

**LDIR#231
UPC
CORRES-
PONDENCE
1972**

HISTORY OF SB 248

1. January 10, 1972 -- introduced and referred to Judiciary Committee
2. January 26, 1972 -- reported out of Judiciary Committee "do pass" and referred to Rules Committee for placement on the calander
3. February 4, 1972 -- advanced from 2nd to 3rd reading and passed the Senate 20 - 0 and sent to the House
4. February 7, 1972 -- received by the House and referred to the Judiciary Committee
5. April 20, 1972 -- reported out of Judiciary Committee "do pass" as amended and referred to Rules Committee for placement on the calander
6. May 3, 1972 -- amendments were adopted, advanced from 2nd to 3rd reading and passed the House as amended 39 - 1
7. May 5, 1972 -- Senate concurred in the House amendments
8. May 22, 1972 -- Governor approved
9. January 1, 1973 -- Effective date

June 4, 1971

Mr. Frances D. Jones
Executive Secretary
1155 East 60th Street
Chicago, Illinois 60637

Dear Mr. Jones:

Our office has been directed by the Alaska Legislature to study the Uniform Probate Code, comparing it to our present law and to the Model Probate Code and prepare a report and bill for presentation to the next session of the legislature. I am attaching a copy of the resolution which sets forth our specific task.

In attempting to carry out this directive we are severally hampered by a lack of adequate research material on either the Uniform Probate Code or the Model Probate Code. In fact all we have is a copy of each code with comments. We would, therefore, appreciate receiving any material you may be able to forward and any further references you think would be helpful.

Sincerely,

RUSSELL E. MULDER
Deputy Director

REM:cb
Enclosure

THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

June 3, 1971

MEMORANDUM

TO : Members of the Anchorage Bar
FROM : John M. Elliott, Executive Director
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 1960-61 and the criminal code revision in 1964-65, 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, the Legislative Council will be meeting in Anchorage on June 25 and 26. 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 the current criminal or probate law, recommendations for changes (either general or oriented to specific areas or statutes), and any other comments pertinent to the issue at

Russ

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

June 3, 1971

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MEMORANDUM

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 19. 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

William A. Egan
GOVERNOR

DEPARTMENT OF LAW

DISTRICT ATTORNEY — THIRD JUDICIAL DISTRICT

1001 FOURTH AVENUE
ANCHORAGE 99501

June 23, 1971

RECEIVED
JUN 25 1971

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

LEGISLATIVE AFFAIRS
AGENCY

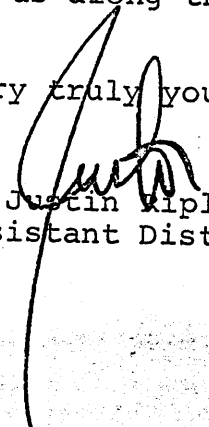
Dear John:

Although in your memo of June 3, 1971 you state that copies of the revisions will be furnished all members of the Bar as soon as these revisions are placed in final form, I wonder if some, or all of your work to date could not be made available to this office.

In terms of practical impact, our office will be the most greatly effected by the end product of these revisions, and we would like to start thinking about them as soon as possible. Conceivably we would even have some practical comments that you might wish to incorporate into your original version before it is put out for general consumption and review. I recognize that you probably do not wish to have your draft versions circulated, lest a lot of comment be generated on some point that might not make the final version. With this in view, we would maintain whatever materials you send us in the strictest of confidence.

Anything you can do for us along this line, John, would be greatly appreciated.

Very truly yours,


J. Justin Ripley
Assistant District Attorney

JJR:ta

ROBISON, MCCASKEY, STRACHAN, HOGE, RICHARDS & FRANKEL

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
921 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-7431

PAUL F. ROBISON
KENNETH MCCASKEY
JOHN R. STRACHAN
ANDREW E. HOGE
WILLIAM G. RICHARDS
MARVIN S. FRANKEL
PETER A. LEKISCH
LEROY BARKER

June 21, 1971

RECEIVED
JUN 22 1971
LEGISLATIVE AFFAIRS
AGENCY

John M. Elliot
Executive Director
Legislative Affairs Agency
State of Alaska
Pouch Y, State Capitol
Juneau, Alaska 99801

