JAN 1 1965

ADVISORY COMMITTEE

Probate Law Revision

Eleventh Meeting

Date: Saturday, January 23, 1965
Time: 9 A.M.
Place: Judge Dickson's Courtroom
244 Multnomah County Courthouse
Portland, Oregon

Suggested Agenda

1. Approval of minutes of January 8, 1965 meeting.

2. Guardianship and conservatorship.

   Final consideration of proposed legislation.

3. Small estates.

   Proposed legislation entitled "The Small Estates Act" (dated October 7, 1964).

4. Arranging agenda for next meeting of Advisory Committee.

ADVISORY COMMITTEE
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Minutes

Meeting convened at 9:10 a.m., Saturday, January 23, 1965, in Judge Dickson's courtroom, 244 Multnomah County Courthouse, Portland. All members, except Gooding, were present. Also present were all members of Committee on Probate Law and Procedure, except Rhoten. Also present were Denny Z. Zikes, William C. Martin and Patricia A. Lisbakken.

Copies of Gooding's letter of January 20, 1965 to Dickson and Schnitzer's letter of January 11, 1965 and Random Thoughts on Bill #7 to Dickson were distributed to all present.

1. PROBATE JURISDICTION IN CIRCUIT COURT. Dickson announced that bill had been introduced by Shirley Field to move all probate jurisdiction into Circuit Courts and asked committee to consider advisability of looking into it.

McKay thought eastern Oregon would be unhappy about such a bill, as circuit judges there must cover two or three counties and exclusive circuit court jurisdiction might turn probate into a mail order business. Dickson and Allison suggested this is value of having a probate commissioner, Allison advising Alaska had solved distance problem with commissioner system.

Dickson stated Campbell Richardson had been asked to study this problem, but the committee had then been looking toward possible legislation in 1967.

After discussion as to how closely committee should monitor progress of bill, a motion was made, seconded, and upon being put to vote carried, to appoint committee to "keep track" of bill introduced by Shirley Field transferring probate jurisdiction to circuit courts. Dickson appointed Richardson, Carson and McKay to do so.

2. GUARDIANSHIP AND CONSERVATORSHIP BILL. (All references are to Rough Draft of July 18, 1964 and to New Revised Draft of September 11, 1964 of subsection (4), Section 2. Dickson suggested bill be drafted in final form for introduction.

Section 2 (4) and (5). Zoller noted changes had been made in subsections (4) and (5) on November 14, 1964, and after members of committee pointed out subsections had been previously discussed, motion was made, seconded and upon being put to vote carried, to approve as amended subsections (4) and (5), Section 2.

Section 2 (6). After motion made and seconded, there being no discussion, upon being put to vote motion carried to approve subsection (6), Section 2.

Section 6 and Section 7. Zoller advised that Section 6 merely provides Section 7 shall be added, that Section 7 provides for termination other than by death of ward. Zoller read comments to Section 7 in Rough Draft of 7/18/64, and after motion was made and seconded, upon being put to vote motion carried to approve Sections 6 and 7.

Section 8. Zoller mentioned this is other half of pair of sections dealing with termination of guardianship, Section 8 providing for termination by death of the ward; that present statute, which provides for 90 day winding up period, is amended to permit such further time as court by order may allow, and includes an extension of guardian's right to possession of all property of the ward, whether in the physical possession of the guardian or another; that there is no further change from present statute until subsection (3), which provides "at any time during the winding up period the court, upon a petition filed by the executor or administrator, may order the guardian to deliver to the executor or administrator any part of the property of the ward in his possession not necessary for such payment, " and stated that Lundy's comments make this applicable only to termination by death of the ward. Zoller then read comments to Section 8, Rough Draft 7/18/64. After motion was made and seconded, there being no discussinn, upon being put to vote motion was carried to approve Section 8.

Section 9. Zoller read comments to Section 9, Rough Draft 7/18/64. During discussion which followed, Frohnmayer asked if committee had considered question of sale of real property without regular formalities of a sale. Allison stated present statute limits small guardian situation to settling debts or choses in action due to person under legal disability, thus covers only personal property; that committee considered it advisable to extend authority to cover right to sell real property where the value does not exceed $1,000; e.g., where there were minor heirs owning undivided interests in real property of small value--that it might be well to bring such interests within scope of statue and allow an informal sale with a right to execute a deed thereto. Allison stated Section 9 as drafted allows such a sale of real property, and that with a limitation of $1,000 there should be no serious problems.

