



April 7, 2017

Honorable Mia Costello
Chairman, Senate Labor & Commerce Committee
State Capitol, Room 504
Juneau, AK 99801

Re: Shaftel Law Offices – Letter in Opposition of Senate Bill 94 – Response

Dear Madam Chairperson:

I appreciate the opportunity to address certain comments made by my friend and fellow attorney, David Shaftel, about certain of the so-called "decanting provisions" contained in SB 94. It was my privilege to have been admitted to the Alaska bar 30 years ago.

By way of background, I believe I am the first attorney in the country to have developed and used what is commonly referred to as "decanting." Decanting of a trust merely refers to meet pouring assets in one trust to another. As a young lawyer, I realized that I inevitably would make errors in drafting. I developed the concept of decanting so that I could transfer assets from one irrevocable trust to another trust which would not contain the same errors. I began doing that in 1973.

Once certain fellow members of the bar learned about my decanting, they asked me to develop a way that they could use decanting for trusts they had drafted but did not authorize decanting in the documents. I volunteered to draft a statute to permit all trusts (in New York, where I am also admitted to practice) to be decanted. I wrote the first decanting statute (New York EPTL 10-6.6), which was for New York, in 1991 and I wrote the second decanting statute, for Alaska, in 1997.

One of the most famous estate planning lawyers in the country has told me that my decanting statutes have been the most important laws passed in her career. Now, approximately half the states in the country have decanting laws. These laws vary from state to state. And there is no perfect one. But the changes proposed in SB 94 will ensure that Alaska has one of the very best.

I have completed dozens (if not hundreds) of decantings, either under the terms of the instrument I had drafted or pursuant to a state statute. In all circumstances, the decanting was done in order to benefit the trust beneficiaries, not to harm them.

I recently surveyed members of the American College of Trust and Estate Counsel and asked whether anyone was aware of a circumstance where a decanting statute had been abused. Not one lawyer reported any abuse.

Decanting is a somewhat complex legal matter. It is highly unlikely that any layperson, acting as trustee, could carry out the decanting alone. Almost certainly, the trustee would need the assistance of an attorney. I am confident that no attorney would intentionally participate in a decanting (or take any other action) that would constitute a breach of trust. Otherwise, the attorney could be personally liable for the damage caused. Also, it seems very unlikely that a trustee would engage in a decanting that would be harmful because the trustee would be personally liable for damages caused by the breach of trust.

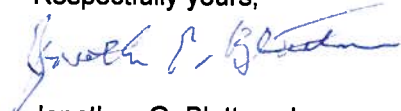
The provisions in the decanting bill about which Attorney Shaftel expresses concern are already available under the decanting laws of other states. Those states also permit trusts from outside of their jurisdictions

to use their states' decanting laws. In fact, over the past several years, I have referred attorneys to those other states because Alaska's decanting statute did not provide the flexibility that the attorney's clients wanted. Unfortunately, that loss of business for Alaska will continue unless the decanting changes proposed in SB 94 are adopted.

Attorney Shaftel certainly can refuse to assist anyone who wishes to complete the decanting which he believes is improper. But his refusal should not foreclose other Alaska attorneys from rendering appropriate services to their own clients where such other Alaska attorneys feel the decanting is appropriate.

Thank you for the opportunity to express my views on this matter. I would welcome the opportunity to discuss this matter with you or members of your staff.

Respectfully yours,



Jonathan G. Blattmachr