

PROBATE ADVISORY COMMITTEE  
Probate Law Revision

Forty-first Meeting

(Joint meeting with Bar Committee on Probate Law and Procedure)

Dates) 1:30 p.m., Friday, October 20, 1967  
and : and  
Times) 8:00 a.m., Saturday, October 21, 1967  
Place: President's Conference Room  
Johnson Hall (on 13th Street)  
University of Oregon Campus  
Eugene, Oregon

Suggested Agenda

1. Approval of September minutes.
2. Miscellaneous matters.
3. Claims. Discussion to be led by Mr. Gooding.
4. Jurisdiction and Powers of Probate Courts.  
Discussion to be led by Mr. Gooding.
5. Restriction of access to filed wills and inventories.
6. Next meeting.

PLEASE NOTE:

The meeting will be held in EUGENE, OREGON.

ADVISORY COMMITTEE  
Probate Law Revision

Forty-first Meeting, October 20 and 21, 1967  
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Minutes

The forty-first 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, October 20, 1967, in the President's Conference Room, Johnson Hall, University of Oregon Campus, Eugene, Oregon, by Vice Chairman Zollinger.

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

The following members of the Bar Committee were present: Bettis, Gilley, Kraemer, Krause, Pendergrass, Piazza, Thalhoffer and Thomas. Biggs, Braun, Copenhaver, Lovett, McKay, McKenna, Meyers, Mosser, Silven, Richardson and Warden were absent.

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

Approval of September Minutes

Jaureguy moved approval of the minutes, and there being no objection, they were approved.

Report from Allison

Allison advised the members of the committees that he had drafted all of the proposed revised Oregon probate code that the committees had approved in final form. He said that he had not, however, drafted all of the comments. He said that at the next meeting, November 24, 25, 1967, the committees would take final action on intestate succession. A draft will be mailed to all members prior to the meeting, and the draft will reflect the suggestions made by Frohnmayer. Allison asked whether he was authorized to make minor changes in the final decisions of the committees where it was evident that there was an error or omission. The members approved of his making corrections, but asked that when there was a major change in a draft, that the matter be brought to the attention of the

committees at a regular meeting. Allison advised the members that he was delaying drafting the chapter dealing with the rights of aliens to inherit until after December because of a pending United States Supreme Court decision dealing with that subject which is expected in December. He said that the draft on allocation of income will be discussed at the next meeting. The drafts on actions and suits, partial distribution, accounting and distribution and ancillary administration have not been considered. The drafts on discharge of encumbrances and missing persons have been discussed by the committees, but they are not in final form. He said that the proposed changes in the inheritance tax laws are being considered by the subcommittee on taxation, and that Judge Dickson advised him that Miss Lisbakken would report the recommendations of the subcommittee to the committees.

#### Miscellaneous Matters

Frohmayer advised the members that he had discussed the proposed chapter on intestate succession with members of the Bar at the annual meeting on the coast, and that those with whom he spoke expressed surprise at the scope of review and revision being undertaken by the committees. He said, however, that the response to the probate revision was favorable.

Mapp suggested that a possible means of explaining the work being done on the probate revision could be at the meeting in the Spring of 1968 of the Continuing Legal Education group. No final action was taken.

Husband explained to the members the procedure followed after the code revision in 1953. He said that the method followed then was for various persons familiar with what had been accomplished went out to speak at meetings of the local Bar associations and other associations.

Zollinger explained to the committees that the current timetable was to have a final draft by the date of the meeting on Continuing Legal Education. He said that the committees should strive for a draft as early in 1968 as possible to allow time to give the revision the widest possible publicity and explanation.

Gilley said that he would favor meeting with small groups of lawyers to explain the work of the committees and that this would insure an opportunity for a question and answer session following the discussion. Zollinger agreed and said that the present plan was to distribute copies of the proposed probate code as early as possible so that lawyers could review it and

raise any questions they might have.

