ADVISORY COMMITTEE
Probate Law Revision

Thirty-second Meeting
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Dates)	1:30 p.m., Friday, January 20, 1967
and:	and
Times)	9:00 a.m., Saturday, January 21, 1967
Place:	Judge Dickson's Courtroom 744 Multnomah County Courthouse Portland

Suggested Agenda

1. Approval of minutes of December meeting.

2. Reports on miscellaneous matters.

3. Accounting (This will be a continuation of the discussion of the draft prepared by Campbell Richardson, William Tassock and William Keller which was distributed prior to the November 1966 meeting).

4. Sale or other disposition of property (Continuation of the discussion and recommendations of Clifford Zollinger and Charles Lovett, sections 860.01 through 860.13 of the proposed Wisconsin Probate code).

5. Ancillary administration (Draft by Professor Mapp and William Riddlesbarger).

6. Escheat (Wallace Carson).

7. Estates of persons presumed dead (Stanton Allison).

8. Inheritance Tax (ORS Chapter 118, subcommittee members Wallace Carson, Patricia Braun and Patricia Lisbakken).

9. Next Meeting.

ADVISORY COMMITTEE
Probate Law Revision

Thirty-second Meeting, January 20 and 21, 1967
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Minutes

The thirty-second meeting of the advisory committee (a joint meeting with the Committee on Probate Law and Procedure, Oregon State Bar) was convened at 1:30 p.m., Friday, January 20, 1967, in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

The following members of the advisory committee were present: Dickson, Zollinger, Allison, Lisbakken, Mapp and Riddlesbarger. Butler, Carson, Frohnmayer, Gooding, Husband and Jaureguy were absent.

The following members of the Bar committee were present: Braun, Gilley, Krause, Meyers, Kraemer, McKay, Piazza, Thalholfer, Thomas (arrived at 2:20 p.m.) and Richardson.

Also present: James Sorte from the staff of Legislative Counsel.

Minutes of December Meeting

There being no objection, the minutes of the last meeting (December 16 and 17, 1966) were approved as submitted.

Miscellaneous Matters

Gilley announced that four former members of the bar committee had been reappointed so there would be some continuity of the people who have been working on the probate revision. The members who have been reappointed are Judge John Warden, Campbell Richardson, Wade Bettis and John Copenhaver.

Sorte reported that although Sam Haley will be leaving the office of the Legislative Counsel to become Public Utility Commissioner, there should not be any changes that would jeopordize the probate revision project. He reported that he had discussed the matter with both Mr. Haley and Mr. Lundy, and although it was indicated that the changes will have some impact upon the services to the committees on probate, it was too early to predict in precise terms what the impact will be.

Sorte introduced Mrs. Vivian Leonard who will be assisting the committee as stenographer.

Riddlesbarger suggested that the members of the bar committee whose terms had expired should be thanked for their services. The committees agreed and Zollinger directed Sorte to furnish a list of the persons who had served on the committee but who were no longer current members.

Proposed Probate Code Relating To Accounting. (Continuation of the discussion November 18 and 19, 1966, and the Memorandum dated November 14, 1966 by Campbell Richardson, William Tassock and William Keller.)

Section 20. Richardson advised the committees that section 20 of the Memorandum was taken from section 193 of the Model Probate Code and was similar to ORS 117.710. He indicated that he preferred the Model Code. Zollinger and Riddlesbarger were in favor of retaining ORS 117.710 as it is.

Riddlesbarger moved that ORS 117.710 be retained. Motion carried.

Section 21. Richardson explained that section 21 was similar to ORS 117.660 but had been expanded to authorize the court to direct compensation for the services of an attorney if the attorney had been of assistance to the court in resolving disputes. Richardson explained that there might be situations where the attorney represented a person to resolve a problem in the estate but was not the prevailing party. If the court could approve the fees they would be a proper deduction for purposes of inheritance taxes.

Gilley and Zollinger were of the opinion that the wording should be that the court could "authorize or direct" payment. There followed a discussion of the use of the language "... for any party whose rights had to be resolved in order to properly administer the estate."

Richardson pointed out that in certain instances it might be proper to pay the attorney fees of both the prevailing and the losing party. Richardson suggested that the heading of the section should be "Expenses" and not "Expenses and Compensation." Richardson moved adoption of the section as amended. Motion carried.

