

TESTIMONY
of
RICHARD B. NETTLER, CHAIR
COURT IMPROVEMENTS COMMITTEE
of the
COUNCIL FOR COURT EXCELLENCE
at
THE PUBLIC HEARING
on
BILL 14-211, THE UNIFORM TRUST ACT OF 2001
COMMITTEE ON THE JUDICIARY
COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 29, 2001

Good afternoon, Chairwoman Patterson, members of the Committee, and ladies and gentlemen. My name is Richard B. Nettler. I am pleased to be here as a volunteer board member and representative of the Council for Court Excellence. As you know, the Council for Court Excellence is a nonprofit, nonpartisan civic organization that works to improve the administration of justice in the local and federal courts and related agencies in the District of Columbia. For nearly 20 years, the Council for Court Excellence has been a unique resource for our community, bringing together members of the civic, legal, judicial, and business communities to work in common purpose to improve access to justice and to increase public understanding and support of our justice system. We have worked closely with the D.C. Council in the past on such important areas as the 1994 Probate Reform Act and the Omnibus Trusts and Estates Amendments of 2001. We have also testified on the Office of Administrative Trials and Hearings Establishment Act of 2001, the Sentencing Reform Amendment Act of 2000, and the proposed budget for the D.C. Child and Family Services Agency. No judicial member of the Council for Court Excellence has participated in the formulation of these comments. I appear today as a representative of the Council for Court Excellence and not on behalf of any client or in any other paid capacity.

The Council for Court Excellence endorsed the Substitute DC Uniform Trust Act of 2001 Bill at its Executive Committee meeting on November 7, 2001 - and subsequently in a letter to you dated November 16, 2001 - and supports enactment of that version of the Uniform Trust Code by the District of Columbia Council rather than the Bill 14-211, the AUniform Trust Act of 2001,@ as introduced. The Council is pleased to join the Bar Association of the District of Columbia and the Estates, Trusts and Probate Law Section of the District of Columbia Bar in support of this Substitute Bill.

Enactment of the Substitute Bill would complement the Probate Reform Act of 1994, and more clearly define the rights and duties of trustees and trust beneficiaries when the trust document fails to adequately address those issues. Trusts are used as will substitutes with increasing frequency; yet, there is no procedure in the District of Columbia which addresses the rights of creditors of the settlor of a revocable trust to be paid from trust assets when there is no probate estate. In many instances, if the settlor has properly titled all his assets in the name of his revocable trust, there will be no probate estate to be administered and consequently there may be no source of payment for the settlor's or decedent's creditors or no procedure for providing the settlor's creditors notice of the settlor's death in order that a demand for payment may be made. This situation has been addressed by the Substitute Bill by including a procedure by which a settlor's creditors may present claims against the trust (when no probate proceeding has been initiated). Section 19-805(d) of the Substitute Bill provides that if there is no probate proceeding, or if only a small estate proceeding has been initiated, a trustee may publish a notice substantially similar to the notice to creditors published in a probate proceeding in order to obtain the same protection from claims as is provided in probate estate.

The Substitute Bill also amends Bill 14-211 to ensure the confidentiality of a trust if that is the settlor's intent. [See ' 19-808.13(c).] Bill 14-211 would not permit confidentiality even if the settlor specifically directed confidentiality in the trust instrument. There are situations where a settlor does not wish that the trust beneficiaries be aware of the provisions made for them in the trust instrument until some later date or upon the happening of an event certain. This seems to us to be a perfectly understandable position.

The most controversial provisions of Bill 14-211 relate to the trustee's duty to inform and report. The Substitute Bill significantly improves upon and refines the notice provisions limiting that duty to the

duty to provide notice of the trust existence (absent a direction of confidentiality) to those qualified beneficiaries who are then entitled or permitted to receive distributions from the trust currently. [See ' 19-808.13.].

Other provisions contained in the Substitute Bill not included in Bill 14-211 as introduced, provide a statutory provision on the manner in which trust property may be titled [' 19-804.18], specific statutory authority for the creation of a trust by an agent acting pursuant to a power of attorney [' 19-804.1(5)], and authority for a parent to represent the interests of incapacitated children, as well as minor and unborn children, in a trust [' 19-803(a)(6)].

As we noted in our November 16, 2001 letter to you, we believe the Substitute Bill represents legislation which is compatible with local law and which enables the District of Columbia to remain competitive as a trust situs with our neighboring jurisdictions of Maryland and Virginia, which have enacted trust codes but have not adopted the Uniform Trust Code. We submit that the Substitute Bill would conform to local law and is consistent with the spirit of Bill 14-211, the AUniform Trust Act of 2001.©

We acknowledge the hard work and productive labor by the National Conference of Commissioners on Uniform State Laws and the DC Bar Task Force, and the Committee on the Judiciary to bring this measure to public light. Speaking from the vantage of a broad-based civic organization concerned with the administration of justice, it seems to us that the Substitute Bill better secures the interests of the citizens of the District of Columbia than does Bill 14-211. Thank you.