Sorte advised the members that the Law Improvement Committee will probably be appointed soon, and that because of possible new membership, the Law Improvement Committee might benefit from a status report. Allison said that he would prepare a status report for the Law Improvement Committee.

Zollinger asked whether or not the West Publishing Company had been contacted to determine a procedure to publish the proposed Oregon probate code. Sorte said that he was uncertain but that he would inquire and advise the members.

#### Tab 2. Probate Court. Powers of Court in Probate

Gooding led the discussion of powers and duties of the probate court. Gooding advised the members that the draft on powers and duties of the court was drafted by Legislative Counsel. Sorte said that most of the material in tab 2 was taken from the Wisconsin code.

#### Section 1

Frohmayer moved that section 1 be amended to read: "The circuit court shall have jurisdiction of all probate matters, specifically including, but not limited to probate of wills; determination of heirship; administration, settlement and distribution of estates of decedents, whether consisting of real or personal property, or both; determination of title to and rights in property claimed by or against estates of decedents, minors and disabled persons; granting of letters testamentary, of administration, of guardianship; construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding; guardianship of the person of minors and incompetents; protection of property of minors and disabled persons; and supervision and disciplining of personal representatives, guardians and conservator-trustees." The motion carried.

#### Section 2

Zollinger asked whether it was the intent of the members to authorize a probate court to appoint trustees and administer trusts. He said that this is a substantial departure from present procedure and that he was opposed to such a change. Frohmayer expressed the view that this would improve the existing law and also be in conformance to the Uniform Probate Code. He said that he favored expanding the jurisdiction of the probate courts.

Piazza was of the opinion that the court should not be involved in trusts unless something became a problem. He said that many trusts do not require court supervision. He pointed out that section 2 would complicate rather than simplify the existing procedure.

Pendergrass expressed the view that under existing law the court has jurisdiction to grant letters of trusteeship and that no change is necessary. Piazza and Zollinger both expressed their opinion that the probate court should be a court of general as opposed to limited jurisdiction.

Bettis said that he favored spelling out the jurisdiction of the probate court.

Husband pointed out that other states inclined toward enumeration of the jurisdiction of the probate court.

#### Section 1

Frohnmayr moved that the following language be added to section 1. "Any appeal shall be to the Supreme Court as in other cases." The motion carried.

#### Section 2

Thalhofer and Gooding both expressed the view that there was no need for section 2 and a motion by Thalhofer to delete the section carried.

#### Section 3

A motion by Piazza carried and section 3 was amended to read:

"All matters, causes and proceedings relating to probate jurisdiction, authority, powers, functions and duties pending in a county court or district court, on the effective date of this Act, are transferred to the circuit court for the county."

Allison moved and the motion carried to delete from subsection (2) of section 3 the following language: "...except that the circuit court shall be considered the court appealed from."

#### Section 4

Section 4 was approved as drafted.

#### Section 5

Section 5 was approved as drafted.

Section 6

After brief discussion the members of the committees noted that section 6 was repetitious and a motion carried to delete the entire section.

Section 7

There was a discussion of whether the county courts will have any function if probate jurisdiction is transferred to the circuit courts. Husband pointed out that there would still be many functions of the county courts including zoning and planning highways. Section 7 was adopted as drafted.

Section 8

Section 8 was adopted as drafted.

Sections 9, 10, 11, 12, 13 and 14

A majority of the members voted to adopt the above sections subject to minor changes by Legislative Counsel.

Section 15

The committees adopted section 15 as drafted.

Allison asked whether it was the intent of the members to repeal all of the existing statutes relating to the transfer of jurisdiction of some of the county and district courts to the circuit courts. The members indicated that the purpose they intend is to draft the measure in such a manner as necessary to give the circuit courts exclusive jurisdiction in probate matters. They indicated that the particular wording would be left to Legislative Counsel.

Tab 23. Sections 20 and 21

Gooding called attention to the fact that the draft on jurisdiction of the courts was similar to sections 20 and 21 of tab 23, Accounting and Distribution. In view of the duplication Gooding moved that sections 20 and 21 of tab 23 be deleted. The motion carried.

