

**LDIR#230
STUDY
1971
PROBATE
CODE**

2nd Revision

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 4, 1971

TO: Members of the Alaska Bar Association
FROM: Russell E. Mulder, Deputy Director
SUBJECT: Proposed Probate Code

As you are aware from previous correspondence, the Legislative Council has undertaken a study and revision of the Alaska probate laws. In carrying out this interim project, the council has asked the members of the Alaska Bar Association to submit their thoughts on whether or not the probate laws of Alaska should be revised and if so, what should be the basis for a revision. Also, the council held public hearings in both Anchorage and Fairbanks this summer in an attempt to receive first hand the thinking of both the Bar and the members of the public in regard to this matter.

As a result of the comments received, public testimony, and its own deliberations, the council has decided that revision of the probate laws of Alaska is long overdue and that the Uniform Probate Code approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in August 1969 should be used as a basis of such a revision. A copy of this Uniform Probate Code as redrafted in accord with our drafting style and numbering system is enclosed for your consideration and comment. While the council decided to use the Uniform Probate Code as the basis for probate revision, it has made certain other decisions and recommended changes which it hopes you will also seriously consider and comment upon. These important Council decisions and recommendations are as follows:

- (1) Because the Uniform Probate Code goes well beyond the subject of decedent's estates, the council decided to expand existing AS 13 (Decedents Estates) to include "Guardianships and Trusts." To date time has not allowed the staff of the Legislative Affairs Agency to go through all existing titles and find the existing statutes on guardianships and trusts which need to be repealed if the Uniform Probate Code became law but this will be done prior to the 1972 legislative session.

PUBLISHED MATERIALS RELATING TO THE
UNIFORM PROBATE CODE

Concerning Preliminary Drafts

- Fratcher, "Toward Uniform Succession Legislation", 41 N.Y.U.L. Rev 1037 (1966).
- Fratcher, "Toward Uniform Guardianship Legislation", 64 Mich. L. Rev. 977 (April 1966).
- Fratcher, "Fiduciary Administration in England," 40 N.Y.U.L. Rev 12 (Jan. 1965).
- Shriver, "The Multi-State Estate", 3/3 R.P.P.T. Jnl. (Fall 1968).
- Wellman, "Proposed Uniform Probate Code", 47 The Trust Bulletin 301 (February 1968).
- Wellman, "Proposed Uniform Probate Code", 48 The Trust Bulletin 146 (December 1968).
- Wellman, "Selected Aspects of Uniform Probate Code", 3/3 R.P.P.T. Jnl. 199 (Fall 1968).
- Wellman, "The Uniform Probate Code--Questions and Answers", 3/4 R.P.P.T. Jnl. 388 (Fall 1968).
- Wellman, "The Lawyer's Stake in Probate Reforms", IX Law Office Economics and Management, 415 (February 1969).

Comments About the Approved Code

- Hauptfuhrer, "The Uniform Probate Code--A Modern Approach for Pennsylvania", XLI Penn. Bar Assn. Quarterly 79 (October 1969).
- Straus, "The Uniform Probate Code Approved; A Bold and Progressive Reform", XLI Penn. Bar Assn. Qtly. 71 (October 1969).
- Wellman, "The Uniform Probate Code; A Possible Answer to Probate Avoidance", 44 Ind. L. Jnl. 191 (Winter 1969).
- Manlin and Martens, "Informal Proceedings Under the Uniform Probate Code: Notice and Due Process", 3 Prospectus (U. of Mich. Law School Student Publication) 39 (December, 1969)
- Mulder, "Intestate Succession Under the Uniform Probate Code", 3 Prospectus 301 (May, 1970).
- Vestal, "Multiple-State Estates Under the Uniform Probate Code", 27 Washington and Lee Law Review 70 (Spring, 1970).

*New study
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THE UNIFORM PROBATE CODE: BLUEPRINT FOR REFORM IN THE 70's

Richard V. Wellman*

INTRODUCTION

PROBATE law changes slowly. On August 13, 1969, the House of Delegates of the American Bar Association promulgated the Uniform Probate Code, completing a project which began in 1962.¹ The UPC project has been described as a continuation of an earlier effort by elements of the ABA to modernize and unify American probate laws which resulted in preparation of the Model Probate Code.² Viewing the two projects as one, the 30 plus years of effort to improve probate law may appear as an exercise in killing an unwanted idea by perpetual debate.³ The Connecticut story, as told by other contributors to this symposium, is representative of the experience in other states where efforts to improve probate law have been frustrated by foot-dragging tendencies of local elements who derive power or profit from the old rules. An observer might well conclude that national efforts at probate reform would be more of the same.

