

ADVISORY COMMITTEE

Probate Law Revision

February 13, 1965

Minutes

Meeting convened at 9:05 A.M., Saturday, February 13, 1965, in Judge Dickson's courtroom, 244 Multnomah County Courthouse, Portland. All members present. Also present were McKay, Keller, Shetterly, Swift and Richardson of Committee on Probate Law and Procedure, and Zikes, Martin and Lisbakken.

Carson read memo of telephone message from Lundy to himself, 2/12/65, which memo is attached to these minutes.

Dickson announced assignments as follows:

<u>Bill No.</u>	<u>Committee</u>
1 & 2	Zollinger, Allison
3, 6 & 9	Shetterly, Swift
4	Jaureguy, McKay
5	Dickson, Carson
7	Zollinger, Jaureguy
8	Allison, McKay
Small Estates Act	Riddlesbarger, Butler, Martin, Zikes & Lisbakken

Martin and Dickson announced Keith Skelton intended to introduce a bill for the Small Estates Act on February 15, 1965, in its original form, and that he is aware Committee is engaged in substantial amendments.

SMALL ESTATES ACT

Section 1. Approved 1/23/65.

Section 2 (1). Approved 1/23/65.

Section 2 (2). Approved 1/23/65.

Section 2 (3). During discussion over terminology, Carson stated word "administration" is broad term which can include probate of a testate estate as well as administration of an intestate estate.

After discussion it was generally agreed intent was to apply act to estates of persons upon which no other administration had been commenced in this state, without regard to date of decedent's death, or date act is passed.

Motion made, seconded and carried to amend subsection (3) to read as follows, and thus approved:

"The Small Estates Act shall apply to estates of decedents upon which no other administration has been commenced in this state

at the time of filing of the affidavit of the voluntary administrator pursuant to section 5 (3) of this 1965 act."

Section 2 (4). Deleted 1/23/65.

Section 3 (1). Amended and approved 1/23/65.

Section 3 (2). After noting word "qualifies" is not defined, subsection amended and approved to read as follows:

"(2) A voluntary administrator is a person who undertakes to settle a small estate without the formality of court administration as provided in this act."

Section 3 (3). Note was taken of the fact the minutes of the 1/23/65 meeting were in error in adding words "and inhabitant" in three places without corresponding deletion of "a resident."

After discussion as to advisability of deleting words "real or personal" as applied to property as was done in subsection (1) of this section, it was generally agreed they should remain.

Subsection amended and approved to read as follows:

"(3) The clerk, as used in this act, is the clerk of the court having probate jurisdiction in the county in which the decedent was an inhabitant at the time of his death if he was an inhabitant of this state, or in a county in which the decedent left real or personal property if he was not an inhabitant of this state."

Section 4 (1). Discussion as to whether right to act as voluntary administrator should be limited to one who has reached age of 21 years, rather than "age of majority," to prevent married minor from acting. Allison pointed out regular probate code provides minors are not qualified to act, and Frohnmayer suggested status of "majority" should be here perpetuated.

Discussion as to merits of limitation of right to act to persons named and only in event none named could act, should right to designate nominee arise. Zikes and Martin stated this was intent of drafters. Committee in agreement widow should be able to appoint a nominee to act for her in preference to having, for instance, her brother-in-law act, that such a result would avoid potential family disharmony. Carson suggested time limitation within which persons of lesser preference or their nominees might not apply would aid situation.

Amended and approved to read as follows:

"(1) The right to act as a voluntary administrator shall be limited to one of the following persons or his nominee, in the order set forth, who is a resident of this state, competent, and has reached the age of majority:"

Section 4 (1), (a) and (b). Advisability of including nephews and nieces discussed. Keller asked if language implied a brother would take preference over a sister, and a nephew over a niece. It was agreed that not only was this the intent, but further, (in jest, we trust?) that this is as it should be.

Amended and approved to read as follows:

"(a) If the decedent dies testate, the executor, any devisee or legatee named in the will, the surviving spouse, any child, grandchild, parent, brother, sister, nephew or niece of the decedent.

(b) If the decedent dies intestate, the surviving spouse, any child, grandchild, parent, brother, sister, nephew or niece of the decedent."

Section 4 (1) (c). See discussion Section 4 (1) above. Subsection (c) automatically eliminated to further intent to permit person named or his nominee to act.