Section 22. Compensation of Representative. Richardson pointed out that section 22 is the same as ORS 117.680. Richardson indicated that the subcommittee had no recommendations with reference to the fees of the personal representative. The discussion that followed indicated that there is considerable variance among the states on the rate of compensation. Richardson

indicated that he was of the opinion that ORS 117.680 was adequate in its present form.

Allison expressed the opinion that the arrangement of the section should be revised. There followed a discussion of whether the compensation of the personal representative should be based on the property as listed in the inventory or the inventory and the property listed for inheritance tax purposes.

Zollinger expressed the view that the personal representative should not be allowed to be appointed as provided in a will that fixed his compensation and later reject the compensation provided in the will and be compensated at the statutory rate. He said that he would prefer to have the personal representative either accept the compensation of the will or reject it prior to and not after his appointment.

Dickson pointed out that if the will provided the compensation the personal representative could accept it without any statute covering that situation. He also pointed out that the personal representative is working for the court and the court always has the right to fix the compensation.

Mapp read the Model Code provision and the comment that followed the section. The theory apparently is that unless you give the personal representative the right to reject the amount of compensation provided by the will you might lose a competent person to one who would not be competent.

Piazza said that he did not like the provision that the "personal representative shall be compensated at ...". He indicated that there are occasions when the personal representative does not want a fee. He would favor a provision "the personal representative may upon application receive...".

Dickson said he would favor a provision that would provide the compensation was "X" dollars for an estate under $10,000, and then three percent for the estate value over $10,000 to $50,000 and two percent on the estate value over $50,000.

Zollinger favored having an absolute minimum fee of $250 and expressed the view that $250 probably would not be adequate compensation for a $10,000 estate.

Dickson pointed out that Wisconsin section 857.05 provided a formula similar to the one he was suggesting to the committees.

Allison favored compensation at the rate of three percent on the first $50,000 and two percent on the amount over $50,000.

Gilley pointed out that a lot of the work done by the attorney was consumed dealing with property that was not considered

part of the estate for the purpose of establishing the compensation.

Riddlesbarger favored the Iowa approach which allowed the court to fix the compensation.

Dickson disagreed and pointed out that the variance among the courts would further complicate the problem.

Thalhofer suggested that the compensation of the personal representative should be based on the amount of work that was done and not the value of the estate.

There followed a discussion of what the "gross estate" or "estate" consisted of and upon which the compensation would be based.

Riddlesbarger favored the value listed in the inventory. He suggested the matter of compensation be referred to a committee that would report back at the next meeting.

Zollinger directed that the matter be postponed until a later date.

Section 23. Account of deceased or incompetent personal representative. The committees discussed the allocation of the compensation when a personal representative is replaced. Dickson advised the committees that it had been his experience that the attorneys agreed on the allocation of the compensation in such a situation. After further discussion a motion was made to delte section 23. Motion carried.

Dickson directed that the matters that were not completed be placed on the Friday afternoon session in February.

Section 24. When property is discharged from administration; distribution of surplus. The committees reviewed the theory adopted that the property vests upon death in the persons entitled to it.

Richardson pointed out the difficulty of reconciling that theory with some of the terminology used. If title vests upon death what are you distributing? Richardson suggested "In its decree of final settlement."

Zollinger moved that section 24 be approved with the understanding that the Legislative Counsel would make any necessary changes in the wording. Motion carried.

Richardson pointed out that the subcommittee had not covered removal of the personal representative. He indicated that it was the view of the members that there should be a general statute covering all of the penalties for breach of duty by the personal representative. He pointed out that section 65 of the Iowa Code has such a provision. No action was taken.

Sale or Other Disposition of Property. (Continuation of the discussion at the December 16 and 17, 1966 meeting. See Appendix A to these minutes.)