But there is more to the new Code. Though it may not have been conceived for purpose of reform, the recent project matured in a period of unparalleled public criticism of the existing probate institution.⁴ Also, the project was supported by both ABA committees

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1. For a brief discussion of the action by the House of Delegates, see 55 A.B.A.J. 976 (1969).

2. See 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

3. The recent motion for final approval also chartered the Real Property, Probate and Trust Law Section of the American Bar Association to engage in continuing "in-depth" studies of the relative merits of uniformity and provincialism in regard to probate laws. The resolution of the House of Delegates authorizing the Section of Real Property, Probate & Trust Law to present the views of the Association followed a resolution of Section Council published in 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

4. N. DACEY, HOW TO AVOID PROBATE (1965); Bloom, *The Mess in Our Probate Courts*, READERS DIGEST, Oct., 1966; *Needed: Better Probate Laws*, CHANGING TIMES, Jan., 1969; *Personal Finance: How to Avoid a Costly Probate*, N. Y. Times, Nov. 14, 1966; *Probing the Source of Probate Pains*, Wall St. Journal, May 14, 1968; *The Probate Fuss*, LOOK MAGAZINE, Nov. 29, 1966; *Editorial*, Columbus, Ohio Citizen-Journal, Jan. 18, 1967.

UNIFORM PROBATE CODE TABLE

In Title 13 (Decedent's Estates), chapters 6 - 36 constitute the Uniform Probate Code, but the Alaska Statutes numbering system is not the same as that in the Uniform Probate Code. The following table provides a cross-reference from the Alaska Statutes to the proper section in the Uniform Probate Code.

<u>AS</u>	<u>UPC</u>	<u>AS</u>	<u>UPC</u>
13.06.005	1-101	13.11.115	2-302
13.06.010	1-102	13.11.125	2-401
13.06.015	1-103	13.11.130	2-402
13.06.020	1-104	13.11.135	2-403
13.06.025	1-105	13.11.140	2-404
13.06.030	1-106	13.11.150	2-501
13.06.035	1-107	13.11.155	2-502
13.06.040	1-108	13.11.158	none
13.06.050	1-201	13.11.160	2-503
13.06.060	1-301	13.11.165	2-504
13.06.065	1-302	13.11.170	2-505
13.06.070	1-303	13.11.173	none
13.06.080	1-305	13.11.175	2-506
13.06.085	1-306	13.11.180	2-507
13.06.090	1-307	13.11.185	2-508
13.06.100	1-310	13.11.190	2-509
13.06.110	1-401	13.11.195	2-510
13.06.115	1-402	13.11.200	2-511
13.06.120	1-403	13.11.205	2-512
13.11.005	2-101	13.11.210	2-513
13.11.010	2-102	13.11.220	2-601
13.11.015	2-103	13.11.225	2-602
13.11.020	2-104	13.11.230	2-603
13.11.025	2-105	13.11.235	2-604
13.11.030	2-106	13.11.240	2-605
13.11.035	2-107	13.11.245	2-606
13.11.040	2-108	13.11.250	2-607
13.11.045	2-109	13.11.255	2-608
13.11.050	2-110	13.11.260	2-609
13.11.055	2-111	13.11.265	2-610
13.11.060	2-112	13.11.270	2-611
13.11.070	2-201	13.11.275	2-612
13.11.075	2-202	13.11.285	2-701
13.11.080	2-203	13.11.295	2-801
13.11.085	2-204	13.11.300	2-802
13.11.090	2-205	13.11.305	2-803
13.11.095	2-206	13.11.315	2-901
13.11.100	2-207	13.11.320	2-902
13.11.110	2-301		

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

June 29, 1971

TO: All Members of the Alaska Bar Association
FROM: John M. Elliott, Executive Director
SUBJECT: Revision of the Criminal and Probate Codes

As you are aware from the previous communications from this office, the legislature has directed the Legislative Council to undertake a revision of current Alaska law pertaining to crimes and probate. At a regular meeting of the Council held in Anchorage on June 25 and 26, the Council made the decision that the bills now pending before the legislature revising the Probate and Criminal Codes (SB 5 and HB 5) would both be scrapped as incompatible with present day needs and requirements.

Further, it was the decision of the Council to base the revision of the Probate Code on the Uniform Probate Code and the revision of the Criminal Code on the Model Penal Code. In view of that fact, all members of the Bar are encouraged to submit their comments concerning the merits of these codes generally or in relation to specific sections and concepts to this office. Of necessity, we would appreciate your comments and suggestions at the earliest possible time.