Section 4 (2). See discussion Section 4 (1) and Section 4 (3) below. Amended and approved to read:

"(2) Within a period of thirty days after the death of the decedent neither a person of lesser preference nor his nominee shall have the right to act as voluntary administrator unless there is filed with the clerk a written renunciation of such right signed by each person of higher preference. Thereafter any eligible person or his nominee may act as voluntary administrator."

Section 4 (3). Allison suggested eliminating subsection (3). After 30 days limitation on order of preference provided in subsection (2), then anyone who comes in may apply. Zollinger suggested addition of sentence to subsection (2) to cover situation.

Subsection (3) of section 4 deleted.

Section 5 (1). Riddlesbarger asked purpose of this subsection; Frohnmayer asked why provided procedure may be used "immediately" after death of decedent. Zikes stated some states provide for a waiting period after death, intent of drafters was to make clear fact no waiting period is necessary.

Dickson suggested ending sentence after Clerk, omitting "without formal administration by the probate judge." Riddlesbarger noted this subsection empowers Clerk.

Shetterly questioned whether clerk would be liable on his bond if he neglected to do something required under the act. Frohnmayer mentioned matter had been discussed in Salem 10/8/64, and that it was a part of the basic philosophy of the act--that clerks now do much work that is more than clerical in nature, and that training of the clerk would be necessary; Riddlesbarger stated "supervise" requires clerk to act affirmatively.

Amended and approved to read as follows:

"(1) The procedure prescribed by this act shall be supervised by the Clerk."

Section 5 (2). Butler believed testator should have privilege of specifying whether or not a bond should be required, as he would be acquainted with person he named as his executor. Martin and Zikes thought bond requirement would defeat intent of the act. After discussion, amended and approved to read as follows:

"(2) The voluntary administrator shall not be required to furnish a bond even though required by the terms of the will, or file an oath

of office, or have the estate appraised."

Section 5 (3). After discussion as to advisability of requiring affidavit of at least one subscribing witness to will as opposed to allowing proof to be otherwise made where no witness was available, amended and approved as follows:

"(3) The voluntary administrator shall file with the clerk his affidavit in the form prescribed by section 6 (1) of this 1965 act, a certified copy of the certificate of the death of the decedent, his will, if any, and an affidavit of a subscribing witness to the will in the form prescribed by section 6 (2) of this 1965 act."

Section 6. First paragraph amended and approved to read as follows:

"The following forms shall be used in administering this act and shall be provided by the clerk."

Section 6 (1). Zollinger questioned necessity of:

"STATE OF OREGON)
County of _____) ss."

Carson stated necessary for venue in criminal prosecution.

Approved.

Section 6 (1) ¶1. Pursuant to changes made in Section 2 (3), amended and approved as follows:

"1. The name of the decedent is _____. There has not been commenced in the State of Oregon any proceeding for voluntary or judicial administration upon his estate."

Section 6 (1) ¶2. It was agreed editorial comment should be added at the end of this paragraph to instruct voluntary administrator to file other documents with his affidavit.

Amended by addition of editorial comment as follows, and thus approved:

"(A death certificate and, if the decedent left a will, the will and the affidavit of a subscribing witness must be filed herewith.)"

Recessed for lunch at 12:50 P.M., reconvened at 2:15 P.M. Absent from Committee were Butler and Riddlesbarger. Also present were Keller, of Committee on Probate Law and Procedure, and Martin and Lisbakken.

Section 6 (1) ¶3. Amended and approved to read as follows:

"3. At the time of his death decedent was an inhabitant of the County of _____, State of _____, and his address was _____."

Section 6 (1) ¶4. Discussion as to possibility of good faith omission, particularly with regard to the naming of issue of a deceased child. Zollinger pointed out frequency with which all remotely related kinsmen are named by individuals as being their potential heirs.

Allison suggested a division of the paragraph into two parts, and Frohnmayer suggested a form be furnished by the clerk setting forth laws of descent and distribution.

Amended and approved to read as follows:

"4.A. The heirs at law of decedent are as follows:

<u>Name</u>	<u>Address</u>	<u>Age</u>
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Surviving husband or wife, if any:

Surviving children, if any:

Surviving children of deceased children, if any:

If none of the foregoing survives, complete and attach schedule provided by the clerk listing heirs at law. See ORS 111.010 through 111.040.

