

ADVISORY COMMITTEE
Probate Law Revision

First Meeting, April 18, 1964

Suggested Agenda

1. Remarks by Allan G. Carson, Chairman of Law Improvement Committee.
2. Scope of probate law revision project (that is, areas of law to be covered by project).
3. Manner and methods of proceeding on project, including:
 - a. Division of project into segments.
 - b. Use of subcommittees.
 - c. Use of more than one research assistant.
 - d. Time schedule.
 - e. Generation of suggestions (general publicity, meetings with representatives of interested groups, direct contact with interested groups and individuals, etc.).
 - f. Liaison with interested groups and individuals (for example, Bar committees, probate judges and clerks, public agencies, etc.).
 - g. Kinds of services and facilities desired by advisory committee.
4. Next meeting of advisory committee.

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Minutes

The first meeting of the advisory committee was convened at 9:30 a.m., Saturday, April 18, 1964, in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland. All members were present. Also present were Allan G. Carson, Chairman of the Law Improvement Committee; William E. Love, a member of the Law Improvement Committee; Sam R. Haley, Legislative Counsel; and Robert W. Lundy, Chief Deputy Legislative Counsel.

The following materials were given to each member:

(1) A loose-leaf notebook in which the member may file various materials received by him. Lundy pointed out that the notebook presently contained a roster of the members, a suggested agenda for the meeting, a copy of Staff Report No. 1 and a reproduction of comments and suggestions, including sources thereof, pertaining to Oregon's probate and related law that had been received by the Legislative Counsel's office in recent years. Lundy requested that each member check the information pertaining to the member on the roster and report any inaccuracies or omissions.

(2) A binder containing the text of the principal Oregon statutes pertaining to probate and related matters -- ORS titles 12 (Estates of Decedents) and 13 (Guardianships, Conservatorships and Trusts) -- and the Oregon annotations (including pertinent Oregon Supreme Court decisions, federal court decisions, Oregon Attorney General opinions and Oregon Law Review material) to those statutes.

(3) A copy of the recently enacted 1963 Iowa Probate Code, with comments of the special bar committee responsible for the revision project out of which that new code arose.

1. Remarks by Allan G. Carson, Chairman of Law Improvement Committee. Allan Carson commented briefly on the selection by the Law Improvement Committee of probate law as the subject of its first law revision project and the appointment of the advisory committee to assist on the project. He called attention to Staff Report No. 1 ("Probate Law Revision in Oregon -- An Initial Staff Report to the Advisory Committee on Probate Law Revision," dated April 1964), and indicated that this report appeared adequately to reflect the background on the project and the role of the advisory committee as contemplated by the Law Improvement Committee. With respect to the scope of the project, he expressed the hope that the advisory committee would ultimately consider the entire area of probate and related law.

2. Scope of Probate Law Revision Project. Chairman Dickson asked committee members for their suggestions on the scope of the probate law revision project.

Allison expressed the view that the committee should not limit itself as to the scope of the project since changes in the probate law that might be proposed by the committee necessarily may involve adjustment of law not strictly probate in nature. Chairman Dickson commented on the work done in the early 1940's on a proposed new Oregon probate code by the Bar Committee on Probate Law and Procedure and its chairman, Mr. Lowell Mundorff, and indicated that since that time no comprehensive study on the subject had been made. After further discussion, Chairman Dickson announced that it appeared to be the prevailing opinion at this time, among advisory committee members and others, that the scope of the committee's work should be all-inclusive so that the best possible probate code would be proposed as the ultimate result of the project.

3. Manner and Methods of Proceeding on Project.

a. In general. Jaureguy expressed the opinion that the committee should decide whether to start with the present Oregon probate code and proceed to propose changes therein, as was done in the case of the revision of the guardianship and conservatorship statutes in 1960-1961, or to start with some other probate code -- for example, the Model Probate Code -- and work from that. He indicated that his preference would be to start with the present Oregon probate code. Allison agreed with Jaureguy's preference.

Zollinger suggested that criticisms of the new Oregon guardianship and conservatorship statutes enacted in 1961 be assembled and that the committee begin its work by proposing necessary improvements in these statutes. He expressed his belief that proposed legislation in this area could be decided upon and prepared in time for submission to the 1965 session of the Oregon legislature. Lundy called attention to the "Comments and Suggestions Received" section of each committee member's notebook, and indicated that a number of the comments and suggestions reproduced therein were addressed to the new guardianship and conservatorship statutes. He stated that the Legislative Counsel Committee had undertaken, but had been unable to complete, a follow-through consideration of these new statutes in 1962, and that the comments and suggestions referred to had been received in response to questionnaires and publicity initiated as a part of the follow-through.

Zollinger suggested that dower and curtesy was another area that the committee might consider and make recommendations on in the form of proposed legislation for submission to the 1965 legislature.

After further discussion, Jaureguy moved, seconded by Riddlesbarger, that the committee begin its work by proceeding with an immediate

program to produce something concrete in the form of proposals for improvement of a few selected areas of Oregon's probate law for submission to the 1965 legislature, and that determination of a long-range program be postponed until the immediate program is well under way and such determination can more intelligently be made. Jaureguy offered an amendment to his motion, which was accepted, that one area to be included in the immediate program be the proposal of necessary improvements in the guardianship and conservatorship statutes. Amended motion carried unanimously.

Chairman Dickson requested that committee members suggest particular areas of the probate law that might be in need of improvement, and that might be included in the immediate program. Frohnmayer described a typical situation in which a person, while not yet legally incompetent, is gradually approaching that status and needs some legal representative device to assist in taking care of his property or personal affairs, guardianship not yet being available or appropriate. He stated that present law does not provide a satisfactory method of determining the point of change from competency to incompetency. He suggested that this problem be investigated and some solution sought.

