Approved March 12, 1984
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~XX~~ a.m./p.m. on March 1, 1984 in room 526- S of the Capitol.

All members were present except:

Representative Justice was excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:
Randy Hearrell, Judicial Council
Judge Sam Bruner, Johnson County District Court
Nancy Schmidt Roush, Attorney, Vice-President of the Kansas Bar Association's Committee on Real Estate, Probate, and Trust Section, Olathe
John Kuether, Professor, Washburn Law School, Member of the Judicial Council Committee on Probate

A hearing was held on HB 3012 and HB 3013, acts relating to the probate code and procedure.

The Chairman reported for John Brookens who had said the Kansas Bar Association initiated the request for the Judicial Council to study probate procedure. The Bar supports HB 3012 and HB 3013, the result of the study, and believed the bills will reduce probate costs including attorney fees.

Randy Hearrell, Judicial Council, gave the background and membership of the Judicial Council's subcommittee that studied the probate issue.

Judge Sam Bruner, Johnson County District Court, who wrote the history of the Judicial Council's committee's work, said the bills are targeted toward non-controversial, non-contested cases but do not limit the amount of money or estate involved. The bills are designed to be used uniformly, and when probate courts and attorneys become familiar with the changes, 25% to 30% of estate cases may be handled in probate court. Costs will be reduced because of less time involved. Judge Bruner gave examples of instances where use of the bills' provisions would be appropriate.

The Chairman said there had been a pre-Committee meeting of himself, Judge Bruner, Randy Hearrell, Professor John Kuether, Washburn Law School, Mary Ann Torrence, Revisor's Office, Nancy Schmidt Roush, Attorney and Vice-President of the Kansas Bar Association's Committee on Real Estate, Probate, and Trust Section, and others to consider amendments, most of which were non-substantial, to address concerns expressed by Ms. Roush (Attachment No.1). Ms. Roush reviewed the suggested amendments of this group regarding HB 3012: in line 37, "due" should be changed to "reasonable"; in line 47, before the period, insert "and expenses of informal administration"; in line 78, "may" should be changed to "shall"' subsection (7), in New Section 4 (a), should be mandatory and the rest of the subsections in (a) should be discretionary; also in subsection (7), "with sufficient particularity to allow transfer of" should be added after "Assigning"; in line 115, "If" should be deleted and "may determine" inserted after "court", and the list of reasons why the court may not use informal administration should be added; and, in line 130, delete "leaves" and insert "estate contains".

Professor Kuether reviewed provisions of HB 3013, noting the bill reduces costs by reducing the time frames for probating a will and for creditors to file claims after the death of a decedent; the penalty for withholding wills has been changed from being barred from benefits to having to pay expenses concerning the costs of withholding a will; and publication of notices should include a copy of the petition and will unless excused by the court. He noted a typographical error in line 467 which should be corrected by changing "of" to "or".

Suggestions were made that the word "valid" should be used in line 109 before "settlement", and in line 114 regarding the publication of the notice for two consecutive weeks, a clarification was needed so that a daily newspaper would not publish the notice 14 times.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 1, 1984.

Inconsistencies in the two bills such as family settlement agreements were noted. Professor Kuether said if HB 3013 does not pass and HB 3012 does, HB 3012 would need adjusting, but it could stand alone with minor changes. HB 3012 is concerned mostly with inheritance tax, and the major change in HB 3013 is shortening the time for creditors to file claims. A list of the time frames for creditors to file in other states is attached (Attachment No.2).

Staff was requested to prepare a balloon version of suggested amendments for both bills for Committee consideration.

The meeting was adjourned at 4:30 p.m.

LAW OFFICES

LOGAN & MARTIN

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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Attachment # 1

February 27, 1984

Representative Robert Frey
Chairperson of the House Judiciary Committee
State House
House Chambers, Third Floor
Topeka, Kansas 66612

Re: House Bill No. 3012

Dear Representative Frey:

I am writing to you on behalf of the Executive Committee of the Kansas Bar Association Real Estate, Probate, and Trust Law Section. We have reviewed House Bill No. 3012 regarding an Informal Administration Act, and wanted to convey to you our concerns in connection with this Bill.

First, we want to emphasize that some form of informal administration, particularly for small estates, is needed in Kansas. For example, the only alternative for families where the assets exceed the Refusal of Letters of Administration limits ($7,500.00 and $10,000.00, respectively), is to file a regular probate or to wait nine months and do a Determination of Descent. It is a waste of time and money to require a full probate where the only asset is, for example, an $11,000.00 certificate of deposit. Second, we feel that the Bill sponsored last session by Speaker Mike Hayden proposed a totally unworkable system. The current proposed Bill is by far a superior solution to the problems mentioned above.