Initiation of Probate

Allison asked for an expression of opinion as to whether sections 3 and 19 of tab 12, Initiation of Probate, might more appropriately be placed in the chapter on the jurisdiction of

the courts. Jaureguy said that he thought the sections should be placed in the chapter on jurisdiction, and that he also felt the provisions for the support of the family should be in the chapter. Riddlesbarger disagreed and called attention to the fact that the committees have already considered the outline of the various chapters and action has already been taken. It was decided to leave the matter to the discretion of Legislative Counsel.

#### Powers of the Clerk of the Circuit Court

(Note: A draft of the proposals of Allison and Gooding is Appendix B to these minutes. The draft does not reflect the action by the committees.)

Bettis raised the question of whether or not the deputy clerks would have the same powers as the clerk. The consensus of opinion of the members was that they would have the same powers.

The committees discussed the provision for determining the amount of bond to be given by a personal representative. The conclusion reached was that the clerk would probably work with the court in setting up guidelines for determining the amount of a bond.

Bettis expressed the opinion that the proposed changes would vest powers in the clerk that have been historically and solely the powers of the judge, and he did not approve of the change. Mapp pointed out that the Uniform Code, in sections 3-304, 3-305 and 3-306, states specifically when a bond is required, how much it is to be and there is no determination by the clerk. Allison explained that he did not use the language of the Uniform Code because he did not believe a clerk, without legal training, would be able to analyze the provisions of the Uniform Probate Code.

Allison explained to the committee that one of the reasons probate matters have been kept in the county courts was because sometimes one could not find a circuit court judge when they needed him, but with the clerks performing some of the functions of the judge, probate matters could be transacted in the absence of the judge. He pointed out that there is also the safeguard because the court can overrule the actions of the clerk.

Pendergrass thought there should be some direction from the court for the clerk to issue orders such as admitting the will to probate, appointing the personal representative, etc. Zollinger agreed, as did Frohnmayer, Riddlesbarger and Gilley.

Amendments were suggested, which are to be prepared by Legislative Counsel, to section 1 (Appendix B) as follows:

In line 1, delete "upon" and after "ex parte" insert "upon".

In line 4, after the period, insert "When and to the extent authorized by rule of court."

In line 8, delete "at any time within 30 days after the orders are entered."

The committees then passed the section as amended.

#### Tab 18. Claims

(Note: Gooding distributed a copy of a letter he had written to Mr. Allison regarding tab 18, which is attached hereto as Appendix C.)

#### Section 1

Krause questioned the matter of limiting the time for presentation of claims to 12 months when the estate might be open beyond that time.

Zollinger asked for an expression of opinion on barring claims after 12 months from the date the estate is opened, and the majority favored this approach.

There was considerable discussion among the committees regarding "equitable relief" as mentioned in subsection (3). Pendergrass did not believe the words "peculiar circumstances" covered the entire matter. After discussion, the committees agreed to direct Legislative Counsel to amend subsection (3), after the semicolon, to read in substance, "but if the court shall find that the presentment of a claim has been delayed because of excusable neglect, the claim is not so barred."

The meeting adjourned at 5:15 p.m.

The forty-first meeting of the advisory committees reconvened at 8:00 a.m., October 21, 1967, with Vice Chairman Zollinger presiding.

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

The following members of the Bar Committee were present:  
Biggs, Bettis, Gilley, Krause, Kraemer, Pendergrass, Piazza  
and Thalsofer.

Also present was Sorte from the staff of Legislative Counsel.

#### Section 2

Section 2 was adopted as drafted.

The committees discussed whether or not they should have a maximum time limit within which a creditor would file his claim. It was decided that all claims would be barred after 12 months of the first publication of notice to creditors except in cases of excusable neglect.

#### Section 3

The committees discussed whether or not the personal representative should be required to pay only claims presented. It was decided that the personal representative should have the authority to pay claims without formal presentment and the particular language was left to Legislative Counsel.

