

Memo

Date: June 2, 2009"

To: Article 9 Drafting Committee and Observers

From: Mark F. Clark

Regarding: Comments on Memo of 5/27 (Collins) and Interim Draft of 5/11

I am now persuaded that a realistic goal for the individual debtor's name can be achieved within the "only if" format, using a limited cascade and retaining the current individual name language of the Code (not a variation of the Canadian language) for the residue or as a default. As I have indicated before, I think the realistic goal is to reduce the practical uncertainty as far as possible without creating a separate law of names that is divorced from people's everyday, non-lien life.

I have three comments/suggestions. One relates to US passports and militates in favor of leaving them out of the cascade. One relates to the suggestion that current UCC individual name language be retained for the default. And one relates to the idea (which I do not favor) of using a variation of the Canadian language as the default. (In these comments, I often refer to the last step in the cascade as the "default" or "residue.")

Except for married women who choose to style themselves differently from their birth names, US Passports essentially punt without moving the ball forward (a neat trick that can only be accomplished in the world of mixed metaphors). There are only two categories of name on a US passport: "surname" and "other names." Thus, what is in western culture commonly referred to as "first name" and **all** "middle names" spelled out in full appear in the same place under "other names." I have not seen the passports of our 41st and 43rd presidents, but I imagine they both say "Bush" under surname and differ under "other names" where one says "George Herbert Walker", and one says "George Walker." That is useful information. I surmise that I would not be alone in seeing some reason to keep them apart.

Yet it is too much information. It is not common to spell out in full middle names. (Here comes my comment on the Canadian formulation.) A devolution in a cascade from a US passport to the current draft default will always result in a material change unless it is clear that an "initial" for the middle name can be the middle name spelled out (which must necessarily include the initial letter -- as well as all the subsequent letters in the name).

Also, the presence of more than one middle name (or initial) should not destroy a filing. Should the elder Bush (or someone dealing with him) be required to choose “Herbert” or “Walker” but not both?

For the residue I favor retaining the current individual name language of the Code. I realize that it may call for due diligence and multiple filings in some cases, and may discriminate against 22-year-old-clerks. (Ah, to be 22 and helpless again -- instead of 69 and helpless.) I think that is better as a residuum than the danger of creating a separate name law that is known only to Bankruptcy Judges, law professors and 22-year-old clerks. In that regard, I suggest changing the Official Comment to the residual individual name provision to make clear that it is to be interpreted consistently with the existing Anglo-American law of names.