

1991 Assembly Bill 780

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1991 WISCONSIN ACT 220

AN ACT to amend 701.14 (3), 814.66 (1) (e), 856.15 (2), 858.03, 859.29, 862.11, 867.01 (5), 867.02 (5), 879.03 (2) (b), 879.09, 879.11, 879.15 (3), 879.19 and 879.25 of the statutes, **relating to:** allowing an attorney-in-fact to act on behalf of a person in the military in the administration of an estate.

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

SECTION 1. 701.14 (3) of the statutes is amended to read:

701.14 (3) ATTORNEY FOR PERSON IN MILITARY SERVICE. At the time of filing a petition for a trust proceeding, an affidavit shall be filed setting forth the name of any person interested in the proceeding who is actively engaged in the military service of the United States. Whenever it appears by the affidavit or otherwise that any person in the active military service of the United States is interested in any trust proceeding and is not represented by an attorney, or by an attorney-in-fact who is duly authorized to act on the person's behalf in the matter, the court shall appoint an attorney to represent the person and protect his interest.

SECTION 2. 814.66 (1) (e) of the statutes is amended to read:

814.66 (1) (e) For filing objections to the probate of a will, \$20, except that this fee may be waived by the court when objection is filed by a guardian ad litem or attorney, or attorney-in-fact, for a person in the military service. The court may order a refund of the fee to the objector from the assets of the estate.

SECTION 3. 856.15 (2) of the statutes is amended to read:

856.15 (2) PROOF OUTSIDE THE COUNTY. Upon request of the petitioner ~~or~~ the petitioner's attorney or, if the petitioner is in the military service, the petitioner's attorney-in-fact, the court in which the estate is pending may by

order direct that proof of heirs or proof of will, if uncontested, may be taken in open court in any county in this state, or by a judge having probate jurisdiction in any other state or territory of the United States, for use in the court in which the estate is pending.

SECTION 4. 858.03 of the statutes is amended to read:

858.03 Persons interested may be informed of inventory. Not more than 5 days after filing an inventory with the court the personal representative shall mail or deliver to the surviving spouse and to all other persons interested, except those whose only interest is as a beneficiary of a monetary bequest or a bequest or devise of specific property, a statement indicating that the inventory has been filed and that a copy of the inventory, or a summary indicating the value of each item of property in which the person has an interest, will be sent to him upon his written request to the personal representative. If any person to whom the statement is required to be sent makes a request, the personal representative shall comply within 5 days after receipt of the request. If a person interested to whom the statement is required to be sent is represented by a guardian of the estate or by a guardian ad litem, the statement shall be mailed or delivered to the guardian of the estate or the guardian ad litem but not to the person interested. If the person interested is in the military service and is represented by an attorney ~~for persons in military service~~ or an attorney-in-fact, the statement shall be sent to both the attorney ~~for persons in military service~~ or the attorney-in-fact and the person interested. Failure of the personal representative to com-

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ply with this section does not affect the jurisdiction of the court as to persons interested.

SECTION 5. 859.29 of the statutes is amended to read:

859.29 Persons interested may be informed of claims. After the deadline for filing a claim against the estate under s. 859.01, any person interested in the estate may make a written request to the personal representative or special administrator for a statement listing all claims which ~~that~~ have been filed against the estate. The statement shall show each claim, the name of the claimant, a brief description of the basis of the claim, and the amount claimed. Within 5 days after receipt of the request, the personal representative shall mail or deliver a copy of the statement to the requester, including any guardian of the estate, guardian ad litem or attorney, ~~or attorney-in-fact~~, for a person in the military service. Failure of the personal representative or special administrator to comply with this section does not affect the jurisdiction of the court as to persons interested.

SECTION 6. 862.11 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

862.11 Copy of account to be given to persons interested. At the time he ~~that~~ the personal representative gives notice of hearing of allowance of any account or secures waivers of notice of hearing, the personal representative shall mail or deliver a copy of the account to every person interested whose distribution from the estate is affected by the information, other than inheritance tax information, contained in the account. If any person interested is represented by a guardian or guardian ad litem, a copy of the account shall be mailed or delivered to the guardian or guardian ad litem but not to the person interested. If the person interested is in the military service and is represented by an attorney ~~for persons in military service or an attorney-in-fact~~, a copy of the account shall be mailed to both the attorney ~~for persons in military service or the attorney-in-fact~~ and the person interested. Failure of the personal representative to comply with this section does not affect the jurisdiction of the court as to persons interested.

