Memorandum 83-16

Subject: Study L-800 - Probate Law (Administration of Estates of Decedents--General Approach to be Taken in Preparing New Division 3 of California Probate Code)

The Commission must decide what basic approach should be taken in preparing a draft of the portion of the Probate Code that governs probate of wills and administration of estates. At the January 1983 meeting the Commission heard presentations addressed to this issue from Professor Richard V. Wellman, Educational Director for the Uniform Probate Code, Mr. Frank Freeland of the California State Legislative Committee of the Associaton of Retired Persons, and Mr. Charles A. Collier, Jr., of the Estate Planning, Trust and Probate Law Section of thes State Bar of California. Their remarks are summarized in the Minutes of the January meeting.

The Commission also had before it at that time as Exhibits to Memorandum 83-5 and the First Supplement thereto, a letter from Mr. Collier elaborating the views of the Executive Committee of the State Bar Section, an article by Judge Milton Milkes of the San Diego County Superior Court stating that probate has become lengthy, complex, and costly, a letter from HALT urging elimination of the percentage system of fee computation and adoption of Succession Without Administration, and a general description of the flexible system of administration of decedent's estates under the Uniform Probate Code.

Since then we have received the following additional communications addressed to this issue. Exhibit 1 is a letter from the officers of the Probate and Trust Law Section of the Los Angeles County Bar Association, urging use of the existing California Probate Code as a frame of reference for probate law reform. Exhibit 2 reproduces material provided by Mr. Collier that summarizes the various methods of transferring assets at death that presently exist in California; this material was given to the Commission at the January meeting but not reproduced in the Minutes of the meeting. Exhibit 3 is a letter from Mr. Freeland elaborating his comments made at the January meeting; his associaiton believes that Succession Without Administration would be a worthwhile addition to existing California law but that this reform alone is not sufficient and that the Uniform Probate Code's flexible system of administration of

decedent's estates should be taken as the basis for the Commission's deliberations. Exhibit 4 is a collection of letters supplied by Professor Wellman from lawyers and judges in a number of states that have adopted the Uniform Probate Code, commenting on the experience under the Code, and Professor Wellman's suggestions on a possible approach for adopting the Uniform Probate Code side-by-side with existing California law. Professor Wellman read excerpts from some of these letters at the January meeting and they are overwhelmingly favorable to the Code.

This memorandum attempts to distil out of this wealth of information what we see as the key considerations for the Commission in making the basic decision on approach.

The reason the Legislature has asked the Commission to study whether the California Probate Code should be revised, including whether the Uniform Probate Code should be adopted in California, is a popular perception that probate is an unnecessarily complex, costly, and time-consuming procedure. This is referred to in the article by Judge Milkes, as well as in the letters from Mr. Freeland and HALT. The staff does not know to what extent this popular perception is accurate; we have no figures comparing time and costs in California with other jurisdictions, in particular, Uniform Probate Code jurisdictions. HALT states that it receives complaints from its California members but not, for example, from its Louisiana members (Louisiana apparently has a probate system that enables succession without administration). Letters provided by Professor Wellman indicate that other states that have had systems similar to California's and have adopted the Uniform Probate Code have experienced dramatic simplification of their probate practice; whether the simplification has resulted in faster closings and lower costs is not clear from the letters. On the other hand, both Mr. Collier and the officers of the Los Angeles County Probate Section point out that California has many ways in which property can be passed without probate, and that even within probate, reforms in recent years have substantially improved probate procedure. They state that the main reason for delays in closing estates under California law has been problems with inheritance taxation; with the repeal of the California inheritance tax these problems have disappeared and we should experience a further speeding up of the probate process. Again, we have no statistics on this matter.

Despite this disagreement over the present condition of California probate procedure, all parties concerned agree there is room for improvement. The probate bar point out that they have been actively involved in making continuing improvements in the law and they point to specific areas where further improvement is desirable. The proponents of the Uniform Probate Code believe that what is basically necessary is to minimize involvement of the court (and consequently of lawyers) in the whole process. The improvements sought by the probate bar tend in the same direction, but not to the degree advocated by Uniform Probate Code proponents.

Existing California law is a system of court-supervised probate. Improvements have been made in the system in response to concepts of the Uniform Probate Code, notably Independent Administration of Estates, which minimize court involvement. But the root concept is a formal opening of the estate and a formal closing of the estate, with public notice and judicial involvement, so that probate is an in rem proceeding that achieves finality and protects the parties involved. The probate bar believes this aspect of the system is fundamental and essential.

The Uniform Probate Code has a system of flexible administration that allows formal or informal openings and closings, as well as optional judicial supervision at any point between. Basically, it permits the interested parties to proceed informally if they so desire, subject to court supervision if any party is dissatisfied. Informal proceedings lack public notice and consequently lack finality for a period of three years, but this is a risk the parties may be willing to take if they can agree and desire to minimize time and expense. The Uniform Probate Code proponents believe this sort of total flexibility is essential if probate proceedings ever are to become simple, cheap, and quick.

Arguments for the existing California supervised probate scheme include:

(1) The notices and court adjudications are not onerous but do protect the interests of persons beneficially interested in the decedent's estate and enable finality. However, it is also arguable that published notice and pro forma court appearances are no real protection to anyone and simply add to the time and cost of probate. A three-year limitation period before the probate becomes final may actually be better protection.

(2) The California scheme has been refined, perfected, and interpreted over many years, and is familiar to practicing lawyers. However, it requires heavy lawyer involvement.

Arguments for the Uniform Probate approach include:

(1) The flexible system of probate enables reduction of time and costs in many estates. But is the reduction of time and cost worth the risk of failing to notify and protect an interested person?

(2) The Code offers the possibility of uniformity of law throughout the country, which is important because the decedent may own property in more than one jurisdiction. However, the Code has not been widely adopted. It also lacks extensive judicial interpretation (which is particularly significant because it is not a model of legislative draftsmanship); detailed manuals apparently must be relied upon in states where it has been adopted. There would be a period of disruption while lawyers, judges, and others learned to operate under a new system.

(3) Lawyers and judges in Uniform Probate Code states seem to be generally happy with the Code. But lawyers and judges in California seem to be generally happy with California law. Has the Uniform Probate Code been in effect in enough states for a sufficiently long time for their experience to be useful? How does the general public like the Code where it has been adopted?

In addition to the option of starting with existing California law and making improvements or starting with the Uniform Probate Code and modifying it for California purposes, there is a third alternative suggested by Professor Wellman at the January meeting: do both. His suggestion is to keep the existing California law as a scheme of supervised probate, but also to enact the Uniform Probate Code as an optional or alternate procedure available to decedents and estates. In essence the existing California law would constitute formal, supervised administration, but informal, unsupervised administration would be offered as an option.

This suggestion has a number of advantages. It preserves the knowledge and expertise developed under existing law. It gives the flexibility of informal probate to those who want it. It offers the opportunity to observe the two systems in operation side-by-side to see how they work and make an objective comparison. And, if the Uniform Probate

Code experience proves to be unsatisfactory, that portion of the law could be excised, leaving existing California law intact.

This suggestion also has a number of disadvantages. The integration of the two bodies of law would be quite complex as a drafting matter. Professor Wellman offers some observations as to how this could be done mechanically; he has indicated that Michigan, which tried something like this, has ended up with a quite complex, but workable, probate scheme. The innumerable alternatives available under a dual scheme, and the doubling of the volume of the law, may make lawyer involvement and expense an even more significant factor in probate than it already is. Whole new sets of forms and rules would be required along with the already voluminous forms and rules for existing law.

A basic consideration in adopting such a dual scheme is when would supervised probate be required and when would informal administration be available? Professor Wellman has noted that the size of the estate or the number of survivors or beneficiaries of the decedent could determine whether Uniform Probate Code administration is available. Perhaps decedents could also be permitted to expressly request supervised or unsupervised administration in their wills.

In its simplest form, the policy issue the Commission must decide boils down to this--is the added time and expense that results from requiring formal, supervised probate worth the protection the formality and supervision may give to interested persons? The California practicing bar answers a definite yes, the proponents of the Uniform Probate Code, a firm no. The staff is unable to further assist the Commission in making this decision because we can offer no data either as to the time and expense of probate or as to the incidence of fraud, mismanagement, etc., in California as opposed to Uniform Probate Code jurisdictions (although we do believe that Californians by nature are no more fraudulent than residents of other jurisdictions).

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

Exhibit 1

TWENTY-SIXTH FLOOR
555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071

January 18, 1983

Mr. John DeMoully
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 99306

Dear Mr. DeMoully:

As the officers of the Probate and Trust Law Section of the Los Angeles County Bar Association, we want to set forth our thoughts concerning the approach to be taken by the Law Revision Commission in its consideration of Division III of the California Probate Code. Due to the impracticality of polling the approximately 900 members of the Probate and Trust Law Section, we cannot speak for the Section. However, we believe that the views expressed by us would be overwhelmingly supported by the Section's members.

We urge that the Law Revision Commission use the existing California Probate Code as its frame of reference rather than the Uniform Probate Code. The existing California Probate Code is the product of many years of review and improvement by the legislature. The review and the changes resulting therefrom have had significant input from the organized Bar and other interested groups. We believe that the system of probate administration in California is now working well. During recent years, major steps have been taken to simplify the process and to reduce the costs and time involved. Under Section 202 it is possible to avoid probate completely where community property or quasi community property passes to a surviving spouse. The frequent amendments enlarging the applicability of Sections 630 and 640 have resulted in the avoidance of probate for the smaller estates. The Independent Administration of Estates Act, Section 591, et seq., has simplified virtually all probates and has reduced both the time and expense involved. The repeal of the California inheritance tax should result in a speeding up of the probate process as the inheritance tax determination was a frequent cause for delays in closing of estates.

Undoubtedly, there are ways of further improving Division III of the existing California Probate Code. For example, we believe that it would be helpful in expediting the administration of estates to permit the Probate Court to try rejected creditor's claims rather than having such claims the subject of a separate civil suit. Actions taken by a personal representative pursuant to advice of proposed action should be made binding upon the persons who receive the advice and do not object. Since such actions are now subject to objection and review at the time of the final account, cautious representatives may seek court approval on interim actions to protect against subsequent objections.

There are probably many changes that could be made to the existing California Probate Code that would make probate administration function even better than it is now. We urge that the Law Revision Commission focus on ways of improving the present code. We do not believe that it is desirable to scrap the existing code and the years of judicial precedents that have been based thereon. Such a scrapping of well tested and finely tuned legislation and interpretation should not be done in favor of a relatively new and untested Uniform Probate Code.

Very truly yours,

Keith A. Pursel
Chair
Probate and Trust Law Section

Leslie D. Rasmussen
Vice Chair
Probate and Trust Law Section

Robert D. Bannon
Secretary-Treasurer
Probate and Trust Law Section

ESTATE PLANNING, TRUST AND PROBATE LAW SECTION

OF THE STATE BAR OF CALIFORNIA

555 FRANKLIN STREET
SAN FRANCISCO 94102-4498
TELEPHONE 561-8200
AREA CODE 415

January 21, 1983

TO: THE CALIFORNIA LAW REVISION COMMISSION

RE: Division III, Administration of Estates of Decedents

In connection with the Commission's consideration, on January 21, 1983, of the approach to be taken in reviewing and revising the provisions of the California Probate Code relating to administration of estates, this Memorandum summarizes various methods for transferring assets at death that presently exist in California. It is hoped that this will assist the Commission in considering Division III of the Probate Code.

Non-Court Transfers

The assets of a decedent may be transferred at death without Court involvement of any kind, in the following situations:

1. Trust accounts payable at death to another party (Totten Trusts);

2. Joint tenancy property (both real and personal property);

3. Proceeds of insurance policies (unless payable to the decedent's estate);

4. Pension and profit sharing plan proceeds;

5. Assets held in an irrevocable trust;

6. Assets held in a revocable inter vivos trust;

7. Assets of $30,000.00 or less otherwise subject to probate that are transferred pursuant to an affidavit under Probate Code § 630, with no Court involvement;

8. Community property and quasi-community property left outright to a surviving spouse, without any dollar limitation, transferable by affidavit with no Court involvement (Probate Code § 202(a)); and

9. Transfer of community real property more than forty (40) days after death subject to certain limitations (Probate Code § 203).

Court Transfers of Assets at Death

The following are methods of transferring title to assets at death through the Probate Court:

1. The surviving spouse may elect to probate the decedent's half of the community property and quasi-community property, notwithstanding the fact that it would otherwise pass to the surviving spouse under Probate Code § 202(a). This election is made pursuant to Probate Code § 202(b).

2. The surviving spouse also has the option to probate the surviving spouse's interest in community property or quasi-community property by filing an appropriate election (Probate Code § 202(b)). The optional probate under this subparagraph or the preceding subparagraph may be advantageous because of possible creditor problems or to create an additional taxpayer, namely, the estate.

3. A surviving spouse may transfer his or her interest in community property or quasi-community property to the testamentary trustees of the trust under the Will of the first spouse to die without submitting that property to probate, so as to combine the assets of both spouses into the trust under the Will of the first spouse to die, thereby avoiding a probate on the death of the second spouse. (Probate Code § 202(c).)

4. If it is unclear whether property is community property or quasi-community property that would otherwise pass outright to a surviving spouse under Probate Code § 202(a), a petition can be filed pursuant to Probate Code § 650 to have the Court determine the nature of the property. After appropriate notice and hearing, the Court will make a determination as to whether the property is in fact community or quasi-community property passing to or belonging to the surviving spouse, or whether it is separate property that would otherwise require probate. This proceeding is apart from a normal probate and can be concluded in a period of perhaps 60 to 90 days from commencement.

5. Where the assets of the decedent subject to probate are $20,000.00 or less, the property can be set aside to the surviving spouse or, if there is no surviving spouse, to minor children, based upon a petition filed with the Court, after notice and hearing. This does not require the commencement of a normal probate in order to have the Court set aside the estate. (Probate Code § 640 and subsequent.)

Probate of Will and Appointment of Personal Representative

Whether the estate is administered under independent administration or under a formal probate, the procedure is the same for admitting the Will to probate and appointing the personal representative. Probate Code §§ 300-362 relate to the probate of Wills and the Application for Letters. Sections 400 through 453 relate to appointment of Executors, Administrators-With-Will-Annexed, and Administrators. Generally, a petition is filed with the Court and set for hearing. Notice is given to all persons named in the Will and to all heirs of the decedent of the hearing. The Court, absent objections, will admit the Will to probate and issue Letters Testamentary or of Administration, as appropriate, to the personal representative. A Will can be contested prior to its admission to probate or within 120 days after its admission to probate. The Order admitting the Will to probate is final at the end of the 120-day period. There are also provisions for appointment of a Special Administrator to act pending appointment of the general personal representative in the estate (Probate Code § 460 and subsequent).

Independent Administration

If the Executor is given authority to administer the estate under independent administration, a petition and Court Order are required only with respect to the following actions:

A. Sales or exchanges of real property;

B. Allowance of Executor's and Administrator's commissions and attorney's fees;

C. Settlement of Accountings;

D. Preliminary and final distributions and discharge; and

E. Granting options to purchase real property.

Certain other actions by the personal representative are to be handled by an Advice of Proposed Action. This Advice is given at least fifteen (15) days before the proposed action by the personal representative, and if there is no objection, the personal representative may proceed with the action without Court Order. The Advice relates to such items as selling or exchanging personal property, leasing real property, entering into contracts, continuing an unincorporated business, commencing or continuing beyond twelve months a family allowance, investing estate funds other than in banks or savings and loans, completing a contract, borrowing money, or determining third-party claims.

All other actions of the personal representative can be taken without either Court Order or Advice.

In most estates, once the Will is admitted to probate, there would only be one further petition filed with the Court, namely, a First and Final Account and Report and Petition for Fees and Commissions and for Final Distribution. Further, in estates where property is being distributed to close family members, an Accounting is often waived.

Under independent administration, the personal representative may petition the Court for Court approval of any other action which the personal representative wishes to have approved by the Court.

The provisions for independent administration are found in Probate Code §§ 591-591.7. (These provisions, enacted in 1974, became effective July 1, 1975.)

A related provision is found in Probate Code § 1004, which allows distribution of up to one-half (1/2) of the estate by ex parte petition, without at Accounting, after the time for creditors' claims has expired.

An Inventory is filed under independent administration on the same basis as with a fully Court-supervised probate.

Fully Supervised Probate Administration

A fully supervised probate administration involves, as in the case of independent administration, initiation by a petition to the Court for probate of the Will and for appointment of the personal representative. These procedures are the same as for independent administration. In both instances, Notice of Death is published. This notice is combined with a Notice to Creditors. Creditors in each case have four (4) months from the date of

issuance of Letters to the personal representative to file claims. Under independent administration, the personal representative can act on the claims without Court approval. Under a fully supervised probate, the Court will also act on the claims.

An Inventory and Appraisement is prepared by the personal representative and sent to a Probate Referee for appraisal purposes. (The system is the same for independent administration.) The Probate Referee, appointed by the Court, appraises the assets. The Inventory is filed with the Court once the assets have been appraised.

In a fully supervised but simpler probate, the only other document that may be filed with the Court is the First and Final Report, Account, Petition for Fees, Petitions for Commissions and Petition for Final Distribution.

However, should other actions be required by the personal representative, then there are a variety of different kinds of petitions that can be filed with the Court, depending upon the needs of the particular estate to obtain Court approval for various actions. These possible petitions include the following:

1. Probate Homestead (§§ 660-666);

2. Family Allowance (§§ 680-684);

3. Sales of Real and Personal Property and Sales of Mining Interests (§§ 750-814);

4. Borrowing of Funds and Mortgaging of Property (§§ 830-834);

5. Leasing of Property (§§ 840-844);

6. Conveyance to Complete a Contract (§ 850);

7. Determination of Title between the Estate and a Third Party (§ 851.5);

8. Exchange of Property (§ 860);

9. Petition for Executor's Commissions on Account (§§ 900, 904);

10. Petition for Allowance of Extraordinary Executor's Commissions (§ 902);

11. Petition on Account of Statutory Attorney's Fees (§§ 910 and 911);

12. Petition for Allowance of Extraordinary Attorney's Fees (§§ 910 and 911);

13. Account Current (§§ 920-927);

14. Proration of Federal Estate Tax (§§ 970-977) (usually included in the Final Account and Report);

15. Petition for Apportionment of Debts as between Decedent and a Surviving Spouse (§ 980);

16. Petition for Preliminary Distribution (§§ 1000-1004);

17. Petition for Final Distribution (§§ 1020-1029);

18. Petition for Discharge of Personal Representative (§§ 1060-1068);

19. Petition to Determine Heirship (§§ 1080-1082);

20. Petition for Partition before Distribution (§§ 1100-1106); and

21. Petition as to Status of Estate (§ 1025.5).

In addition, there are numerous miscellaneous provisions, including such petitions as a Petition for Instructions (Probate Code § 588, for example). However, as noted earlier, in most estates, few if any of these petitions actually are utilized, as the estate simply does not involve assets or issues where the particular petitions would be appropriate.

Tax Aspects of a Decedent's Estate

Prior to January 1, 1981, it was not possible to close a probate estate in California until the California Inheritance Tax had been determined, the Court made an Order fixing tax and the tax was paid. Most probate closings were delayed significantly because of the necessity of finalizing the inheritance tax before the estate could be closed. After January 1, 1981, due to changes in the law, most counties allowed the closing of probate notwithstanding that the tax had not been finalized. With the repeal of the inheritance tax in June of 1982, this reason for delay in probates has been removed.

The Federal Estate Tax Return is due nine (9) months from date of death, and the tax is payable at that time. However, the vast majority of estates are not large enough to require the

filing of a Federal return. The exemption from Federal Estate Tax this year is $275,000.00, and will gradually increase to $600,000.00 by 1987. Where estates are less than the exemption amount, no return is filed.

CAC:pf

AMERICAN ASSOCIATION OF RETIRED PERSONS

January 27, 1983

CALIFORNIA STATE LEGISLATIVE COMMITTEE

CHAIRMAN	VICE CHAIRMAN	RECORDING SECRETARY	CORRESPONDING SECRETARY
Mr. Paul W. Avery	Mr. Clarence F. Nedom	Dr. Wallace Hall	Mr. Frank Freeland
1271-B Pine Creek Way	4191 Sandburg Way	P.O. Box "H"	429 Dunster Drive, #2
Concord, CA 94520	Irvine, CA 92715	Belvedere, CA 94920	Campbell, CA 95008
(415) 676-2946	(714) 552-8714	(415) 435-0695	(408) 379-0782

CALIFORNIA LAW REVISION COMMISSION
% John H. DeMoully, Executive Secretary
4000 Middlefield Road Room D-2
Palo Alto, Ca. 94306

RE: PROBATE REFORM IN CALIFORNIA

This is to express thanks and appreciation for the opportunity which you provided for me to state orally, during your meeting on January 21st, on behalf of our Association and its members, our concerns and recommendations with regard to the probate code. For the record it has occured to us that I should repeat my comments in this form and add to them to some extent at this time.

In the years since the Uniform Probate Code (UPC) was drafted by the task force committee of the American Bar Association, our Association has been advocating its adoption in all of the 50 states. While doing so in California, we have been mindful of the fact that, with the enactment of various bills, our Legislature has made some improvements in our California probate code. While being appreciative of those improvements, we have not been satisfied, and we are still advocating that our code should be brought into more complete compliance with the UPC.

We are now pleased to know that you, the members of our Law Revision Commission, are seriously considering that ultimate objective, and that in particular you are considering a number of proposed reforms which, if enacted, could become steps in the right direction in our approach to eventual adoption of the UPC. It is now appropriate for me to comment on one or two of those proposals.

In reviewing your background papers pertaining to a proposal for "Succession Without Administration" (SWA), while we look with favor on that proposal and will likely be anxious to support it, we will be urging for more than that particular program to be adopted. We are concerned in supposing that this SWA plan would perhaps become another option between two unacceptable alternatives in many of the cases where it could be used. One of those alternatives could be to expose a survivor's pre-inheritance assets and future earnings to the risk of unknown liabilities of the decedent to the extent they exceed the value of the estate share he or she inherits. The other alternative would seem to offer the only escape from what could be the

frightening liability prospects - that is, to have to go through a fully supervised California probate. We think it is reasonable to suggest that the survivors should also have the option of administering an estate via UPC's informal proceedings and unsupervised administration. Thus there would be provided limits to the liabilities for unbarred claims against the decedent to the value of the assets inherited, and perhaps to the claims to be barred. So, let's not settle for just the adoption of "Succession Without Administration".

Another of your proposals has to do with "Administration of Estates of Decedents". This involves a concept which is supported by a commentary in the concluding paragraph on page 2 of the attachment to the "First Supplement" to your "Memorandum 83-5", with which we are in full accord. It says:

> " Oversll, the system accepts the premise that the Court's role in regard to probate and administration, and its relationship to personal representatives who derive their power from public appointment, is wholly passive until some interested person invokes its power to secure resolution of a matter. The State, through the Court, should provide remedies which are suitable and efficient to protect any and all rights regarding succession, but should refrain from intruding into family affairs unless relief is requested and should limit its relief to that sought."

With the provisions of the UPC offering, as they do, such a "flexible system of administration of decedents' estates", we recommend that those provisions be taken now as the basis for your Commission's deliberations in its planning for revisions in Division 3 of the California Probate Code.

In expressing our views with regard to our membership, you will be interested in knowing that we now have over 13.5 million members nation-wide and we have about 1.5 million of those members in California. Our national headquarters is in Washington, D.C., where we have a permanent staff of highly trained individuals with considerable expertise in law, economics, sociology, psychology, management, etc. When our staff has studied and researched a matter, as it did with regard to the Uniform Probate Code, and when they then state a support position, as they have done in this case, I feel comfortable in knowing that my own feelings and endorsement is well substanciated.

In expressing our concerns and feelings about probate, from a layman's point of view, with regard to the basic purposes and needs in settling an estate, most of us I think simply regard death and inheritance as common-place events to be coped with according to logical and necessary practices as naturally desired by the deceased and by the survivors. If left to our innate abilities and inclinations, many of us can handle all that needs to be done without being hindered, thwarted, and discouraged by the courts and by the legal system.

Instead of the judges being required to spend as much time as is now required in the estate settlements, if the code were simplified and minimized as we are advocating, in a great many of the cases their duties could be reduced to being rather perfunctory in nature. A lot of their routine duties could be performed by their aids and by the clerks. The judges and the clerks, without having to spend a great deal of time in doing it, could advise and assist in a helpful manner, thus rendering a good service for many citizens, and the congested court dockets in the state could be greatly reduced.

Sincerely, Frank Freeland

Frank Freeland

Exhibit 4

Joint Editorial Board for the Uniform Probate Code

American Bar Association Section of Real Property, Probate and Trust Law
American College of Probate Counsel
National Conference of Commissioners on Uniform State Laws

February 14, 1983

Dear Commissioner

One purpose of this mailing is to transmit copies of letters from lawyers in Uniform Probate Code states that were written in response to my request for information concerning the functioning and professional acceptance of UPC.

The authors of these letters were informed that the California Law Revision Commission was interested in lawyers' reactions to UPC. The enclosed responses are all that I have received to date. Several of them were written by people who were asked to write by someone to whom I had written.

I think you will agree that the enclosed letters go far toward answering the arguments of lawyers who presently oppose California enactment of UPC's "flexible system" for probate of wills and administration of decedents' estates.

The letters indicate: (1) that UPC's formulations, though apparently complex, are easily mastered and effective in application, particularly after suitable forms have been developed; (2) that there is little substance to pre-enactment predictions to the effect that court supervision of probate fiduciaries is necessary to prevent fraud and mistake, and that adjudicated estate openings and closings should be mandated by law; (3) that administration of estates is much simpler and more efficient under UPC than it was under conventional "supervised administration" legislation and that the public realizes benefits in savings of costs and time from enactment of the UPC's provisions; and (4) a state's court system is significantly relieved of time and manpower demands relating to probate jurisdiction by legislation that replaces California style probate procedures with those offered by UPC.

I have also enclosed a copy of a short article entitled "The Altered Role of the Court Under UPC" that appeared some years ago in UPC Notes, a newsletter we circulated prior to 1980. This article, written by Judge Gerald Schroeder of Boise, Idaho, is especially helpful as one thinks about how a UPC enactment would affect the probate work of your superior court judges. You will note that Judge Schroeder opposed Idaho's enactment of UPC and became a strong UPC advocate after a period of experience with the Code.

In addition to urging that you give close attention to the contents and implications of the enclosed materials, I want to expand a bit on a recommendation I made to you on January 21. I refer to the suggestion that you consider UPC Article III with a view of adding it as a side-by-side alternative to present California statutes governing probate and estate administration. The suggestions that follow may assist you in conceptualizing how a side-by-side approach might be worked out.

First, there will be provisions, which may be drawn either from UPC or present California statutes that will be common to each procedural track. These should include sections controlling venue for probate, sections (like those now constituting Article 3 of Division III of your probate code) governing proof of lost or destroyed wills, sections governing qualifications and priority of persons seeking to administer estates, sections stating the necessity of, and time limits relating to, the probate of wills, and the like.

Second, there will be procedures, such as UPC's formal testacy and appointment proceedings as described in Article III, Part 4 and formal closing proceedings described in III, pt. 10, which will be virtually the same for estates in either track. Their use will be optional for estates on the UPC track and mandatory for those following the court-supervised procedure. One may visualize these as appearing twice in the emerging package, though cross-references may suffice.

Third, the procedures by which creditors' claims are presented, the procedure for advising claimants of allowance or disallowance, and the provisions governing the barring or preservation of claims, must, so far as they govern claimant conduct, be common in both systems. At the same time, the two tracks will differ in relation to the fiduciary's ability to allow and disallow claims, and pay all allowed claims. I believe that Chapter 12 of your present code, with modifications, can supply the bulk of the coverage regarding claims.

Fourth, it may be necessary to come up with a new label for fiduciaries who will be controlled by the optional UPC system so that letters issued to them will signify their statutory powers and related ability to protect persons dealing with them or their distribu-

tees. Perhaps the UPC term "personal representative" will do, but it may be helpful to add "unsupervised," or "independent." The old terminology, involving the terms "executor," "administrator" and the like will signify those controlled by the court-supervised procedure.

If you should decide to launch a project that would produce the proposed two-track system, I will be happy to work with your staff in an initial survey of provisions of UPC and your present code to facilitate classification and identification of organizational and policy issues.

Thank you for permitting me to contribute to your deliberations regarding your important venture into the probate law jungle.

Sincerely,

Richard V. Wellman
Educational Director

RVW/khb
Enclosures

UPC NOTES

NUMBER 10 NOVEMBER 1974

THE ALTERED ROLE OF THE COURT UNDER THE UPC

Idaho adopted the UPC effective July 1, 1972. At that time I had served for three and a half years as a judge handling decedents' estates, guardianships, and trust matters and had grown well accustomed to, and comfortable with, the existing procedures. Having spent over two years working with the UPC, I now feel somewhat accustomed to, and comfortable with, its procedures and can compare them with our old law. The changes are great, and the role of the court is much different. As a judge I have enjoyed a substantial reduction in the amount of time I spent both in court and in the office on routine and unnecessary matters.

Under our prior law the court had the duty of overseeing and supervising the administration of estates. Thus, the judge fixed a bond in all estates except when specifically waived by the will, entered an order requiring the publication of notice to creditors, and approved and confirmed the sales of real and personal property. At times he acted much like an auctioneer. Moreover, the judge appointed appraisers automatically and was supposed to remove on his own motion an executor or administrator who failed to file an inventory within the statutory period. He fixed the amount of inheritance taxes to be paid the state and routinely signed orders approving creditors' claims already approved by the executor or administrator. Unless relieved from the court's scrutiny by a non-intervention provision in a will,* the executor or administrator acted more as the court's amanuensis than as the representative of the estate. Even the non-intervention provisions were ignored by many practitioners who distrusted their effect in view of the heavy overlay of court supervision that prevailed in our law. Thus, although the legislature had attempted to relieve estates and the courts of unnecessary proceedings in a limited class of cases, the effort did not have the impact one might have expected. First, of course, it was necessary that the will be written with the non-intervention provision for the estate to be relieved of routine court supervision. All the intestate estates in which administrators were appointed were subject to the court's supervision. However, many testate estates with non-intervention wills were processed as if the provision were not present: given the thrust of the law towards court supervision, the attorneys simply did not trust the effect of the provision.

In retrospect, the provisions relating to the court's role can be examined more objectively than at the time when they were routine and comfortable. Much of what I was doing as a judge was a waste of time, unjudicial, and often a token compliance with the statutes in order to achieve expeditious and intelligent results.

In the category of time wasting, I routinely signed orders requiring notice to creditors. All this really added to the statutory requirement that the executor or administrator give notice to creditors was a theoretical right of the court to hold him in contempt for failing to do so. That was an impractical and unused sanction; and the time spent signing such an order was time wasted. In the category of non-judicial and tokenism, our law required the court to appoint three appraisers in all estates except those consisting entirely of cash. Three appraisers are not necessary in most estates. This led to the expediency of appointing unqualified persons, secretaries, friends, and the like who would serve without fee to avoid pointless cost to the estate. I knew I was appointing many people who had no qualifications as appraisers, but that was preferable to burdening the estates with unnecessary expense. The attorneys and the courts complied with the letter of the law, but it was a bad and burdensome law that achieved no result justifying its existence. The common-sense approach

(Continued on page 2)

of the UPC allowing the personal representative to use appropriate appraisers when necessary and none when not necessary relieves the court of a role it should not have been playing.

One of the most uncomfortable duties a judge can have is signing orders that he either does not understand or has insufficient information to enter and to defend himself for having signed. These were situations in which he regularly found himself whenever the court was required to approve creditors' claims and to enter orders fixing inheritance tax. Any judge who actually has the time and staff to investigate each and every creditor claim submitted and to determine if it is a valid claim subject to no defenses by the estate is a lucky man in a rich jurisdiction. I signed the orders approving the claims because the statute required me to do so, not because I had sufficient information to enter a judicial order. Similarly, I routinely signed orders fixing the amount of tax due in complex six- and seven-figure estates when it had taken a lawyer and a CPA much time and expertise to determine the amount due. I signed the orders simply to get them to the tax commission where they would be properly scrutinized and objected to if incorrect or questionable. Again our law required a judge to do something he was not qualified to do unless evidence was actually submitted in a hearing with adequate time to deliberate and research the issue. Without belaboring the issue, the point I make is that the philosophy of our previous law interjected the judge into areas of estate administration that were not in dispute, that were beyond his abilities in terms of time and information to adequately determine, and that needed no judicial determination. This created an appearance of judicial supervision and a seal of approval that were both artificial and time consuming. It either misled the public into believing that the court was doing more than it really was or caused the public to resent or mistrust the courts for appearing to burden estates with unnecessary and time-consuming proceedings.

The UPC takes the judge out of the area of routine supervision of the estate and puts the burden upon the personal representative to properly administer the estate and upon persons who have a serious interest in the estate to protect their interests. Thus, section 3-704 vests the personal representative with the power and the obligation to proceed expeditiously with the settlement and distribution of the estate without order or supervision from the court unless a specific order has limited his powers to act. Again, section 3-711 confers upon the personal representative the same powers over the property that an absolute owner would have, acting for the benefit of the creditors and others interested in the estate, this power to be exercised without notice or hearing or order of the court.

The broad grant of power to the personal representative significantly reduces the amount of time a judge must spend both in court and in his office. For example, under the UPC the court is relieved from confirming the sales of property unless there is a petition from someone seeking to restrain the personal representative from acting or a petition by the personal representative who believes that he needs the protection of a court order. This is a welcome relief, particularly in the case of household items and the like where the court's supposed expertise in assessing the propriety of sales of salt shakers, teaspoons, and similar items was a waste of time for the court and the estate.

In a like fashion the court is relieved of the routine approvals of creditors' claims that were not in dispute, which frees time to deal with contested matters. So it is also with orders fixing inheritance tax and orders to publish notice to creditors. While none of these actions was in and of itself overwhelming, the accumulation was great. If any of them had accomplished a substantial public purpose, then certainly the time consumed would not have been a sufficient reason to remove the court from such activity. However, the public did not gain significantly and, in fact, lost the ability to get disputed matters to hearing as promptly as should have been possible.

In nearly six years as a judge, probate is the only area in which I have enjoyed a reduction in the amount of time that I must spend on cases. In the division in which I serve we have nearly doubled the court and administrative staff over the past few years to keep up with the increase in cases; yet I spend only about a third of the court and office time in probates that I did two and a half or even five and a half years ago. The relief has been welcome and, in fact, provides a major economy to the system by freeing my time to hear an increased case load in other areas.

Aside from the reduction of time on probate matters, my role as a judge is much more comfortable under the UPC than it was under our old law. The court now acts in those cases in which persons with an interest in the estate seek an actual ruling from the court. This moves the role of the judge in probate much nearer to his traditional place in the judicial system.

The question that arises is, of course, whether removal of the court from the routine supervision of estates has placed the public in jeopardy. To date there has been no indication of any greater degree of wrong being done to beneficiaries and creditors under the UPC than occurred under our old, theoretically protective, law. While a little over two-years experience is certainly not conclusive, the lack of evidence of ill effects from the change must be balanced against the very obvious benefits to the court that have occurred. In short, removal of the court from the supervision of routine estates has had no noticeably detrimental effects upon the public. On the other hand, it has had very positive results upon the court, which is a benefit to the public it serves.

ARIZONA STATE
UNIVERSITY TEMPE, ARIZONA 85287

COLLEGE OF LAW (602) 965-6188

January 11, 1983

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, Georgia 30602

Dear Dick,

This is in response to your request for my opinion concerning the Bar's response to the Uniform Probate Code in Arizona. As you know Arizona adopted the entire Code with only minor changes; the effective date was January 1, 1974, so we have had nine years of experience under the Code.

I should point out that acceptance of the Code by the judiciary in Arizona was facilitated by the fact that probate jurisdiction was already vested in our court of general jurisdiction, the Superior Court. The reduction in paper work for probate matters was therefore widely welcomed by our judges, who were freed for more important judicial assignments.

Significantly, statistics for our two more populous counties, Maricopa and Pima, show that less than 1% of all estates are now handled under supervised administration. This is contrary to early predictions by some probate lawyers that they would continue to use supervised administration for all estates. It demonstrates the complete acceptance by the Probate bar of the Code philosophy of minimal court interference in the administration of decedents' estates. This acceptance was in fact substantially achieved in the first year after the Code became effective. Once lawyers became familiar with Code concepts and the increased options for handling the opening, administration, payment of claims, distribution, and settlement of an estate, the Bar adjusted easily to the new system. This, in my opinion, was due to excellent leadership by the State Bar of Arizona. The leadership took a progressive attitude in working for the adoption of the Uniform Code while the legislation was pending; and, once the Code was adopted, the Bar sponsored an extensive educational program around the state. The Bar also engaged me to produce a Probate Code Practice Manual for our state; the Manual is now in its second edition and has been widely distributed; it provided forms and check-lists, which eased the change to the new procedures.

The initial fear that the relaxation of court control would lead to "fraud" has also disappeared. Except for one case where an applicant for informal probate of a will failed to list two heirs

(who in fact discovered the proceeding before the estate was distributed), I know of no instance where the informal procedure has been abused. It is interesting that a comparable case occurred under our prior code and the estate was completely administered and closed under court supervision, without notice to the real heir.

Obviously I can not speak for the Bar but only report my impressions. Those are based on numerous conversations with practitioners in the field of probate, however, and reflect what I believe to be the general views of lawyers and judges around the state.

Sincerely,

Dick

Richard W. Effland
Professor of Law

RWE:af

WADE ASH WOODS HILL & GUTHERY
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AND COUNSELLORS AT LAW
3600 EAST ALAMEDA AVENUE, SUITE 200
DENVER, COLORADO 80209

JAMES R. WADE, P.C.
WALTER B. ASH, P.C.
LUCIUS E. WOODS, P.C.
JAMES W. HILL, P.C.
PETER C. GUTHERY, P.C.
MICHAEL R. HOMIER

AREA CODE 303
322-8943

January 18, 1983

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, GA 30602

Dear Dick:

I am writing in response to your recent request for my comments on the workability of the Uniform Probate Code in Colorado.

Initially, I would say that the Code has worked well in our State and that it has achieved its stated objectives of making the probate process quicker and less expensive. I also believe that, in spite of the initial misgivings of some judges and a minority of lawyers, our Code has been well accepted by the bench and the bar.

Part of the success, I believe, stems from the study which the Code received in Colorado prior to its adoption. Interestingly enough, prior to adoption of the Uniform Probate Code, Colorado was already a "probate reform" state with simplified procedures regarding small estates and the like. Colorado's pre code system worked rather well, and yet there was much open-mindedness among the probate bar to see if adoption of the U.P.C. would improve the system.

The impetus for adoption of the U.P.C. in Colorado came almost exclusively what I believe was enlightened leadership of the Probate and Trust Law Section of the Colorado Bar Association. A special committee of 12 to 20 lawyers was established. This committee spent a couple of years comparing the Uniform Probate Code on a line by line basis with the existing Colorado probate law.

The Council of the Colorado Bar Asociation Probate and Trust Law Section approved the Code in concept and asked the committee to determine the areas of substantive law, if any, which adoption of the U.P.C. would change. In some minor areas (proof of lost wills, no partial revocation by physical act) the Code was modified to remain consistent with existing law. In other areas (especially the augmented estate election, allowances, and equitable apportionment of death taxes), the substantive law changes of the Uniform Probate Code were approved.

With Colorado Bar Assocation sponsorship, the Code was introduced in the legislature and passed on its first attempt. As I recall, there were only two lawyers who testified in committee hearings against its adoption and the legislature made only one change in the bill (a modification to the net augmented estate provision), which was unworkable and which was repealed the next session.

Colorado's adoption of the Code was done with a delayed effective date of about one year. During this period a committee of lawyers drafted proposed rules and forms for practice. These were adopted without change by the Colorado Supreme Court prior to the effective date.

Also during this period, the Probate and Trust Law Section of the Colorado Bar Association put a two-day program together to educate practicing lawyers. The program was well-done and very well attended. The Forms and Rules Committee also presented several one-day programs around the State for probate court clerks and other staff. Finally, there was a one-day program in Denver where judges with probate jurisdiction around the State, at the invitation of the Chief Justice, were briefed by the Rules and Forms Committee.

Thus, on the effective date, there was a fairly good common understanding of the Code and practice under it by practicing lawyers, professional fudiciaries, and court staffs.

In practice, about 90% of decedent's estates are opened informally. Perhaps 20% to 50%, depending somewhat on local practice, are closed formally. My experience as a practicing lawyer, a teacher in CLE courses, and as Judge of the Denver Probate Court from 1977-1982 leads me to believe that lawyers have handled the flexible system of administration knowledgably.

More particularly, I have the following comments about Colorado's adoption of the Code:

1. The guardianship and conservatorship provisions were much better than our former law. Proceedings in these areas became a bit more cumbersome, but properly so.

2. Colorado had virtually no law on trust administration. The Code provisions on trust registration and administration have been helpful.

3. There was some speculation that adoption of an entire new probate code would lead to a substantial increase in probate

litigation and appellate decisions, specially in the area of the augmented estate. I don't believe that there was any increase. In fact, there were only two early cases in the augmented estate area, focusing on the transitional rules.

4. Although there are no statistics, I believe that all participants in the probate process would agree that the process has been simplified and expedited without adverse effects upon substantive rights. There is also a general consensus that combined attorney and personal representative fees have been reduced over previous levels based on percentage of assets schedules. The feeling is that fees are lower in the medium to large estates and that there may be some increase in small, complicated estates (which cannot be handled under an affidavit or informal proceedings).

One thing that is clear is that the approach of the Code tends to shift supervisory responsibilities from the Court to the estate attorney. Consideration of adoption of the Code should depend on part upon the level of confidence which the community has in its lawyers.

The Probate Bar in Colorado is, I believe, happy with the reduction in the number of trips to the courthouse on tomalistic matters (i.e., to obtain probate of wills without contest, to obtain orders for partial distribution, etc.). Lawyers have also more room for creativity and skill in advising personal representatives and beneficiaries as to the most appropriate option to select under the flexible system of administration.

There has been some grumbling about the potential for reduction of fees, especially in the context of the repeal of the Colorado Inheritance Tax and the simplification of the federal estate tax.

My experience on the Court gave me still another perspective. I found that, while professional fudiciaries and the lawyers understood their roles and responsibilities under reduced court supervision, a substantial number of estate beneficiaries did not and assumed that a probate court would monitor the administration of all estates and see that their interests were protected. I came to the conclusion that it was a failing of the Code not to insure that estate beneficiaries were not told rather clearly what responsibilities they had to protect their interests and where and in what manner they could look to the Court. This concern was responded to by a rule enlarging the information to be provided to estate beneficiaries in the Information of

Appointment following the opening of the estate and by more specific language in the notice instruments advising as to the possible consequence of non-appearance.

Yours very truly,

James R. Wade

/jf

TELEPHONE
208 — 743-0807

PHILIP E. PETERSON, P.A.
Attorney at Law
318 FIFTH STREET
LEWISTON, IDAHO 83501

December 7, 1982

Prof. Richard V. Wellman
School of Law
University of Georgia
Athens, Georgia 30602

Dear Dick:

I am saddened to hear about your problem. As you will undoubtedly hear, Terry developed leukemia last summer and was gone within the week. Needless to say we miss him terribly.

At the moment I have an ancillary proceeding in progress in California. The estate owns several pieces of real property there and the personal representative decided that one of these properties should be sold. It was placed with real estate firms and a satisfactory arrangement finally reached. It is my understanding that we now have to make an appearance in probate court (not unexpected) but that the property will have to be auctioned in the process. I gather that the auction will be pro forma but it certainly seems to me to be a needless expense. I have to be in Los Angeles on estate matters within the next two weeks and if I receive any other information I will pass it on.

Idaho's experience, it seems to me, has been what would be expected. Initially, there was a good deal of resistance on the part of older practioners who resented legislative theft of their knowledge. I believe that resentment has disappeared. I have made a practice of asking court personnel in different districts around the state what their reaction is and how the lawyers have reacted. The response has been uniformly favorable. They now indicate that this is an extreme improvement over the old system and that everbody is, in fact, happy with it. There is one thing that does create a problem. Some of the less scrupulous lawyers make a practice of filing disputed claims with the court clerk and not with the personal representative; not all the clerks pass information on to the lawyers. As a result, if you fail to check the court files at the appropriate time, you encounter a situation in which the

claim will be diaallowed for failure to object. There is a good deal of dissatisfaction with that and I have felt that there should be a change, that either the creditor should have an obligation to inform the personal representative of the claim or the court clerk should be obligated to mail notice of the claim to the lawyers (as they now do with judgments). That is the major objection that I have encountered.

There is the usual pattern with fees. I think lawyers generally have gone to a time method. However, in the outlying districts and particularly in northern Idaho some of the lawyers are charging a percentage fee, following traditional practices and this will be the case with every lawyer in the community. In the larger cities (Lewiston with its 30,000 population is one of these) this is not the case. There may be a few lawyers who are still using the old system but most of them are using a time method which, in my opinion at least, is more satisfactory to the clients.

I believe I can flatly state that the Code has been a great improvement on our prior practice and that the lawyers are, in fact, satisfied with it. I do feel that there is still objection to probate among the public and that this is probably a public relations problem more than anything else, that is, that we could do a good deal about quieting the objections if we were to make a real effort.

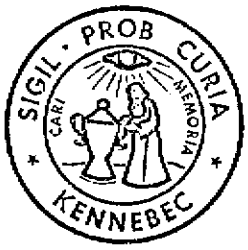
The best of luck to you in your efforts, Dick. I have most sincerely enjoyed the opportunities I have had to work with you and the other members of the editorial board.

Sincerely,

PHILIP E. PETERSON

PEP:j

JAMES E. MITCHELL
JUDGE



DONNA B. GRANT
REGISTER

STATE OF MAINE

PROBATE COURT—KENNEBEC COUNTY

AUGUSTA January 17, 1983

Prof. Richard V. Wellman
University of Georgia School of Law
Athens, Georgia 30602

Dear Professor Wellman:

You have asked how the Uniform Probate Code has worked since its effective date in Maine of January 1, 1981.

As a part time probate judge and active probate practitioner, I have found the Code a significant improvement over prior Maine Law. It answers more questions than did our prior probate statutes and has led to a significant decrease in the number of decisions required of the judge.

I have enclosed statistics from the first year the Code was in effect which you may find interesting. One item not included in the statistics is the number of requests for informal probate which were denied by the register. (In Maine our Registrars are Registers.) In Kennebec County (my county) of 443 requests for informal probate in 1981, the register denied 3. In 1982, through November 30, in Kennebec County there were 285 requests for informal probate of which 3 were denied. In that period there were 34 formal petitions for probate.

One difficulty has been the absence of a Practice Manual keyed to Maine. I have just finished a Manual keyed to Maine forms which is to be published this spring. Pre-publication sales have been brisk. It is difficult to produce a Practice Manual simultaneously with the effective date of the Code, but it would be helpful.

Yours very truly,

JEM/mls

James E. Mitchell

ROBINSON AND KRIGER P.A.
ATTORNEYS AT LAW
FOUR MOULTON STREET
POST OFFICE BOX 568
PORTLAND, MAINE 04112 - 0568

ROBERT C. ROBINSON
JAMES S. KRIGER
SARAH ALLISON THORNTON
JOHN M. McCALLUM

ROLAND BEAUDOIN
FREDERICK H. GREENE, III

AREA CODE 207
TELEPHONE 772-6565

January 17, 1983

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, Georgia 30602

Dear Dick:

At your request I am writing to briefly report on the new Maine Probate Code which has been in effect in the State of Maine for one full year as of January 1, 1982.

One year ago there was some skepticism on the part of those who were not familiar with the Uniform Probate Code, as well as a level of apprehension on the part of the older practitioners, that probate practice in the State of Maine was going to suffer from this change to the new Code. I am very happy to report that after one year of operation for the most part those who were skeptical have been convinced that the new Code really works and those who were apprehensive have been reassured that the alienation of patrimony from one generation to the next is as secure as it ever was and in fact is now more easily accomplished.

The great benefit seems to be the ease with which almost every probate procedure (under the new Code) can now be effected. The great worry about lack of Court involvement seems to have dissolved when the ease and convenience of a completed transaction shows that most of the time and in most cases Court involvement is not necessary. The checks and balances and security of Court supervision are there if needed.

It would be my candid opinion that a referendum taken among members of the practicing bar in the State of Maine, one year after the adoption of the Maine Probate Code, would unequivocally support the new Code by a very large majority.

greatly diminished the demands for documentation or "paper shuffling" that were delaying real estate transfers.

In Maine between 95 and 98 percent of all decedent's estates are handled "informally".

One point that came to my attention as I studied probate forms and rules in several states was while our Committee was working on a set of uniform rules and uniform basic forms to be used in every Maine county, in most states the county judge or the local lawyers set their own rules and prepared their own petitions in their own language.

There is a better way. In Maine, a statewide committee recommended the format of the most used petitions and orders, and the probate rules which would fit with the general rules of civil procedure where applicable. After hearings, the Maine Supreme Judicial Court ordered their use. The Judges of Probate met and agreed on uniform interpretations; the Registers of Probate (the Clerks of the Probate Courts) met and agreed on uniformity of procedures. Several lawyers seminars have dealt with the obvious and with the puzzling portions of the Code, forms and rules. We now think that the day of the petty duchies is behind us for awhile, so that the petition or application is the same in each county.

It does little good to have a substantially uniform probate code adopted by several states if it is variously interpreted by the several counties within any one state.

The Uniform Probate Code did not necessarily make probating an estate in Maine simpler because we already had the simplest procedures of any state. It did clarify procedures, and it did provide constitutional protection for some questionable situations. In most states it would simplify, clarify and expedite the payment of creditors and distribution to beneficiaries immeasurably.

Now, if the laws for payment of death taxes would fall in line also, - but that is another story.

My hopes are that you can persuade more states to adopt the Uniform Probate Code.

Sincerely,

Caspar F. Cowan

CFC/pw

PERKINS, THOMPSON, HINCKLEY & KEDDY
ATTORNEYS AND COUNSELORS AT LAW

ONE CANAL PLAZA
P. O. BOX 426
PORTLAND, MAINE 04112-0426

FRANKLIN G. HINCKLEY
CASPAR F. COWAN
ROYDEN A. KEDDY
CHARLES P. BARNES II
PETER G. RICH
THOMAS SCHULTEN
BRUCE E. LEDDY
OWEN W. WELLS
DOUGLAS S. CARR
ANDREW A. CADOT
LEE D. URBAN
RICHARD G. MOON
THOMAS B. WHEATLEY
PRISCILLA F. GRAY

JOHN R. OPPERMAN
PHILIP C. HUNT
JILL P. BOTLER
HUGH T. McCORMICK
DENNETT H. BUETTNER
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY

PORTER THOMPSON
OF COUNSEL

WILLIAM S. LINNELL
1885-1968
ELLIOT P. PERKINS
1899-1976
JAMES R. FLAKER
1932-1980

AREA CODE 207
TELEPHONE 774-2635
TELECOPIER 774-2635

January 17, 1983

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, GA 30602

Re: Uniform Probate Code

Dear Professor Wellman:

Bob Robinson asked me to comment on the Maine Probate Code as an active practising lawyer who has assisted in the administration of decedent's estates since 1940, and as one who has had his share of close contact with decedent estates in many other states.

The Uniform Probate Code, which the State of Maine adopted with very little change, is very detailed, very complex, and appears to have an answer for every question raised as to the estates of decedents, property of missing persons, minors, persons who need supervision of property or person or both, and the relationship between trustees and trust beneficiaries. You, of course, are aware of this and I, with many others, am grateful for your two volumes which to us are commonly called "The Golden Book".

One caveat: by oversight, the solution to the Colorado problem in §2-202(3) was omitted from the Maine Statute as the Maine transfer tax does not appear on the record. This has caused problems with the title and conveyancing bar which has now suggested a curative amendment.

In general, since January 1, 1981, when the Maine Probate Code became effective, it has worked very smoothly to facilitate prompt appointment of the personal representative and to expose to public record only those portions of an estate which the beneficiaries chose to have placed on record. People like the confidential aspect. The powers granted to personal representatives, to conservators, and to trustees, whether local or foreign, have

Judge Edward Godfrey would like to extend his kind wishes to you and condolences for the loss of your dear wife, Lou.

With kind personal regards.

Sincerely,

Robert C. Robinson

RCR/jer

JAMES P. DUNLEAVY, Judge
CECILIA BEAULIEU RHODA, Register

TELEPHONE: (207) 532-2591

Probate Court, Aroostook County

P.O. Box 787
Houlton, Maine 04730

January 17, 1983

Professor Richard V. Wellman
University of Georgia School of Law
Athens, Georgia 30602

Dear Professor Wellman,

When Bob Robinson called me this morning and asked if I would kindly send you a letter regarding my personal observations of the Maine Uniform Probate Code thus far, I was delighted to be able to do so, although I was not given adequate time to really give the topic careful consideration. However, if you would like me to provide you with greater detail as to how the UPC is actually working in Maine, simply ask -- I will be more than happy to accomodate your wishes.

I am especially delighted to have an opportunity to tell you what an invaluable resource you are!!! I got a set of the Uniform Probate Practice Manual prior to the effective date of the Code here in Maine and have felt it to be indispensable when a problem arises, especially in the interpretation of a particular section of the Code. I have recommended the Manual to members of the Bar throughout the State and insisted that all Registers of Probate obtain a set for their individual probate offices. Not only have I found the Manual to be an important resource tool, but also various articles written by you have proved to be very enlightening. As a matter of fact, I quoted you repeatedly at a recent Probate Law Seminar sponsored by the Maine State Bar Association, at which both Bob Robinson and I were participants.

I hope that this rather brief statement will be of some use to you. I would be more than happy to elaborate further if this would be helpful. I am a strong proponent of the Code and especially enjoy promoting it every chance I get.

Good luck with your conference.

Sincerely yours,

Cecilia B. Rhoda

Cecilia Beaulieu Rhoda
Register of Probate
Aroostook County

JAMES P. DUNLEAVY, Judge
CECILIA BEAULIEU RHODA, Register

TELEPHONE: (207) 532-2591

Probate Court, Aroostook County
P.O. Box 787
Houlton, Maine 04730

TO: PROFESSOR RICHARD V. WELLMAN
UNIVERSITY OF GEORGIA SCHOOL OF LAW
ATHENS, GEORGIA 30602

FROM: CECILIA B. RHODA
REGISTER OF PROBATE
AROOSTOOK COUNTY
P. O. BOX 787
HOULTON, MAINE 04730

"MAINE'S PROBATE CODE TWO YEARS LATER"

A great deal of forebodement was expressed, both by the legal profession and personnel of the probate courts in Maine when the proposed legislation, entitled the "Maine Uniform Probate Code" came before the legislature of this state in 1979, to become effective January 1, 1981.

However, this new probate reform has revolutionized procedure in a manner that is much simpler, more concise and a great deal more flexible. Indubitably, it has made the probate system better, and much to everyone's amazement, it is working!!!

The merits of the system brought about by the enactment of the Code in Maine are numerous. For example: the "noncourt" administration of a decedent's estate by means of the informal proceeding is now available, both for local and foreign estates. The burdens of mandatory court supervision have been alleviated, allowing the non-controversial administration of an estate in a timely fashion. Also, monetary costs have been significantly reduced, making the probate system one that is accessible and palatable to the general public.

Article V offers a procedure for the appointment of a guardian and a conservator which far surpasses the old system. The ward and the protected person are offered a greater degree of protection with regards to their person and property than was available under our former probate law.

I believe Jane Bryant Quinn reflects my personal impression of the Code thus far, by her statement in the June 23rd, 1980 issue of "Newsweek" which goes as follows:

> "The Uniform Probate Code cuts the idiot work of probate and saves heirs a lot of money."

There are, of course, some sections of the Code which have been particularly troublesome for everyone. However, corrective and interpretative legislation has been submitted to our present session of the Legislature in order that the present Code be upgraded in a manner that will be beneficial to everyone.

BERNSTEIN, SHUR, SAWYER AND NELSON
COUNSELLORS AT LAW
A PROFESSIONAL ASSOCIATION
ONE MONUMENT SQUARE
PORTLAND, MAINE
04101

AREA CODE 207
TELEPHONE 774-6291

ISRAEL BERNSTEIN (1890-1967)

BARNETT I. SHUR
LOUIS BERNSTEIN
SUMNER T. BERNSTEIN
HERBERT H. SAWYER
LEONARD M. NELSON
WILLIAM W. WILLARD
JEROME F. GOLDBERG
GEORGE M. SHUR
GREGORY A. TSELIKIS
F. PAUL FRINSKO
PETER J. RUBIN
ALAN R. ATKINS
RICHARD P. LeBLANC
ERIC F. SAUNDERS
GORDON F. GRIMES
PHILIP H. GLEASON
GEOFFREY H. HOLE
JOHN M. R. PATERSON
JAMES H. YOUNG II
MARY L. SCHENDEL
CHARLES E. MILLER
LINDA A. MONICA
ANDREW J. BERNSTEIN
ROBERT D. GIBBONS
CHRISTOPHER L. VANIOTIS
JOYCE WHEELER POULIN
NATHAN H. SMITH
JEFFREY T. SHEDD

OF COUNSEL
HAROLD J. RUBIN

AUGUSTA OFFICE
2 CENTRAL PLAZA
AUGUSTA, MAINE 04330
TEL. 207-623-1596

January 18, 1983

Prof. Richard V. Wellman
University of Georgia
School of Law
Athens, GA 30602

Re: Uniform Probate Code

Dear Professor Wellman:

I understand you are trying to gather together some "feedback" on Maine's experience to date with the Uniform Probate Code. I have had a number of opportunities to work with the Code, as my practice is largely concentrated in the areas of estate planning and probate.

To my way of thinking, the Code has been a definite success. As one would expect, we have experienced certain inevitable "growing pains" as the Bar, the Probate Judges and Probate Court personnel have worked at adjusting to the new provisions and procedures of the Code. Most of that now seems to be behind us, however; and with the upcoming publication of Judge Mitchell's "how to" book on forms and procedures, we should be well on our way to dealing intelligently and creatively with the simplified, streamlined probate process available to us under the Code.

The Probate Code has filled a number of "gaps," eliminated certain inconsistencies, and updated some of the antiquated policies we had in our pre-Code law. In doing this, it has brought about a clear improvement in Maine's substantive law on decedent's estates, protected persons, multi-party accounts, etc. We may well want to make additional improvements; but the Code as adopted is already a giant

step in the right direction in terms of reforming the substantive law.

The Code has also added a great deal of flexibility in our procedures; and that, in my judgment, has made the practice of probate law much more interesting and satisfying than it had been before. We find ourselves using "informal probate" in the vast majority of estates, and have had no problems with it to date. Among other things, our clients have very much liked the privacy now available to them in the probate process, since the filing of a probate inventory is optional and probate accountings can be rendered directly to the beneficiaries without review by the Court.

As you can tell from the foregoing, I am definitely "a believer" in this new Code. I have seen it working in Maine for a little over two years, and I am convinced now more than ever that it was a good piece of reform legislation for practitioners in this state as well as for the general public. I hope these comments can be of some use to you in persuading other states to adopt the Uniform Probate Code as we have done here in Maine.

Sincerely,

Richard P. LeBlanc

RPL/pl

cc: Robert Robinson, Esq.

HARRISON L. RICHARDSON
WILLIAM K. TYLER
WILLIAM B. TROUBH
ROBERT L. HAZARD JR.
EDWIN A. HEISLER
ROBERT E. NOONAN
JOHN S. WHITMAN
ROBERT J. PIAMPIANO
RICHARD J. KELLY
WENDELL G. LARGE
DAVID K. O'BRIEN
KEVIN M. GILLIS
JEFFREY A. THALER
ANN H. MOHNKERN
MICHAEL P. BOYD
THOMAS E. GETCHELL
JOHN W. CHAPMAN
EVE H. CIMMET
WILLIAM S. WILSON JR.
ELLEN A. GORMAN

RICHARDSON, TYLER & TROUBH
ATTORNEYS AT LAW
465 CONGRESS STREET
PORTLAND, MAINE 04101

AREA CODE 207
774-5821

January 18, 1983

Richard V. Wellman, Esquire
University of Georgia
School of Law
Athens, Georgia 30602

Dear Mr. Wellman:

I am a practitioner in Portland, Maine, with an extensive probate practice. I am also a member of the Probate Rules Advisory Committee and served on this Committee when it recommended the adoption of the Maine Probate Code.

The Maine Probate Code, a slightly modified version of the Uniform Probate Code, was passed by the legislature, effective January 1, 1981. I have had many discussions with other members of the Committee who practice in the Maine Probate Courts, and these discussions confirm my own observations that the Code has been a useful addition to Maine law and has been very well received by Maine practitioners.

Sincerely,

Edwin A. Heisler

Edwin A. Heisler

EAH:jml

PROBATE COURT
PENOBSCOT COUNTY
97 HAMMOND STREET
BANGOR, MAINE 04401
(207) 942-6784

ALLAN WOODCOCK, JR.
JUDGE

SUSAN M. ALMY
REGISTER

January 17, 1983

Professor Richard V. Wellman
University of Georgia School of Law
Athens, Georgia 30602

Dear Professor Wellman:-

I am writing in regard to my view of the new Maine Probate Code.

From my spot as a Judge of Probate (20 years), practitioner (we are part-time officials),Vice Chairman of the Maine Probate Law Revision Commission and member of the Advisory Committee on Probate Rules, it is my belief that the Probate Code, which has been in operation for just over two years, is working well. It seems to have received general acceptance from the Bar, and personally, as a Judge, I am particularly impressed by the hefty number of routine, time-wasting matters that no longer cross my desk. I think the move to the Code was a sound one and, as time goes by, it will become just as comfortable and familiar to us as was the former system.

Very truly yours,

Allan Woodcock, Jr.

Allan Woodcock, Jr.
Judge of Probate

LAW OFFICES OF
TWITCHELL, LINSCOTT & BADGER
82 COLUMBIA STREET
BANGOR, MAINE 04401

ORMAN G. TWITCHELL
WILLARD H. LINSCOTT
FREDERICK J. BADGER, JR.
PAMELA D. CHUTE

TELEPHONE
207-947-6151

January 20, 1983

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, GA 30602

Re: Maine Probate Code

Dear Professor Wellman:

Robert Robinson, Esq. asked me to write to you since I am Chairman of the Probate Section of the Maine Bar Association and have been since the committee to study the Model Probate Code was formed by the Maine Legislature. I have followed the Probate Code through its intensive study to its enactment and am presently on the committee responsible for promulgating forms and rules.

While the Code was being studied, there were some members of the Bar who were in opposition and expressed themselves. However, when public hearings took place, the opposition from the Bar was nonexistent.

The Code has been in operation for more than two full years. During this time, I have not received in my capacity as Probate Chairman any criticism of it or any comment that it is not working. The only comments have been constructive pointing out errors or in inconsistencies or suggested clarification. It is clear that it is working well and that the State of Maine with 16 counties, which prior to the Code had, in effect, 16 separate Probate practice areas now has achieved uniformity in these counties.

The great majority of matters are being handled informally and almost every petition for Informal Probate filed has been acted upon immediately with almost no rejections.

It is quite clear to me that the Probate Code affords one the chance to present a formal matter, have it determined and not have to resort, again, to supervised or formal administration. Appointment and allowance are quicker than in the past. One can focus on the matters

involved in an estate but which never really had anything to do with Probate; that is, liquidating business interests, investing assets on a temporary basis, properly insuring assets, dealing with the various taxing authorities, disposing of real estate without need of license from Court, clearance from Inheritance Tax authorities, etc. and the more pressing matters that did not involve Court supervision.

The Code that appeared at first blush to be overwhelming has become simplistic since the Maine forms immediately call ones attention to the applicable statutory section and make it almost impossible not to complete the forms correctly. This, I feel, is the most significant aspect of the new Code to give to the practioners a fill in the blanks with proper references type of form and would encourage this approach to forms in other jurisdictions that enact the Code.

Very truly yours,

Willard H. Linscott

/slh
cc Robert Robinson, Esq.

LAW OFFICES OF

HARLEN, THOMPSON, & PARISH

800 SIXTH AVENUE

HELENA, MONTANA 59601

ADA J. HARLEN
SHAUN R. THOMPSON
RICHARD L. PARISH

TELEPHONE:
(406) 443-0360

December 22, 1982

Professor Richard V. Wellman
University of Georgia
School of Law
Athens, GA 30602

Dear Professor Wellman:

I have had a letter from our mutual friend, Bjarne Johnson, concerning your request to him of our view of how the Uniform Probate Code has worked in Montana. I am happy to give you my input as concerns the use of the code here in Montana.

As I am sure you are aware, Montana adopted its own version of the UPC in 1975. At the time of the adoption of the code, the legislature was rather difficult to convince that the best way to adopt the code was to use the identical language of the National Conference of Commissioners. Rather than take the chance of losing the adoption of the code at all, we agreed to the various amendments to the national code which the legislature proposed. We have been paying for that mistake ever since. Every time the legislature meets, our initial committee for the drafting of the Uniform Probate Code in Montana has had to return to the legislature and do a good bit of housekeeping to adopt the language of the national commission. It would have been so much easier and simpler in the long run if we had been able to convince our legislature to simply adopt the national code verbatim.

As one of our committee members put it "with all of the great minds that have been put to use in compiling the National Uniform Probate Code, why on earth would our legislature and even our committee want to doubt the language that the national commissioners have adopted". I believe our biggest problem was that members of our legislature were people who were not only very unlearned in the field of law but also were very distrustful of lawyers themselves.

Since the adoption of the code in 1975, those of our profession who have taken the time to acquaint ourselves with all the benefits to be derived from the new code cannot sing its praises enough. The younger lawyers who have been taught the new code in law school since its inception have absolutely no problem with it at all. The biggest problem seems to come from those older lawyers who probably fit into the age old category of "it is difficult to teach an old dog new tricks".

Once the lawyers have acquainted themselves with the flexibility of the new code and the fact that it is so simple to by-pass probate in many cases and to avoid a probate completely in small estates, they are much more apt to take advantage of the provisions available under the new code. The lay public is very definitely in favor of the new code. I have a hunch that there are a lot of estates being probated in Montana that really have no business having had to appear on the court dockets at all.

One of the main points in adopting the new code is to provide the lawyers with some new forms and an overview of the code itself. This was particularly helpful here in Montana and we have just completed an update of our manual. The states that have adopted the code are almost unanimous in adopting a printed manual complete with forms which can be sold through the local state bar association and make money for that association. I cannot believe that anyone after having used the new code would give any consideration to going back to our old probate procedure as it was known prior to the adoption of the new code in 1975. If you can provide the bar with assistance and educational forms for using the new code, and that would most certainly include paralegals as well, then there should be no problem in convincing the lawyers that the Uniform Probate Code is certainly a wonderful tool.

It is easy to see the advantages of the Uniform Probate Code in conducting ancillary probates with states who have also adopted the code. What a treat it would be if we could indeed have a uniform probate code throughout all of the fifty states. Perhaps that is a goal which might possibly be achieved in our lifetimes!

Sincerely,

Ada J. Harlen

(Mrs.) Ada J. Harlen

AJH:mw

LAW OFFICES OF
CHURCH, HARRIS, JOHNSON & WILLIAMS

I. W. CHURCH (1884-1972)
G. G. HARRIS (1883-1973)
BJARNE JOHNSON
CARTER WILLIAMS
WM. A. REID
DALE FORBES
CRESAP S. McCRACKEN
CHARLES C. LOVELL
DOUGLAS C. ALLEN
MILTON O. WORDAL
RICHARD F. GALLAGHER

DON A. LABAR
ROBERT P. GOFF
R. KEITH STRONG
W. BJARNE JOHNSON
MICHAEL B. ANDERSON
GREGORY R. SCHWANDT
KENNETH T. JARVI
MICHEAL F. LAMB
KENNETH R. DYRUD
JEANNIE YOUNG

P.O. BOX 1645 • GREAT FALLS, MONTANA 59403 • THIRD FLOOR NORTHWESTERN BANK BUILDING • PHONE (406) 761-3000

December 7, 1982

Mr. Richard V. Wellman
Educational Director
Joint Editorial Board for the
Uniform Probate Code
University of Georgia School of Law
Athens, Georgia 30602

Dear Dick:

I have been chiding my friend, Harold Boucher, of the Pillsbury firm, that California is one of the more backward states in law reform, particularly in the probate field. Our probate procedure was very similar to what I understand is the current California probate procedure, before we adopted the Montana Uniform Probate Code with an effective date of July 1, 1975.

You will recall that the Montana lawyers were less than enthusiastic in our efforts to adopt the Code in Montana. You will also recall that at the bar meeting in Missoula, which you attended, that the vote was almost even and only on the basis that we adopt the Uniform Probate Code with such modifications as might be required by Montana custom, practice and peculiar local requirements. I was chairman of the UPC Commission in Montana for several years before we were able to get a draft of the Code to the Legislature and when finally submitted it was referred out to a special joint committee for study and for such changes as the Montana joint committee should deem appropriate. I spent several sessions with the joint committee trying to preserve the integrity of the Code but we were not very successful in our efforts. The Code was adopted with so many changes you wondered if we really had adopted a Uniform Probate Code or something else. The Montana Code was sufficiently close to the Uniform Probate Code that we were able to open estates informally, close formally or informally, and of course gave us the many options contained in the Uniform Probate Code. After we had lived with the Code for some period of time there wasn't a single lawyer in Montana that I know of who would repeal the Montana version and return to the archaic

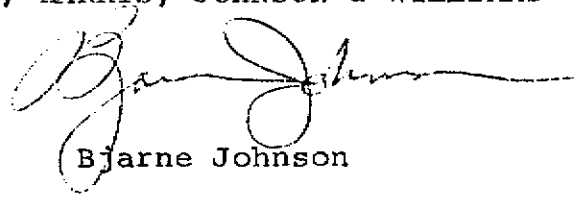
procedure we had before. The only problems we experienced with the Code, not to say that there aren't or can't be others, were with the changes or departures made by the joint committee. The Code, even in the modified form that we adopted in 1975, has worked extremely well, and in the last session of the Montana Legislature in 1980 we substantially eliminated all the changes originally made by the Montana committee to now conform in almost a pure state with the Uniform Probate Code as drafted by the Editorial Board. I obtained a copy of the proposed amendment from Joe Straus on "Succession Without Administration" and it may very well be that the Montana Bar will take the next step by referring this to our Legislature for adoption.

In my view, and I think this is a view shared by all lawyers in Montana, the Uniform Probate Code is a very workable code and far suprior to the code we had before. It would be a mistake for California to tinker with it in any area, as we found our tinkering was chiefly responsible for some inconsistencies and simply added nothing to the Code. If there is some way that our experience can be helpful to the California Law Revision Commission I of course would be glad to help in any way that I can.

With kindest regards.

Yours truly,

CHURCH, HARRIS, JOHNSON & WILLIAMS



BY: Bjarne Johnson

BJlb

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH
ATTORNEYS AT LAW
500 TRANSWESTERN PLAZA II
490 NORTH 31ST STREET
P.O. BOX 2529
BILLINGS, MONTANA 59103-2529
TELEPHONE (406) 252-3441

CALE CROWLEY
JAMES M. HAUGHEY
NORMAN HANSON
BRUCE R. TOOLE
JOHN M. DIETRICH
THOMAS N. KELLEY
LOUIS R. MOORE
GARELD F. KRIEG
ARTHUR F. LAMEY, JR.
MYLES J. THOMAS
GEORGE C. DALTHORP
DAVID L. JOHNSON
JACK RAMIREZ
KEMP WILSON
ROBERT EDD LEE
STUART W. CONNER
THOMAS F. TOPEL
HERBERT I. PIERCE, III

RONALD R. LODDERS
STEVEN RUFFATTO
ALLAN L. KARELL
L. RANDALL BISHOP
STEVEN J. LEHMAN
MARK D. SAFTY
T. C. SPEAR
CYNTHIA FORD
LAURA A. MITCHELL
SHERRY J. MATTEUCCI
CAROLYN S. OSTBY
CHRISTOPHER MANGEN, JR.
MICHAEL E. WEBSTER
DANIEL N. McLEAN
LINDA SHELHAMER

January 17, 1983

Mr. Richard V. Wellman
University of Georgia
School of Law
Athens, Georgia 30602

Dear Dick:

Sometime ago I received a letter from Bjarne Johnson, our mutual friend, enclosing a portion of a letter which he had received from you in which in which you invite any comments that might be shared with the California Law Revision Commission concerning experience in other states which have enacted the UPC.

I am in agreement with Bjarne's observations "..that the only real problem we have experienced with the Code results from the tinkering of the Montana Legislative Joint Committee with the original text..." Now that we have changed back to the Code, I feel that there have been a good many ambiguities eliminated, and there is an ease in getting to the various provisions that had been virtually destroyed by the good intentions of the Joint Committee. As you know, Montana has been one of the "title states," where our old form of probate in a highly supervised fashion, was felt to be the only thing that would enable title lawyers to know who had the title. In the initial stages of our review of Montana's probate law, several members of the Committee kept wanting to simply amend the probate law to try and streamline the same, and never really comprehended the concept of the UPC in its attempts to minimize the contact with the court. As a consequence, as you know from your visits with Bjarne, we experienced some difficult times, but finally the perseverance of Bjarne, yourself and others prevailed and we were able to at least convince the Committee that we should adopt the UPC virtually in its entirety. Wherever we attempted to make some modest changes, they came back to haunt us.

Early on, the lawyers in many communities who had as a principal part of their practice the examination of titles indicated that they felt they would be compelled to have all of their probate proceedings supervised, or at least closed formally. This has not turned out to be the case. I am confident that most lawyers have

now become thoroughly accustomed to informal probate. We have enacted a revision of one of the sections dealing with those who deal with a personal representative or a distributee in the area of oil and gas and have broadened that protective section as a consequence of the experience of those in the energy field.

I would wholeheartedly endorse the UPC in its entirety and would hope that California lawyers did not try to "pick and choose" among its various provisions.

Most cordially,

JOHN M. DIETRICH

JMD:ls
cc: Mr. Bjarne Johnson

C. MELVIN NEAL (1907-1968)
J. W. NEAL
JAMES P. SAUNDERS, JR.
W. A. McBEE
JOHN R. McVEY

NEAL & NEAL
LAWYERS
NEAL BUILDING - P. O. BOX 278
HOBBS, NEW MEXICO
88240

TELEPHONE
AREA 505 397-3614

January 4, 1983

Mr. Richard V. Wellman
Educational Director
Joint Editorial Board for the Uniform Probate Code
University of Georgia School of Law
Athens, Georgia 30602

Dear Dick:

I have your letter of December 21, 1982. You might change your records to note my new mailing address. I am pleased to be able to give you any assistance which I can in connection with your meeting before the California Law Revision Commission in January of this year.

I believe the Uniform Probate Code has proved to be extremely successful in New Mexico. While there were initially many lawyers who objected to the amendment to our existing probate laws, I sincerely believe that even the most skeptical have grudgingly come around to accept the New Mexico Probate Code as a marked improvement in speeding up and eliminating the cost of administration in this State. I have no hesitation in suggesting to you that the Code has received unanimous approval from those of us who practice in the probate field, as well as the District Judges and Probate Judges who administer the Probate Code in this State.

For your recollection, remember that New Mexico has a constitutional probate court; however, the powers of that court are not defined by the constitution. Therefore, in the drafting of the New Mexico Act, we substituted the probate court for the registrar or clerk position and gave to the Probate Judges only the powers of the registrar. All decisional matters were to be presented to the District Court, which is our court of general jurisdiction. This action was taken as Probate Judges in New Mexico need not be lawyers and in ninety-five percent of the cases are not lawyers. One of the problems which we had with our former probate procedure was that issues requiring judicial decision were tried out in the Probate Court before a non-lawyer and the losing party simply appealed de novo to the District Court, thus duplicating all matters requiring decision.

There are changes that are in general procedure which some of our lawyers desire to make in the New Mexico Probate Code. I have strongly suggested to those persons that they coordinate these proposed changes through the Board in order that the Board be given an opportunity to review these changes, submit their expertise, and determine whether or not the changes should be made universally to the Code. I have reviewed these proposed changes and do not believe that they seriously impact the operation of the Probate Code in New Mexico, but they are matters which I feel the Board should review.

It is my opinion that the adoption of the Uniform Probate Code by the New Mexico Legislature was one of the major pieces of civil legislation adopted by the State, with the other being the Uniform Commercial Code. I have solicited other commentaries from lawyers working in the probate field in New Mexico and will forward them to you upon receipt. I have taken the liberty of sending this letter both to the Chicago address of the National Conference of Commissioners on Uniform State Laws, and to you address at the University of Georgia School of Law.

Very truly yours,

NEAL & NEAL

By James P. Saunders, Jr.

JPS/sp
cc: National Conference of Commissioners on Uniform State Laws

LAW OFFICES OF
Robinson, Stevens & Wainwright, P. A.
20 FIRST PLAZA, SUITE 413
POST OFFICE BOX 787
ALBUQUERQUE, NEW MEXICO 87103

PAUL W. ROBINSON
GEORGE F. STEVENS
PAUL S. WAINWRIGHT
GREGORY V. PELTON
LINDA N. EITZEN

TELEPHONE
AREA CODE 505
243-6777

January 7, 1983

Mr. Richard V. Wellman
Educational Director
University of Georgia
School of Law
Athens, Georga 30602

Dear Dick:

Thank you very much for your letter of December 21. I was away from the office for a few days during the holidays, and had not had a chance to reply until now, and I hope this does reach you in time for your January 21 meeting.

We are six years into the Code, and I believe that even the skeptics are convinced that our Code has provided simplicity and ease in administration of estates that they could not believe. I am certain that many of the old-time practitioners in New Mexico resented any change at all. Today, and I talked to many of them through the American College of Probate Counsel and through the New Mexico State Bar, they feel that they are rendering a service to their clients at less cost, and are avoiding for their clients the expense of appraisal and reduction in expense of publication.

One of the major benefits I find is that attorneys like the manner in which ancillary proceedings are handled under the Code. New Mexico has many large land developments, and people in various parts of the country have purchased single lots, and the simplicity of handling that transfer upon death has been very beneficial.

I hope this is of a benefit to you in your presentation.

Sincerely yours,

Paul

Paul W. Robinson

PWR/sc

ZIONS
FIRST NATIONAL BANK

Please respond to:

TRUST DEPARTMENT
P.O. Box 30680
Salt Lake City, Utah 84130
801/524-4806

December 28, 1982

Richard V. Wellman
Educational Director
Joint Editorial Board for the Uniform Probate Code
University of Georgia
School of Law
Athens, Georgia 30602

Dear Dick:

It was nice to hear from you after such a long time. I hope that you and your family had a very nice holiday season.

As you recall, it was quite a struggle to gain sufficient votes in the Utah Legislature to pass the Uniform Probate Code. We made numerous concessions and changes to the Uniform Law to suit some of the Utah Legislators and the Utah Bar Association. It has been interesting that over the last few years almost all of the changes that we have made to the Probate Code have been to undo the changes we made originally back into conformity with the Uniform Law. There are several suggested changes that are being introduced into the Legislature in this upcoming session which will do exactly that - bring the Utah version of the Uniform Probate Code into conformity with the Uniform Act.

I believe that the attorneys practicing in this area, as well as the judges and clerks throughout the State of Utah, fully support the Uniform Probate Code and that it is operating very smoothly in our state. Unfortunately, one of the changes that our legislature made to the code was to retain a percentage fee schedule for Personal Representatives and attorneys. This has worked to the detriment of the citizens of our state, I believe. Many attorneys charge for probate services based on an hourly rate but many still use a percentage basis, particularly in larger estates where the hours spent do not nearly equal the suggested fee schedule in the Code. This matter will be the subject of a bill which will be introduced into the Legislature in January. I am hopeful that the Legislature will adopt the suggested language in the Uniform Act.

I think the only real basis for objecting to the Uniform Probate Code by many attorneys when it was initially enacted was the time that it takes to understand and implement the new law. Many attorneys, of course, had worked for years and were familiar with our old laws and were very reluctant to change. I think, without exception, now that the attorneys have become familiar with the new code, they appreciate the extra tools and the ease with which they can accomplish their work. I think most of the attorneys were also amazed with

how quickly they were able to implement the new provisions especially since the necessary forms were drafted and made available to members of the bar.

I hope that this gives you the information that you have requested. If I can help you in any other way, please do not hesitate to call. I am enclosing a copy of a letter I wrote to three members of the Utah Bar and hope that you hear from them soon.

Very truly yours,

Peter K. Ellison
Senior Vice President and
Senior Trust Officer

PKE/jf

Enclosure

ZIONS
FIRST NATIONAL BANK

Please respond to:

TRUST DEPARTMENT
P.O. Box 30880
Salt Lake City, Utah 84130
801/524-4806

December 21, 1982

Ms. Anita J. Torti
Attorney at Law
Prince, Yeates and Geldzahler
424 East 500 South
Salt Lake City, Utah 84111

Mr. Brett F. Paulsen
Attorney at Law
Moffat, Welling and Paulsen
Suite 300, 261 East Broadway
Salt Lake City, Utah 84111

Mr. Charles M. Bennett
Attorney at Law
Greene, Callister and Nebeker
800 Kennecott Building
Salt Lake City, Utah 84133

Gentlemen:

Enclosed is a copy of a letter I received from Richard V. Wellman of the University of Georgia Law School. You may know of Mr. Wellman's efforts in the past in drafting and promoting the Uniform Probate Code.

I would appreciate it very much if you would take a few minutes to write to Mr. Wellman giving him your honest reaction to your observations regarding the quality of the Uniform Probate Code and how you feel members of the Bar have received this legislation since its enactment.

Thank you very much for your assistance.

Very truly yours,

Peter K. Ellison
Senior Vice President and
Senior Trust Officer

PKE/smh
Enclosure

RICHARD H. MOFFAT
DUANE B. WELLING
BRETT F. PAULSEN
WALLACE R. LAUCHNOR
JOHN L. YOUNG
C. JEFFRY PAOLETTI
CHRISTOPHER J. BURKE
J. GRANT IVERSON (1902-1969)
O. HOWE MOFFAT (1903-1978)

LAW OFFICES OF
MOFFAT, WELLING & PAULSEN
A PROFESSIONAL CORPORATION
SUITE 300
261 EAST BROADWAY
SALT LAKE CITY, UTAH 84111

TELEPHONE
521-7500
AREA CODE 801

December 24, 1982

Mr. Richard V. Wellman
Educational Director
Joint Editorial Board for
the Uniform Probate Code
645 North Michigan Avenue
Suite 510
Chicago, Illinois 60611

Dear Mr. Wellman:

Pete Ellison has asked me to write with regard to your letter of December 14, 1982. I have found the quality of the Code to be excellent. Certainly the informal provisions of the administration of estates has facilitated probates, particularly of smaller estates. Utah adopted a section with regard to personal representative fees and attorney's fees which I think for the most part did away with the intent of the Uniform Probate Code.

The reception of this legislation by Utah practitioners has been very favorable. The Courts, for the most part, seem to have adapted themselves to the new Probate Code. The standardized forms were prepared by a law professor at the Brigham Young University. Those have been acceptable to the Courts, for the most part.

The three-year limitation on probates seems to be mystifying. The Courts and the practitioners are trying to devise methods to skirt that problem. It seems to be the most unpopular provision.

In Utah the Registrar must be a Judge. In rural areas this is really disadvantageous hence the Judges are on Circuit. In discussing this matter with the Clerk in Salt Lake County, he does not want to be the Resistrar because he would have no protection from liability.

I have found it to be excellent in the probate, conservatorship, guardianship, affidavit in lieu of probate, and small estate areas.

Very truly yours,

Brett F. Paulsen

BFP/an
cc: Pete Ellison