MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 15, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:09 a.m. on Wednesday, April 15, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada
Russell Smith, District Attorney, Humboldt County, Nevada

Chairman Anderson:
[Roll called.]

Let us open the hearing on Senate Bill 141.

Senate Bill 141: Enacts the Uniform International Wills Act. (BDR 12-673)

Senator Care, explain to me why Nevada should be concerned about international wills.

Senator Terry Care, Clark County Senatorial District No. 7:
I will do my best, Mr. Chairman, in an area in which I do not practice. I know that Mr. Segerblom testified before the Committee a couple weeks ago on the Uniform Interstate Family Support Act (UIFSA). For the Committee members who have not heard this before, briefly, there is a group of about 300 of us who meet annually for eight days and promulgate so-called uniform acts. The idea is to give uniformity to certain matters, oftentimes matters of commerce. The Uniform Commercial Code is the best example. So when you cross state lines, you know that the rules are pretty much the same, absent any sort of trumping federal legislation, which we try to stay away from. We try to get the states to come up with their own rules. The Uniform Commission has been around for 117 years. It includes federal and state district and appellate court judges, law school professors, representatives from the various attorneys general offices, and legislators, pretty much the gamut.

Out of that, we now have—actually, it has been around for a while—the so-called International Wills Act, which has now been adopted in 15 states. It arose from what is known as the Washington Convention of 1973. I need to point out this has nothing to do with the United States somehow yielding sovereignty. That would be a mistaken interpretation of what this bill does. The Convention was in 1973, and about a dozen countries have signed on to it, including Belgium, Bosnia and Herzegovina, Canada, Cyprus, France, Italy, Libya, Niger, Portugal, and Slovenia. So far, the United States has not signed on to it. There is some disagreement as to whether that needs to happen, because we already have 15 states, including our neighbor California, that have signed on to it.

The basic idea is that you want to come up with some sort of a universal form of a will, which is acceptable in all of the countries that have signed on to the Convention, despite any variance with local requirements. You asked about Nevada, Mr. Chairman. Let us say you are a Nevadan and you own property in Italy, which is a signatory to the Washington Convention. You die here. You made a provision in your will for the disposition of your property in Italy. If Nevada were to pass this act, and Italy is already a signatory, it would mean that the wishes of the Nevadan would be recognized in Italy, so there is no issue about the disposition of the Italian villa. Or, if you were a Nevadan living in Italy, and you had in your will a condo in Nevada that you wanted to leave to somebody, if Nevada passes the act, then the Italian courts would recognize your wishes, and there would not be any issue about where that Nevada condo would go. That is pretty much the idea behind it. I would point out that, as a general proposition anyway, Nevada will recognize a will validly executed in another state and probably would recognize in most instances a will executed in another country. This bill basically gives a safe harbor to those people who have property overseas, at least in those countries that have signed on to the Convention. This has also been approved by the American Bar Association.

To walk the Committee through the bill, sections 6-10 are really the guts of the bill. Section 6 addresses the validity of an international will. To help clarify this a little bit so the Committee understands, if you already have a will, you can convert it into a so-called international will by going through the formalities here. That is the basic idea. Section 6 states that the will be valid regardless of form. It does not matter about the location of the assets, nationality, domicile, or residence of the testator—that is the person who makes the will—so long as the formalities are observed. The invalidity of the will as an international will does not affect its formal validity as a will of another kind. Let us say that you do not observe some of the formalities: it may be that you have handwritten the will; you may be in a country where they recognize a holographic will, where somebody writes out a will and there is no witness.

Just because it is not valid as an international will does not necessarily mean that it would not be a valid will under the law of the other jurisdiction. In subsection 3 of section 6, "This chapter does not apply to the form of testamentary dispositions made by two or more persons." Apparently in some countries, there are customs where two people can make a will. That does not happen in the United States. The Convention says we are not going to permit that because some countries do and some do not.

Section 7 addresses to the requirements of the will. It has to be in writing, can be in any language, and can be by hand or any other means. There is a provision for two witnesses having to see the person authorize the act.

Section 8 goes to other points of form. Signatures must be placed at the end of the will, each sheet of the will has to be initialed by the testator, pages have to be numbered, et cetera.

Section 9 is the certificate. If you already have your will, it is a matter of simply attaching this certificate to your existing will and converting it into a so-called international will.

