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Sen. Joseph Zakas, Chairperson  
Sen. Randall Head  
Sen. John Broden  
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Rep. Ed DeLaney  
Rep. Ralph Foley  
Chris Colpaert  
Joseph H. Davis  
Kris Fruehwald  
Thomas Hardin  
Judge Thomas Lowe  
James Martin  
David Pendergast  
Dan Reeves  
Timothy Sendak  
Jerry Withered



# PROBATE CODE STUDY COMMISSION

Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

**LSA Staff:**

Ross Hooten, Attorney for the Commission  
James Landers, Fiscal Analyst for the Commission

Authority: IC 2-5-16-2

## MEETING MINUTES<sup>1</sup>

Meeting Date: October 7, 2009  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Sen. Joseph Zakas, Chairperson; Rep. Ed DeLaney; Rep. Ralph Foley; Kris Fruehwald; Thomas Hardin; Judge Thomas Lowe; James Martin; David Pendergast; Timothy Sendak.

**Members Absent:** Sen. Randall Head; Sen. John Broden; Rep. Trent Van Haaften, Vice-Chairperson; Chris Colpaert; Joseph H. Davis; Dan Reeves; Jerry Withered.

Sen. Zakas called the meeting to order shortly after 10:00 a.m. Although no votes were taken, the meeting was primarily devoted to considering the following preliminary drafts:

3119	(Exhibit A)	Guardianships (HB 1040-2009 without SB 505-2009 but with the language of the judiciary committee).
3120	(Exhibit B)	SB 505-2009 concerning life insurance and the uniform

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at [licrequests@iga.in.gov](mailto:licrequests@iga.in.gov). Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard 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.

3121	(Exhibit C)	prudent investor act Provides that the death taxes do not apply after June 30, 2010
3123	(Exhibit D)	Miscellaneous inheritance tax issues
3124	(Exhibit E)	Asset protection trusts
3129	(Exhibit F)	Trust matters: (1) matrimonial property; (2) decanting; (3) missing beneficiaries
3133	(Exhibit G)	Miscellaneous estate planning and administration matters including the general waiver provision and various items deemed technical
3139	(Exhibit H)	IC 32-17.5-5-1 concerning disclaimed property

### **PD 3120 (SB 505-2009)**

Attorney John Collins testified on behalf of the Indiana Bankers Association (IBA). The IBA has sought the passage of legislation similar to PD 3120 in each of the two previous legislative sessions. The PD would relieve trustees of some of the duties imposed by the Uniform Prudent Investor Act (UPIA) with respect to life insurance policies. Mr. Collins explained that irrevocable life insurance trusts (ILIT) are particularly problematic under the UPIA as the trusts usually consist of very little property other than a life insurance policy.

The Commission discussed PD 3120 with Mr. Collins. Rep. Delaney and Mr. Hardin were concerned that the draft excluded too much from the coverage of the UPIA, particularly the duty to exercise policy options under a contract of insurance. Mr. Collins noted that obtaining relief from the duty to diversify an ILIT is his chief concern. Mr. Collins also expressed his concern that provisions of the draft intended to enable the trustees of existing trusts to obtain relief from the UPIA may threaten certain tax advantages of ILITs by granting too much power to the settlors of those trusts. Mr. Collins urged the Commission to recommend legislation that applies to trusts established after a particular date.

### **IC 29-1-14-1(d)**

Attorney Paul Sauerteig asked the Commission to consider changing the final deadline for submitting a claim against an estate. IC 29-1-14-1(d) bars all claims filed after nine months of the date of death. Mr. Sauerteig testified that some estates delay opening as long as possible to deny creditors any reasonable opportunity to file a claim against the estate. The Commission discussed with Mr. Sauerteig the options available to a creditor, including petitioning the court to open the estate. Mr. Sauerteig commented that it is unfair to place that burden on a creditor and that the statutes should focus on the duty of a personal representative to get the process moving.

Following Mr. Sauerteig's testimony, Mr. Hooten briefly summarized the remaining preliminary drafts. The Commission then discussed PD 3124, PD 3119, PD 3121, and PD 3123.

### **PD 3124**

Attorney Jeff Kolb presented the case for authorizing asset protection trusts in Indiana. Mr. Kolb urged the Commission to approve the PD and set Indiana on course to join the ten states that currently permit asset protection trusts.

Much of the discussion focused on whether abrogating the rule against perpetuities for an asset protection trust is a good idea. Rep. Delaney asked whether capital is leaving

Indiana for out-of-state asset protection trusts. Mr. Kolb replied that the members of the Probate, Trust, and Real Property Section of the Indiana State Bar Association (ISBA) have not been surveyed for that information.

#### **PD 3119 (HB 1040-2009)**

The Commission agreed that the PD should be revised to include transfer on death strategies in the estate planning powers bestowed upon a guardian by statute. The Commission also agreed to remove a reference to the protected person's wishes within the provision authorizing the power to make gifts, on the grounds that the provision is rendered unnecessary by language set forth in subsection (b) requiring a court to consider the estate planning decisions that the protected person would have made.

#### **PDs 3121 and 3123**

The discussion focused on the probability that a repeal of the inheritance tax would be enacted by the General Assembly. Rep. Delaney stated that he sees no chance for the passage of a repeal of the tax. He urged the Commission to recommend moderate and rational increases in the exemption amounts for Class B and Class C transferees. Rep. Foley and Mr. Hardin also stated their support for increasing the exemption amounts.

Sen. Zakas asked whether the entire ISBA has a position on the repeal of the inheritance tax. Ms. Paje Felts (ISBA Legislative Counsel) replied that while the Tax Section of the Indiana State Bar Association also favors a repeal of the inheritance tax, the ISBA has not taken a position.

Sen. Zakas adjourned the meeting shortly after 12:00 p.m.