



PROBATE, TRUSTS, AND ESTATES SECTION NEWSLETTER

November 2023

Upcoming Events & CLE Programs

Probate, Trusts, and Estates Section Council Meeting

- Thursday, November 16, 2023, 3:30 p.m.
- Location: in person and via Zoom
- Contact Tram Nguyen (tnguyen@mnbars.org) with questions or to attend

Greater Minnesota Probate & Trust Study Group Conference Call

- Wednesday, November 15, 2023, 9:00 a.m.
- Location: Call-in Number: (888) 354-0094; Passcode: 9295091072
- Contact Bradley W. Hanson (bhanson@quinlivan.com) with questions or to join

CLE Programs:

- November 8, 2023, 9:00 a.m. Online Replay: [Understanding Estate and Gift Taxation](#)
 - November 14, 2023, 9:00 a.m. Minnesota CLE Conference Center: [Hot Topics in Advanced Estate Administration](#)
 - November 28, 2023, 9:00 a.m. Online Replay: [Hot Topics in Advanced Estate Administration](#)
 - June 10 & 11, 2024, 9:00 a.m. St. Paul RiverCentre: [2024 Probate And Trust Law Section Conference](#)
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In Rem v. In Personam Trust Proceedings: The Implications of Swanson v. Wolf

By:

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For over 120 years, Minnesota District Courts acted with *in rem* jurisdiction to remove trustees in the vast majority of trust proceedings. Then, on January 30, 2023, the Minnesota Court of Appeals, in *Swanson v. Wolf*, held that “a district court cannot remove a trustee in an *in rem* proceeding.

Rather, the district court must act in an *in personam* proceeding to remove a trustee.” 986 N.W.2d 217, 223 (Minn. App. 2023). The *Swanson* decision left many practitioners scrambling to amend pleadings in removal actions and questioning the broader implications of *Swanson* moving forward.

Background

The Minnesota Trust Code, which is based on the Uniform Trust Code, was signed into law on March 19, 2015, and went into effect on January 1, 2016. Before the Minnesota Trust Code went into effect, almost all trust proceedings in Minnesota were *in rem* and relied on the court’s jurisdiction over trust property. However, trust proceedings under the Uniform Trust Code and in most other states were *in personam* proceedings that relied on the court’s jurisdiction over the individual parties involved.

The drafters of the Minnesota Trust Code were reluctant to abandon *in rem* jurisdiction but also saw the benefit of allowing *in personam* jurisdiction. Specifically, the drafters felt that *in personam* jurisdiction could be used to avoid publishing notice, and thus, allow interested persons to maintain a level of privacy. As a result, Minn. Stat. § 501C.0201 was adopted to provide interested persons flexibility and states that “[t]he petition shall specify whether the interested person is invoking the jurisdiction of the district court as an *in rem* proceeding or as an *in personam* proceeding.” Section 501C.0201 further states that “[i]n the absence of a designation of an *in rem* or an *in personam* proceeding by the petitioner, the district court’s *in rem* jurisdiction is invoked.”

From January 2016 to January 2023, the vast majority of trust proceedings continued to be *in rem* proceedings – including trustee removal proceedings.

Swanson v. Wolf

In *Swanson*, one sister petitioned the district court to remove another sister as trustee of a trust established by their father. The trustee objected to the petition and moved to dismiss it, arguing that the district court lacked jurisdiction to remove her because despite the court’s *in rem* jurisdiction over the trust, the court lacked *in personam* jurisdiction over her.

The Court first analyzed *in rem* and *in personam* jurisdiction generally and stated that “[w]hile a judgment *in rem* affects the interests of all persons in designated property, a judgment *in personam* imposes a personal liability or obligation on one person in favor of another.” The Court then framed the question as one of statutory interpretation and analyzed the language of Section 501C.0201. Specifically, the Court stated that Section 501C.0201 provides that an order in an *in rem* proceeding “is binding *in rem* upon the trust estate and upon the interests of all beneficiaries” whereas an order in an *in personam* proceeding is binding on individuals. The Court held that “[b]ecause *in rem* jurisdiction is over the trust estate and *in personam* jurisdiction is over the person, we discern that to issue an order granting a petition to remove a trustee, the district court must exercise *in personam* jurisdiction.” The Court further reasoned that “if an order filed in an *in rem* trust proceeding granting a removal petition could bind a trustee, the portion of Minnesota Statutes section 501C.0204, subdivision 2, specifying that an order from an *in personam* proceeding can bind a trustee would be superfluous.”

The Court also relied on legislative history and the Restatement to support its holding. The Court, citing legislative testimony from the chair of the drafting committee for Minnesota's Trust Code, found that the testimony suggested that the committee "recognized that *in rem* jurisdiction is about the trust itself, not the power to remove the trustee." With respect to the Restatement, the Court held that the "Second Restatement of Trusts recognizes the dichotomy, stating that a proceeding *in rem* affects interests in the trust property while a proceeding *in personam* can subject the trustee to personal liability, enjoin them from committing a breach of trust, compel them to make specific reparation for a breach of trust, or remove them."

Practical Implications

The decision in *Swanson*—which is a precedential decision—held that petitions to remove a trustee must invoke the court's *in personam* jurisdiction. However, the case left open broader questions about how to properly assert jurisdiction when bringing multiple claims that seek to bind both trust property and certain individuals. For example, the Court stated that "Minnesota law also limits the power of a district court to bind parties and property in trust matters, depending on the type of jurisdiction involved." In other words, it appears that some claims must be brought in an *in rem* proceeding and others must be brought in an *in personam* proceeding. Unfortunately, today, there is no clear answer, except that a petition to remove a trustee must be brought *in personam*.