Frohnmayer asked if a deed would be given; Allison replied that it would, subject to court approval. Zoller pointed out subsection (1) provides "with such notice as the court may order or without notice," and this would apply to sale of real or personal property for cash. Frohnmayer noted this is rather new concept. Allison stated present statute provides for "such notice as the court may order or without notice," and notice is thus already provided for.

Jaureguy mentioned possibility of an estate of $10,000 or more, but each particular item not exceeding the $1,000 limit.

Zoller commented that provision in subsection (1) for notice provides for conferring of authority upon person to act and relates to circumstances under which such an order may be entered, but does not determine purpose for which a sale may be made without notice.

In answer to query by McKay, Dickson stated $1,000 limit applies to value of ward's interest.

Allison advised where there is undivided interest in real property a petition could be filed for the appointment of a person to sell a particular piece of real property, and before an order was entered appointing him to sell, the court has authority to order that notice be given, e.g., "in a month Joe Doakes as special guardian is to sell Blocks 3 and 4, Blackacre." The notice would describe the property and give notice of the appointment of the person who is to sell it.

Zoller thought court should, where appropriate, be able to authorize person designated to execute transfer instrument without any formalities at all, and would like paragraph (c) of subsection (1) so to read.

Riddlesbarger noted provision that sale shall be approved by the court.

After general discussion as to whether notice provided in subsection (1) would apply only to appointment of person, or whether it would also apply to notice preliminary to a sale of property, and possible effect of a repetition of language, motion was made, seconded, and upon being put to vote carried, Allison voting against, to amend paragraph (c) of subsection (1) to repeat language appearing therein providing for notice, such language to immediately follow the words "Sell for cash".

Frohnmayer questioned whether wording "with such notice as the court may order or without notice," might be construed as meaning the individual could decide to sell without notice, not that the court might determine no notice was necessary.

After discussion of possible wording to prevent such a construction, motion was made, seconded and upon being put to vote carried, Allison approving wording but disapproving repetition, to amend both subsection (1) and paragraph (c) of subsection (1), Section 9, to provide: "with such notice, or without notice, as the court may order,".

General discussion ensued following query by McKay as to why it is necessary for a sale to be for cash, Riddlesbarger questioning where asset would end up if sold for credit; mentioned by Dickson intent was to allow disposal of property quickly, for cash; by Zoller the difficulty of collecting installment payments and making application of them in a continuing capacity; generally, the lack of authority in an appointee to bring an action if there were a breach, and that intent had been to provide a limited power, a one-shot cash deal in view of fact no formalities are required.

Zoller queried last sentence in paragraph (c), providing: "The sale shall be approved by the court." Zoller wondered whether this meant a time lapse before court order approving sale, stated he would prefer the sale be approved in a petition preliminary, rather than subsequent, to the sale. Frohnmayer suggested

possibility of court order entered and sale thereafter not completed; thus it should be reported to the court. Zoller stated a deed is public notice; Schnitzer that this would negate necessity of having sale approved; Zoller that if sale was upon terms authorized, court approval would not be essential.

Motion made, seconded, and upon being put to vote carried, to delete last sentence in paragraph (c), subsection (1), Section 9: "The sale shall be approved by the court."

Motion made, seconded, and upon being put to vote motion carried, to approve as amended Section 9.

Sections 10, 11 and 12. Zoller stated Section 10 deletes subsection (3) of present ORS 126.660, is preliminary to Section 12, which is all new; that Section 11 merely adds Section 12. Zoller read all three sections. Butler questioned necessity of accounting to guardian of the person as provided in Section 12.

Motion made, seconded, upon being put to vote carried, to delete words "guardian of the person and estate or" appearing in Section 12 (2).

Motion made, seconded, and upon being put to vote carried to approve as amended Sections 10, 11 and 12.

