

JOINT MEETING
ADVISORY COMMITTEE PROBATE LAW REVISION
OREGON STATE BAR COMMITTEE ON PROBATE LAW AND PROCEDURE

Friday, January 8, 1965

MINUTES

The tenth meeting was a joint meeting of the Advisory Committee and the Committee on Probate Law and Procedure which convened at 2:00 o'clock p. m. on Friday, January 8, 1965 in Room 319 State Capitol, Salem, Oregon.

Members of the Advisory Committee present were Judge William L. Dickson, Chairman, Clifford E. Zollinger, Vice Chairman, R. Thomas Gooding, Otto J. Frohnmayer, Wallace P. Carson, and Herbert E. Butler.

Members of the Committee on Probate Law and Procedure present were Duncan L. McKay, Chairman, William M. Keller, Secretary, Louis Schnitzer, Wade P. Bettis, Charles M. Lovett, Campbell Richardson, Robert W. Gilley, J. Ray Rhoten, Herbert Swift, and William E. Tassock.

Minutes of Meetings. Mr. Lundy and Judge Dickson discussed reporting, typing, and reproducing the minutes. Mr. Lundy advised that the Legislative Counsel Committee had authorized the payment of \$2.00 per hour for reporting and typing rough drafts of the minutes -- this did not include editing or reproducing -- and that \$50 would be the maximum allowable per meeting. Mr. Lundy explained that previously minutes had been typed on a Multigraph plate, mats made, and copies run off in Salem. Judge Dickson stated that six meetings were scheduled up to the first of July, and requested the allowance of \$50 a meeting.

Report of Law Improvement Committee. Judge Dickson distributed to the members copies of the nine proposed bills and asked for a report from Mr. Butler who had met with the Law Improvement Committee that morning. Mr. Butler stated that the Law Improvement Committee had requested him to report to them before adjournment whether the committees were in agreement on the proposed bills, or whether further study was indicated, and advised that these bills, if introduced, should be introduced immediately so that legislative time would not be lost. Judge Dickson then suggested that the agenda be changed to give first consideration to the proposed measures.

Bill No. 1. Mr. Butler commented on the obvious oversight in amending ORS 111.020; that inadvertently there had not been included a provision for descent and distribution in cases where the intestate is survived by lineal descendants but not a surviving spouse, and that under such circumstance it was intended that the law would remain as it is now. It was agreed that the effective date of this Bill would be January 1, 1966.

Bill No. 2. It was suggested that Bill No. 2, page three, Section 1, subsection (4) be amended so that a surviving spouse having filed the marital declaration would not inherit additional property than that provided for in Bill No. 1.

It was suggested further that Section 3 of Bill No. 2 be amended to read: "A guardian of the estate with prior approval of the Court by order may exercise for and on behalf of the ward the right of the ward to revoke a recorded declaration claiming a marital right of the ward and to cause the revocation to be recorded or to release or subordinate the marital right."

After considerable discussion of these two bills, they were referred to Messrs. Zollinger and Butler with instructions for them to collaborate with Judge Dickson in revising the bills as per committee suggestions.

Bill No. 3. Mr. Keller explained that the only change in the bill as approved by the Committee on Probate Law and Procedure was the elimination of the word "interested" in the following sentence: "At any time within 15 days from the filing of such return any /interested/ person may file his objection to the confirmation of such sale."

Bill No. 3 was approved as amended.

Bill No. 4. Mr. Butler read the suggested changes in terminology made by the Law Improvement Committee in Section 1. A discussion among the members ensued, and it was the consensus that Sections 1 and 2 of Bill No. 4 should be revised as follows:

"Section 1. If, after making any will, the testator shall marry, and the spouse of the testator shall be living at the time of his death, such will shall be deemed revoked, unless provision shall have been made for such survivor by a written antenuptial agreement or marriage settlement or unless the will shall declare the intention of the testator that the will shall not be revoked by the marriage.

"Section 2. If, after making his will, a testator shall be divorced, or his marriage shall be annulled, unless his will shall otherwise provide, such divorce or annulment shall revoke all provisions in the will in favor of the former spouse, including any provision appointing such spouse as the executor of the will and the effect of the will shall be the same as though the former spouse had predeceased the testator.

"Section 3. ORS 114.130 is repealed."

Bill No. 5. The following amendments to Bill No. 5 were suggested:

"Section 2. ORS 116.425 is amended to read:

"116.425. (1) An appraiser designated by order of the court to appraise a property or properties is entitled to receive compensation of not less than \$15 nor in excess of the following rates for the property or properties appraised by him:

"(a) For appraising real estate, \$1 per \$1,000 of appraised value on the first \$100,000, and 50 cents for each \$1,000 thereafter.

"(b) For appraising listed securities, bonds and notes of the United States, and insurance, 25 cents per \$1,000 of appraised value.

"(c) For appraising unlisted over-the-counter securities other than those mentioned in paragraph (d), \$1 per \$1,000 of appraised value on the first \$100,000, and 25 cents for each \$1,000 thereafter.

* * * * *

"(3) In addition to compensation provided in this section the appraisers shall be allowed their actual and necessary expenses."

Committee members were in accord with these amendments.

Bill No. 6. After discussion of the bill by Mr. Tassock, it was approved in its present form for submission to the Law Improvement Committee.

Bill No. 7. This bill was discussed in full and revisions suggested by Messrs. Bettis and Frohnmayer. A motion was made, seconded, and adopted to withdraw Bill No. 7 and to refer it back to the Advisory Committee for further consideration since members of the committees were in disagreement as to both the wording and the substance.

Bill No. 8. This bill was discussed and approved, Mr. Tassock dissenting by stating that he felt the bill encompassed too much and effected a very considerable change; that it should be reconsidered by the Oregon State Bar Committee.

Bill No. 9. After general discussion, Bill No. 9 was amended as follows:

"Section 1. (1) Upon the hearing under ORS 116.805 of objections to the sale of real property or in the absence of objections, the court shall make an order confirming the sale and directing the execution of a proper conveyance to the proper person by the executor or administrator, unless the court determines that:" * * * * *

This bill was approved as amended.

The bills having been considered thoroughly, Mr. Butler was instructed to report back to the Law Improvement Committee concerning the action taken. After making his report, he stated that the Law Improvement Committee would look forward to the bills being corrected and revised, and referred to Mr. Lundy for appropriate drafting before introduction to the Legislature.

Revision of the Probate Code: The best way to proceed with revision of the Probate Code was discussed. Mr. Frohnmayer indicated he felt that separate sections should be assigned to specific members of the two committees for analyzing and comparison with model codes until a skeleton was set up for general discussion. Mr. Zollinger was of the opinion that it would be more advantageous to avoid dividing up the project, and that the members should work jointly in turning out a revised draft and in criticism of the proposed changes. Messrs. Carson and Lovett concurred in the latter view. Mr. Schnitzer advised that copies of the Uniform Small Estate Code were available and its consideration might be of assistance. Mr. Frohnmayer suggested that the present Code, the Mundorff Code, and a recent model code be cross-indexed as a preliminary to suggested revision. Judge Dickson stated that he would assign sections to committee members for consideration on the basis of their interests at the next meeting.

Next Meeting of Advisory Committee. A special joint meeting with the Bar Committee on Probate Law and Procedure was scheduled for Saturday, January 23, 1965 at 9 a.m. in Room 244 Multnomah County Courthouse, Portland.

Minutes of Joint Meeting. It was agreed that copies of the minutes of joint meetings would be furnished members of the Committee on Probate Law and Procedure as well as the Advisory Committee.

The meeting was adjourned at 5:45 p. m.