

**LDIR#227
PROBATE
CODE 1961**

FOR DISCUSSION ONLY UNIFORM PROBATE CODE

National Conference of
Commissioners on
Uniform State Laws

1155 East 60th Street
Chicago, Illinois 60637

Working Draft Number 5
UNIFORM PROBATE CODE
with
Prefatory Note and Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, if any, have not been passed upon by the Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated law.

HOUSE BILL NO. 5

ALASKA PROBATE CODE

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THE UNIFORM Probate Code advances the proposition that the laws relating to the affairs of decedents and incompetents, and to court proceedings involving trusts, should be modernized and made uniform throughout the states.

This proposition is not new. National probate reform efforts really began with careful work in the early 40's by a subcommittee of a Section of the American Bar Association. Ultimately, the product of that effort was published in 1946 as the *Model Probate Code*.

The recent project to update the 1946 model code and to make it a uniform act did not originate in academic circles. Rather, the impetus came from working professionals who resolved to do something about local probate rules and procedures.

In spite of the *Model Probate Code*, local probate machinery has tended to become more complex in many parts of the country. This tendency, complicated as it relates to many estates in our mobile society by the wide diversity of laws between states, has run directly into powerful counter-forces generated by the increasing number of Americans who demand efficiency in the handling of their estates.

Estates and trusts are big business, especially to lawyers. Probate courts simply are not the right agencies to control the way this important area of professional service is organized to serve clients. This indisputable point is what probate code revision is all about.

Paradoxically, this lawyers' project has received important boosts from the furor which Dacey's anti-lawyer book, *How To Avoid Probate*, generated. Of course he did not mean to help us, but, by insulting lawyers and making the public curious, he goaded more busy professionals to think about long neglected probate problems.

Probate Court Jurisdiction

The Code can be described as a series of systems, with that relating to court jurisdiction being the most basic. For a court, the Code describes a tribunal having exclusive jurisdiction of judicial proceedings between beneficiaries and property fiduciaries, including personal representatives of decedents, conservators of estates of disabled persons, and trustees of inter vivos and testamentary trusts. The tribunal has concurrent jurisdiction with other courts when estate fiduciaries represent beneficiaries in litigation brought by or against an estate.

Uniform Pro

A National Necessity

by Prof. Richard V. Wellman, Univ. of Mich. Law School

The tribunal required by the Code must be capable of making final orders in matters involving large sums of money, complex issues and many parties. Hence, the estates court may be a docket of the court of general trial jurisdiction rather than the specialty forum assumed by the draftsmen of the Code.

An office of the probate registrar, which may be organized within or outside of the estates court, is contemplated to handle nonbinding, administrative determinations and to receive and maintain records relating to fiduciaries and estates where public filing is desired or required.

Whether a general or specialized court is used, the Code's system for binding persons in regard to their interests in estates by notice (which may be mailed or delivered in or out of the jurisdiction) must be included for use in the proceedings which would be within the specialty court's exclusive jurisdiction. A related section which should reduce but not eliminate the need for guardians ad litem deals with various ways of representing minors, unborn, unascertained and missing persons in regard to interests in estates.

Decedents' Estates— Procedural Elements

The Code's system for adminis-

tration of decedents' estates features many options and great flexibility. Four key concepts are involved. The first is that the essential steps of probate and appointment may be accomplished by an affidavit procedure involving a nonjudicial official who is assumed by the Code to be part of the probate court organization. Informal probate and informal appointment do not purport to be adjudications. Still, the Code makes them effective unless and until contradicted in judicial proceedings. Using these procedures, an estate can be opened at any time after a mandatory waiting period of five days from death has passed, and appointment of a special administrator may be made earlier in emergency cases.

The second pillar of this flexible system is the concept that after appointment a personal representative is a fiduciary with broad statutory powers. There is no statutory obligation on the personal representative to return to the court for any purpose. Statutory duties and powers for all personal representatives authorize and direct application of estate assets to family support, claims, expenses, and final distribution without court order.

Third, the system includes several important limitation periods which are designed to make unadjudicated estate settlements acceptable in many cases.

(Continued on page 25)

February 26, 1970

346(27)

Hon J. Kent Edwards
Attorney General State of Alaska
Juneau, Alaska 99801

Dear Sir:

As promised I am enclosing the Veterans Administration's comments and suggested amendments with respect to Article V of the proposed Uniform Probate Code in the event its adoption is seriously considered.

This proposed Article represents a major departure in philosophy from the existing Alaska law relating to guardianships. It presents a philosophy of "hands off" by the court in protective proceedings after a conservator is appointed. We do not believe this is wise legislation and believe that existing law is much to be preferred over the proposed article.

The flagrant misuse and embezzlement of funds of disabled veterans and their dependents before the Guardianship Service was established and the Uniform Veterans Guardianship Act or similar legislation was enacted are well known. A need for these basic protective services continues. Cases occur in every state each year which demonstrate the efficacy of protecting the estates of the disabled. The accounting and bonding provisions of existing law serve to protect.

If the article is to be adopted, we believe that the amendments we have prepared will strengthen it without emasculating it. They are, for the most part, limited in effect to the benefits paid by Government agencies. In developing these amendments, it has been our intention to preserve the basic intent of the drafter of the code.

It may be necessary to change the wording to some extent, depending upon how the code is adapted to state procedure. The precise language is not important so long as the intent of these amendments is accomplished.

Since the drafters of the code envisioned any government agency as an interested party, this language has been used in drafting amendments.



