

Members

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Rep. Ralph Foley
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Sen. Brent Steele
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Joseph H. Davis
Kris Fruehwald
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Judge Thomas Lowe
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Timothy Sendak
Jerry Withered



PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: October 15, 2008
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Trent Van Haften, Chairperson; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Brent Steele; Joseph H. Davis; Kris Fruehwald; Thomas Hardin; Judge Thomas Lowe; James Martin; David Pendergast; Dan Reeves; Jerry Withered.

Members Absent: Rep. Jeb Bardon; Sen. John Broden; Chris Colpaert; Timothy Sendak.

Rep. Van Haften called the meeting to order at 10:05 a.m.

The Commission's first order of business was to discuss Preliminary Draft (PD) 3245. The draft provides stiffer penalties and more tools to law enforcement with respect to the misuse of funeral trusts, trust accounts, and escrow accounts used to purchase funeral and cemetery services and merchandise in advance of need. Mr. Curtis Rostad testified that the Indiana Funeral Directors Association supports the draft. He also suggested that

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

misusing cemetery perpetual care funds should also be covered by the draft's expansion of the racketeering influenced corrupt organizations (RICO) and civil forfeiture laws. The Commission adopted Mr. Rostad's suggestion by consent. The Commission adopted the amended draft by consent.

Mr. Jeff Kolb presented PD 3339 concerning funeral planning declarations to the Commission on behalf of the Probate, Trust, and Real Property Section of the Indiana State Bar Association. The members, Mr. Kolb, and Mr. Rostad discussed the draft at length before deciding to make three changes to the draft. The Commission accepted by consent motions to:

- (1) permit qualified individuals to execute a declaration that is substantially in the statutory form;
- (2) define the term "designee"; and
- (3) require a declaration to designate a person to serve as the declarant's designee.

The Commission adopted the amended draft by consent.

Mr. Kolb also presented PD 3248 concerning the estate planning powers of guardians. Mr. Kolb explained that a 2007 Indiana Supreme Court Case had interpreted IC 29-3-9-4 in a manner that invalidated certain estate planning actions that guardians had come to find useful. Mr. Kolb acknowledged that the Court had ruled correctly and testified that a new statute would better serve Indiana. Mr. Kolb compared the powers permitted by IC 29-3-9-4 to the powers permitted by PD 3248. The Commission accepted by consent a motion to:

- (1) make technical corrections; and
- (2) specify that a guardian may receive copies of the protected person's relevant estate planning documents at the guardian's expense.

The Commission adopted the amended draft by consent.

The Commission discussed but did not adopt PD 3337 which is identified as the Comprehensive Transfer on Death Act. Mr. Kolb testified that, if passed, the act would put Indiana in the forefront of the states that permit non-probate on death transfers of property. An important feature of the draft is the authorization to transfer real property via a transfer on death deed. Mr. Kolb noted that other kinds of property are already transferred on death in Indiana. He added that the draft improves upon current law by addressing contingencies that the current laws do not. He cited as an example language permitting a transferor to enable a descendant of a beneficiary to receive a transfer in the beneficiary's place if the beneficiary dies before the transferor.

The Commission agreed to make many changes to PD 3337. Rep. Van Haften announced that a revised draft reflecting those changes will be discussed at the Commission's October 29 meeting.

Rep. Van Haften adjourned the meeting at 1:10 p.m.