Dickson requested Zollinger and Lisbakken to prepare bill for submission to Lundy.

3. SMALL ESTATES ACT. Dickson read letter of Keith Skelton, dated January 21, 1965, to Zikes, expressing his interest in work and research done regarding handling of small estates. Dickson had invited Skelton to attend this meeting, which he was unable to do. Dickson forwarded a copy of the Small Estates Act to Skelton.

Martin pointed out act is based on net estate, rather than gross; that court would have nothing to do with the administration; but that in no instance would the act have exclusive authority--an estate could still be handled in regular probate court whenever problems arise. Procedure is optional. Estate is administered by a "voluntary administrator," who will go to county clerk, then proceed to administer the estate in summary manner with one publication to give creditors opportunity to make claims. Upon closing of the estate, a final account is rendered to the clerk and estate will thereupon be concluded. Voluntary administrator has authority to sell both real and personal property, applies to testate as well as intestate estates. As there is no attempt made to determine the validity of the will, should there be an objection thereto the estate would be moved into probate court.

Butler asked if consideration had been given to insolvent estates where only interested persons would be creditors; Martin replied creditors would be required to administer the estate in regular probate court, as the act is confined to administration by relatives, and intent is to keep proceeding simple and inexpensive.

McKay queried use of court clerk; Carson advised county clerk is ex-officio clerk of the court.

Zikes stated 14 states now have provision for small estates, that New York act is the most complete, but that it covers only personal property and intestate situations, with a limit of $3,000.

Frohnmayer mentioned discussion at October 8, 1964 meeting as to whether value of estate should be limited to $5,000 net or gross. Shetterly asked whether "liens and encumbrances" included claims; Zikes replied claims are not included.

Zoller pointed out individual must be willing to act as a voluntary administrator; that schedule is used similar to that in bankruptcy; no court order is entered. Zoller suggested advisability of having court intervention for determination of validity of will, that Gooding's suggestion for court review at conclusion of the administration had merit.

Martin stated this would require an attorney to present orders; Zoller suggested intervening orders could still be eliminated.

Zikes and Martin mentioned at present even though will is admitted to probate, it can still be later attacked; and that if validity of will is not questioned, no matter how invalid it may be the estate can still be administered and closed.

Allison suggested possibility of hand-written will, unwitnessed, being filed; that procedure is administrative.

Swift mentioned advisability of requiring a bond, as under act where there is no bond and no court accounting a voluntary administrator might skip the country with the assets. Martin replied bond would defeat purpose of the act, that a prohibitive premium might be set.

Betts felt a comprehensive small estates act was advisable, but by eliminating appraisal, notices, complexity of sale proceedings and time required for administration costs could still be cut down without doing away with bond and attorneys, suggested limiting attorneys' fees in the statute.

Frohnmayer reminded committee at 10/8/64 meeting Mr. Ferder of Inheritance Tax Division, State Treasurer's office, stated by far greatest number of reports in nonprobated estates were filed by laymen, not attorneys.

After discussion as to definition of a small estate as stated in Section 3 (1), motion was made, seconded and upon being put to vote carried to approve subsection (1), Section 3, reserving for further consideration whether it should include testate estates.

Discussion ensued as to whether testate estates should be included, Zoller asking if they could be included but with a provision that amendment be made to provide will must be valid; Jaureguy stated any interested party could still go into court and have a regular administration; Frohnmayer queried whether there is

a lack of notice; Martin mentioned provision is made for notice to be sent by the clerk; Schnitzer that if testate estates were eliminated persons would be placed in position of deciding whether or not to make a will; Gilley that elimination of testate estates might prove temptation to suppress a will; Allison that affidavit could include names of witnesses to the will so as to alert the clerk to requirement therefor.

Motion made, seconded, and upon being put to vote carried, to approve in principle testate as well as intestate estates.

Section 1. (Short title.) Motion made, seconded, and upon being put to vote carried to approve Section 1.

Section 2 (1) and (2). (Rules of construction, purpose and application.) Motion made, seconded, and upon being put to vote carried to approve subsections (1) and (2), Section 2.

