

Friday, January 21, 2011

2:15 p.m. – 5:30 p.m.

Probate, Estate Planning & Trust Section

3.0 MCLE Credit Hours, 3.0 Estate Planning & Probate Specialty Credit Hours, 3.0 Taxation Specialty Credit Hours

The Code-20 Years Later

In a certain comic strip of recent vintage, a character notes that trusts are ineffective systems designed to replace ineffective probate systems, and his lawyer responds that his clever observation will cost him \$4. Another joke at our expense. But despite the perception that estate planning “systems” are designed to frustrate or cost clients money, our judicial and legal communities have implemented a Probate and a Trust Code which are efficient, logical and fair. Nothing is perfect, however, and in the 23 years since the Uniform Probate Code was adopted in South Carolina, judges and lawyers have encountered certain problems with the practical application of the Code. While various statutes have been amended or added in a piecemeal fashion, there’s been no comprehensive review. The South Carolina version of the Uniform Trust Code was added in 2005, and while technical amendments were adopted in 2010, certain substantive changes are worthy of consideration.

Two years ago, the Council of the Probate Estates and Trusts Section authorized a committee to study revisions to the Codes. The capable Catherine Kennedy recruited subcommittee chairs and members, organized the meetings and now chairs the plenary committee. Alan Medlin continues his invaluable work as the reporter. It is a work in progress. More than 60 lawyers and probate judges are participating.

Experienced judges and attorneys all, they’re aware of the pitfalls, what works and what doesn’t, what’s broke and what isn’t, and when to improve upon or leave well enough alone. In the review process, statutes have been analyzed, dissected and compared with laws of other jurisdictions; changes have been proposed, discussed, agreed or disagreed upon, fine tuned, and adopted or discarded. There will always be differing interpretations of the law, but the committee’s goal has been to identify the problems encountered by the bench and bar and clarify wherever possible.

The purpose of this seminar is to highlight the areas that have generated the most discussion, point out where changes have been proposed, present opposing viewpoints as the process continues, and advise as to new developments in the law and whether and why those have been included. It’s a great opportunity for both new and experienced attorneys to become informed as to issues that arise frequently in the practice and to learn what changes have or have not been proposed and why.

Agenda

2:15 p.m. – 3:10 p.m.

Introduction – The Code: 20 Years Later

Catherine H. Kennedy, Columbia

Article 1: Jurisdiction, Removals, Appeals

Scott W. Hutto, Georgetown

Article 2: Elective Share and Exempt Property

Dan Collins, Greenville

3:10 p.m. – 4:00 p.m.

Article 2: Execution, Disclaimers, Revocation & Revival, Additions to Trusts, Ademption, Slayer Statute, Delivery of Will

Alan Tewkesbury Jr., Spartanburg

Article 3: Priorities for Appt as PR Demand for Notice, Formal Testacy-Contested Cases, Required Court Filings, Personal Property, Affidavits

John Jolley, Hilton Head

4:00 p.m. – 4:15 p.m.

Break

4:15 p.m. – 5:10 p.m.

**Article 3: Creditor Claims, Compromise of Controversies,
Small Estates & Summary Administration, Sale of Real Estate**

Mitchell C. Payne, Rock Hill

**Article 7: Creation, Validity, Modification and Termination;
Revocable Trusts; Creditors Claims; Duty to Inform;
Decanting Trusts**

William Reynolds III, Columbia

5:10 p.m. – 5:30 p.m.

Overview and Recent Developments

Professor S. Alan Medlin, Columbia

Course Planner: Carolyn W. Rogers, Rock Hill

Moderator: Catherine H. Kennedy, Columbia