#### Section 4

Pendergrass moved that section 4 be changed to subsection (3) of section 3. The motion carried.

#### Section 5

With reference to the payment of claims Zollinger called attention to previous consideration of the problem and the decision that a creditor with a note not due could be paid the amount due as of the date of presentment or delay and rely on any security he might have. Frohnmayer moved that section 5 be adopted as drafted and the motion carried.

#### Section 6

Bettis questioned whether a security instrument should be required to be described by volume, page, etc. Pendergrass did not feel the second sentence of subsection (2) was necessary. Riddlesbarger pointed out that the language proposed did not make it mandatory to describe the security by volume, page, etc.

Pendergrass then suggested the following as a new section:

" Upon receipt and allowance of a claim for a debt on which a creditor has security, the personal representative

shall either pay the claim and obtain the right to the security, or require creditor to withdraw the security as provided by a security agreement and pay all the remaining debt."

The majority of members felt that five days would not be enough time to allow the personal representative an opportunity to obtain the money to pay the obligation. The committee felt it might be better to allow the court to order the enforcement of the security or it could authorize a longer time in which to raise money to pay claims. The feeling was that in an ordinary situation a secured creditor would not present a claim at all.

Zollinger suggested the following wording: "A secured creditor may not exercise remedies under the security agreement without having presented his claim to the personal representative or its being rejected by a personal representative."

After discussion of whether or not a time limit of from 10 to 60 days should be set for presenting claims, or if the court should be permitted to set the time for secured creditors to exercise their rights, the committee accepted Zollinger's recommendation that the Legislative Counsel draft a section providing in substance:

"A secured creditor shall not exercise the remedies provided by his security agreement until 30 days after a claim shall have been presented to the personal representative, unless notice shall have been given of his intention to exercise remedies under the agreement, except the court may, on motion of the creditor, permit foreclosure of the security agreement at an earlier time."

Allison questioned the meaning of the words "finally allowed" in subsection (4) and Zollinger said it should be deleted.

The committee then adopted the substance of the draft of section 6.

#### Section 7

Allison suggested a new subsection (d) beginning with the words in subsection (c) "If the debt thereafter becomes absolute or liquidated, the . . ."

The committee authorized this change and adopted Section 7 as amended.

#### Section 8

Pendergrass recommended section 8 be amended to read:

"The claim of a personal representative shall be filed within the time required by law for presentment and shall be presented to the court for allowance or disallowance."

Gooding moved approval of section 8, with Legislative Counsel authorized to make any changes as to form that are necessary. The motion was seconded and carried.

#### Section 9

Allison recommended substitution of the following wording at the beginning of section 9:

"If the assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:"

Pendergrass suggested deleting "are" and inserting "appear to be".

The committee discussed the order for payment of debts and expenses and the inclusion of provisions for family support. Zollinger recommended that section 10 be included as a subsection of section 9.

Further discussion was held regarding the payment of expenses for last illness and funeral expenses.

Section 9 was then adopted, with Legislative Counsel to make any further revision, in order of subsections as follows:

- "(1) Family support.
- "(2) Expenses of administration.
- "(3) Reasonable expenses for the disposition of the remains of the decedent.
- "(4) Funeral and burial expenses (section 10).
- "(5) Debts and taxes with preference under federal law.
- "(6) Expenses of last sickness of the decedent.
- "(7) Debts and taxes with preference under the laws of this state.
- "(8) Debts owed employes of the decedent for labor performed within the 90 days immediately preceding the date

of death of the decedent.

"(9) The claim of the State Public Welfare Commission for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent, and the claim of the Oregon State Board of Control for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

"(10) All other claims against the estate."

#### Section 11

Pendergrass moved to amend section 11 to read as follows:

"The personal representative may compromise a claim for or against the estate of the decedent."

The motion was seconded and carried.

