

MEETING NOTICE

On Saturday, February 27, 1965, at 9:00 a.m. in Room 244, Multnomah County Courthouse, Portland, Oregon, there will be a special joint meeting of the Oregon Probate Law Revision Advisory Committee and the Oregon State Bar Committee on Probate Law and Procedure, to consider further revisions of the "Small Estates Act" and House Bill 1614.

Enclosed herewith is a copy of the letter sent to Senator Mahoney on February 19, 1965, which is self-explanatory.

WILLIAM L. DICKSON, Chairman  
Oregon Probate Law Revision  
Advisory Committee

CIRCUIT COURT OF OREGON  
FOURTH JUDICIAL DISTRICT-DEPT. NO. 7  
COUNTY COURT HOUSE  
PORTLAND 4, OREGON

WILLIAM L. DICKSON  
JUDGE

February 19, 1965

Honorable Thomas R. Mahoney  
Senate Judiciary Committee  
State Capitol Building  
Salem, Oregon

Dear Senator:

Thank you and the other members of the Senate Judiciary Committee for introducing the bills hereinafter mentioned.

The names, addresses and telephone numbers of members of the interested committees appear on the attached lists.

The committee members who have been selected to appear before the Senate Judiciary Committee and present the sponsors' views are indicated below:

- S. B. 302 Sale of real property by administrator or executor, filing of objections, conforms with guardianship law (originated with Bar Committee as Bill No. 3).  
Mr. Herbert Swift Mr. Kenneth E. Shetterly
- S. B. 303 Reopening of estate (originated with Bar Committee as Bill No. 8).  
Mr. Duncan L. McKay Mr. Stanton W. Allison
- S. B. 305 Revocation of Will by subsequent marriage (originated with Bar Committee as Bill No. 4).  
Mr. Duncan L. McKay Mr. Nicholas Jaureguy
- S. B. 306 Power of sale under will, clarification (originated with Bar Committee as Bill No. 6).  
Mr. Herbert Swift Mr. Kenneth E. Shetterly
- S. B. 307 Confirmation of sale of real property by executor or administrator (originated with Advisory Committee as Bill No. 9).  
Mr. Herbert Swift Mr. Kenneth E. Shetterly
- S. B. 308 Appraisal of decedent's estate, (originated with Bar Committee as Bill No. 5).  
Judge William L. Dickson Mr. Wallace P. Carson

Thomas R. Mahoney

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- S.B. 315 Abolishes dower and curtesy (originated with Advisory  
Committee as Bill No. 1)  
Mr. Stanton W. Allison Mr. Clifford E. Zollinger
- S.B. 328 Declaration of marital right (originated with Advisory  
Committee as Bill No. 2).  
Mr. Herbert Swift Mr. Kenneth E. Shetterly

When appropriate, will you please have Mr. Murray, the  
Committee Clerk, invite the gentlemen indicated above to appear before  
the Committee.

With kind personal regards, I am,

Sincerely yours,  
  
WILLIAM L. DICKSON  
Probate Judge

WLD:mb

Encl. - Roster of members of the Oregon  
Probate Law Revision Advisory  
Committee and Oregon State Bar  
Committee on Probate Law and  
Procedure.

## ADVISORY COMMITTEE

Probate Law Revision

February 27, 1965

### Minutes

Meeting convened at 9:00 a.m., Saturday, February 27, 1965, in Judge Dickson's courtroom, Portland. Butler, Frohnmayer, and Gooding absent. McKay, Bettis, Swift and Richardson, of Committee on Probate Law and Procedure present. Also present were Zikes, Martin and Lisbakken.

Dickson reported Senate Bills 302, 306 and 307 were to be considered by the Senate Judiciary Committee on Wednesday, March 17, 1965, at 1:00 p.m., Room 113, State Capitol Building, Salem.

Dickson advised that pursuant to telephone conversation with Frohnmayer, summer meeting might better be held in August rather than in July, and it is presently scheduled in Medford August 13 and 14, 1965, beginning at 9:00 a.m. Friday morning, August 13. Each member individually shall write Frohnmayer about reservations for rooms and for Shakespeare tickets.

Minutes of February 13, 1965 meeting distributed to all present.

### 1. GUARDIANSHIP AND CONSERVATORSHIP BILL

Zollinger reported on his appearance before Law Improvement Committee in Salem, February 19, 1965, which committee examined proposed amendments to Code and decided to prepare bill for introduction; but determined that Lundy should rephrase Section 2 (4) (a) (A) to provide request for accountings shall be in writing, and Section 2 (4) (a) (D) to provide a copy of the request shall be filed with the court; and recommended that this Committee reconsider Section 12 with regard to conservatorships and the lack of provision for termination other than by death of the ward in view of fact elaborate provision therefor had been made with regard to guardianships.