Subject: Revision of Probate Code

Dear Mr. Elliot:

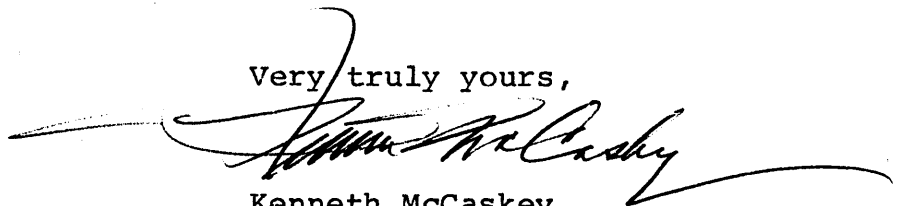
Reference your letter dated 3 June, 1971 to members of the Anchorage Bar concerning revision of the Alaska Probate Code, and the Legislative Council meeting in Anchorage on 25 June, 1971 to consider such revision.

As chairman of the Real Property, Probate and Trust Committee of the Alaska Bar Association I have heretofore requested all local bar associations to appoint committees to review the Uniform Probate Code approved by the National Conference of Commissioners on Uniform State Laws, and by the ABA in August, 1969.

As a former probate judge during Territorial status, and as a practicing attorney working with the present Probate Code, it is my personal opinion that revision of the code is long overdue. Moreover, I personally support adoption of the Uniform Probate Code by the legislature, subject of course to the reasonable revisions that might be supportably argued by others. The Uniform Code is a product of experienced lawyers in the field of probate, arrived at after much work.

The bar of Alaska should be given such reasonable opportunity as may be yet available prior to the 1972 legislature to comment upon possible revisions of the Uniform Probate Code before its enactment. Speaking for myself and not for the bar, I urge its enactment by the next legislature.

Very truly yours,



Kenneth McCaskey

KM-vrr

BOARD OF GOVERNORS
ALASKA BAR ASSOCIATION

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944 WEST 5TH STREET
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AREA CODE 907/272-7469
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November 29, 1971

Legislative Affairs Agency
The Legislature
State of Alaska
Pouch Y State Capitol
Juneau, Alaska 99801

Attention: Russell E. Mulder, Deputy Director

Subject: Proposed Probate Code

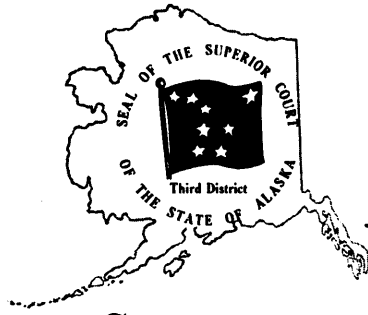
Gentlemen:

In response to your memorandum on this subject dated October 4, 1971 addressed to members of the Alaska Bar Association, and at the direction of the Board of Governors of the Alaska Bar Association I report herewith the comments of the Real Property, Probate and Trust Committee of the association as reported to the Board of Governors at Anchorage, 6 November 1971. These comments and suggestions set forth the views of the Board of Governors. They are not intended to be totally exhaustive, but do reflect the views of the Association as expressed by the said committee, as follows:

1. The committee, based upon comments of reviewers in other states, considered recommending elimination or revision of Part 3 of the UPC (Informal Probate and Appointment Proceedings), (Article 3 of the work draft copy of the Legislative Affairs Agency). Objections were voiced in the belief that insufficient controls to protect creditors and heirs was afforded. However, it is concluded that sufficient safeguards are provided in the uniform code and no objections are taken to Article 3 as set forth in the redraft.

2. On the whole the UPC is acceptable, to the committee with few exceptions which are listed below.

a. UPC Section 2-401, Article II, Exempt Property and Allowances (Article 4, Sec. 13.11.125 et seq. of work draft copy). The use of a description such as "Homestead Allowance" for the widow of decedent and for minor and



Superior Court

State of Alaska

THIRD JUDICIAL DISTRICT
941 FOURTH AVENUE, ROOM 224
ANCHORAGE, ALASKA
99501

KEIFER L. GRAY

STANDING MASTER
PROBATE MASTER

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."

