

1999 DRAFTING REQUEST

Bill

Received: **01/03/2000**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Tony Staskunas (608) 266-0620**

By/Representing: **Adrienne**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Probate**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Expanding categories of persons who may be appointed personal representative in informal administration

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 0 1/05/2000	csicilia 0 1/05/2000		_____			
/1			martykr 01/05/2000	_____	lrb_docadmin 01/05/2000	lrb_docadmin 01/18/2000	

FE Sent For:

<END>

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/?	kahlepj	1 cjs 1/5 00	<i>[Signature]</i>	<i>[Signature]</i> 1/5			

FE Sent For:

<END>

MEMO

To: Adrienne
From: Tony
Date: December 22, 1999
Re: Section 865.08

I would like to have a bill drafted which will streamline the appointment of personal representatives in an informal probate and expand the persons that may be named as personal representative in an informal probate.

Under current law, Section 865.08 (1) (a), dictates who may be named as a personal representative. I would like to expand the list to include the following:

“Any person, subject to Section 856.23, Wis. Stats, who has the consent of all interested persons.”

This is based on the following fact scenario.

My client is an 80-year-old widow, who is in poor health. Recently, her 47-year-old daughter passed away. The daughter did not leave a will and, therefore, under the laws of intestacy, the daughter's entire estate will go to the mother. The mother is the sole heir and the sole interested party in this probate proceeding.

The deceased sister left a surviving sister and two brothers. The three surviving siblings and the mother all agree that one of the brothers would be appointed as personal representative. However, under a strict reading of Section 865.08, since the brother is not an heir under the laws of intestacy, he cannot be appointed as personal representative. This forces a situation where the personal representative must be the 80-year-old widow, who is in poor health, or an attorney or a bank & trust company. It precludes the appointment of one of the mother's children to act as personal representative and handle this estate,

This bill will give more flexibility as to who can be appointed as a personal representative.



ANTHONY J. STASKUNAS
STATE REPRESENTATIVE . 15TH ASSEMBLY DISTRICT

MEMORANDUM

December 27, 1999

To: Robert Nelson

From: Adrienne Ramirez

Re: Drafting request

Attached is a memo I received from Rep. Staskunas requesting a bill draft.

I would appreciate it if you could draft the legislation he requests. If you are not the appropriate drafting attorney, please forward this request to that person.

Thank you.



1's

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft
→ general

1 **AN ACT** ^a; relating to: who may be appointed personal representative in
2 informal administration

Analysis by the Legislative Reference Bureau

→ Under current law, in the informal administration of an estate, the probate registrar may appoint a personal representative. If there is a will, the personal representative appointed by the probate registrar must be the person nominated in the will or a person requested by the parties interested in the estate, subject to qualification and acceptance. If no person is nominated in the will, if the person nominated in the will fails to qualify or if there is no will, the personal representative appointed by the probate registrar must be either a bank or trust company that is entitled to exercise fiduciary powers in this state or a natural person. In either case, the personal representative must have the consent of all of the parties interested in the estate. In addition, if the personal representative is a natural person, he or she must be an attorney admitted to practice law in this state or someone who takes under the will if there is a will or an heir of the decedent if there is no will.

This bill changes the natural persons who may be appointed personal representative in informal administration if no person is nominated in the will, if the person nominated in the will fails to qualify or if there is no will. Under the bill, any person who has the consent of all interested parties and who qualifies may be

appointed. The person does not have to be an attorney ~~and does not have to be~~ a beneficiary under the will if there is a will or an heir if there is no will.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 865.08 (1) (intro.) of the statutes is renumbered 865.08 (1) (ac) and amended to read:

865.08 (1) (ac) Upon receipt of an application and making the determinations required by s. 865.07, the probate registrar may enter a statement of informal administration, admit a will to informal probate and may appoint the personal representative nominated by the will or requested by the interested parties, subject to qualification and acceptance.

History: 1973 c. 39; 1975 c. 331; 1993 a. 486.

SECTION 2. 865.08 (1) (a) (intro.) of the statutes is renumbered 865.08 (1) (am) and amended to read:

865.08 (1) (am) Where **If** no personal representative is named or ~~where~~ **if** the named personal representative fails to qualify, the personal representative shall be either a bank or trust company that is entitled to exercise fiduciary powers in this state ~~which~~ and that has the consent of all interested persons, other than creditors of the deceased, or, subject to s. 856.23, a natural person who has the consent of all interested parties, other than creditors of the deceased, ~~and is:~~

SECTION 3. 865.08 (1) (a) I., 2. and 3. of the statutes are repealed.

History: 1973 c. 39; 1975 c. 331; 1993 a. 486.

SECTION 4. Initial applicability.

(1) This act first applies to informal administrations commenced as a result of deaths occurring on the effective date of this subsection.

(END)

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4134/dn

PJK...Y:...

legs

I repealed s. 865.08 (1) (a) 1., 2. and 3. because it does not make sense to list specific persons who may be appointed personal representative with the consent of all interested parties if, under the bill, *any* person who has the consent of all interested parties may be appointed personal representative. I also "cleaned up" s. 865.08 (1) somewhat; as you can see, s. 865.08 (1) (intro.) in current law is not really an (intro.).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4134/1dn
PJK:cjs:km

January 5, 2000

I repealed s. 865.08 (1) (a) 1., 2. and 3. because it does not make sense to list specific persons who may be appointed personal representative with the consent of all interested parties if, under the bill, **any** person who has the consent of all interested parties may be appointed personal representative. I also "cleaned up" s. 865.08 (1) somewhat; as you can see, s. 865.08 (1) (intro.) in current law is not really an (intro.>.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 0 1/05/2000

To: Representative Staskunas

Relating to LRB drafting number: LRB-4134

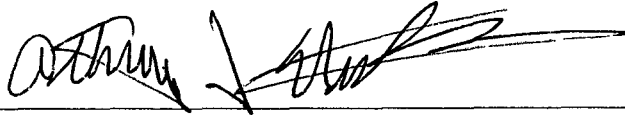
Topic

Expanding categories of persons who may be appointed personal representative in informal administration

Subject(s)

Probate

1. **JACKET** the draft for introduction _____



in the **Senate** or the **Assembly** ✓ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney
Telephone: (608) 266-2682

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