Zollinger felt conservatorship should have similar provisions to those of guardianship. Carson questioned necessity where ward is still living. Zollinger asked whether conservator could pay expenses before accounting to ward, his own fees and his attorneys' fee, and if not, why not. Zollinger stated he was unable to give committee reason for this Committee's omission of these provisions except perhaps it had been press of time. Dickson said Lundy had suggested Committee perhaps had been influenced by present Code. Zollinger believed in any event lack should be remedied, suggested incorporation by reference of Section 7.

Allison mentioned lack of time limitation on winding up of conservatorship was probably not good, that a time limit might be more important where there is a competent person waiting to receipt assets. Zollinger pointed out same situation arises in guardianship where incompetent ward becomes competent, as is dealt with in Section 7. Allison noted incorporation by reference had been used in conservatorship section relative to termination by death of ward, and that it seemed just as important to make provision for termination by other than death.

Motion carried to incorporate by reference into conservatorship section provisions of guardianship section for winding up upon termination other than by death of ward, and to delegate to Zollinger the chore of preparing appropriate provisions.

## 2. SMALL ESTATES ACT

Lisbakken reported on her appearance before Law Improvement Committee in Salem on February 19, 1965, which committee approved in principle H.B. 1614 (the original draft of the Small Estates Act, dated 10/7/64) and approved in principle changes and revisions now being made by this Committee. Reported that revised Act should be in Salem by Tuesday, March 2, 1965, and that discussion was to be entertained with Keith Skelton as to the possibility of jacking up title on H.B. 1614 to incorporate in its entirety the revised Act. Reported questions had been raised with regard to lack of provision for notice to State Public Welfare Commission (which notice was subsequently provided at this meeting), and with regard to constitutionality of non-claim provisions barring rights of creditors and whether Section 7 (4), which provides "The giving of notice hereunder is not jurisdictional," might prove Act vulnerable to charge of lack of due process. Martin advised test is sufficiency of notice, and after subsequent discussion Committee decided to provide for two publications of notice and to extend time limit for presentation of claims to 30 days in order to remove any doubt. Martin advised time schedule would then be as follows:

15 days after filing Affidavit before first publication required,

30 days to file claim,

10 days to reject claim,

30 days for rejected claimant to petition for probate.

Thus, a total of 85 days. Allowing an extra 5 days, a 90 day period would be required after filing Affidavit as minimum before distribution may be made. Act revised accordingly.

Dickson reported Sam Haley had suggested possibility of having a State agency or officer, e.g., the Secretary of State, provide forms for use under the Act, rather than to have them provided by the clerk, and in this manner forms could be conveniently changed from time to time without waiting for legislature to create new forms. Discussion ensued, during which Zollinger stated he would have no objection to Supreme Court drawing forms to be used, but that he did not believe forms should be left to discretion of some state agency, and that he preferred statutory forms until Supreme Court did draw forms. Lisbakken commented State of New York had provided statutory forms, apparently on theory concept is novel and precisely detailed forms are basic to carrying out purpose and intent of Act.

Bettis noted that having forms printed by a state agency would be additional tax burden on the people; whereas, if particular forms are mandatory by statute, then commercial printing firms will promptly print and sell them.

Motion carried to delete provision in Act that forms shall be provided by clerk.

Motion carried to declare forms shall be statutory and obligatory.

Discussion follows with regard to various sections of the Act. The Act as revised will be distributed when printed copies are available. Prepared for review by Allison on March 1, 1965, and subsequent immediate delivery to Lundy. References below are to section numbers as they appear in original 10/7/64 draft, as previously revised.

Section 6. Provision made 2/13/65 minutes that forms "shall be provided by the clerk" is deleted.

Section 6 (1) ¶8 (f). Amended to provide lapse of 90 days before payment of expenses and liabilities.

Section 6 (1) ¶8 (g). New provision is here inserted to require voluntary administrator to send notice to claimant that his claim has been allowed or rejected.

Section 6 (1) ¶8 (h) [formerly (g)] . Approved.

Section 6 (1) ¶8 (i) [formerly (h)] . Amended to provide Report and Account shall be filed no later than six months after filing of Affidavit.

Section 6 (1) ¶10. Amended to limit any letters testamentary which might be issued to those issued "pursuant to the order of any court" in accordance with subsequent decision by Committee to provide in Act for issuance of letters of voluntary administration.

Section 6 (2). Draft of Affidavit of Witness to Will form which was sent to members by mail prior to this meeting substantially revised by Committee, with final review by Zollinger, Allison and Carson.