Section 10 explains the effect of the certificate: "the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this chapter." I should point out that the definition of an "authorized person" is in section 4. In this country, that would be an attorney; overseas it could be a member of the diplomatic or consular service.

Section 11 governs revocation. It says that an international will is subject to "the ordinary rules of revocation of wills." That simply means that the Uniform Commission did not want to get into the subject of revocation. Whatever the rules are, those rules are not going to be changed by this.

That is pretty much it. I do not practice in the area. This is one of those uniform acts that the Commission is now asking us to try to get enacted. I will confess to you that there was a practitioner from Reno who testified in the Senate against the bill. I gave him the number of the staff in Chicago, and they never heard from him. I do not know if he is here today to testify. I cannot say that I am really aware of any opposition. It was not my intent to bring anybody else to testify for the bill.

Assemblyman Cobb:
I do not practice in this area either. Just a technical question: what is the role of the "authorized person" in this act? Does he need to witness the execution, hold the executed will, prepare it, or something to that effect?

Senator Care:
We are probably talking about a will that has already been prepared. I think it is a reference to the certificate. There is a requirement in section 8, subsection 3, "The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will." If the testator does, that has to be handled by the authorized person. In section 9, I think it is, there is some language about where copies of the will or certificate are going to be located. If you read section 7, it talks about the requirements having to be done in the presence of the authorized person; there has to be witnesses, but the authorized person is the one who oversees that the requirements are met for the international will.

Assemblyman Cobb:
I am trying to visualize this process. A will already exists, and transforming it into an international will is an extra step, which is also an execution, and therefore it would take place in front of this authorized person?

Senator Care:
That is correct. That is section 9 of the bill. The certificate spells out what the authorized person is certifying. If you look at the language of the certificate in section 9, page 3, line 39 of the bill, "I furthermore certify that: (a) In my presence and that of the witnesses: (1) The testator has signed the will or has acknowledged his or her signature previously affixed."

Assemblyman Hambrick:
You listed several countries that are already signatories to the Convention, and hopefully that list will grow. Is there a method for enforcement? Some of the countries you listed have religious-based governments, and they could change in a heartbeat. What would happen if someone leaves property in a Muslim country to a Christian or in a Jewish state to a Muslim? Who would we go to to enforce this issue in case the country at that time said, "Well, we do not care"?

Senator Care:
To rephrase the question, let us say that a country signs on to this, they are a signatory to it, and then there is a change in government and for whatever reason they just ignore the formalities of it. There is very little, frankly, that you could do in a situation like that. You hope that the signatories to a provision like this would be faithful to it.

Chairman Anderson:
My concern would be, if we are going to be enforcing, since the United States is a signatory on this already I presume...

Senator Care:
Actually, Mr. Chairman, it is not. That is an interesting question. My understanding is there are several international accords that it may not be necessary for the United States to sign on to absent some action by Congress, but the Commission is encouraging states to enact this. We are up to 15 now. As a formal matter, no, the United States has not signed on to it.

Chairman Anderson:
So I guess my question is hypothetical in nature. Let us say that someone died here in Nevada intestate—without a will—and then an international will is discovered in some other country. Would you expect that will could be enforced here in Nevada? Does that will supersede whatever actions may have already been taken in Nevada?

Senator Care:
I do not know the answer to that question. You could put it to me as follows, and I would still not know the answer. Somebody who practices in the area would. But let us say you die in Nevada, and you have a Nevada will, and nobody discovers it until a year after your death, I am not sure what happens in a situation like that.

Chairman Anderson:
Well, we are going to have someone here in a little while who is going to be talking about that topic. Maybe public administrators often end up in that kind of a situation.

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:
The Nevada Bankers Association is in support of this bill. As people who are ultimately directed by someone to do something as the result of wills, it would be nice to know that there is a process in place that recognizes there are people who perhaps die in Nevada, have property in Nevada, or are not residents of Nevada. It would be nice to know there is a system in place that can manage that.

Chairman Anderson:
I will close the hearing on S.B. 141.

Let us turn our attention to Senate Bill 96.