B. If the decedent left a will, list the devisees and legatees below:

<u>Name</u>	<u>Address</u>	<u>Relationship</u>	<u>Age"</u>
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Section 6 (1) ¶5. After discussion, amended and approved to read as follows:

"5. The description and value as of date of death of decedent of all his real and personal property located within the State of Oregon, after deducting the amount of liens and encumbrances, are as follows:

(Include any obligations due or to become due to decedent. Do not include property held jointly with right of survivorship or as tenant by the entirety. Describe each item and state its location and gross value at date of decedent's death. Describe any lien or encumbrance against each item and state its amount at date of decedent's death, showing net value of property in right-hand column. In addition to street address, a legal description must be shown for real property.

<u>Item No.</u>	<u>Description</u>	<u>Net Value</u>
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Total Net Value

Section 6 (1) ¶6. Amended and approved to read as follows:

"6. The description and value as of date of death of decedent of all real and personal property which decedent owned jointly, with another or others, with right of survivorship, or as a tenant by the

entirety, after deducting the amount of liens and encumbrances, are as follows:

(Include any obligations due or to become due to decedent and another or others with right of survivorship. Describe each item and state the name, address and relationship of survivor, location of the property and its gross value at date of decedent's death. Describe any lien or encumbrance against each item and state its amount at date of decedent's death, showing net value in right-hand column. In addition to street address, a legal description must be shown for real property.

<u>Item</u> <u>No.</u>	<u>Description</u>	<u>Net Value</u>
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Total Net Value

Section 6 (1) ¶7. Amended and approved to read as follows:

"7. To the best of my knowledge, all of decedent's debts and liabilities are as follows:

<u>Item</u> <u>No.</u>	<u>Name of Creditor</u>	<u>Address</u>	<u>Description</u>	<u>Amount</u>
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Total

Section 6 (1) ¶8. Amended and approved to read as follows:

"8. I undertake to act as voluntary administrator of decedent's estate and to administer it pursuant to the Small Estates Act. In so doing, I agree:

- (a) to open an estate bank account in this state in which I will deposit all money received;
- (b) to sign all checks drawn on such account in the name of the estate by myself as voluntary administrator;
- (c) to reduce all of decedent's assets to possession;
- (d) to liquidate such assets to the extent necessary;
- (e) to set apart property exempt from execution to the persons entitled thereto and file with the clerk a statement of such property;
- (f) after obtaining a receipt or release from the State Treasurer and a clearance from the State Tax Commission, but in no event earlier than forty-five days after filing this affidavit, to pay the expenses of administration, decedent's reasonable funeral expenses and his debts and liabilities in the order provided by law;

- (g) to distribute the balance of decedent's assets to the person or persons and in the amount or amounts provided by law or b the terms and provisions of decedent's Will, if any, filed herein; and
- (h) to file with the clerk an account of all receipts and disbursements as soon as possible, but in no event later than three months after filing this affidavit unless for good cause an extension is granted by the clerk."

Section 6 (1) ¶9. Amended and approved to read as follows:

"9. I understand this proceeding is not a determination of estate and inheritance tax liability, if any. I will file all tax returns required by law and I will obtain a receipt or release from the State Treasurer and a clearance from the State Tax Commission."

Section 6 (1) ¶10. [Formerly ¶11, original ¶10 deleted 1/23/65.] Amended and approved to read as follows:

"10. If letters testamentary or of administration are granted in the State of Oregon at any time during my administration, I acknowledge that my powers as voluntary administrator shall cease and thereupon I will file a report and account of my administration as provided in subsection (3) of this section and deliver to the executor or administrator all assets of the estate in my possession."

Section 6 (1) ¶11. [Formerly ¶12.] Approved.

Section 6 (1) ending. Wprd "(Affiant)" deleted from beneath signature line. Approved as thus amended.

Section 6 (2). Lisbakken to prepare draft for consideration of Affidavit of Witness to Will.

Section 6 (3). Formerly subsection (2). Amended to delete "FOR SETTLEMENT OF ESTATE" from title of document, and beginning paragraph amended and approved to read as follows:

"The undersigned voluntary administrator of the above entitled Estate reports and accounts as follows:"

Section 6 (3) ¶1. Lisbakken to revise and prepare draft of accounting for consideration.