#### Section 12

There was general discussion among the members about the order in which claims will be paid that are presented and allowed and whether a claim that is presented must be specifically allowed. Zollinger suggested substituting the language in the Uniform Probate Code for subsection (1). Allison moved the substitution, seconded by Gooding, and the motion carried.

Frohnmayr recommended that Allison be authorized to make section 13 a new subsection (3) of section 12.

"If the estate is insufficient to satisfy all claims or expenses of any one class specified in section 9, each claim or expense of that class shall be paid only in proportion to the amount thereof."

Section 12 was adopted with Legislative Counsel authorized to make appropriate changes.

#### Section 14

The committees discussed the liability of a distributee with relation to property he received, and at what date the property value should be computed; the date it is received or the date it is returned. Mapp referred the members to section 7 which leaves it to the court to require a bond, and to the provisions of the Uniform Probate Code.

Allison moved the substitution of the language in the Uniform Probate Code, section 3-512, for sections 7 and 14. The motion was seconded by Jaureguy and carried.

Section 15 and Section 16

Allison suggested that there should be an allowance requirement which would set out how the personal representative would pay the claims that are allowed.

The committee then discussed the time limitation within which a claim is allowed or disallowed, and the right of the personal representative to rescind an allowance within a specified time prior to the filing of final account.

Allison suggested the two sections be combined to read as follows:

"Claims shall be allowed as presented unless the personal representative causes notice of disallowance to be mailed to claimant or his attorney within 60 days after his disallowance."

Pendergrass asked for the following additional provision:

"The personal representative shall be permitted to rescind the allowance of any claim, whether it has been expressly allowed, or allowed by inference, at any time prior to 30 days of filing of final account."

Frohmayer thought this would be unfair to the creditor who would get notice of rejection 30 days before the final account is filed.

Pendergrass added to his motion: "the presumption of allowance occurs 60 days after receipt of the claim or five months from the date of first publication, whichever last occurs."

Allison suggested the following wording: "It is allowed unless the personal representative shall cause notice of disallowance to be published or delivered to the claimant."

Gilley recommended a change to: "cases of error, misinformation or excusable neglect on the part of the personal representative."

Kraemer seconded a motion to amend by Gilley. The motion carried. Zollinger explained the amendment is to limit the right of the personal representative to rescind his allowance of the claim by making it conditioned upon the showing of error, misinformation or excusable neglect.

Zollinger then called for a vote on the motion by Pendergrass and the motion carried.

Section 17

Frohmayer asked about the possibility of having the filing of a separate suit in the proceeding right in the probate court. After discussion it was decided to adopt section 17 as drafted.

Section 18

Jaureguy recommended deletion of the language in section 18, starting at the bottom of page 13 with the words "The personal" and all of the wording on page 14 relating to section 18.

Section 18 was approved as modified by Jaureguy.

Section 19

Section 19 was adopted as drafted.

Section 20

Section 20 was approved by the committee with the recommendation that Legislative Counsel restate it in line with Piazza's suggestion that the section should read: "In a proceeding for summary determination by the probate court of a claim, any person interested in the estate may be heard on the matter of allowance or disallowance of the claim."

Section 21

Gooding moved to delete section 21. Carried.

Section 22

Jaureguy moved that section 22 be adopted with the following amendment:

In the fourth line, after "direction" insert "or consent of those". The motion carried.

The meeting adjourned at 11:15 a.m. after the adoption of a unanimous resolution expressing the appreciation of the members for the hospitality of Mr. and Mrs. Riddlesbarger and the University of Oregon for the use of the President's conference room.

APPENDIX A

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

(This is a draft of Mr. Gooding without the changes made at the meeting.)

TRANSFER OF PROBATE JURISDICTION OF OTHER COUNTIES TO CIRCUIT COURT. (1) All probate jurisdiction, authority, powers, functions and duties of the District Courts and Judges thereof, are transferred to the Circuit Courts and the Judges thereof in Benton, Clatsop, Coos, Curry, Deschutes, Hood River, Lincoln, Wasco, and Washington Counties.