Senate Bill 96: Makes the District Attorney of Humboldt County the ex officio Public Administrator of Humboldt County. (BDR 20-374)

Russell Smith, District Attorney, Humboldt County, Nevada:
I am representing Humboldt County on this bill that we are putting forth. We are trying to add Humboldt County to Lander, Lincoln, and White Pine Counties, where the district attorney is the public administrator for the county. We have found a necessity to do this. Our previous public administrator determined that it cost her $500 to perform the duties of public administrator of the county. She no longer wanted to perform those duties, so she resigned. We also have some other public administrators who are in various stages of criminal actions brought against them for misappropriating funds. The county commissioners turned to my office and asked if I would be willing to be the public administrator.

After speaking to some of my colleagues, it is quite a hot topic: some district attorneys do not want it, others think they could do a great job and would love to have it. I decided that for our county it would be a good thing to have it and be able to get this done the way it should be. The county commissioners have agreed to give me a half-time legal person and a half-time office administrator to run this office properly and to ensure the legal affairs are done appropriately, and we are able to do that. So far we have been able to turn this around in the short period that we have had the responsibility. I believe that having the district attorney's office in our county as the public administrator works really well. We are able to take care of the legal actions, get things filed on time in court, get the matters wrapped up quickly, and dispose of the property of the deceased in an appropriate fashion. That is the only thing we are asking for: to add Humboldt County to the list of the other three counties that already have the district attorney as the public administrator.

As most of you are probably aware, when you look at the current governing statute, the Legislature has set the amount public administrators get paid in Washoe County and Clark County. Then there are all the public administrators in between, where they are elected but there is no prescribed amount for them to be paid. Then you have the bottom three, right now, where the district attorney is the public administrator. How much the counties are willing to pay the public administrator seems to be the area that causes the problem. If our county just takes it over with the district attorney's office, that solves that problem.

Chairman Anderson:
Is there a competing piece of legislation in process that will do this across the board?

Russell Smith:
Yes, there are two other pieces of legislation. Assemblyman Goicoechea has one that includes the same language as this bill. Under his bill for the other counties, if the district attorney or another elected official choose to take it on, they can, and they can eliminate that elected position until the official or the county no longer want to be in that relationship. Regarding Humboldt County, they just adopted our language. There is another bill that is much more expansive than Assemblyman Goicoechea's bill, but it also adopts our language. Our language is the same in all three bills.

Chairman Anderson:
In other words, it would fall to the district attorney's office in all three?

Russell Smith:
Yes.

Assemblyman Horne:
One of my concerns relates to those instances where the death of a person may result in a prosecution by the district attorney's office, and it poses a potential conflict.

Russell Smith:
The person was murdered?

Assemblyman Horne:
Murder or suspicious death. The district attorney's office is prosecuting a potential heir to an estate. Those types of conflicts concern me.

Russell Smith:
I could see it happening in very few cases. The reason is the public administrator does not become the administrator of the estate if there are other family members who can do that. The public administrator is there only if nobody else is able to administer that estate.

Assemblyman Horne:
I was always under the impression that the public administrator also took those duties when none of the family members feel comfortable that they possess the wherewithal to be the administrator, and they choose not to adopt that role for the estate. Is that not correct?

Russell Smith:
Yes, the statute says "able and willing." Different courts are interpreting the "willing" part differently. Is it willing to do it or willing to pay to have it done?

The statute allows public administrators to charge for their services if there are people able to do it but just do not want to do it. My experience has been, in the short period of time we have done this, once the family finds out that we charge for it, they choose not to be our clients because we do what we feel is in the best interest of the estate. They can hire someone else, who might cost them a little bit more, but they are in control. We end up with the cases where there are no family members or the other family members are in a rest home, for example, a spouse who does not have any children or anybody else we can locate who is able to do it.

I will go back to the other question. If a situation does happen where we are prosecuting a family member for the death of the deceased, in one respect you could claim that causes a conflict of interest; in the other, there is no conflict, because we are working in the best interest of the deceased in both cases. We are not trying to represent the murderer, the wrongdoer, and take care of the deceased's estate appropriately. As you know, in the State of Nevada, as in most states, if there is a wrongdoer, he becomes a non beneficiary of the will. I do not see that we are going to be in a situation where we are trying to prosecute a person and then give him the estate.

Assemblyman Horne:
The problem is you make the assumption that the defendant is the wrongdoer. If the defendant is making a rightful claim to the property and is professing his innocence, maybe he is even found not guilty, now he has to come before the district attorney who prosecuted him, and who is also handling the estate. Can you see that conflict? That is what I am talking about.