SECTION 7. 867.01 (5) of the statutes is amended to read:

867.01 (5) PROCEEDING WITH OR WITHOUT ATTORNEY. Any party to a proceeding under this section may commence or appear at such proceeding in the party's his or her own behalf ~~or~~, by an attorney or, if in the military service, by an attorney-in-fact, but not otherwise.

SECTION 8. 867.02 (5) of the statutes is amended to read:

867.02 (5) PROCEEDING WITH OR WITHOUT ATTORNEY. Any party to a proceeding under this section may commence or appear at such proceeding in the party's his or her own behalf ~~or~~, by an attorney or, if in the military service, by an attorney-in-fact, but not otherwise.

SECTION 9. 879.03 (2) (b) of the statutes is amended to read:

879.03 (2) (b) Any guardian ad litem, guardian of the estate or attorney, ~~or attorney-in-fact~~, for a person in the military service that represents any person interested.

SECTION 10. 879.09 of the statutes is amended to read:

879.09 Notice requirement satisfied by waiver of notice. Persons who are not minors or incompetent, on behalf of themselves, and appointed guardians ad litem and guardians of the estate on behalf of themselves and those whom they represent, may in writing waive the service of notice upon them and consent to the hearing of any matter without notice except that guardians ad litem cannot waive the notice of a hearing to prove a will or for administration on behalf of those whom they represent. An attorney, ~~or attorney-in-fact~~, for a person in the military service may waive notice on behalf of himself ~~or herself~~ but cannot waive notice on behalf of ~~anyone whom he represents~~ the person in the military service. Waiver of notice by any person is equivalent to timely service of notice.

SECTION 11. 879.11 of the statutes is amended to read:

879.11 Notice requirement satisfied by appearance. An appearance by a person who is not a minor or incompetent is equivalent to timely service of notice upon him. An appearance by a guardian of the estate is equivalent to timely service of notice upon him and upon his ward. An appearance by a guardian ad litem is equivalent to timely service of notice upon him and except at a hearing to prove a will or for administration is equivalent to timely service of notice upon those whom he represents. An appearance by an attorney, ~~or an attorney-in-fact~~, for a person in the military service is equivalent to timely service of notice upon him the attorney or attorney-in-fact but does not satisfy a requirement for notice to ~~anyone whom he represents~~ the person in the military service.

SECTION 12. 879.15 (3) of the statutes is amended to read:

879.15 (3) Every other person shall appear either in person ~~or~~, by an attorney or, if in the military service, by an attorney-in-fact.

SECTION 13. 879.19 of the statutes is amended to read:

879.19 Attorney, notice to. ~~When~~ Except for a person in the military service, as provided in s. 879.09, if a person interested who is not a minor or incompetent has retained an attorney to represent him and the attorney has mailed a notice of retainer and request for service to the attorney for the personal representative and filed a copy with the court, any notice which would be given to the person interested shall instead be given to the attorney, and the attorney may waive notice for the person interested under s. 879.09.

SECTION 14. 879.25 of the statutes is amended to read:

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879.25 Attorney for person in military service. At the time of filing a petition for administration of an estate, an affidavit shall be filed setting forth facts showing whether ~~or not any of the persons~~ any person interested in the matter ~~are~~ is actively engaged in the military service of the United States. Whenever it appears by the affidavit or otherwise that any person in the active military service of the United States is interested in ~~any~~ an administration and is not represented by an attorney, ~~or by an attorney-in-fact who is duly authorized to act on his or her behalf in the matter,~~ the judge shall appoint an

attorney to represent the person and protect his interest, and no further proceedings shall be had until such appointment has been made. The attorney ~~for a~~ who is appointed for the person in the military service shall be an attorney admitted to practice in this state and shall be allowed compensation and necessary expenditures to be fixed by the court and paid out of the estate.

SECTION 15. Effective date. This act takes effect on January 1, 1992, or the day after publication, whichever is later.