Section 6 (3) ¶2. Deleted. See following.

Section 6 (3) ¶2. [Formerly ¶3.] Amended and approved to read as follows:

"2. I have paid all claims against the estate which were duly presented to me and approved."

Section 6 (3) ¶3. [Formerly ¶4.] Amended and approved to read as follows:

"3. I have filed all tax returns required by law and I have filed with the clerk the receipt or release of the State Treasurer and the clearance of the State Tax Commission."

Section 6 (3) ¶4. [Formerly ¶5.] Approved.

Section 6 (3) Verification. Note: Page numbered 16-A should be numbered 17-A Word "(Affiant)" deleted from beneath signature line, approved as thus amended.

Section 6 (4). Formerly subsection (3). Title amended to read as follows:

"STATEMENT OF EXEMPT PROPERTY SET APART UNDER SMALL ESTATES ACT"

Statement amended to delete "have" from phrase "that I have set apart property".

List amended to read as follows:

<u>"Date</u>	<u>Description</u>	<u>Net Value</u>
	Name, relationship and age of person to whom property was set apart:	"

Word "(Affiant)" deleted from beneath signature line.

Approved as thus amended.

Section 7 (1). After discussion to effect "appropriate record" would allow clerk to keep same type of record he now keeps for probate, without separate docket, subsection (1) was amended and approved to read as follows:

"(1) The clerk shall keep an appropriate record of all proceedings in estates settled under the Small Estates Act."

Section 7 (2). Amended and approved to read as follows:

"(2) Upon the filing of each affidavit made pursuant to section 5 (3) of this 1965 act the clerk shall forthwith:"

Section 7 (2) (a). Amended and approved to read as follows:

"(a) File a copy of the affidavit with the clerk of each other county in the state of Oregon in which real property of the decedent is situated, and"

At Frohnmayer's invitation, two-day meeting scheduled for July, none in August. Friday and Saturday, July 16 and 17, 1965, in Medford, to begin at 9:00 o'clock A.M. Friday morning.

Next meeting of Committee to be February 27, 1965, at 9:00 o'clock A.M., in Judge Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

Meeting adjourned at 5:40 P.M.

LAW IMPROVEMENT COMMITTEE

ADVISORY COMMITTEE ON PROBATE LAW REVISION

MESSAGE FROM ROBERT LUNDY TO WPC, BY TELEPHONE, OF FRIDAY, FEBRUARY 12, 1965, P.M.

Mr. Lundy asks WPC to convey this message to Judge Dickson and the members of the Advisory Committee On Probate Law Revision: The Office of the Legislative Counsel is not in a position to employ a secretary to be assigned to this advisory committee. However, on February 11, 1965, the Law Improvement Committee authorized the allocation of \$450 to this advisory committee for defraying the costs of secretarial work and supplies for six meetings, with the expectation that that total sum of \$450 will allow \$75 for each of six meetings of this advisory committee, or not exceeding \$50 for secretarial services, and not exceeding \$25 for supplies, for each of the six meetings.

Mr. Lundy suggested that, inasmuch as the office of the Legislative Counsel is not in a position to place the secretary for this advisory committee on the payroll of that office, the secretary's single statement for services rendered at all the six meetings may be presented to the office of the Legislative Counsel in a lump sum after such six meetings will have been held. Also, Mr. Lundy stated that the Law Improvement Committee is expected to meet on Friday, February 19, 1965, at 2:00, p.m., in the Senate Judiciary Committee room, which is Room 113 of the Capitol, and to consider, at that meeting, the Bill for an Act amending and supplementing the Guardianship and Conservatorship statutes, and any other proposed bills that this advisory committee may submit to the Law Improvement Committee at or before its meeting of February 19, 1965, including, for example, the "Small Estates Act", possibly. Mr. Lundy commented that this advisory committee perhaps would delegate some member, or members, of this advisory committee to appear before the Law Improvement Committee at its meeting of Friday, February 19, 1965.

AGC reports that, on Friday, February 12, 1965, the Secretary of the Senate Judiciary Committee assured him that the first eight bills for acts submitted by this advisory committee to the Law Improvement Committee were introduced in the Senate in the afternoon of Friday, February 12, 1965, as bills of the Senate Judiciary Committee, introduced at the request of the Law Improvement Committee.