It is our opinion that House Bill No. 3012, while presenting a good and workable alternative to full probate, could benefit from additional thought and drafting. I am enclosing a list of a few of the concerns we have in connection with this Bill. We believe tha all of these concerns could be appropriately addressed and handled if the probate subcommittee of the judiciary council was allowed additional time to work on this project, including obtaining input from a wider group of practioners in this field.

IRS REPRESENTATIVE NUMBERS:
C. MAXWELL LOGAN, PRES. 7800-61805R
ALSON R. MARTIN, PRES. 7800-33756R
NANCY SCHMIDT ROUSH, PRES. 7800-07459R

Atch. 1

I would also like to comment regarding the revisions to K.S.A. §59-618a. The proposed revision contained in House Bill No. 3012 allows the affidavit for filing the Will to only be used if the decedent leaves no real property. I assume this refers to the decedent leaving no real property which is subject to probate. Unfortunately, I think the clause as drafted could be construed to prohibit use of the 618a Affidavit if the decedent had an interest in real property even as a joint tenant, which interest in property would not be subject to the jurisdiction of the probate court since the property would pass by operation of law to the surviving joint tenant. We feel that the 618a Affidavit has a valid use in cases where there is little or no "probate" property, whether due to extensive joint tenancy property or the use of a revocable living trust, or other such circumstance. The 618a Affidavit preserves the Will and provides a means of recording the Will if it should ever be needed. Therefore, we would respectively recommend that the proposed K.S.A. §59-618a(a)(2) be clarified. An example of the proposed language would be as follows: "(2) The decedent's estate contains no real property."

Thank you very much for the opportunity to present out input on this Bill. Either myself or any members of the Executive Committee would be more than happy to discuss this with you or any member of your committee further.

Sincerely,

Nancy Schmidt Roush
Vice President of the
Kansas Bar Association
Real Property, Probate, and
Trust Law Section

NSR:laf

Enclosures

cc: Executive Committee Members
Honorable Judge Sam K. Bruner

HOUSE BILL NO. 3012

The following are comments and questions concerning the draft of House Bill No. 3012, dated February 15, 1984.

1. Sec. 2(b)(4) and (5)--One uses "reasonable" diligence and the other uses "due" diligence; these provisions ought to be parallel, since a different standard of diligence does not seem to be justified.

2. ~~Sec. 2(b)(6)--"Valuation or appraisal" seem to refer to the same thing; query whether a distinction is intended here, and if so, why such distinction is made.~~

3. Sec. 2(b)(7)--Reference to "including reasonable fees" is unclear; is this intended to refer to attorneys' fees?; if so, it should be up to the court to determine whether the fees are reasonable rather than to impose what seems to be a superfluous requirement on the attorney to only charge "reasonable" fees, or to only include those fees on the petition to the extent they are reasonable.

4. Sec. 2(b)(9)--Reference to the nature and form of disposition "requested" seems misleading. It should not be up to the petitioners to request disposition, but rather they should set forth the disposition required under law. Also, the reference to a settlement agreement both here and other places in the Act raises questions whether parties can request disposition of the property by means of a settlement agreement as opposed to by Will or intestate succession. I doubt if that is intended, and therefore I think this section should be made clear.

5. The petition is to contain reasons why informal administration is appropriate, and the court can determine that informal administration is not appropriate. However, no guidance is given to the court or petitioners regarding when administration might be inappropriate.

6. Sec. 4 states that a court may make a number of different orders if it finds that an estate can be completely administered by informal administration. Since most of these designated items would be necessary in order to administer an estate, it seems like they should be a mandatory part of the court's order, where applicable.

7. Sec. 4(a)(8) provides for the giving of bond. First, this says that bond can be excused by a testamentary

instrument. Since the person being bonded is a "person ordered to pay debts and expenses" and not an executor, then query whether the Will has to specifically excuse this type of person from a bond or whether an excuse of a bond for the executor will apply to this case. Second, nowhere is any procedure given for the court to review the payments of debts and expenses and terminate the bond. Sec. 4(b)(3) provides that bonds apparently terminate when the nonclaim statute runs. However, that will not protect creditors who have filed claims but who are not paid before the statute runs, which is usually the case.