Zollinger advised the committees that the Legislative Counsel had drafted subsections (5), (6) and (7) to be added to the provisions of section 860.11 of the Wisconsin code as follows:

"REPORT
January 10, 1967

"TO: Members of the
Advisory Committee on Probate Law Revision
and
Bar Committee on Probate Law and Procedure
"FROM: Legislative Counsel

"At the December 1966 meeting of the committees the substance of section 860.11 of the proposed Wisconsin probate code was approved and the following subsections were appended and asked to be reproduced and distributed to committee members prior to the January 1967 meeting:

"Wisconsin proposed probate code section 860.11

"(5) A personal representative may be enjoined from making a threatened sale, mortgage or lease in breach of duty.
"(6) If the personal representative sells, mortgages or leases property in breach of duty he is:
"(a) In contempt of court and may be punished as for other contempts.
"(b) Subject to removal as personal representative.
"(c) Liable to the persons affected by the sale for their actual damages because of the sale, mortgage or lease, and punitive damages not to exceed twice the value of the property. Punitive damages may be awarded irrespective of whether or not there are actual damages.
"(d) Precluded from receiving any fee for acting in the capacity of personal representative.
"(7) A sale, mortgage or lease is not made in breach of duty if written consent thereto is given by the persons affected by it."

He reiterated his opposition to allowing punitive damages in instances where there were no actual damages. He pointed out

that this is contrary to existing law and a radical change of the law. He proposed that the personal representative should only be liable in punitive damages when a sale, mortgage or lease is made in breach of duty and the personal representative has acted wilfully and with bad motive.

Riddlesbarger questioned the meaning of "in breach of duty."

Piazza asked whether there was any necessity to set forth the penalties in this section. He indicated he believed that the general section dealing with penalties for violation of duty by the personal representative was enough. He indicated that he favored punitive damages without actual damages because of a possible sale of a family heirloom and actual damages would be difficult to prove. If the penalty provisions are to be located in the chapter on selling property the section should read "These penalties are in addition to ORS_____."

Gilley was of the opinion that punitive damages should be a matter of discretion of the court. Krause agreed with the position of Gilley. Gilley proposed that subsection (6) include subparagraphs (a), (b) and (d). He favored making subparagraph (c) subsection (7).

Mapp compared the Wisconsin section, as amended by the committees, with the draft of Richardson dealing with violation of duty by the personal representative. He favored a provision that would allow interested parties to enjoin the personal representative from any breach of duty. He also favored a provision that the personal representative would be in contempt for violation of any duty, and not just for breach of duty with regard to a sale, mortgage or lease of property.

Zollinger and Gilley favored placing the sections dealing with breach of duty in the section on the powers of the personal representative to sell, mortgage or lease property. The majority of the committees disagreed.

The committees agreed that the sections under consideration should be cross referenced to general powers and duties of the personal representative.

Piazza suggested a provision that where there is a breach of duty there could be nominal damages and punitive damages. This would avoid the criticism of punitive damages irrespective of actual damages.

Zollinger agreed with Piazza.

Allison was of the opinion that the sections as presently drafted, with the amendments of the committees as a result of the December 1967 meeting, subjected the personal representative

to very severe consequences. He favored a provision that punitive damages could only be awarded based on actual damages and only for a wilful or malicious act.

Foreign Personal Representative; Ancillary Administration. (A draft of this subject was distributed by Mr. Riddlesbarger and Mr. Mapp at the October 1966 meeting.)

Mapp explained that the draft prepared by Riddlesbarger and himself, included provisions of both the Uniform Ancillary Administration of Estates Act and the Uniform Powers of Foreign Rempresentatives Act. Mapp distributed a Report dated November 16, 1966, prepared by Mapp and Riddlesbarger. (This report is appendix A to these minutes.) Mapp proceeded to discuss the report. He explained that ancillary administration is necessary in a situation where a person domiciled in Washington dies leaving real property in Oregon. The reason, he explained, is that unless there is an ancillary administration there is a cloud on the title to the property in Oregon. The property is also subject to claims and to sale for payment of estate debts. If the Washington decedent died intestate the ancillary administration at least provides a public record of heirs.

ORS 116.186 authorizes a foreign personal representative to collect personal property in Oregon, but the real difficulty arises in the event there is real property. Mapp then reviewed the committees' previous action in refusing to adopt the Uniform Foreign Wills Act. Under the Act once a will is admitted in the domiciliary state, it is also admitted in any other state without proof of due execution. The state, other than the domiciliary state, does not require proof other than that the will has been admitted in the domiciliary state. The Uniform Act also provides that if there is a will contest in the domiciliary state, the state other than the domiciliary will accept the decree of the domiciliary state. These provisions eliminate the necessity of proof of execution and contests concerning the admission of the will or testamentary capacity.