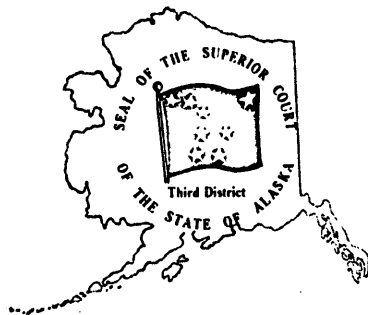
ESTATES

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



Superior Court

State of Alaska

THIRD JUDICIAL DISTRICT

941 FOURTH AVENUE, ROOM 224

ANCHORAGE, ALASKA

99501

February 29, 1972

STANDING MASTER
PROBATE MASTER

KEIFER L. GRAY

Honorable William J. Moran
Chairman, House Judiciary Committee
Juneau, Alaska

Uniform Probate Code.

Dear Bill:

I am in receipt of a copy of the Uniform Probate Code, SB 248, furnished me by Gene Guess who advised that it had been passed by the Senate and has now been referred to your committee for final action.

It has been noted that Section 13.16.680, which replaces our present Sec. 13.30.002, dealing with small amounts of personal property, makes no provision for the disposition of personal property which has been held for longer than six months. This was formerly listed thereunder as Sec. 2(b) and reads as follows:

"The superior Court may authorize the disposal, in a manner it prescribes, of personal property which has not been disposed of under this section by the end of six months and no heirs or claimants have been located."

This particular section of law allowed the Public Administrator to dispose of small amounts of personal property such as clothing, tools and other personal effects, converting such as possible to cash and then holding the money in the Trust Fund of the Court for possible heirs. It not only allows us to dispose of these articles but also cuts down on the amount of storage space which was required to store these articles awaiting someone to claim them.

It would be appreciated if you would have this provision added to SB 248, possibly as Section (c) thereunder, as it is badly needed and simplifys the handling of such articles.

MEMORANDUM**State of Alaska**

Department of Health and Welfare

TO: Joseph W. Betit, Deputy Commissioner
Department of Health and Welfarethru: V.L. Iverson, Director
Division of Administrative Services

DATE : February 18, 1969

FROM: F. E. Kester, State Registrar
of Vital Statistics

SUBJECT: HB 39, Alaska Probate Code

House Bill 39 revises and codifies the Alaska Probate Code. At the same time it repeals many existing statutes. Among those repealed is AS 20.05.130(b), which is quite vital in the determination of presumptive death after six years disappearance. We cannot find that this has been adequately replaced in the new proposed code.

The present statute says in part "If a missing person is not heard from for a period of six continuous years, he is presumed to be dead . . ." This combined with AS 09.55.050 gives an authority for filing a certificate of death in these cases. Both the Bureau of Vital Statistics and the Supreme Court (Rule 5, Probate Rules) have implemented this, and the resulting death certificates have proven very useful in the settling of estates and other claims.

There are several references to such presumption of death and missing persons in the proposed code; for example:

AS 13.16.070	page 19
AS 13.16.075	20
AS 13.16.085(3)	21
AS 13.36.010	72
AS 13.36.400(b)	87
AS 13.36.410(3)	87

However, no place states specifically that the court may make a finding of presumptive death; nor does it set a standard such as the six years in the present statute.

Possibly the proposed wording is sufficient. We do not feel that this should be assumed. If it is not sufficient authority, we will again have a group of persons for whom we cannot file a death certificate.

I suggest that we call this to the attention of the House Judiciary Committee to see if they have considered this angle. If desired, I would be glad to call it to the attention of Mr. Jackson or Mr. Fink of that committee.

June 29, 1971

Honorable Arthur Lyle Robson
District Court Judge
604 Barnette Street
Fairbanks, Alaska 99701

Dear Judge Robson:

Please excuse my delay in replying to your request for copies of the proposed probate and penal codes, but I have been waiting until the Legislative Council decided which version of the codes to use.

At the Legislative Council meeting in Anchorage on June 25 and 26, it was decided that HB 5 and SB 5 would not be revised and that the Uniform Probate Code and Model Penal Code would be considered in their place. Therefore, I am forwarding copies of these codes under separate cover.

Sincerely,

Russell E. Mulder
Deputy Director

REM:lmk

cc: Senator Robert H. Ziegler, Sr.