Section 6 (3) ¶1. Draft of accounting (page 15 of 10/7/64 draft) mailed to members prior to meeting approved after Lisbakken noted word "all" should be deleted from statement of payment of claims, and after deletion of parenthetical statement appearing at bottom of page.

Section 6 (3) ¶2. Inserted statement by voluntary administrator that he has sent notice to each creditor of allowance or rejection of claim.

Section 7 (2) (b). Allison revised form of notice.

Section 7 (2) (c). Amended to include provision notice shall be sent to State Public Welfare Commission.

Section 7 (2) (d). Inserted former subsection (4) of Section 7 after Martin stated purpose of clause stating notice not jurisdiction was to refer to notice to be given to heirs at law, devisees and legatees, and to State Treasurer, Tax Commission and Public Welfare, and intent was not to apply it to notice to creditors.

Section 7 (3). Discussion as to sufficiency of notice, manner in which it should be published, whether publication should be by voluntary administrator or by clerk. Approved two publications by clerk in form set forth.

Section 8 (1). Upon Allison's suggestion, deletion of provision that claims must be made "in the form provided by law for claims presented to duly appointed executors and administrators," and time of presentation amended to refer to first publication of notice pursuant to decision to require two publications. Amended to provide claim shall be thereafter barred, rather than to bar any suit or action thereon.

Section 8 (2). After discussion in which it was generally agreed any claim not allowed should be rejected, not merely deemed denied, this section was deleted.

Section 8 (2) [formerly (3)] . Amended to include direction voluntary administrator shall allow or reject claims and notify claimants thereof in writing within 10 days.

Recessed for lunch at 12:45 p.m. Reconvened at 2:00 p.m. Present were Dickson, Zollinger, Jaureguy, Allison and Carson, also Martin and Lisbakken.

Section 9. Entire section rewritten to provide for issuance of letters of voluntary administration as evidence of authority to act and form therefor set forth similar to statutory forms in Code for letters testamentary and letters of administration.

Section 10 (1) and (1) (a). Approved.

Section 10 (1) (b). Determined this section unnecessary . Lisbakken advised of similar provisions in small estates acts of other states; Allison believed voluntary administrator should not be able to subject others to legal costs without their permission. Deleted.

Section 10 (1) (b) [formerly (c)] . Provision for sufficiency of deed or bill of sale of voluntary administrator set forth separately as a new Section 12. Clarified with respect to sale of assets so as to specifically limit such sale to one for cash.

Section 10 (1) (c) [formerly (d)] . Approved.

Section 10 (1) (d) [formerly (e)] . After language changes, approved.

Section 10 (1) (e) [formerly (f)] . Advisability of allowing discretion unlimited in distribution to minors and incompetents questioned. Determined it would be wise to allow distribution under \$1,000 as in guardianship code. Subsequent provision made in Section 11 [new subsection] (7) for duty of voluntary administrator upon distribution to follow guardianship provisions. Subsection deleted.

Section 10 (2). Surplusage. Deleted.

Section 10 (2) [formerly (3)] . Approved.

Section 11 (1). Amended in accordance with previous decision (see 7/13/65 minutes, Section 6 (1) ¶8 (a)), and thus approved.

Section 11 (2). Now subsection (5).

Section 11 (3). Now subsections (2), (6) and (7).

Section 11 (3) [new] . New subsection inserted to require voluntary administrator to notify creditors of allowance or rejection of claims.

Section 11 (4). Decision to require voluntary administrator to report all sales made within 10 days thereafter (see Section 6 (1) ¶8 (d)), and amended accordingly.

Section 11 (5). Now subsection (8).

Section 11 (6). Determined unnecessary and deleted.

Section 11 (7). Now subsection (9).

Section 12. A new Section 12 has been inserted with regard to effect of deed or bill of sale (see Section 10 (1) (b) [formerly (c)] above). Former Section 12 (1) revised. Former Section 12 (2) deleted, after noting penal liability exists without being here set forth. Former Section 12 (3) revised. Section 12 is now Section 13.

Section 13. Amended to provide 90 days rather than 45 days, moved and now appears as subsection (2) of Section 2.

Section 14 (1). Moved and now appears as subsection (1) of Section 2.

Section 14 (2). Determined provisions for comity unnecessary and section deleted.

Section 14 (new). After discussion as to amount at which filing fee should be set, new section inserted to provide for a filing fee of \$35.00.

Next meeting of Committee to be March 13, 1965 at 9:00 o'clock a.m., in Judge Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

Meeting adjourned at 6:30 p.m.