Russell Smith:
Yes, I can. All public administrators have the ability, under the statute, to contract with another attorney to administer an estate. My office will not normally need to do that, because we have in-house attorneys who will take care of that. But if there is a situation where it looks like we could end up in a conflict, or say it is a public figure—a county commissioner—or someone closely tied to our office who we give legal advice to, then we can always contract with an outside attorney to handle that.

Chairman Anderson:
I was under the impression that the public administrator often comes into play when you are not sure if there are other family members, or you are waiting for the family to come from out of state, where the will is, if there is in fact a will. It is much clearer when no one comes forward to claim responsibility for the deceased. Clearly, it would then end up being your responsibility to deal with

the estate. Do you not have that immediate responsibility? I am not familiar enough with Humboldt County, but the coroner is the sheriff, correct?

Russell Smith:
Correct.

Chairman Anderson:
The coroner, the sheriff, would determine whether there were suspicious circumstances surrounding the death and then call in the district attorney to corroborate that, which ends up being you. I am trying to understand how this is going to work.

Russell Smith:
The sheriff is the coroner, and he has several deputies who are sworn coroners. They respond to a call regarding a death. The district attorney's office does not get called at that point. The coroner makes the determination. Once the determination is made, either that there are suspicious circumstances or it is a natural cause of death, they call our office and let us know. If it is a natural cause of death, they call us and give us the information, and then we immediately respond as the public administrator. We go out, and the coroner removes the body from the scene. It is usually gone before the public administrator gets there. I have assigned those duties to one of my deputies. She shows up with the assistant, and they begin to inventory all of the property. They take pictures, and so forth.

If it is a suspicious-circumstances death and we are going to treat it as a murder, they do not respond to the scene to begin cataloging the property until after the body is removed, and the investigation stage is done. There are some time frames for filing the initial paperwork with the court—I believe it is 15 days for the first one we have to file with the court. Any time during that period, if it is determined that the district attorney's office will pursue criminal charges, then we will have to assess in-house if this will pose a conflict: do we need to get an outside attorney to assume the public administrator duties from that point forward?

Assemblyman Carpenter:
A couple of questions. When your public administrator resigned, how did you become the public administrator? Is there some place in the law that provides for it?

Russell Smith:
The public administrator resigned after the filing deadline for elections. The statute provides for the county commissioners to appoint somebody else until

the next election period. That is when the county commissioners approached me and asked if I would serve as public administrator for that period of time. They could have automatically appointed any department head within the county that was not an elected official. They had the power to do that. If they wanted my office or some other elected official to do it, then they have to get the elected official's permission because our duties are outlined by statute. I accepted that for the period of time until the next election when somebody would be able to file and run for public administrator.

Assemblyman Carpenter:
I was just wondering because Senator Matthews' bill specifically provides that "if, for any reason, the office of public administrator becomes vacant, the board of county commissioners may appoint a public administrator for the remainder of the unexpired term." (Senate Bill 194, section 2, subsection 5.) I guess there is another section of law where the county commissioners can do that anyway. Maybe this is just reinforcing that.

Russell Smith:
Correct. They just need to appoint somebody for that position for that period of time because somebody has to be able to do those duties in the county until the next election.

Chairman Anderson:
I was under the impression that application is for any elected position in the county, for example, if a commission seat becomes vacant, do they not then have the power to appoint their own colleagues?

Assemblyman Carpenter:
No, the Governor does that for county commissioners.

Russell Smith:
That is correct. For a county commissioner, it has to be the Governor. But you are correct with regard to most of the other positions. If they become vacant, the county commissioners then appoint.

Chairman Anderson:
The justice of the peace or the district attorney?

Russell Smith:
Correct.

Assemblyman Carpenter:
Reading Mr. Goicoechea's bill, it has to go to an election before it can be changed, the way I read it. I think in Senator Matthews' bill, the same language is there, but it has to do with many other things like guardians and guardianships. This is the bill that specifically provides that the district attorney shall be the administrator.

Chairman Anderson:
I will close the hearing on S.B. 96.

Let us turn our attention to some housekeeping issues. [Discussed Committee's schedule ahead.]

We are adjourned [at 8:59 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

RESPECTFULLY SUBMITTED:

Julie Kellen
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 15, 2009 **Time of Meeting: 8:09 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster