

1999 HOUSE JUDICIARY

HB 1329

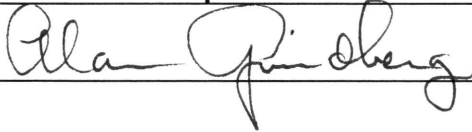
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1329

House Judiciary Committee

Conference Committee

Hearing Date January 20, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature 			

Minutes:

REP. WALD: The purpose of this bill is to get estates closed as early as possible. I had a call from a constituent whose in-law's estate was still open after 13 years. The estate had to pay over \$100,000 in penalties to the IRS. The bill does provide for extension for good cause.

REP. MEYER There is a serious problem in some areas of the state with estates not being closed. A widow who isn't used to the business side of the couple's affairs often has to make great decisions and she is bound to rely on her attorney. As in every profession there are some unethical attorneys and we need this law to help correct the problem with those lawyers. Current law requires that estates be closed in three years but does not provide for anyone to keep track of them.

LEONE LINDSETH: I work on eligibility for assistance in our county. I have several clients who are having troubles like this but they are afraid to appear and testify. North Dakota adopted

the Uniform Probate Code which was supposed to speed up probate. Dunn County currently has 178 probates that are open and are more than 3 years old, some as long as 33 years.

DEBBIE BIFFERT: Submitted written testimony, a copy of which is attached.

NAOMI MURPHY: I am for this bill for the same reasons given by Debbie Biffert.

SANDI TABOR: Presented prepared testimony, a copy of which is attached. No one who has testified has used any of the disciplinary procedures now in place.

COMMITTEE ACTION: February 2, 1999

REP. MEYER presented proposed amendments intended to allay concerns about due process.

REP. KOPPELMAN moved that these amendments be adopted and Rep. Meyer seconded. Rep. Klemin moved to amend the amendment by adding the word "devisee" after the word "heir" in both places where it now occurs. Rep. Meyer seconds the motion. Rep. Mahoney moved to further amend the amendment to add "file a complaint with the disciplinary board" on page 2, line 3. The amendments to the amendment were adopted on a unanimous voice vote. The full amendment was adopted on a unanimous voice vote.

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS AS AMENDED. Rep. Meyer seconded and the motion was passed on a roll call vote with 12 ayes, 1 no and 2 absent. Rep. Klemin was assigned to carry the bill on the floor.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

Page 2, line 1, after "proceeding" insert "involving an attorney at law"

Page 2, line 3, remove "other of that attorney's"

Page 2, line 4, replace "proceedings" with "proceeding", replace "are" with "is at least", and
after "old" insert "in which that attorney is involved"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1329

Page 1, line 1, replace "chapters 27-14 and" with "chapter"

Page 1, line 2, remove "and" and after "penalty" insert "; and to provide for retroactive application"

Page 1, remove lines 4 through 8

Page 1, line 18, after "provide" insert "multiple", remove "not more than", and after "year" insert "per extension"

Page 1, line 19, remove "A first violation of this subsection subjects the attorney to a"

Page 1, remove lines 20 through 23

Page 2, line 3, replace "listing by name and court number every other of that attorney's estate" with "shall serve notice on the heirs and the personal representative. An heir or personal representative may request, or the court on its own motion may hold, a hearing as part of the estate proceeding to determine if a delay is unwarranted. If the court determines the delay is unwarranted, the court may order a fee or damages to be paid to the estate and any sanctions the court determines appropriate, and shall recommend disciplinary procedures to the supreme court."

Page 2, remove line 4 and insert immediately thereafter:

"SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to an estate proceeding initiated before August 1, 1999, and to an estate proceeding initiated after July 31, 1999. Notwithstanding section 1 of this Act, the attorney at law has until November 1, 1999, to file the affidavit and send notice if this Act applies to an estate proceeding initiated before July 21, 1996."

Renumber accordingly

Date: 2/2/97
 Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

House JUDICIARY _____ Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Kopp Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		✓
REP. CLEARY		✓	REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER			REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 1

Absent 2

Floor Assignment Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1329: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "chapters 27-14 and" with "chapter"

Page 1, line 2, remove "and" and after "penalty" insert "; and to provide for retroactive application"

Page 1, remove lines 4 through 8

Page 1, line 18, after "provide" insert "multiple", remove "not more than", and after "year" insert "per extension"

Page 1, line 19, remove "A first violation of this subsection subjects the attorney to a"

Page 1, remove lines 20 through 23

Page 2, line 3, replace "listing by name and court number every other of that attorney's estate" with "shall serve notice on the heirs, devisees, and the personal representative. An heir, devisee, or personal representative may request, or the court on its own motion may hold, a hearing as part of the estate proceeding to determine if a delay is unwarranted. If the court determines the delay is unwarranted, the court may order a fee or damages to be paid to the estate and any sanctions the court determines appropriate and shall file a complaint with the disciplinary board."

Page 2, replace line 4 with:

"SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to an estate proceeding initiated before August 1, 1999. Notwithstanding section 1 of this Act, the attorney at law has until November 1, 1999, to file the affidavit and send notice if this Act applies to an estate proceeding initiated before July 31, 1996."

Renumber accordingly

1999 SENATE JUDICIARY

HB 1329

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1329

Senate Judiciary Committee

Conference Committee

Hearing Date March 9, 1999

Tape Number	Side A	Side B	Meter #
1	X		0 - 3172
3-9-99 2		X	0 - 1050
3-16-99 1		X	0 - 500
3-16-99 1	X		0 - 2300
3-23-99	X		0 - 2950
3-29-99	X		2100 - end
3-29-99	X		0 - 195

Committee Clerk Signature *Jackie Follman*

Minutes:

HB1329 relates to delay in settling an estate; and to provide a penalty.

SENATOR STENEHJEM opened the hearing on HB1329 at 9:00 A.M.

All were present.

REPRESENTATIVE WALD, District 37, testified in support of HB1329. There are serious problems in this area that need to be addressed. I have received communication from the Mackoff Kellog Law Firm. This is attached. Representative Wald proposed some amendments.

These are attached.

SENATOR NELSON asked if there is a filing fee with each of these affidavits.

SENATOR WALD stated that he did not know.

SENATOR STENEHJEM stated that there is a filing fee at the beginning of the probate and there are no additional fees for filing after that.

SENATOR TRAYNOR stated that sometimes the client doesn't want to close the estate within that period of time.

REPRESENTATIVE WALD stated that you can ask the Court for the multiple extensions.

REPRESENTATIVE MEYER, District 36, testified in support of HB1329. There are a large amount of estates open in Dunn County. In our district, there are estates that have been open for 30 years. This bill is an attempt to get at the unethical practices of an attorney.

SENATOR TRAYNOR asked how many estates are open in Dunn County.

REPRESENTATIVE MEYER stated that there are 5 over 30 years and over 100 over 3 years.

SENATOR TRAYNOR asked if there is a record of attorney's fees being charged.

REPRESENTATIVE MEYER stated that yes, they are charged yearly. The clerk of court told me that.

SENATOR TRAYNOR stated that in our office, we don't charge anything until the estate is closed.

REPRESENTATIVE MEYER stated that is what we are trying to get accomplished with HB1329.

DEBRA BIFFERT submitted written testimony in support of HB1329. Testimony attached.

SANDI TABOR, State Bar Association, testified in opposition to HB1329.

MALCOLM BROWN, Attorney in Bismarck, testified in opposition to HB1329. A memo from Steve McCullough is attached. There are existing protections for the Personal Representative. I believe the Uniform Probate Code is taking care of these problems.

SENATOR WATNE asked if this bill does not add anything to the Uniform Probate Code, are there penalties in the code.

MALCOLM BROWN stated that yes there are.

SENATOR STENEHJEM CLOSED the hearing on HB1329.

MARCH 9, 1999 TAPE 2, SIDE B

SENATOR NELSON made a motion for DO NOT PASS, SENATOR TRAYNOR seconded.

Discussion. 5 - 1 - 0

SENATOR TRAYNOR will carry the bill.

MARCH 16, 1999 TAPE 1, SIDE B

HB1329 was brought back to the Committee. Discussion. The Personal Representative is appointed and I don't know if they don't understand that.

Sandi Tabor proposed some amendments. I think what we tried to do with the amendments is to clean up existing statutes to clarify if someone thinks they are having trouble with the attorney involved employed by the estate that they can go to the Court and get a petition and that person is going to file a very detailed report with the Court to explain what is going on. The Uniform Probate Code establishes the fiduciary duties and the functions of taking care of the estate in the Personal Representative.

SENATOR LYSON proposed some new amendments. Representative Wald was presented with these amendments. Senator Traynor suggested that it should state residuary heirs instead of interested parties. Representative Wald wanted to review these amendments so the committee will act on this bill on Wednesday.

MARCH 23, 1999 TAPE 1, SIDE A

SENATOR STENEHJEM brought to the committee two sets of amendments. These contain an integration of the amendments that Sandi and Representative Wald talked about. The only difference between these two amendments is that one of them applies to an estate where a state and federal tax is required.

SENATOR TRAYNOR talked about putting residuary before both heirs and devisees.

SENATOR TRAYNOR asked about the last sentence in section 2, paragraph 1, I believe we wanted this language out.

SANDI TABOR stated that yes, this brings back in the notice requirement that the committee had discussed and wanted to take out.

SENATOR STENEHJEM asked Representative Wald if that was intentionally left in.

REPRESENTATIVE WALD stated I guess what we are trying to accomplish is the attorney is sitting on these estates that have been opened, how do you get this off of dead center.

SENATOR STENEHJEM stated that the Personal Representative under subsection 1 would allow any of the heirs to petition the court formally or by informal request or the Court on its own motion may order that the Personal Representative or the attorney be required to show cause to the court why the estate has not been closed.

SENATOR LYSON stated that the reason that we put that in there so the Court could on its motion could require this. If the bill passes without the last underlined in paragraph 1, couldn't an heir file with the Court to bring it back.

SENATOR STENEHJEM stated that leaving this sentence in would create havoc with a lot of attorneys.

REPRESENTATIVE WALD asked if this doesn't apply to estates under a \$100,000.

SENATOR STENEHJEM stated I think it should apply to all estates.

SENATOR NELSON made a motion on Amendment 90198.0407 deleting the last sentence in Section 2, paragraph 1, SENATOR WATNE seconded. Discussion. Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion on the Amended Amendment 90198.0407, SENATOR NELSON seconded. Discussion. Motion carried. 6 - 0 - 0

SENATOR WATNE made a motion on the Amendment changing the \$250,000 to Federal Estate Tax, SENATOR NELSON seconded. Discussion. Motion failed. 3 - 3 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON seconded. Discussion. Motion carried. 4 - 2 - 0

SENATOR STENEHJEM will carry the bill.

MARCH 29, 1999 TAPE 1, SIDE A

SENATOR STENEHJEM stated he has a problem with Subsection 2 of Section 1.

SENATOR TRAYNOR made a Motion to Reconsider, SENATOR LYSON seconded.

Discussion. Motion carried. 5 - 0 - 1

SENATOR TRAYNOR made a motion to take Subsection 2 of Section 1 out, SENATOR NELSON seconded. Discussion. Motion carried. 3 - 2 - 1

SENATOR LYSON made a motion for DO PASS AS AMENDED. Motion failed for lack of a second.

SENATOR TRAYNOR made a motion for DO NOT PASS, SENATOR NELSON seconded. Discussion. Motion failed. 2 - 3 - 1

SENATOR WATNE made a Motion Without Committee Recommendation, SENATOR TRAYNOR seconded. Discussion. Motion carried. 3 - 2 - 1

SENATOR TRAYNOR will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1329

Page 1, line 1, replace "chapter" with "chapters" and after "30.1-12" insert "and 30.1-21"

Page 1, line 2, after "estate" insert "and to attorney's fees"

Page 1, after line 24, insert:

"SECTION 2. A new section to chapter 30.1-21 of the North Dakota Century Code is created and enacted as follows:

Notice of amount of attorney's fees. In an estate where the fair market value of the probate property exceeds two hundred fifty thousand dollars, the attorney shall provide notice to every interested person of the attorney's fees charged for the entire estate. In addition, the fees must be approved by the court as part of a formal closing pursuant to section 30.1-21-01, or the formal closing must be waived by all interested persons and the fees must be informally reviewed and approved by the court."

Page 2, line 1, replace "This" with "Section 1 of this"

Page 2, line 3, after "if" insert "section 1 of"

Renumber accordingly

Date 3-9-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1329

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not Pass

Motion Made By Senator Nelson Seconded By Senator Draynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne		X			
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Draynor

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1329

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 30.1-18-21 and 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-18-21 of the North Dakota Century Code is amended and reenacted as follows:

30.1-18-21. (3-721) Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

1. After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for that person's own services, including services rendered as attorney, may be reviewed by the court. If the amount of attorneys' fees is based upon the value of the decedent's estate, the fee agreement must be in writing and mailed to all parties who are heirs of the estate pursuant to the last will and testament of the decedent. If the decedent died intestate, notice must be provided to all heirs of the estate in accordance with chapter 30.1-03. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.
2. In an estate where the fair market value of the probate property exceeds two hundred fifty thousand dollars, the attorney shall provide notice to residuary heirs and devisees of the attorney's fees charged for the entire probate. In addition, the court shall approve the fees as part of a formal closing pursuant to section 30.1-21-01, or all residuary heirs and devisees shall waive the formal closing and the court shall informally review and approve the fees.

SECTION 2. AMENDMENT. Section 30.1-21-03.1 of the North Dakota Century Code is amended and reenacted as follows:

30.1-21-03.1. Estate closing - Procedures.

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed, and the ~~and the~~ The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within

ninety days why the estate has not been closed, ~~and~~. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of ~~such~~ the order to show cause ~~and~~, the date of the hearing, and ~~invite such respondents~~ of their right to participate in the hearing proceedings, ~~after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding.~~ The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent. An attorney employed by the personal representative shall notify, without undue delay, the court of all estates for which the attorney is employed which have been open for at least three years since the date of death of the decedent and which exceed one hundred thousand dollars in value.

2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

SECTION 3. RETROACTIVE APPLICATION. Section 2 of of this Act applies retroactively to an estate proceeding initiated before August 1, 1999."

Renumber accordingly

Date 3-23-99
Roll Call Vote = 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL RESOLUTION NO. HB 1329

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on Amendment

Motion Made By Senator Nelson Seconded By Senator Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1329

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 30.1-18-21 and 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-18-21 of the North Dakota Century Code is amended and reenacted as follows:

30.1-18-21. (3-721) Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

1. After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for that person's own services, including services rendered as attorney, may be reviewed by the court. If the amount of attorneys' fees is based upon the value of the decedent's estate, the fee agreement must be in writing and mailed to all parties who are heirs of the estate pursuant to the last will and testament of the decedent. If the decedent died intestate, notice must be provided to all heirs of the estate in accordance with chapter 30.1-03. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.
2. In an estate where federal estate tax is required to be filed, the attorney shall provide notice to residuary heirs and devisees of the attorney's fees charged for the entire probate. In addition, the court shall approve the fees as part of a formal closing pursuant to section 30.1-21-01, or all residuary heirs and devisees shall waive the formal closing and the court shall informally review and approve the fees.

SECTION 2. AMENDMENT. Section 30.1-21-03.1 of the North Dakota Century Code is amended and reenacted as follows:

30.1-21-03.1. Estate closing - Procedures.

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed, and the ~~The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and.~~ The court shall

serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of ~~such~~ the order to show cause ~~and~~, the date of the hearing, and ~~invite such respondents~~ of their right to participate in the hearing proceedings, ~~after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent. An attorney employed by the personal representative shall notify, without undue delay, the court of all estates for which the attorney is employed which have been open for at least three years since the date of death of the decedent and which exceed one hundred thousand dollars in value.~~

2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

SECTION 3. RETROACTIVE APPLICATION. Section 2 of of this Act applies retroactively to an estate proceeding initiated before August 1, 1999."

Renumber accordingly

Date 3-23-99
 Roll Call Vote = 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL RESOLUTION NO. HB1329

Senate Judiciary Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amended Amendment

Motion Made By Senator Watne Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyu Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date 3-23-99
Roll Call Vote = 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL RESOLUTION NO. HB 1329

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on
Amended Amendment

Motion Made By Senator Seconded Senator
Draupner By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne		X			
Senator Stanley Lyson		X			
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolyn Nelson	X				

Total (Yes) 3 No 3

Absent _____

Floor Assignment _____

Date 3-23-99
Roll Call Vote = 4

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL RESOLUTION NO. HB 1329

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Senator Watne Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor		X			
Senator Dennis Bercier	X				
Senator Caroloyne Nelson		X			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Stenehjem

REPORT OF STANDING COMMITTEE

HB 1329, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 30.1-18-21 and 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

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2. In an estate where the fair market value of the probate property exceeds two hundred fifty thousand dollars, the attorney shall provide notice to residuary heirs and residuary devisees of the attorney's fees charged for the entire probate. In addition, the court shall approve the fees as part of a formal closing pursuant to section 30.1-21-01, or all residuary heirs and residuary devisees shall waive the formal closing and the court shall informally review and approve the fees.

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30.1-21-03.1. Estate closing - Procedures.

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed, and the The court shall order the personal representative and the attorney employed by the

~~personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such the order to show cause and, the date of the hearing, and invite such respondents of their right to participate in the hearing proceedings, after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.~~

2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

SECTION 3. RETROACTIVE APPLICATION. Section 2 of this Act applies retroactively to an estate proceeding initiated before August 1, 1999."

Renumber accordingly

Date: 3-29-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1329

Senate Judiciary Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to Reconsider

Motion Made By Senator Traynor Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
SenatorCarolyn Nelson	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

Date: 3-29-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1339

Senate Judiciary Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to Amend

Motion Made By Senator Traynor Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne		X			
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Carolyn Nelson	X				

Total (Yes) 3 No 2

Absent 0

Floor Assignment _____

Date: 3-29-99
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1329

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass 1

Motion Made By Senator Traynor Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne		X			
Senator Stanley Lyson		X			
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Carolynn Nelson	X				

Total (Yes) 2 No 3

Absent 0

Floor Assignment _____

Date: 3-29-99
Roll Call Vote #: 4

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1339

Senate Judiciary Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion without Committee Recommendation w/amendments

Motion Made By Senator Watne Seconded By Senator Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenejem		X			
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Caroloyne Nelson		X			

Total (Yes) 3 No 2

Absent 0

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE

HB 1329, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1329 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-21-03.1 of the North Dakota Century Code is amended and reenacted as follows:

30.1-21-03.1. Estate closing - Procedures.

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed, and the The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such the order to show cause and, the date of the hearing, and invite such respondents of their right to participate in the hearing proceedings, after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.
2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the

decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to an estate proceeding initiated before August 1, 1999."

Renumber accordingly

1999 HOUSE JUDICIARY

HB 1329

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1329

House Judiciary Committee

Conference Committee

Hearing Date : April 6, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature <i>Ala Goldberg</i>			

Minutes:

The clerk called the roll and all members were present.

SEN. TRAYNOR explained the Senate amendments. As the bill is as amended in the Senate it will allow any interested party to bring to the attention of the court that the probate of their interest has been open more than three years after the date of death of the principal. The court will then set a hearing to determine a schedule for completion of the closing. The court may order attorney's fees of the complainant be paid by the respondent. This bill has a retroactive effect and applies to any probate that has ever been filed.

REP. KLEMIN proposes an amendment requiring notice of entry of order.

SEN. TRAYNOR maintains this is covered by Rule 5 of the Rules of Civil Procedure.

Page 2

House Judiciary Committee

Bill/Resolution Number 1329

Hearing Date : April 6, 1999

SEN, TRAYNOR moves that the committee recommend that the House accede to the Senate amendments. Sen. C. Nelson seconds and the motion was passed on a roll call vote with 6 ayes, 0 nays and 0 absent. Rep. DeKrey was assigned to carry the bill.

Prepared by Representative Klemin
April 1, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1329

Page 2, line 10, after the period insert "The personal representative or the attorney employed by the personal representative must serve the report on the persons served with the notice of the order to show cause at the time of the filing of the report with the court."

Renumber accordingly

(Bill Number) 1329 (, as ~~(XXX)~~ engrossed):

Your Conference Committee

2011
 ✓ For the Senate:
 ✓ SEN. TRAYNOR Y
 ✓ SEN. LYSON Y
 ✓ SEN. C. NELSON Y

2011
 ✓ For the House:
 ✓ REP. DEKREY Y
 ✓ REP. KLEMIN Y
 ✓ REP. MEYER Y

recommends that the (~~SENATE~~/HOUSE) (~~ACCEDE~~ to) (~~RECEDE~~ from)
723/724 725/726 S724/B726 S723/B725
 the ((Senate,House) amendments on (SJ/HJ) page(s) _____ - _____

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
 _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
 and a new committee be appointed. 690/515

~~(XXX)~~ Engrossed) 1329 was placed on the Seventh order of business on the
 calendar.

DATE: 04 / 06 / 99

CARRIER: DeKrey

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

HB 1329, as engrossed: Your conference committee (Sens. Traynor, Lyson, C. Nelson and Reps. DeKrey, Klemin, Meyer) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1093 and place HB 1329 on the Seventh order.

1999 TESTIMONY

HB 1329

TESTIMONY OF DEBRA BIFFERT
H.B. 1329
HOUSE JUDICIARY COMMITTEE

Chairman DeKrey and Judiciary Committee Members, thank-you for the opportunity to testify in favor of H.B. 1329. This legislation is long overdue. Because of what happened to my family, I appear before you today asking that you look favorably upon this bill for the protection of all North Dakotans from unethical and unprofessional practices by some attorneys.

I am representing my husband, myself and our immediate family. In 1978, my husband's father passed away. His will contained specific decisions he wanted his wife to make after his death. My mother-in-law was to decide whether to retain the land and rent it out or give her children the money that had accrued over the years or vice versa.

My husband went about his business believing that his mother's best interests and the wishes of his father were taken into consideration as well as handled in a professional manner. In 1992, we learned his father's wishes had not been carried out and the estate was not closed. With pressure from the children, the attorney finally closed the estate after allowing it to lay in limbo for 14 years.

The purpose of hiring an attorney is for guidance in how to make the best decision for all concerned. But, in this instance that did not happen. Instead, the attorney kept the case open, continually drawing money from the estate for every bit of "work" he performed regarding the estate no matter how small.

Our family is not the only victim of the questionable practices of this attorney. He should have had his certificate of admission to the bar revoked a long time ago. If an attorney cannot handle the simple task such as helping my mother-in-law make the decision she needed to make, how can an attorney handle estates requiring more detailed and in-depth decision-making.

This attorney garnered an incredible amount of money (\$12,500) in 1979 to close an estate he left open for 14 years. Within a year, my mother-in-law had to pay him another \$1000.00 for a mistake he made regarding the will. He received another monetary payment (1000.00) when he finally closed the estate in 1992.

In retrospect, his decision to leave the estate open for 14 years hindered us in many decisions we needed to make regarding the welfare of our family. Whether a conscious or unconscious decision, it took an immense emotional toll on our family. By this time, our family not only suffered the loss of a husband and dad, we also suffered the loss of dignity due to the unprofessional handling of the estate. In 1996, our family lost my husband's mother after a brief illness. This same attorney requested over \$9000.00 to settle her estate but later told them he would settle for \$7000.

This time, the attorney was met with older and wiser family members. They refused to pay the amount, requested a copy of their files, and informed him they would obtain another attorney to handle the estate. The attorney told the family the file belonged to him and added, "If you want anything in this file, you go to the courthouse and pay for copies." Those files belonged to the estate and were paid for many times over. The family handed him a check for \$3500.00 for the "work" he had completed, but not the \$9000.00 he originally requested. It remains a mystery how much money he collected between 1978 and 1996 each time he had a request for anything regarding the files.

Having finished their business with the attorney, my husband and 2 of his siblings rose to leave. The attorney's last words to our family were, "I better not hear that you've bad-mouthed this firm!"

I respectfully request you to recommend a "DO PASS" on H.B. 1329. It will prevent some attorneys from taking advantage of families, both emotionally and monetarily. Families have enough to deal with in the loss of a loved one without the stress of a delayed closing of an estate. Thank-you.



State Bar Association of North Dakota

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Testimony of Sandi Tabor

Executive Director

State Bar Association of North Dakota

HB 1329

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Sandi Tabor

I am here today to testify in opposition to HB 1329. I have several handouts which I would like to review with you before I get into the specifics of the bill.

Section 1 clearly violates the separation of powers in that the Constitution provides that the Supreme Court is responsible for the discipline of attorneys. By requiring the court to revoke the certificate of admission of an attorney who has a second or subsequent offense, the legislature has improperly infringed on the constitutional powers delegated to the court. In addition, this section provides no hearing procedure or any other mechanism to ensure due process.

In addition, how can there be a subsequent offense, since once an attorney has lost his or her certificate of admission after the second offense, that would be it. The Association not only believes that the legislation attempts to usurp the court's power, but that the penalty (which is apparently in addition to the \$10,000 fine) is beyond excessive.

Section 2, lines 12-15, provide that an attorney may not willfully delay the administration or settling of an estate. It then goes on to define delay as the attorney's failure to complete the closing of the estate within three years from the date of hire. Based upon the materials we have reviewed, it should be apparent that the closure of an estate is typically not solely within the discretion of the attorney. At best it is a joint project between the personal representative who is providing the information necessary for the attorney to complete the paperwork. Consequently, the bill attempts to lay the blame for delay upon the attorney when in reality the personal representative could be equally to blame for delay.

Additionally, section 30.1-21-03.1 provides a mechanism for any heir or claimant to petition the court if the estate has not been closed within three years. The section provides a procedure for holding an order to show cause hearing which requires the personal representative to explain why

the estate is still open. It would appear that this section covers the concerns addressed in the first part of HB 1329. As an aside section 30.1-21-03.1 allows the court to award attorneys' fees and costs in favor of a petitioner if the court finds that the personal representative (not the attorney) has failed to show cause why the estate has not been closed within three years from the date of the death of the decedent.

Mr. Aakre also discusses a one-year petition process which can be used to have the court order a final account and distribution. Again, it would appear that existing law provides remedies sought by the bill sponsors.

Lines 17-19 provide that the court may provide extensions of additional time for a period of time of not more than one year for good cause shown. It is unclear whether this means the court may grant one extension for one more year or multiple one-year extensions.

And finally, the bill allows for excessive civil penalties solely against the attorney. There is no apparent standard for the court to use in determining whether to assess the fine, nor is there a specific procedure included for providing the attorney with due process. It is also not clear what constitutes a second offense. Is it keeping the estate open for 4 years or 5 years, or is it for keeping a different estate open for more than 3 years without good cause? Lines 22 and 23 state the court may impose the civil penalty in the estate proceeding, but as we have discussed there really isn't any estate proceeding at which time to impose the penalty.

On page 2, the bill appears to be requiring an attorney to provide an affidavit to the court listing all the cases over three years old by name and docket number. If you were to pass the bill, this section needs to be cleaned-up, i.e. it is not a "court number", it is a "docket number" and the rest of the sentence does not make sense.

The sponsors of the bill have provided the committee with several reasons why this legislation is appropriate. They believe that the heirs and other interested parties of the estate have no ability to control the conduct of the attorney. In fact, they have several ways to control the actions of the attorney. First and foremost, the personal representative can fire the attorney. And present law allows for any interested person to petition the court to review the propriety of the employment of the attorney and the reasonableness of the attorney's compensation.

The personal representative can also file a complaint with the Supreme

Court's disciplinary board. Now, I know the sponsors of the bill do not have the same faith in the board as I do, but the fact of the matter is the board is there to deal with complaints regarding diligence. Again, the bill attempts to usurp the power of the Supreme Court.

If the interested party is for some reason unable to fire the attorney or file a complaint, that person could simply send a letter to the judge who issued the letters appointing the personal representative. Even if it is not a formal petition, my understanding is that most, if not all, judges in the state would look into the matter, and if necessary hold a hearing on the status of the probate.

Before I end my comments, I would like to address the concerns raised by the sponsors. It seems that the real issue here is how do we make sure that the personal representative and the attorney assisting with the probate do their job in a timely and cost-effective manner. Based upon my correspondence with several attorneys from all across North Dakota, the answer is that in most instances this is not a problem. Most estates are closed within the three -year period, and present law provides a mechanism for reviewing those that are not. But, when an estate goes beyond three years, how can we keep track of it? One attorney I spoke with suggested that the clerk of court request a status report on the probate at the one-year mark. This would require the personal representative and the attorney to update the court, and provide the court with an opportunity to determine whether there is a need for more information. It is my understanding that this type of request is part of the docket currency procedures for other types of cases. This seems to be a much easier solution to the issue which could be discussed with the court.

To conclude, it is clear to the Association that current law provides a way to check on the status of the probate, not only within three years, but in fact within one year. In addition there are a multitude of remedies in place to take care of instances when the personal representative and/or the attorney have stepped out of line. We question the need for legislation which incurs not only excessive civil penalties, but in fact provides for the revocation of the attorneys license with out due process. I respectfully request that the committee recommend a **do not pass** on HB 1329.

**SERKLAND LUNDBERG ERICKSON
MARCIL & McLEAN, LTD.**

Founded in 1888

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January 19, 1999

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(1886-1982)
CHESTER J. SERKLAND
(1909-1998)

Dear Committee

Re: House Bill 1329

I am sending this letter to oppose enactment of House Bill 1329. It is unnecessary, because current statutes and rules are available to protect beneficiaries of estates. It would add to the costs of extended probates, because attorneys would have to prepare requests for extensions and/or affidavits.

My opposition to House Bill 1329 is based on my 17 years of experience as an attorney specializing in estate planning and probate. In my experience, very few estates require more than three years to complete. However, when more time is needed, the attorney is not the sole cause for delay.

As I indicated above, estate beneficiaries have protection against undue delays, and have remedies for losses caused by delay:

1. A personal representative is under a duty to settle and distribute the estate of a decedent as **expeditiously and efficiently** as is consistent with the best interests of the estate. N.D. Cent. Code 30.1-18-03(1)(emphasis added).
2. A personal representative **shall proceed expeditiously** with the settlement and distribution of a decedent's estate without court order. N.D. Cent. Code 30.1-18-04. (emphasis added).
3. A personal representative has a duty to inform all heirs and devisees, within 30 days of appointment, that they may petition the court in any matter relating to the estate, **including distribution of assets and expenses of administration**. Failure to give this information is specifically a breach of the personal representative's duty. N.D. Cent. Code 30.1-18-05. (emphasis added).
4. If the personal representative acts improperly, the personal representative is liable to persons interested in the estate for damages. N.D. Cent. Code 30.1-18-12. If the attorney hired by the personal representative has unduly delayed the

January 19, 1999

Page 2

probate proceeding, the attorney's actions are imputed to the personal representative, under general rules of law. The attorney also can be liable to the personal representative, if the attorney's action caused the personal representative to pay damages.

5. Any person interested in an estate may petition for court review of the propriety of employment of an attorney and the reasonableness of the attorney's compensation. Any person who has received excessive compensation from any estate may be ordered to make refunds. N. D. Cent. Code 30.1-18-21. The Editorial Board Comment to this section notes, "if excessive fees have been paid, this section provides a quick and efficient remedy."
6. One year after a personal representative has been appointed, any person interested in the estate may petition the court to order that a final account be prepared, and that a final distribution of the estate be made. N.D. Cent. Code 30.1-21-01. Thus, any heirs or devisees can take the initiative to speed up the process, if they think the personal representative or attorney is not acting expeditiously.
7. Attorneys are already under the North Dakota Rules of Professional Conduct, several of which impose a duty to act diligently. NDRPC 1.3 requires that a lawyer "shall act with reasonable diligence and promptness in representing a client." NDRPC 3.2 states that a lawyer "shall make reasonable efforts to expedite litigation consistent with the interests of the client." The comment to NDRPC 3.2 notes: "It goes without saying that a lawyer may not use the legal process to achieve delay, or delay the normal consideration and disposal of pending cases." Violation of a rule of professional conduct can result in suspension or disbarment of an attorney. North Dakota Rules for Lawyer Discipline, Rules 1.2 and 1.3.

The above list shows that adequate ways to prevent or overcome delay are available to any heir or devisee. Further, damages and discipline can remedy wrongful conduct.

I do not know what circumstances led to the introduction of House Bill 1329. If someone has complained about improper delay in estate proceedings, I suggest that the complainant failed to use some or all of the statutes and rules cited above.

In reviewing my own files, I know of probates which took longer than three years to complete. The reasons for these length proceedings were:

1. A total deadlock among beneficiaries as to a fair and equitable division of estate assets. The most intractable of these disputes often involve personal property with little financial value, but great sentimental worth. It is often hard to justify the expense, and the diversion of valuable court resources, to decide how to divide hand tools, plates and rocking chairs. Unfortunately, devisees

January 19, 1999

Page 3

all too often prefer to drag out the fight, in hopes the other side will finally cave in.

2. The decedent was involved in litigation which continued after his or her death, or the estate became a defendant in a lawsuit. I have represented estates of persons who died in car accidents. Their personal representatives were named as defendants. Because the decedent carried liability insurance, the insurance company provided a separate lawyer to defend it and the insured. If potential damages might exceed the amount of insurance coverage, the estate should remain open so that a judgment or settlement in excess of the liability limits can be paid by the personal representative on behalf of the estate. Obviously, the attorney for the estate cannot control the other parties to litigation, and has no influence on when those cases will be settled or tried.
3. The decedent owned complex business interests for which his surviving family members needed adequate time to decide what to do. An example from our office comes to mind: Just before his death, a real estate developer had begun a large residential addition. Large portions of streetwork, curbs, and sewer and water lines had been installed. The developer was a personal guarantor for the cost of these improvements, and still owed a large amount on the purchase price of the land. His heirs were his two teen-aged children, whose mother had died a few years earlier. These young people were certainly not in any position to dicker with dozens of claimants, including the mortgagee, house contractors, realtors, and city officials. A "fire sale" of the property, as it stood at the developer's death, would have left their heirs nothing, and would not have even paid all the creditors. The personal representative and attorney for the estate acted prudently and patiently; obligations were renegotiated to extend the time for payments, and aggressive marketing accelerated the sale of lots and homes. Overall, the estate had to be open much longer than three years, but the best interests of the heirs were protected. House Bill 1329 would have done nothing to help this estate, but would have added the cost for preparing applications for extension and affidavits.

I urge you to defeat the proposed bill. If any of you would like to discuss my letter or the proposed bill, please contact me at 800-726-1963 or saakre@serklandlaw.com.

Sincerely yours,



Steven K. Aakre

risks involved. The fees of the lawyer should be reasonable, with due regard for the fair value of the services actually rendered.

Do not be afraid to ask the attorney representing the estate what his/her fee will be. It is a legitimate question and should be asked.

WHAT ABOUT SMALL ESTATES?

Our law recognizes that there are estates that are so small that the cost of the usual and normal type of probate proceeding cannot be justified. An "affidavit procedure" can be used in a case where thirty days have elapsed after the death of the decedent. At which time, any person indebted to the decedent or having possession of personal property belonging to the decedent can make payment of the indebtedness or deliver the personal property, or an instrument evidencing a debt, obligation, stock or cause of action to a person claiming to be the successor of the decedent. Property can be transferred to a successor upon being presented an Affidavit made out by or on behalf of the successor stating that the value of the entire estate does not exceed \$15,000.00, that thirty days have elapsed since the date of death, that no application or petition for appointment of a personal representative is pending or has been granted, and that the claiming successor is entitled to payment or delivery of the property and the decedent owned no real property.

SUMMARY ADMINISTRATION

Summary administration is available if it appears that the value of the entire estate does not exceed the homestead as defined by law, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable hospital and medical expenses of the last illness of the decedent. In such cases, the personal representative, without giving Notice to Creditors, may immediately disburse and distribute the estate to persons entitled to same and file a closing statement. The closing statement must show that the personal representative has handled the estate in the manner authorized for handling of small estates through a summary administrative procedure.

This pamphlet is prepared to inform, not to advise. No person should ever apply or interpret any law without the aid of an attorney who is fully advised concerning the facts involved, because a slight variance in facts may change the application of the law involved.

Published by



Information & Service Committee
State Bar Association of ND
P.O. Box 2136
Bismarck, North Dakota 58502

Revised 11/97

PROBATE



WHAT IS A PROBATE?

Probate is the Court supervised, legal process for the orderly settlement of the affairs of a decedent (deceased person). When a person dies, title to property owned by that person at death may pass directly to others as surviving joint tenants; as trust beneficiaries; or as named beneficiaries of a life insurance policy, bank account, or other account or to the estate of the deceased person.

WHAT IS THE PURPOSE OF PROBATE?

1. To collect, protect and preserve the probate property and assets of the decedent.
2. To pay all debts, claims and taxes owed by the estate.
3. To determine who is entitled to share in the estate, and to distribute the property accordingly.

CAN PROBATE OF AN ESTATE BE AVOIDED?

Probate proceedings can be avoided if a person has no property in his own name at the time of death.

A person who owns property and wishes to avoid probate can do several things. The property can be given away, so that there is not any property left at the time of death. Title to property can be placed in joint ownership, with right of survivorship, or in an account that is payable on death to another person, so that it passes to the survivor through operation of law. A trust can be created and title to the property can be transferred to a trustee to hold in accordance with instructions of the trustor.

Taxes, both estate taxes and income taxes, should be considered as an important factor in determining whether a person should try to transfer title to property to avoid probate. Indeed, estate taxes should always be considered by someone who is planning the administration of an estate regardless of what efforts, if any, are being made to avoid probate.

WHAT IS INVOLVED IN PROBATE?

There are basically two forms of probate proceedings: Formal and informal. The basic differences between the two proceedings lie in their complexity and the need for court supervision.

Authorization to use an informal proceeding has brought about a probate procedure that is speedy, efficient, and that provides a means of handling probate proceedings with a minimum of cost involved.

A formal proceeding is necessary if there is a necessity to determine whether or not the decedent left a valid will and in cases where disputes are anticipated.

If a will is involved, and an informal proceeding is utilized, the probate can be started as soon as five days have elapsed after death. Probate is started by the person named as personal representative in the will by filling an application for Letters, and by filing a copy of the will. In case of a formal proceeding, notice must be given to all potential heirs, and a date must be set for hearing the petition for appointment as personal representative unless the individual heirs waive their right to such a hearing.

The person appointed to look after the probate is called a personal representative. The term "personal representative" has been adopted in place of executor, executrix, or administrator and administratrix.

As soon as Letters have been issued to the personal representative, that person will take care of the affairs of the estate and the property of the estate. The personal representative will be required to (1) take possession of the property and to preserve the assets of the decedent; (2) to apply for a support allowance for any surviving spouse or dependent members of the family of the deceased, if needed; (3) to collect income, and to do whatever is necessary to collect debts, claims and notes due to the decedent, and to take legal action, if necessary; (4) to determine the names, ages, residences and the relationship of all heirs at law and next of kin of the decedent; (5) to complete any pending legal matters of which the decedent had an interest; (6) to carry out all proper orders of the probate or County Court; (7) to determine the amount of tax due, and to prepare tax returns for all state, federal, inheritance and estate income tax; or to arrange to have some competent person perform such a service; (8) to pay the valid claims of the creditors of the decedent; (9) to generally look after the decedent's property and business affairs; (10) to distribute the assets of the estate after the payment of debts and expenses.

WHAT IS THE ROLE OF THE COURT?

All probate proceedings are subject to the jurisdiction of the Judge of the District Court in the decedent's county of residence.

HOW LONG DOES PROBATE TAKE?

Because each situation is different, it is impossible to determine in advance how long it will take to probate an estate. However, if all matters can be handled, an estate can be closed in as little as three months after the date of the first publication of the Notice to Creditors. In the event an estate exceeds \$600,000.00 and a federal estate tax return is necessary, the proceedings will undoubtedly take considerably longer. The exemption amount will gradually increase over the next few years according to the following schedule:

1998	\$625,000
1999	\$650,000
2000-2001	\$675,000
2002-2003	\$700,000
2004	\$850,000
2005	\$950,000
2006 and after	\$1,000,000

Final distribution will probably not take place until eighteen months after the date of death.

WHAT ARE THE FEES AND COSTS INVOLVED?

The fee for filing the probate is \$80.00, and the cost of a certified copy of Letters is \$10.00 for the first copy and \$5.00 for each additional copy requested at the same time.

The fee of the personal representative must be reasonable and be based on the type of work involved, its complexity, and the



Mackoff Kellogg
Law Firm

NB 1329

February 15, 1999

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IF A PROBLEM ARISES, PLEASE CALL (701) 227-1841 AND

ASK FOR: Faye

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MESSAGE

*** Attached is some wording I have prepared, to try to solve the problem caused by the very few attorneys who charge presumably excessive attorney fees (usually on a percentage basis of 3½% or 4% of the probate assets and sometimes even non-probate assets), and then cover it up by misusing our informal probate procedure and failing to inform the heirs and failing to obtain Court approval. [Closing the estate does not help at all if it is done informally and without disclosure of fees.]

The wording of this may at first glance seem extreme to some attorneys, but it should have absolutely no effect on the overwhelming majority of attorneys who handle their probates in a proper manner (by disclosing their fees and using a formal closing in large estates). GWS

*The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity to whom it is to be delivered, named above. If the reader of this message is not the intended recipient, you are hereby notified that any retention or use, by any means, of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us, by mail, at the above address. Thank you.

NOTICE AND REVIEW OF CERTAIN ATTORNEY FEES

In an estate where the fair market value of the probate property exceeds ~~\$200,000~~^{\$250,000}, the attorney fees charged for the entire estate may not exceed 1% of the fair market value of the probate property, unless all interested persons have received copies of the Inventory and an accounting which discloses the fees, and, thereafter: (1) the fees are approved by the Court as part of a formal closing pursuant to §30.1-21-01, or (2) the formal closing is waived by all interested persons and the Court has informally reviewed and approved the fees. [This paragraph is not intended to impose a limitation on attorney fees, but rather a requirement of notice and Court review in certain cases.]

Attorney fees in connection with administering an estate and handling estate tax matters are not to be charged on a percentage basis, except in cases of fee agreements as authorized in §30.1-18-21. In all other cases, the reasonableness of such fees is to be determined based upon the following guidelines: (1) the time and labor required (distinguishing between legal work in the strict sense, and clerical work); (2) the novelty and difficulty of the legal and tax issues; (3) the skill requisite to perform the legal services properly; (4) the customary fee; (5) the amount and value of the “probate” property involved (and thus, this particular guideline shall not be applicable with respect to “non-probate” property); (6) the competence and efficiency with which the work is performed; (7) the results obtained; (8) the experience, reputation and ability of the attorney; (9) awards in similar cases; (10) the attorney’s pre-existing knowledge of the decedent’s property, family and estate planning; (11) the harmonious nature of the professional relationship with the personal representative and the persons interested in the estate; and (12) the attorney’s diligence in completing the work and in keeping the interested persons informed.

30.1-21-01. Formal proceedings terminating administration - Testate or intestate - Order of general protection.

1. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and, after receiving satisfactory evidence of payment of any estate tax due, directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

2. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

30.1-21-03.1. Estate closing - Procedures.

If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, that the personal representative be required to show cause to the court why the estate has not been closed, and the court shall order the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such order to show cause and the date of the hearing, and invite such respondents to participate in the hearing proceedings, after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.

Source: S.L. 1991, ch. 349, § 1.

Shiley -

The attorney told the
Personal Rep + siblings
they ~~better~~ not take this
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else or they would be
sued - That is why

The D elderly + even our
family members or any
family members did not
use what is ^{already} in place

M E M O R A N D U M

To: Whom It May Concern
From: Steven E. McCullough
Subject: HB 1329
Date: February 17, 1999

I write this memo to encourage rejection of House Bill No. 1329, which bill relates to perceived delays in the handling of estates. The bill is not needed to cure the problems at which it is aimed. The existing law provides remedies for the perceived problem. Finally, the legislation is inartfully drafted. It should, therefore, be voted down and not be made law.

Before getting to specific critiques of the language in the bill, I would note that it apparently is aimed at preventing delays in the handling of estates of deceased persons (although nowhere in the bill does it limit itself to estates of deceased persons rather than, for example, estate of minors or incompetents¹). If this is the case, then appropriate statutes already exist to remedy the situation.

Initially, it must be noted that the structure of the present Uniform Probate Code reflects the basic, underlying reality of the law of probate: that is to say it is the personal representative that make the decisions (with advice from whatever agents and attorneys it hires) as to how an estate will be handled. Thus, Section 30.1-18-03 of the North Dakota Century Code provides:

A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 30.1-34-02. **A personal representative is under a duty to settle and distribute the estate of the decedent** in accordance with the terms of any probated and effective will and this title, and as **expeditiously and efficiently** as is consistent with the best interests of the estate.

Id. § 30.1-18-03 (emphasis added). Further, the Code provides:

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate

Id. § 30.1-18-04 (emphasis added).

¹ The term "estate" can mean not only the property of a decedent, but also of a trust, or a minor, incompetent, or protected person whose affairs are subject to the provisions of title 30.1 of the North Dakota Century Code. N.D. Cent. Code § 30.1-01-06 (15). These other estates clearly may rightfully not be "closed" in less than three years.

Analysis of HB 1329
Page 2
February 17, 1999

The Personal Representative can, and usually does, hire an attorney to assist him or her². This is also recognized in North Dakota's existing statutes. Section 30.1-18-15 of the Code provides:

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 30.1-20-02, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

...

Employ persons, **including attorneys**, auditors, investment advisers, or agents, even if they are associated with the personal representative, to **advise or assist** the personal representative in the performance of the personal representative's administrative duties, and act, without independent investigation, upon their recommendations. Instead of acting personally, the personal representative may employ one or more agents to perform any act of administration, whether or not discretionary.

Id. § 30.1-18-15 (emphasis added). Of course, if the Personal Representative feels the attorney retained for the purpose of advising and assisting is not performing adequately, then the Personal Representative is totally and completely free to discharge (or fire) the attorney at any time.

Further, if the attorney that had represented the Personal Representative was negligent in his or her handling of the case, the Personal Representative may commence an action for any damages the attorney has caused the estate to incur. It is well established that an attorney is liable for all losses caused by his failure to follow with reasonable promptness and care the lawful instructions of his client. Olson v. Fraase, 421 N.W.2d 820, 829 (N.D. 1988). Thus, the existing law clearly allows for appropriate action to be taken against a dilatory attorney.

While the Personal Representative controls the retention of agents and attorneys to help process the estate, even if the Personal Representative is "asleep at the wheel," it does not mean that a dilatory attorney can never be held accountable. After all, a Personal Representative (the person actually making the decisions as to how and when the estate will be handled) has a fiduciary duty to ensure efficient and expeditious handling of the estate. N.D. Cent. Code § 30.1-18-03.

If, for whatever reason, the Personal Representative fails to act in the best interests of the estate, such as if he or she refused to dismiss a dilatory attorney, not only could the Personal Representative be personally liable for any damages caused thereby, but also the Personal Representative could be removed and a new Personal Representative (one who **would** fire the

²The statutes specifically provide, however, that an informal probate may be commenced without the assistance of an attorney. N.D. Cent. Code § 30.1-14-01.1.

dilatory attorney or take other appropriate action) could be appointed. See *id.* § 30.1-18-12 (making Personal Representative liable for damage caused estate by breach of his or her fiduciary duty). Thus, Section 30.1-17-11 of the Code provides:

1. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 30.1-17-07, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

2. Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the personal representative's appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of the personal representative or the personal representative's nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

Id. § 30.1-17-11 (emphasis added).

Finally, there already exists a statute which allows a non-Personal Representative to force the issue of the length of time an estate has remained open. Section 30.1-21-03.1 of the Code provides:

If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, that the personal representative be required to show cause to the court why the estate has not been closed, and the court shall order the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such order to show cause and the date of the hearing, and invite such respondents to participate in the hearing proceedings, after which the court shall issue its order establishing a

timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.

Id. § 30.1-21-03.1.

Similarly, the requirement of HB 1329 that the judge "file a complaint with the disciplinary board" is simply not needed. Rule 1.3 of the North Dakota Rules of Professional Conduct, governing lawyers in this state, provides:

A lawyer shall act with reasonable diligence and promptness in representing a client.

N.D.R. Prof. Cond. 1.3. The rules do not prevent any person from making a complaint to the disciplinary board. See N.D.R. for Lawyer Discipline 3.1. Thus, a Personal Representative or any other interested person in an estate could make the complaint. The complaint does not have to come from a judge. More important, however, the Code of Judicial Conduct, governing judges in this state, provides:

A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

N.D. Code Jud. Cond. Canon 3.D.2. The commentary to this Canon of Judicial Conduct further provides:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body

Id. at Commentary. The North Dakota Supreme Court has in the past severely sanctioned an attorney for the lack of diligence in regard to the handling of a deceased person's estate. In Re LaQua, 548 N.W.2d 372 (N.D. 1996) (taking away LaQua's license, and ability to earn a living, for six months).

This memo contains a detailed analysis of the current state of the law in this area. It is important to know, however, that a person who feels he or she has been damaged by a "willful" or "unwarranted" delay in the processing of an estate already has rights and remedies under the present law. The present statutes work. There is no need for the enactment of House Bill 1329.

Further, the language of the bill, even as amended by the House, is jumbled, confused, and will cause much uncertainty. For example, in paragraph one of the bill (page 1, line 10), the prohibition is against the "willful" delay of an estate administration. In other parts of the bill, however, the language used refers to warranted and unwarranted delays as a triggering condition. The two (willful and unwarranted) are not synonymous. It is unclear whether the offensive conduct is willful delay or unwarranted delay.

The first paragraph of the bill further provides it is deemed to be a delay if the estate is not closed within three years from the "date of hire," unless the Court has granted an extension. This implies an extension must be granted **before** the expiration of the three-year period. The second paragraph, however, clearly anticipates an extension will be sought "after three years have passed in an estate proceeding." This means that a delay will already be deemed to have occurred. It is totally unclear if the mandatory disciplinary complaint provision is triggered if an extension is not granted prior to the expiration of the three-year period, *i.e.*, if an attorney waits until the 10th day after the three years to file his affidavit, must the judge make a complaint to the disciplinary board? Further, if an extension is granted prior to the three-year period does this mean there is no delay, and hence no need for the filing of the affidavit?

Much more important, however, the triggering dates for the "three year period" in the two paragraphs are different. The first paragraph speaks of the "date of hire" of the attorney.³ The second paragraph speaks of "after three years have passed in an estate proceeding." These are never the same dates and can, in some instances, be separated by considerable periods. For example, if the surviving spouse visits with the attorney within days of the death but it takes weeks (or sometimes months) to locate the will to offer it for probate, the three-year periods will not come close to running at the same time.

Further, some of the language used in the statute is extremely unclear in its meaning. For example, the term "three years have passed in an estate proceeding" is inherently ambiguous. The term might refer to three years since the death of the decedent, since the hiring of the attorney, since the application for probate of the will, since the issuance of the Letters Testamentary or since some other event. The language simply does not add up.

Similarly, the phrase "complete the closing of the estate" in the first paragraph is likewise ambiguous. Facially, this language would seem to mean much more than simply the preparation of the documents necessary for closing of the estate. However, it is the Personal Representative, and not the attorney, who must take the action necessary for closing the estate (whether that is submission of a Final Accounting or a sworn statement from the Personal Representative under

³Obviously, in the situation where there are multiple attorneys the language is imprecise. Is the triggering date the date of hire of the first attorney (who is, perhaps, no longer working for the Personal Representative) or is it the date of hire of the last attorney (thus possibly extending the deadline vastly beyond the anticipated three years)?

section 30.1-21-03). The attorney is not responsible to "complete the closing of the estate." The attorney could have all the documents necessary to close the estate prepared, but a lack of execution by an intransigent Personal Representative could easily frustrate "completion" of the estate closing. An attorney should not be held responsible for the conduct of a client. The problem arises because this bill simply flies in the face of the structure of the present Probate Code which makes the Personal Representative, not the attorneys and agents hired by the Personal Representative, responsible for the manner in which the estate is processed.

Not only is this legislation poorly drafted and unnecessary, it also might actually end up costing working men and women, the beneficiaries of smaller estates, money. It has been quite a common practice that in some estates a formal "closing" has never been done. Under the current law, an estate may be "closed" formally via a Court hearing. It may also be "closed" informally, with the service and filing of a "closing statement" and final accounting. In small, uncomplicated estates, those in which the surviving spouse and children are the only heirs and in which there are no disputes or controversies that need judicial resolution, past practice has frequently been to do neither a formal nor an informal closing. Rather, the appointment of the Personal Representative has simply been allowed to expire or terminate by lapse of time.

This method of ending these smaller, uncomplicated estates has the benefit of saving clients the fees and costs necessitated by a closing procedure. This proposed legislation would require, in every instance, either a formal or informal closing procedure be done, with the attendant fees and costs being paid out of the estate corpus rather than going to the heirs.

Further, because of the frequency of this practice in the past, the retroactivity of this Bill is especially pernicious. There vary well may be hundreds, if not thousands, of technically "non-closed" estates in the state of North Dakota. The language of the proposed legislation would require not only that an affidavit from the attorney be filed (and/or an extension from the Court be gotten), but also that every such estate be formally or informally closed, even though the Personal Representative had previously decided not to incur the expenses of going through a closing procedure. The effect of this Bill will not be to provide any additional protection to citizens of North Dakota, but rather will require them to expend needless resources. It should not be made law.

Respectfully submitted,

Steven E. McCullough