Mapp explained that under the provisions of the draft on wills adopted by the committees virtually all wills will be admitted in Oregon. (See page 1 of Appendix A to these minutes.) However, because of the previous action by the committees, the will must be proved in Oregon even though it has been admitted in Washington. The Uniform Act would eliminate the requirement of proof in a foreign state once the will is admitted in the domiciliary state.

The meeting adjourned at 5:00 p.m.

The meeting was reconvened at 9:00 a.m., Saturday, January 21, 1967, in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

The following members of the advisory committee were present: Zollinger, Allison, Butler, Carson, Husband, Lisbakken, Mapp and Riddlesbarger. The following members of the Bar committee were present: Braun, Gilley, Krause, Meyers, Kraemer, McKay (left at 10:30 a.m.), Piazza, Thalholfer and Thomas. Also present was Sorte from Legislative Counsel Committee.

Foreign Personal Representative; Ancillary Administration. (cont'd)

Riddlesbarger explained to the committees that they must have some understanding of the Uniform Foreign Wills Act when discussing the matter of ancillary administration.

Mapp was of the opinion that once a will is admitted to a court of any state it should be admitted in Oregon when proof establishes the will was admitted in the domiciliary state. He was of the opinion that once a court in any state litigates the admission of a will Oregon should bow to that state's decision admitting the will. Mapp explained that under the present law the will could be offered in Oregon but it would require evidence of due execution etc.

Piazza was of the opinion that once a will is admitted to probate it should be admitted in Oregon without the necessity of proof of attestation and testimentary capacity. He would also abolish the distinction between real and personal property.

Mapp then explained that under the Uniform Act if a will was admitted to probate in Washington and then admitted in Oregon the same person would be the personal representative. The adantage in appointing the same personal representative for all of decedent's estate, wherever it is, is that the estate would be administered by someone familiar with all of the property and claims.

Husband asked if the proposed act would give a preference to Oregon creditors and Mapp said under the proposed act Oregon creditors would not be given a preference.

Allison advised the committees that under the uniform act all of the money would go into a single fund and all creditors, Washington and Oregon, would share in that fund for payment of claims.

The committees then discussed previous action taken by the committees, and at the April 15, 16, 1966 meeting it had been agreed there should be a provision to allow a nonresident executor to act in Oregon provided he be bonded and appoint a process agent in Oregon.

Riddlesbarger advised the committees that the draft overlapped ORS 116.186.

Mapp pointed out that the three main objectives of adopting the act would be: (1) To have the same person act in the capacity of personal representative in both states; (2) To establish and maintain privity in the two administrations; and (3) Pro-rate the assets of all of the estate to creditors in both states. This will allow the personal representative to bind the estate for acts in either state.

Zollinger expressed the view that when administration is in more than one state the creditor might be paid twice on his claim. It would also give the creditor a chance to select the place to file or litigate a claim.

Kraemer indicated he was opposed to allowing a creditor a choice of forum in which to file and litigate a claim.

Mapp then reviewed the provisions of the New York Code providing for ancilliary administration.

The meeting recessed at 12:30 p.m.

The meeting was reconvened at 2:00 p.m. The following members of the advisory committee were present: Zollinger, Allison, Butler, Carson, Husband, Lisbakken, Mapp and Riddlesbarger. The following members of the Bar committee were present: Braun, Gilley, Krause, Meyers, Kraemer, Piazza, Thomas (left at 2:15). Also present was Sorte.

Krause asked about the payment of Federal tax. The committees agreed there should be some provision for coordinating the actions of the personal representatives in different states.

Mapp indicated that if the uniform act is adopted he would favor making it applicable only if the other jurisdiction had a similar statute.

Husband expressed the opinion that unless there is some method to coordinate the administration in two jurisdictions there could be payment of claims in one state and denial of claims in Oregon. He was of the opinion that all of the creditors should

share in the assets of the estate without regard to their residence. He indicated he would favor having one of the two states having the final say in estate matters.

Allison was of the opinion that to adopt the uniform act would make the code, as presented to the legislature, more controversial and more difficult to pass. He indicated that in the matter of ancillary administration there had not been much difficulty operating under the existing law.