NATIONAL BANK OF ALASKA

Head Office • Box 600 • Anchorage, Alaska 99501

January 16, 1970

*Read
File
Probate code
bill*

Mr. John M. Elliott
Executive Director
Legislative Affairs Agency
State Capitol, Room 409
Pouch Y
Juneau, Alaska 99801

Re: Proposed Uniform Probate Code

Dear Mr. Elliott:

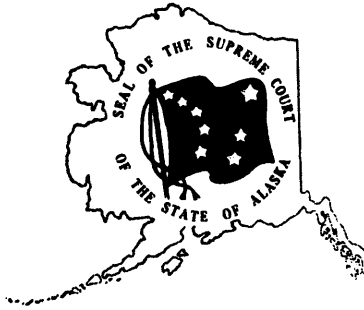
In August of 1969, the American Bar Association adopted a Uniform Probate Code which was promulgated by the National Conference of Commissioners on Uniform State Laws after many years of exhaustive study. This proposed Uniform Code has been sent to the authoritative bodies in each of the fifty States for tailoring to the particular local State problems and conditions.

The American Bar Association has kept the drafting committee active for another year to consider suggestions that may be forthcoming.

The Anchorage Estate Planning Council has an active committee which is now in the process of reviewing the proposed Uniform Code and comparing it with the existing Alaska State Statutes and is soliciting opinions from all who work in the field of estate and trusts.

The scope of this Act is comprehensive and will make substantial changes in the substantive and procedural rules pertaining to laws of inheritance, estates and trust administrations, as well as guardianship of minors and incompetents. It is understood that all matters contained in this Uniform Code will not be satisfactory to all as a matter of substance and many matters expressed in the text will not be satisfactory to some.

Given the magnitude of the "overhaul," it appears prudent for all persons and organizations working in this area to be given an ample opportunity, to review, analyze and recommend the adoption of this modern statute in whole or in part.



File

Alaska Court System

State of Alaska

ROBERT H. REYNOLDS
ADMINISTRATIVE DIRECTOR
RAYMOND W. GREGORY
ASSISTANT ADMINISTRATIVE DIRECTOR
ERNEST Z. REHBOCK
LEGAL ASSISTANT

OFFICE OF ADMINISTRATIVE DIRECTOR
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

February 7, 1969

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: House Bill 39 - Alaska Probate Code

Dear Representative Jackson:

Pursuant to your request, and in accordance with the Fiscal Note Act, I have reviewed the provisions of House Bill 39, a revised Alaska Probate Code.

From my review I am unable to find anything therein which would require additional funds in the Alaska Court System budget.

Sincerely,

Robert H. Reynolds
Administrative Director

RHR/ld



JUNEAU ALASKA

Alaska State Legislature House

February 4, 1969

Alaska State Bar Association
Anchorage Bar Association
Juneau Bar Association
Ketchikan Bar Association
Tanana Valley Bar Association

Gentlemen:

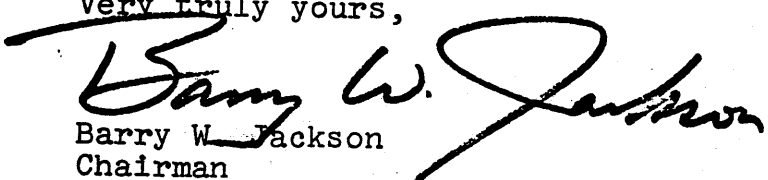
The proposed Probate Code, House Bill No. 39, has been referred to the Judiciary Committee. This is the same bill that was before the last legislature.

I understand that it was held up at the request of the Bar Associations pending completion of the American Bar Association's Probate Code project, which was to have been completed late last year.

I would appreciate receiving views of the several Bar Associations on the handling of the proposed Probate Code. At least two possibilities appear: First - action this session; Second - interim study by the Judiciary Committee, anticipating passage at the next session.

I shall advise you immediately should we determine to try for passage at this session.

Very truly yours,


Barry W. Jackson
Chairman
House Judiciary Committee

BWJ/msc

2/11/69

Dear Barry: If you will send me several copies of the proposed code - I will get a committee to work at Alaska State Legislature

House

once
Bill Stump
V.P. K. Bar. Assn.



JUNEAU ALASKA

February 4, 1969

- Alaska State Bar Association
- Anchorage Bar Association
- Juneau Bar Association
- Ketchikan Bar Association
- Tanana Valley Bar Association

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Very truly yours,

Barry W. Jackson

Barry W. Jackson
Chairman
House Judiciary Committee

BWJ/msc

2/11/69

Dear BARRY -

... Bill Stump ...
... anticipate passage at next session

IN THE HOUSE

BY STEVENS

HOUSE BILL NO. 349

IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act codifying and revising the state law relating to probate; providing a comprehensive probate code; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 13 is amended by adding new chapters to read

CHAPTER 6. WILLS.

ARTICLE 1. EXECUTION.

Sec. 13.06.010. WHO MAY EXECUTE A WILL. A person of sound mind may make a will if he

- (1) has attained the age of 19 years,
- (2) is or has been lawfully married, or
- (3) is a member of the armed forces of the United States or of its auxiliaries or of the maritime service.

Sec. 13.06.020. EXECUTION OF A WILL. A will, other than a holographic or nuncupative will, is valid only if signed by the testator and at least two witnesses as follows:

- (1) The testator signifies to the attesting witnesses that the instrument is his will and either
 - (A) himself sign, or
 - (B) acknowledge his signature already made, or