Section 501C.0204 appears to contemplate a choice between *in rem* "or" *in personam* jurisdiction, without specifically stating that interested persons cannot invoke both *in rem* and *in personam* jurisdiction in the same case. The Court in *Swanson* stated that "[i]n a trust matter, the district court may exercise *in rem* jurisdiction, *in personam* jurisdiction, **or both**, depending on which form of jurisdiction the petitioner invokes." (Emphasis added). At this stage, it appears most practitioners are asserting both *in personam* and *in rem* jurisdiction and working through the implications of *Swanson* until further clarity is provided.

Proposed Amendments to the Minnesota Trust Code

The Section Council has approved the below amendments to sections 501C.0202 and 501C.0204 of the Minnesota Statutes in response to *Swanson v. Wolf*, 986 N.W.2d 217 (Minn. Ct. App. 2023), regarding the binding effect of an order issued under the court's *in rem* jurisdiction. The Section Council will submit these amendments as a legislative proposal to the MSBA Assembly for its approval as a legislative position. The Section Council hopes to secure MSBA approval and funding for these proposed amendments in the upcoming 2024 legislative session.

501C.0202 SUBJECT MATTER OF JUDICIAL PROCEEDINGS.

A judicial proceeding, whether filed by petition under the district court's *in rem* or *in personam* jurisdiction, involving a trust may relate to one or more of the following matters:

- (1) to confirm an action taken by a trustee;
- (2) upon the filing of an account, to settle and allow the account;
- (3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;

- (4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31;
- (5) to approve payment of the trustee's, attorney, or accountant fees, or any other fees to be charged against the trust;
- (6) to confirm the appointment of a trustee;
- (7) to accept a trustee's resignation and discharge the trustee from the trust as provided in section 501C.0705;
- (8) to require a trustee to account;
- (9) to remove a trustee as provided in section 501C.0706;
- (10) to appoint a successor trustee when required by the terms of the trust instrument or when by reason of death, resignation, removal, or other cause there is no acting trustee;
- (11) to appoint an additional trustee or special fiduciary whether or not a vacancy in trusteeship exists as provided in section 501C.0704;
- (12) to confirm an act taken by a person with respect to a trust while there was no acting trustee or otherwise in compliance with section 501C.0701;
- (13) to subject a trust to or remove a trust from continuing court supervision under section 501C.0205;
- (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee notwithstanding any contrary provision of the trust instrument;
- (15) to suspend the powers and duties of a trustee in military service or war service, in accordance with section 525.95, and to order further action authorized in that section;
- (16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in accordance with section 501B.41, relating to charitable trusts;
- (17) to determine the validity of a disclaimer under sections 524.2-1101 to 524.2-1116;
- (18) to transfer the trust's principal place of administration as provided in section 501C.0108;
- (19) to redress a breach of trust;
- (20) to terminate a trust;
- (21) to divide a trust or to merge two or more trusts as provided in section 501C.0417;
- (22) to approve a nonjudicial settlement as provided in section 501C.0111;
- (23) to approve, modify, or object to a proposed trust decanting as provided in section 502.851; or
- (24) to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties, including a request for instructions and an action to declare rights.

History:

2015 c 5 art 2 s 2

501C.0204 ORDER AND APPEAL.

Subdivision 1. In rem judicial proceedings.

Upon the hearing of a petition under the district court's in rem jurisdiction, the court shall make an order it considers appropriate. The order is binding in rem upon the trust estate and all interested persons including without limitation and upon the interests of all beneficiaries, vested or contingent, even though unascertained or not in being. An appeal from an order which, in effect, determines the petition may be taken by any party after service by any party of written notice of its filing as provided under the Rules of Appellate Procedure or, if no notice is served, within six months after the filing of the order.

Subd. 2. In personam judicial proceedings.

Upon the hearing of a petition under the district court's in personam jurisdiction, the court shall make an order it considers appropriate. The order is binding on (1) a party who is served with notice of the judicial proceeding, (2) a party who appears in the judicial proceeding, and (3) any other party who may be bound by such parties as described in sections 501C.0301 to 501C.0305. An appeal from an order which, in effect, determines the petition may be taken by any party after service by any party of written notice of its filing as provided under the Rules of Appellate Procedure or, if no notice is served, within six months after the filing of the order.

History:

2015 c 5 art 2 s 4

2023-2024 Dead Hand Writing Competition



The Writing Competition Committee is excited to announce the second annual Probate, Trusts, and Estates Section Writing Competition, now known as the Dead Hand Writing Competition. This year we invite students to learn about antemortem probate proceedings and trust validations by (1) exploring their advantages and disadvantages and (2) reviewing other states' laws and commenting on their desirable or undesirable features. All eligible law students are welcome to enter and showcase their writing skills for a chance to win a **\$5,000 cash prize**. The deadline for submissions is February 1, 2024. We encourage you to share this opportunity with students in your network! Click [here](#) for more information.

Have a suggestion for a future Dead Hand Writing Competition topic? Share your ideas with the Writing Competition Committee by emailing tnguyen@mnbars.org.

Call for Submissions

We welcome attorneys to submit brief articles on issues relevant to the Section for distribution via the Newsletter. The Newsletter is sent to the Probate, Trusts, and Estates Section membership, which consists of approximately 1,056 practitioners. Writing for the Newsletter is a great way to share your knowledge and expertise with your colleagues. Click [here](#) for examples of articles published in prior editions of the Newsletter.

If you are interested in submitting an article for the Newsletter, please contact Kiley Henry (henry.kiley@dorsey.com) or Jenny Colich (colich.jennifer@dorsey.com).

Regards,
Kiley Henry & Jenny Colich
Probate, Trusts, and Estates Section Newsletter Editors

Click [here](#) to access the Section website.

If you do not wish to receive the Newsletter, please contact Tram Nguyen at tnguyen@mnbars.org to unsubscribe.