(2) All probate jurisdiction, authority, powers, functions and duties of the County Courts and the Judges thereof are transferred to the Circuit Courts and the Judges thereof in Baker, Crook, Gilliam, Grant, Harney, Jefferson, Malheur, Morrow, Sherman, Union, Wallowa and Wheeler Counties.

(3) The Circuit Courts and the Judges thereof are governed by the existing laws relating to the exercise of the probate jurisdiction, authority, powers, functions and duties transferred under subsections (1) and (2) of this section, insofar as they are applicable, as though the Circuit Courts and the Judges thereof were originally referred to in the existing laws.

Comment: The form of this statute is taken from ORS 3.180, and it would have to provide for the repeal of ORS 5.040, vesting probate jurisdiction in certain County Courts, and ORS 46.092 vesting probate jurisdiction in District Courts.

Section 4. ORS 3.101 is amended to read:

3.101. District court judge acting as circuit court judge in certain cases; orders; effect. (1) (omitted).

(2) A district court judge exercising the powers and duties of circuit court judge as provided in subsection (1) of this section also may, within the county, give and make any order, [other than one setting apart exempt property or

fixing a widow's allowance, that by law is ex parte in nature or is upon default of the appearance of, or expressly consented to in writing by, the adverse party or parties,] in any matter, cause or proceeding in probate pending in the county.

(3) (omitted)

Section 5. ORS 5.080 is amended to read:

5.080. County judge as interested party. Any judicial proceedings commenced in the county court in which the county judge is a party or directly interested, may be certified to the circuit court for the county in which the proceedings are pending[. If the matter is one in probate, then all the original papers and proceedings shall be certified to the circuit court, and the judge of that court shall proceed in the manner in which the county judge would be required to proceed had the matter remained in the county court. If the matter is other than a probate matter,] and it shall be proceeded with in[this] the circuit court as upon appeal from the county court to the circuit court.

Section 6. Repeal of existing statutes. ORS 5.040, 5.050, 5.070 and 5.100 are repealed.

## APPENDIX B

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

(This is a draft by Gooding without the changes made at the meeting.)

POWERS OF THE CLERK OF THE CIRCUIT COURT. (1) The Clerk of the Circuit Court may act upon applications for probate of Wills and appointment of personal representatives and may make and enter orders admitting Wills to probate and appointing personal representatives subject to being set aside or modified by the Judge; after entering such order, the Clerk may receive a bond executed by a surety company in the form prescribed by (Tab 12, Section 10), but in a sum not less than the probable value of the personal property of the estate plus the probable value of the annual rents and profits from the real property of the estate, and then may issue letters testamentary or letters of administration.

(2) The Court may increase, reduce the amount of the bond, or require a new bond as provided in (Tab 12, Section 11).

(3) Any matter presented to the Clerk may be referred by him to the Judge.

### POWERS OF THE CLERK OF THE CIRCUIT COURT

Section 1. The clerk of the circuit court may act upon ex parte petitions for appointment of special administrators, for probate of wills and for appointment of personal representatives. He may make and enter orders on behalf of the court admitting wills to probate, appointing special administrators and personal representatives, and setting the amount of the bond as prescribed in ORS \_\_\_\_\_, subject to his orders being set aside or modified by the judge at any time within 30 days after the orders are entered.

Section 2. Any petition presented to the clerk may be referred by him to the judge.

Section 3. Unless set aside or modified by the judge the orders of the clerk pursuant to section 1 shall have the same effect as if made by the judge.

APPENDIX C

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

September 20, 1967

Mr. Stanton Allison  
2444 S. W. Broadway Drive  
Portland, Oregon

Dear Stan:

As you know, I was largely responsible for the "claims" section, now Tab 18 in the drafts prepared by Legislative Counsel. I am now going over the copy of the Commissioner's Probate Code (Boulder, Colorado) supplied to me by Tom Mapp.

