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TO: Senator Gary A. Winfield
Representative Steven J. Stafstrom
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Honorable Members of the Judiciary Committee

FROM: Paul J. Knierim
Probate Court Administrator

RE: Raised Bill 7104
An Act Concerning Adoption of the Connecticut Uniform Trust Code

DATE: February 15, 2019

Thank you for the opportunity to testify on Raised Bill 7104, An Act Concerning Adoption of the Connecticut Uniform Trust Code. The bill embodies four distinct concepts:

Trust Code: Sections 1 to 80 establish a trust code for our state. The proposal is based on the Uniform Trust Code, with revisions to integrate the uniform act with Connecticut's court structure and our state's law and procedure. Sections 109 to 118 and 120 to 123 make conforming changes to existing statutes.

Directed Trusts: Sections 81 to 98 establish guidelines for directed trusts, an arrangement under which a third party selected by the settlor has the power to direct a trustee's actions on specified aspects of trust management.

Qualified Dispositions in Trust: Sections 99 to 108 create a means by which an individual can establish an irrevocable trust for asset-protection purposes.

Rule Against Perpetuities: Section 119 extends the perpetuities period for a newly created trust from 90 years to 800 years.

The Office of the Probate Court Administrator supports the trust code provisions of the bill (sections 1 to 80; 109 to 118; and 120 to 123). This testimony summarizes our position on trust code provisions. We do not take a position on the directed trust, qualified disposition or rule against perpetuities provisions of the bill.

Trust Code

The trust code proposal reflects an intensive effort over the past year on the part of the Connecticut Bar Association, the Office of the Attorney General, the Connecticut Bankers Association and the Probate Courts. The proposal before you today is, in our view, significantly improved from prior versions of the bill and accordingly, has our support.

The enactment of a comprehensive trust code would be highly beneficial for our state. It would replace our state's existing patchwork of statutes with an accessible and well-organized set of rules for trusts. It would also address important questions on trust issues that are currently unresolved in Connecticut.

A significant additional benefit of the proposal is the clarity that it provides on the jurisdiction of the Probate Courts to hear and decide trust cases. Section 15 consolidates numerous inconsistent statutes into a clear roadmap that describes which types of trust cases are heard in the Probate Court and which are heard in the Superior Court. Section 16 similarly substitutes a single cohesive rule for a confusing body of statutes on the issue of which of the state's Probate Courts has jurisdiction to hear a case.

The bill also provides much-needed guidance on the circumstances under which a trust may be modified or terminated. It creates more flexibility to address changes in circumstances that make a trust unworkable or obsolete. It also provides clear standards for a court when deciding a petition to modify or terminate a trust.

In reviewing the proposal, the committee should be aware of the following key policy considerations:

Beneficiary's Right to Information:

Section 63 articulates the duty of a trustee to provide beneficiaries with information about the trust, such as the terms of the trust and periodic reports about the management of trust assets. This is an important right that enables a beneficiary to know how the trust is performing.

Subsection (j) of section 63 establishes an exception to a beneficiary's right to information. It permits the settlor of a trust to authorize the trustee to send information to a "designated representative" instead of sending it to the beneficiary. If a trust provides for a designated representative, the trustee can withhold information about the trust from the beneficiary. A trustee could even refuse to inform the beneficiary of the existence of the trust.

As a general principle, a beneficiary should be entitled to information about a trust in which he or she has an interest. Knowledge of the trust is a means for a beneficiary to evaluate the trustee's performance and, if there are problems, to take steps

necessary to protect the beneficiary's interests. We recognize, however, that there are important policy considerations associated with the designated representative exception. A trust settlor may wish, for example, to restrict access to information about a trust as a means of protecting a beneficiary who has a substance abuse problem or who is vulnerable to financial exploitation. We note also that subsections (d) and (e) offer important safeguards by making it clear that a beneficiary has the right to petition the court for an accounting even if the beneficiary has a designated representative. Taken together, we view these provisions as striking a reasonable balance on the issues involved.

Creditors' Rights:

The proposal omits provisions in the Uniform Trust Code that address the ability of creditors to reach trust assets. Those provisions include helpful guidance about handling a decedent's debts when some of the decedent's assets are being administered through the probate process and other assets are held in trust. We view the omission as a missed opportunity because Connecticut law lacks clarity in this area.

Attorney's Fee Awards:

While the bill generally improves on existing law by clarifying the remedies available to courts in deciding trust cases, section 58 creates an unacceptable distinction between the powers of the Superior Court and the Probate Courts. Section 58 provides that only the Superior Court may award attorney's fees and other costs. Since the Superior Court and the Probate Courts hear similar cases involving trusts, we see no reason why the parties should be denied access to this important remedy when their case is being heard by in Probate Court. Moreover, section 58 is inconsistent with existing law, which in section 45a-175(h) confers all powers of the Superior Court upon Probate Courts when deciding trust accounting matters.

Like any legislation of this level of complexity, the bill still needs some fine-tuning. We are prepared to continue our discussions with the other interested parties to resolve the remaining issues.

We appreciate the committee's consideration and urge favorable action on the trust code provisions of the bill.