For those persons interested in the revision of these two codes who do not have either the Model Penal Code or the Uniform Probate Code at their disposal, this office will see that copies are furnished to you upon receipt of the attached request form. The request for either code must be received in this office by July 10. After that date, those persons desiring copies of either code will be expected to order them direct from the publisher and at their own expense.

Again, your early submission of recommendations, comments, etc. will be greatly appreciated by this office.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

July 2, 1971

MEMORANDUM

TO: Members of the Fairbanks Bar

FROM: John M. Elliott, Executive Director

SUBJECT: Hearings on Revision of the Alaska Criminal and Probate Codes.

This memorandum is to inform all members of the Fairbanks Bar of the fact that the Legislative Council has scheduled a meeting in Fairbanks on July 26 and 27 regarding the above subjects. At that time, the council will be interested in receiving recommendations and opinions, particularly from members of the bar, as to the merits or demerits of any of our current criminal or probate laws, recommendations for changes (either general or oriented to specific areas or statutes, and any other comments pertinent to the issue at hand.

In a previous notice this week, all members of the bar were informed that at a meeting of the council on June 25 and 26 the council made a major policy decision in regard to the revision of these two codes, i.e., they determined that the contemplated new criminal code be based upon the Model Penal Code, and that the contemplated probate code be based upon the Uniform Probate Code. In view of this determination, your comments concerning the merits of either the Model Penal Code, or the Uniform Probate Code will be of particular interest and value to the council and its staff.

Every effort is being made to have the revisions in bill form at the earliest possible time. When completed, copies of the revisions will be furnished all members of the bar and their comments and criticisms solicited in ample time for the revisions to be in final form and ready for introduction next January. I would also anticipate additional hearings once the codes have been initially revised. In the meantime, your written comments and suggestions are welcome at any time and should be forwarded to this office. The council anticipates working closely with the bar during the coming months on these important projects. As time is a factor, receipt of your comments at the earliest possible time is requested.

STATE OF ALASKA
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JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 16, 1971

TO: Members of the Alaska Bar

FROM: Joel F. Bennett, Legislative Counsel *JFB*

SUBJECT: Revision of the Alaska Criminal and Probate Codes

By passage of Senate Concurrent Resolution No. 36 and House Concurrent Resolution No. 24, the Seventh State Legislature directed the Legislative Council (a permanent interim committee of the legislature) to undertake revisions of the current Alaska law pertaining to probate and the substantive criminal law.

Actually, the legislature has had before it both a revision of the criminal code and the probate code for many years but the proposals have received little or no consideration. As the original probate revision was done in 1960--1961 and the criminal code revision in 1964--1965, these proposals are hopelessly out of date in light of court decisions and studies, and do not take into consideration recent recommendations and approaches which have been considered or adopted in other jurisdictions or advocated by concerned groups such as the National Conference of Commissioners on Uniform State Laws. The resolutions passed by the legislature envision the introduction next January of revised codes in light of present day attitudes, studies, court decisions, and recently adopted or recommended approaches to these areas of the law.

As a preliminary step to the revision of these two codes, hearings will be held this summer at Anchorage and Fairbanks. At the hearings, the Council will be interested in receiving recommendations and opinions, particularly from members of the bar, as to the merits or demerits of any of our current criminal or probate laws, recommendations for changes (either general or oriented to specific areas or statutes), and any other comments pertinent to the issue at hand. In the case of the probate code revision, the Council has been specifically instructed to study and adapt, if satisfactory, to Alaska law, the Uniform Probate Code that has been studied and recommended by the

Alaska Bar
X- Criminal Code

RECEIVED
JUN 15 1971
ANCHORAGE, ALASKA

June 15, 1971

Honorable Edward V. Davis
Acting Presiding Judge
Superior Court
Anchorage, Alaska

Dear Judge Davis:

In response to your request that I furnish you suggestions in connection with the revision of the Probate Code to be presented at the City Council chambers in this City on June 25 and 26 since I will not personally be here at that time, you are informed that the following suggestions are made.

It is suggested that wherever the word "county" is used that we substitute instead "judicial district."

ESTATES

Section 1-401, regarding notices under paragraphs (1) and (2), it is suggested "10 days" rather than "14 days" as set forth in the proposed code.

Section 2-109, paragraph (1), add "provided the Native rights through blood of any person so adopted may be retained if provided for in the decree of adoption."

Section 2-401, the homestead allowance should be a minimum of "\$8,000" instead of "\$5,000" as listed in the proposed bill.

Section 2-502, add a paragraph (a) which states "Wills other than self-proving wills under Section 2-504 may be proven by