As to certain matters in the Uniform Code which cause me concern, I am sending a copy of this letter to Tom, asking that he comment directly to you with a copy to me.

Section 3-501 of the Uniform Code has good language, especially the second sentence. I am wondering why there is included the third sentence providing for recovery against distributees. The present Oregon counterpart is ORS 121.230 at et sequitur, which, I understand, the advisory committee has voted to repeal.

Section 3-502, the Notice to Creditors, seems to say substantially what is meant by our Tab 12, Section 13 (Initiation of Probate or Administration), and in fewer words. I am not warm about the option of mailing notice to creditors.

Section 3-503, Statute of Limitations, is contrary to our Section 22 (Waiver of Statute of Limitations) and Section 24 (Extension of Statute of Limitations). In the latter, we extend it for one year after death. I believe this is more reasonable than four months.

Section 3-504, Limitations on Presentation of Claims, contains language similar to the old model Probate Code which has been adopted by Iowa, Missouri and others, but seemingly did not pass the committee. I remember presenting it, but do not find it in the draft. Our draft touches on it in Section 1 (3) and Section 25. I think it might be feasible to distinguish between claims arising before death and those arising after death. Sub-section C, Liens, etc., is touched upon in Section 28.

Section 3-505, Manner of Presentation to the Personal Representative, is found in our Section 3, which I believe is better. It also discusses the unmatured claim, the contingent claim and the secured claim, which we describe in Sections 5, 6, 7 and 14. Our organization is somewhat different, in that we apparently intend to treat these matters fully in the above sections. The Uniform Code also treats them in Sections 3-510, 3-511 and 3-512. Respecting the payment and treatment of claims not due, our Section 5 and the Uniform's Section 3-510, ours appears to be adequate, and more explanatory. The Uniform Code does not address itself to a secured claim which is not yet due.

Respecting secured claims which are due, Section 6, and Section 3-511 of the Uniform Code, again, I believe that ours is somewhat more complex, but more explanatory.

On the matter of contingent claims, Section 7, and Section 3-512 of the Uniform Code, I believe that ours is preferable.

Referring back to Section 3-505 of the Uniform Code, Sub-paragraph B, we have resolved not to have claims filed with the clerk of the court. Sub-Section C seems to allow an independent action without running through the claim procedures, which seems to be contrary to our committee's intent in Sections 17-19, although we recognize the availability of an independent action that is already pending at death. See Section 26 and 27. Sub-Section C of the Uniform Code also provides for an action against the personal representative individually for breach of a fiduciary duty to the claimant.

Section 3-506 concerns Classification of Claims. Our counterpart is found in Section 9 and Section 12. I prefer our classification. Moreover, since insolvent estates are a rarity, I prefer that the executor obtain court order for payment as provided in Section 12 (2).

Section 3-505, the Allowance of Claims, has a section dealing with "interest on allowed claims" which might be worthy of your consideration. I don't believe the procedures for allowance and disallowance and subsequent action has any more merit than our present draft.

Section 3-508, Payment of Claims, reminds the personal representative of statutory allowances, claims not allowed or on appeal, which might be incorporated into our Section 12.

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Appendix C

As for the creditors' rights to obtain an order for payment, it is stated in less words than our Section 13. It also contains a meritorious provision allowing the personal representative power (Tom Mapp) to pay a claim with or without formal presentation.

Section 3-509 may well be worth consideration.

Section 3-513, Counter-Claims, merits consideration. See Iowa, Section 445.

Section 3-514, insofar as it prohibits execution and levy, should be added to our Section 28. In my review of the other Codes, most of them expressly provide for this prohibition.

Section 3-515, Compromise of Claims, is found in our Section 12.

Section 3-516, Encumbered Assets, gives additional powers to the personal representative and would appear to apply even though a claim wasn't filed. It would merit consideration.

Sincerely yours,

/s/ R. THOMAS GOODING

RTG:ce

cc: Mr. Thomas Mapp  
Law School  
University of Oregon  
Eugene, Oregon