8. There does not seem to be any procedure for designating a person to distribute the assets of the estate. It will be necessary to have some documents authorizing a named person to make that transfer, in order to satisfy the requirements of banks, stock transfer agents, etc. to accomplish the transfer. The reference under Sec. 4(a) to the court's order only refers to designating a person to pay debts and expenses, and does not contain a similar provision for designating a person to assign assets of a decedent's estate. It would seem that the order would have to give a person the authority to not only pay the debts but also distribute the assets. If a named person is specifically given court authority to distribute assets, then the bank, stock transfer agent, etc. should accept that person's signature in transferring assets.

9. Sec. 4(b)(2) provides that if a distribution is made before six months from the date of death, then the person receiving the property must give a redelivery bond. Sub-Sec. (3) then states that the bond shall continue until the running of any statute of nonclaims. This would seem to overlook the problem of a second Will being admitted within the nine-month period for admitting Wills. For example, if a new Will was admitted on the eighth month, determined to be valid, and the person distributing assets had distributed them as of seven months after the date of death, and the nonclaim statute had run as of that date, then no redelivery bond would have been required, or any such bond given would have expired, and the actual persons entitled to the property under the new Will may be left with no practical recourse.

These comments were formulated after a quick reading of House Bill No. 3012. Additional areas of concern and improvement may also be apparent after further study.

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M E M O R A N D U M

Attachment # 2

June 22, 1983

To: Probate Law Advisory Committee

From: Randy M. Hearrell

Re: Time for Filing Claims

The following is the time for filing creditors claims:

Alabama	6 months after appointment of P. R.
Alaska	4 months after publication, or within 3 years after death if no notice published.
Arizona	4 months after publication, or within 3 years after death if no notice published.
Arkansas	2 months after appointment of P.R.
California	4 months after appointment of P.R., (one year for out-of-state claimants who did not receive notice).
Colorado	4 months after publication, or within 1 year after death if notice not published.
Delaware	6 months after appointment of P.R. Claims arising after death due 6 months after they arise.
District of Columbia	6 months after publication of appointment of P.R.
Florida	3 months after publication. Claims not rejected within 4 months are automatically accepted.
Georgia	3 months after last newspaper publication date.
Hawaii	4 months after publication.
Idaho	4 months after publication.
Illinois	6 months after appointment of P.R.
Indiana	5 months after first publication.
Iowa	6 months after second publication.
Kansas	6 months after publication.

Atch. 2

Kentucky	1 year after appointment of P.R. or 3 years after death if no P.R. appointed.
Louisiana	Presented to P.R. before or at the final hearing to settle estate.
Maine	4 months after publication.
Maryland	6 months after appointment.
Massachusetts	4 months after appointment of P.R. All claims considered valid unless P.R. disclaims by notice within 4 months and 60 days after appointment of P.R.
Michigan	18 months after claims hearing date if estate is open. Claims barred if estate is closed.
Minnesota	4 months after publication or within 3 years if no notice published.
Mississippi	90 days after notice.
Missouri	6 months after publication.
Montana	4 months after publication.
Nebraska	2 months after publication.
Nevada	90 days after publication (60 days if under $60,000).
New Hampshire	Must be presented "promptly".
New Jersey	Within 6 months of court order of notice to creditors.
New Mexico	2 months of publication or within 3 years if no notice published. All claims not rejected by P.R. within 60 days of filing deadline are automatically accepted.
New York	7 months after appointment of P.R., but accepted until estate closed.
No. Carolina	Due within time estate is open (min. of 6 mo.)
No. Dakota	3 months from publication.
Ohio	3 months after appointment of P.R. Without newspaper publication, claims are valid 21 years (4 years for real estate claims).
Oklahoma	2 months after first publication or posting of notice.

Oregon	Generally filed within 4 months after first newspaper publication. Must be filed within 1 year after final account is filed. P.R. must reject claims within 60 days of claims period or claims are accepted.
Pennsylvania	Must be presented "promptly".
Puerto Rico	6 months after publication.
Rhode Island	6 months of publication P. R. must disallow claims within 30 days after claims filing period.
S. Carolina	5 months after publication.
S. Dakota	2 months after publication.
Tennessee	6 months after publication.
Texas	6 months after appointment of P. R.
Utah	3 months of notice or within 3 years after death if no notice published.
Vermont	4 months after publication.
Virgin Island	6 months after publication
Virginia	Due by date of hearing on claims, set by the Commissioner of Accounts. Usually P.R. requests date for hearing on claims.
Washington	4 months after publication.
W. Virginia	4 - 6 months after publication.
Wisconsin	Due before hearing on claims, which is set by court order (usually 3 months).
Wyoming	3 months after newspaper publication.