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Rep. Ralph Foley
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Sen. Rose Ann Antich



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Mr. Vincent J. Heiny
Mr. Robert Christopher
Ms. Janet S. Ellis
Mr. Terry Harris
Ms. Diane L. Bender
Mr. John S. Chappell
Ms. Kristen G. Fruehwald

PROBATE CODE STUDY COMMISSION

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MEETING MINUTES

Meeting Date: October 8, 1998
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 156A
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. Ed Mahern, Chairperson; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Rose Ann Antich; Mr. James W. Martin; Ms. Cynthia Boll; Mr. Vincent Heiny; Mr. Robert Christopher; Ms. Janet Ellis; Ms. Diane Bender; Ms. Kristen Fruehwald.

Members Absent: Rep. Michael Dvorak; Sen. Sue Landske; Mr. Terry Harris; Mr. John Chappell.

Rep. Mahern called the meeting to order at 10:15 a.m.

Commission Discussion

Ross Hooten, attorney for the Commission, informed the Commission that it would be considering two drafts that had not been previously discussed by the Commission: Preliminary Draft (PD) 3342 concerning the "dead man's statute" and PD 3343 concerning inheritance tax filing and payment deadlines.

Rep. Foley presented PD 3343.¹ The draft was first prepared for the Commission in

¹This document is on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana, 46204. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

1996 in response to Judge Charles Dieter's proposal to shrink the time frames for the filing and paying the inheritance tax. Rep. Foley stated that the draft would result in faster, more efficient probate administration. Rep. Foley noted that the shorter time frames dovetailed with the requirements of the federal estate tax and would not be an undue burden to practitioners. More importantly, added Rep. Foley, faster administration is beneficial to the beneficiaries of the estate.

Mr. Martin noted that the State Bar and the Commission have previously approved the proposed changes to the inheritance tax deadlines.

Judge Douglas Morton of the Fulton County Circuit Court presented PD 3342. Judge Morton informed the Commission that the proposed changes were the result of the work of the Probate Committee of the Indiana Judges Association. The committee had studied the approaches of other states and considered a wide variety of options before proposing the changes in PD 3342. The draft would allow persons who may not testify under current law to testify in will and trust contests. The draft also follows appellate court rulings that have granted trial courts some discretion to allow testimony in certain situations.

Ms. Fruehwald noted that the Probate Review Committee of the Indiana State Bar Association had not looked at formal language but would support the changes in principle.

Rep. Mahern asked whether the changes would help banks and lending institutions collect debts they cannot collect now. Ms. Fruehwald replied that the changes were a good step forward and that they provided further guidance to judges.

Rep. Mahern then announced that the Commission would vote on PD 3342 and PD 3343 at the end of the meeting after voting on the drafts discussed at the August 27 meeting.

Commission Voting

The Commission first considered PD 3062 concerning various probate matters, including the surviving spouse allowance. The Commission discussed the political viability of raising the allowance. Rep. Mahern and Rep. Foley indicated their preference for passing the draft out as written. Ms. Ellis then suggested amending the draft to use the term "protected person" instead of "ward". The Commission agreed and voted 10-0 to recommend PD 3062 as amended to the General Assembly.

The Commission then voted 10-0 to recommend PD 3069 concerning investments by fiduciaries to the General Assembly.

After discussing the fiscal impact of PD 3073 concerning farmland valuation, the Commission then voted 10-0 to recommend the draft to the General Assembly.

Preliminary Draft 3141 concerning charitable trusts was then approved by the Commission after some discussion of the definition of "charitable trust". The Commission determined that some of the language was repetitive and agreed to

remove the language. The draft also passed by a count of 10-0 as amended.

The Commission then voted 10-0 to recommend PD 3282 concerning a family business inheritance tax deduction to the General Assembly.

The Commission suggested stylistic changes to the application language to PD 3283 concerning probate notices and hearings and then voted 10-0 to recommend the draft as amended to the General Assembly.

Ms. Ellis led the Commission's discussion of PD 3285 concerning various probate deadlines that resulted in significant changes to the draft. The following SECTIONS of the draft were removed at the Commission's suggestion: SECTION 3; SECTION 5; and SECTION 15. The Commission also suggested stylistic changes to the application language and substantive changes to SECTION 1 and SECTION 6. The Commission voted 10-0 to recommend the draft as amended to the General Assembly.

The Commission voted 10-0 to recommend PD 3329 concerning the Uniform Prudent Investor Act to the General Assembly with a technical correction to the dates in the application language.

The Commission then voted 10-0 to recommend PD 3330 concerning an inheritance tax affidavit to the General Assembly.

A lively discussion ensued when the Commission considered PD 3331 concerning unsupervised estates. Rep. Mahern expressed his concern that the draft was setting up a system whereby everyone would have access to the inventory of an unsupervised estate but the judge. Rep. Foley noted that in noncontroversial cases beneficiaries are distressed when inventories are required by the court and made public. Rep. Mahern then asked Judge Morton to comment.

Judge Morton relayed the unanimous opposition to the measure expressed by the judges. He noted that judges always have the option of sealing the files of unsupervised estates. He informed the Commission that the inventory is an important tool when the court has to intervene and supervise the administration of the estate after an unsupervised administrator goes awry or fails to act.

Rep. Foley wondered if the problems of unsupervised administration were exaggerated. He said that he did not want to make all estates do something to solve the problems of a few. He added that he did not want to make more people reluctant to avail themselves of the probate courts.

Judge Morton described the types of problems that the judges routinely discuss. Judge Morton agreed with Rep. Foley that there is a need to make the courts friendlier, but he also stated that these issues must be dealt with responsibly.

Rep. Mahern concluded the discussion by explaining that he would not vote in favor of recommending PD 3331 to the General Assembly. Rep. Mahern noted the concerns of the judiciary and suggested that the draft was perhaps more controversial than it looked upon first glance.

The Commission then voted 9-1 to recommend PD 3331 to the General Assembly.

Finally, the Commission voted 9-0 to recommend PDs 3342 and 3343 to the General Assembly. Rep. Mahern then adjourned the meeting.