Riddlesbarger made a motion that the committees approve the Uniform Ancillary Administration of Estates Act without change.

Butler expressed approval of the general idea of the uniform act, but said he would make several changes.

Those voting for the motion were Husband, Riddlesbarger, Lisbakken, Mapp, Carson, Allison, Butler, Zollinger, Thomas, Piazza, Thalhofer and Gilley. Those opposed were Braun, Meyers, Krause and Kraemer.

Riddlesbarger then asked the committees to indicate whether or not they wanted the subcommittee of Mapp and Riddlesbarger to pursue the matter further.

Those favoring further consideration of the matter of ancillary administration were: Husband, Riddlesbarger, Mapp, Lisbakken, Carson, Allison, Zollinger, Butler, Thomas, Thalhofer, Piazza and Gilley. Those opposed were: Meyers, Braun, Krause and Kraemer.

The committee then considered section 504 of the Iowa probate code. Gilley said that he would oppose a provision such as Iowa has which favored Iowa residents and creditors. He said he believed that attitude was parochial and provincial.

Riddlesbarger moved that all of the provisions of the uniform act be approved with an amendment to provide a preference for local creditors similar to section 504 of the Iowa code. The motion lost.

Carson made a motion that the committees approve the Iowa approach to ancillary administration. Those favoring the motion were Carson, Allison, Thomas, Krause, Karemer, Riddlesbarger and Zollinger. Those opposed were Husband, Lisbakken, Thalhofer, Piazza, Gilley, Butler and Kraemer.

A motion was made that would give preference to a foreign representative if probate in Oregon was necessary. Motion carried.

A motion was made to establish privity between foreign and local personal representative. Motion carried.

A motion was made to give preference to Oregon Creditors. Motion failed.

The matter of ancillary administration was placed on the agenda for the February 1967 meeting.

Carson then discussed the matter of escheat. He advised the committees that he had received a letter from Mr. Mallicoat, clerk of the State Land Board. One of the suggestions made by Mallicoat was that in certain instances there be a presumptive escheat.

Allison said that the entire area of escheat has always bothered him because of provisions regarding determination of heirship. He said there are other specific sections dealing with the entire subject of heirship determination and he saw no need for sections in the escheat chapter.

Piazza suggested that the present law gives more rights to the state, where there is an escheat, than are given to heirs of an estate. He did not see any reason to give preferential treatment to the state.

Allison made a motion to require notice to the State Land Board where it appeared that the property would escheat. Motion carried.

A motion was made that the State Land Board be given all other notice that is required to be given to an heir. Motion carried.

Gilley favored the wording of the statute be that whenever it appeared from the record of the probate proceedings that the property would escheat notice be given to the State Land Board.

Carson moved that the language be worded so that the statute apply to an invalid or partially invalid will. Motion carried.

Carson advised the committees another recommendation of Mr. Mallicoat was that the State of Oregon be given the right to decide whether there would be a private or public sale.

Zollinger favored handling escheat estates in the same manner as other estates. The procedure is to wind the estate up and distribute it to those entitled to it. Zollinger was opposed to giving the state any more rights than other heirs, and said if the personal representative was acting contrary to the best interests of the estate, the State Land Board could object to the final account.

Carson advised the committees that the state would prefer having property delivered to them to sell. In many instances there are articles that have value as antiques that a casual observer would sell for less because he was not aware of the value.

Piazza indicated he would favor giving notice to the state with a statement of the administration.

Zollinger made a motion that the sections dealing with escheat be in a manner to give the state the same rights as other heirs. Motion carried.

Allison indicated that he thought there should be some determination by the court that there was an escheat.

The committees apparently favored allowing an heir to petition the State Land Board for a conveyance of property or payment of money if the property had escheated. If the Land Board denied the petition the heir could procede under the Administration Procedure Act.

February Meeting of Committees

The agenda for the February 1967 meeting was tentively scheduled to include the following matters:

1. Allocation of income.
2. Accounting.
3. Creditors rights and insolvent estates.
4. Estates of persons presumed dead.
5. Inheritance tax.
6. Effect of a provision in a will "to pay my just debts."
7. Drafts of:

    a. Intestate succession.
    b. Wills.
    c. Avancements
    d. Adoption.
    e. Illigitimacy.
    f. Family Rights.

The meeting was adjourned at 4:30 p.m.

APPENDIX A

(Minutes, Probate Advisory Committee Meeting, January 20, 21, 1967)

REPORT

November 16, 1966

To: Members of the Advisory Committee on Probate Law Revision and Bar Committee on Probate Law and Procedure

From: Mr. Mapp and Mr. Riddlesbarger

Subject: Problems related to ancillary administration of Estates.

Facts: Deceased died domiciled in Washington, leaving real and personal property in Oregon. A domiciliary personal representative has been appointed in Washington.

1. Necessity for ancillary administration.

a. Real property is subject to debts of decedent, and for a period of 6 years from the time of death creditors may seek administration in order to subject the real property to sale for the payment of debts.
J. & L. 3539.
ORS 12.190 (establishes 6 year limitation).
Thus for 6 years there is a cloud on the title to the real property.

b. If Decedent died intestate, the Oregon administration at least provides a public record including sworn testimony as to the identity of the heirs of the real property.
J. & L. 3539.

c. If Decedent died testate, how can the will be established as proof of the devisees? Under ORS 115.160, if a will is made pursuant to ORS 114.060 and probated in another jurisdiction, "copies of such will and of the probate thereof... shall be recorded in the same manner as wills executed and proved in this state, and shall be admitted in evidence in the same manner and with like effect."

This committee has voted (p. 13 of March Minutes) to replace ORS 114.060 with a section reading as follows:

Sec. 4. Validity of Will. A will is legally executed if it is written, signed by the testator, and is otherwise executed in accordance with the law in force of

(1) this state at the time of execution or at the time of the testator's death, or

(2) the domicile of the testator at the time of execution or at the time of his death, or

(3) the place of execution at the time of execution.

Thus ORS 115.160 would establish a means for the proof of devisees in Oregon under virtually any will probated in another jurisdiction. However, ORS 115.160 does not result in ancillary probate of the Decedent's will in Oregon, and its use does not remove the cloud on the title to real property which exists because such property remains subject to sale for the payment of debts for 6 years after the decedent's death.

d. The domiciliary (Washington) personal representative may collect debts owed to the Decedent by Oregon residents, and may collect personal property of the Decedent in Oregon, without ancillary administration in Oregon, by complying with the provisions of ORS 116.186.

2. Procedure for Ancillary Administration.
"The Oregon Code makes no reference, by name, to ancillary administration or to ancillary executors or administrators. And there is very little law in this state on the subject."
J. & L. 3595.

a. Probate of Will in Oregon.

Assuming Decedent died testate, and that ancillary administration in Oregon is deemed necessary to perfect the devisees' title to real property, the first question concerns probate of the will in Oregon.

Under existing Oregon law, the will would simply be offered for original probate in Oregon. Due to the broad provisions concerning validity incorporated in section 4 quoted above, most wills would be "legally executed" in terms of the technical formalities. However, the fact that the will had already been probated in Washington would not be relevant. Due execution would have to be established in Oregon. Consequently, a will probated at the domicile in Washington might be contested in Oregon, and refused probate.

The basic purpose of the Uniform Probate of Foreign Wills Act is to defer to the fact of domiciliary probate, and admit such a will for ancillary probate upon proof of the domiciliary

probate. The proposed Wisconsin Code contains the Uniform Probate of Foreign Wills act in sections 868.01. The new Iowa Code achieves the same basic objective in § 496, but does not cover certain other technical problems treated in the Uniform Act. The new New York Code appears to be substantially patterned after the Uniform Act, and accepts the basic philosophy that a Decedent's estate should be treated as a unit insofar as possible. See sections 1601-1604.

b. Eligibility and powers of foreign domiciliary representative.

Under existing Oregon law, no special procedures exist governing ancillary administration. The purpose of the Uniform Ancillary Administration of Estates Act is to establish procedures leading to the treatment of an entire estate as a unit insofar as possible. It is contained in the proposed Wisconsin Act in section 868.03. Sections 1607-10 and 1612-13 of the new New York Code appear to be substantially patterned after the Uniform Act.

The committee recommends that the Uniform Act be adopted in Oregon, with such technical changes as may be required to meet specific drafting problems when the entire revised Oregon Code is prepared.