Section 2 (3). Betts asked why use of act should be limited to persons who die after effective date of act, and general discussion ensued as to advisability of allowing act to apply to estates of persons who died prior to it, Jaureguy suggesting limitation to persons for whom proceedings of administration had not been commenced.

Motion made, seconded, and upon being put to vote carried to amend subsection (3), Section 2, to read: "The Small Estates Act shall apply to estates of decedents upon which administration has not been commenced in this state at the effective date of this Act.

Section 2 (4). Motion made, seconded, and upon being put to vote carried, to delete subsection (4), Section 2.

Motion made, seconded, and upon being put to vote carried, to approve as amended Section 2.

Section 3 (1). (Definition of a small estate.) Zoller proposed deletion of "real or personal"; Carson pointed out "liens and encumbrances" do not constitute "value"; general discussion as to correct wording to express net value.

Subsequent discussion (see Section 6 (1), Paragraph 10, infra) as to when value should be determined.

Motion made, seconded, and upon being put to vote carried to amend subsection (1), Section 3 to read: "A small estate is the estate of a decedent who dies testate or intestate leaving property in this state of avalue as of the date of death not exceeding $5,000 after deducting the amount of liens and encumbrances."

Motion made, seconded, and upon being put to vote carried to approve as amended subsection (1), Section 3.

Section 3 (2). (Definition of a voluntary administrator). Frohnmayer asked if there was reason for sole use of term "administrator," rather than "voluntary administrator or executor."

Martin stated intent was to clearly distinguish capacity from that of an executor under a will in a regular probate proceeding.

Motion made, seconded, and upon being put to vote carried to approve subsection (2), Section 3.

Section 3 (3). (Definition of clerk.) Allison asked if there were reason to restrict proceeding to county in which decedent was a resident at the time of his death; Martin stated that due to simplified procedure this would give better notice, that clerk would send notice to any other county in which real property is situated; Carson advised as to history of use of "resident," "inhabitant," "domicile" in present probate code.

Motion made, seconded, upon being put to vote carried to change "resident" in three places where it appears in subsection (3), Section 3, to "resident and inhabitant."

Motion made, seconded, and upon being put to vote carried to approve as amended subsection (3), Section 3.

Section 6 (1) Paragraph 10. (Form of affidavit.) Riddlesbarger questioned whether voluntary administrator would report to the clerk if property should exceed $5,000. Martin stated purpose of No. 10 is to alert layman if he should discover additional property during course of his administration he must report it. Discussion ensued as to whether value should be determined as of date of death, or as of date of affidavit; unclear from reading No. 10, Section 6 (1) whether voluntary administrator must report to clerk if additional property is found during administration (as Martin stated was intent of drafters), or if it applies to increase in value during administration; whether it should be necessary to dump administration back in clerk's lap if a slight excess should appear.

After general discussion as to date at which property should be valued, whether at date of decedent's death or at date of affidavit, motion was made, seconded and upon being put to vote carried to amend entire act to provide wherever provision is made for value, such value should be as of the date of death. (See Section 3 (1), supra.)

Motion made, seconded, and upon being put to vote carried to delete Paragraph 10, Section 6 (1).

Martin pointed out Paragraph 10 is a part of the affidavit to be signed by the voluntary administrator, that in Section 11 (6) like duties are given him. It was discovered that copies of the Small Estates Act mailed to members of both committees were incomplete. Dickson requested Martin and Keller to provide for the additional pages to be prepared and mailed.

General discussion followed, Riddlesbarger asking if transfer agent would recognize act; Martin replied acts in other states are recognized; Jaureguy questioned necessity of reporting and applying to the court if tax clearance and release cannot be obtained, and

Allison asked why closure could not be simply postponed until clearances obtained; Martin replied estate shouldn't be allowed to sit idle, and further, tax problems might be indication of other problems, such as an excess of the $5,000 limit.

Dickson announced next meeting to be February 13, 1965, at 9:00 o'clock a.m., in his courtroom, 244 Multnomah County Courthouse, Portland. Members of Committee on Probate Law and Procedure invited to attend. Agenda to be continuation of discussion on Small Estates Act, and proposal No. 7.

Respectfully submitted

Patricia A. Lisbakken
Acting Secretary