Love stated that, as Vice Chairman of the Bar Committee on Judicial Administration, he would appreciate an expression of opinion by the advisory committee as to whether the Bar committee should proceed to make a recommendation to the 1965 legislature concerning the transfer of probate jurisdiction to the circuit court in all counties, or whether the Bar committee should postpone this matter until such time as the advisory committee had an opportunity to look into the matter and perhaps make its own recommendation. Chairman Dickson agreed that the matter was one in need of study, and commented on a number of problems involved. Zollinger suggested that the Bar committee proceed with its own study, and then perhaps might wish to report its findings and recommendations to the advisory committee.

Zollinger suggested that summary proceedings for administration of small estates of decedents was an area of the probate law that should be considered with a view to improving and facilitating such proceedings. Butler and Wallace Carson agreed, Butler adding that the committee would be doing the public a real service if it could devise means of speeding up such proceedings and making them less expensive.

Chairman Dickson suggested that consideration be given to expanding to cover a widower the present provisions of law relating to allowances of temporary support for a widow. [Note: See, for example, ORS 116.005 and 116.015.]

Chairman Dickson appointed Zollinger as chairman of a subcommittee to coordinate efforts to specify the selected areas of the probate law to be covered by the committee's immediate program,

and to submit recommendations thereon at the next meeting of the committee. Zollinger was authorized to designate other members of the committee to serve on his subcommittee.

b. Use of subcommittees. The use of subcommittees for various aspects of the probate law revision project was discussed. It was agreed that subcommittees should be employed where appropriate, and that since members of the committee reside in widely separated parts of the state, particular tasks may be assigned to individual members, who may then solicit such assistance as they choose from that available in their immediate vicinity.

c. Staff assistance. Haley commented on the availability of personnel of the Legislative Counsel's office to perform research and other staff functions for the committee, and the limitations necessarily imposed on that availability by reason of other functions required to be performed by that office. Lundy pointed out that his availability to serve the committee during the balance of 1964 was limited to between three and four months by reason of other commitments. The possibility of securing research assistance other than that provided by the Legislative Counsel's office was discussed. Haley suggested that law schools might be a source of research assistance worth investigating, and mentioned the Harvard Student Legislative Research Bureau and the staff of Vanderbilt Law Review, which has recently inaugurated a section to be devoted to legislation with emphasis on law improvement, as possibilities. After further discussion, Chairman Dickson appointed Riddlesbarger to investigate the possibility of securing outside research assistance for the committee.

d. Correspondence and publicity. Chairman Dickson requested that all communications from members of the Bar or from the public received by members of the committee that pertain to the work of the committee be forwarded to Lundy, who will acknowledge receipt on behalf of the committee and catalogue the comments, suggestions and other information contained in such communications for submission to and consideration by the committee.

Frohnmayr suggested that a letter, signed by Chairman Dickson as chairman of the committee, be sent to each probate judge in Oregon calling attention to the probate law revision project and requesting comments and suggestions. He also suggested that a similar letter be sent to the president of each local bar association. After further discussion, it was agreed that such letters should be sent to all probate judges, presidents of local bar associations, deans of the three Oregon law schools, banks, trust companies, title insurance companies, county clerks (probate court clerks) and state and federal tax agencies (i.e., State Tax Commission, State Treasurer and District Director of Internal Revenue).

Lundy explained that the Legislative Counsel's office had been attempting to publicize the activities of the Law Improvement Committee by sending news releases, usually following meetings of that committee, to the Oregon State Bar Bulletin, to newspapers published

in the cities where committee members reside and to representatives of wire services headquartered in the State Capitol. It was agreed that the same procedures should be employed in an effort to publicize the activities of the advisory committee.

Zollinger suggested that, in the interests of publicizing the probate law revision project and the work of the advisory committee, Staff Report No. 1 be submitted to the editorial staff of the Oregon Law Review for its view as to the possibility and suitability, with whatever revision necessary, of publication of the report in a forthcoming issue of the Review. Riddlesbarger was asked to check into this matter. Frohnmayer requested that, if Staff Report No. 1 is accepted for publication in the Oregon Law Review, the report specifically credit Mr. Lowell Mundorff for his work as Chairman of the Bar Committee on Probate Law and Procedure in connection with the proposed new Oregon probate code drafted by that committee in the early 1940's.

e. Liaison with Oregon State Bar and Bar committees. Allison pointed out that he currently is Chairman of the Bar Committee on Probate Law and Procedure, and asked that the advisory committee consider whether it would want recommendations by the Bar committee submitted to it, or would prefer that such recommendations be submitted to the legislature in the usual manner as Bar or Bar committee proposals, independently of the advisory committee. Frohnmayer suggested that liaison be established between the advisory committee and the Board of Governors of the Oregon State Bar, and further that Chairman Dickson, on behalf of the advisory committee, appear before the Board of Governors to call attention to the work of the advisory committee and seek to enlist the support and cooperation of the Board of Governors. Chairman Dickson agreed to do this. Chairman Dickson appointed Allison to act for the advisory committee in a liaison capacity with appropriate Bar committees, Allison's duties to commence after Chairman Dickson has contacted the Board of Governors and received their views on the matter.

f. Future meetings. The day, time and place of future meetings of the committee were discussed. It was agreed that Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland, was the best place for holding committee meetings, and that Saturday commencing at 9:30 a.m. were the best day and time. It was also agreed that, for the time being at least, meetings should be held at the call of the chairman.

Frohnmayer requested that minutes of meetings prepared and furnished to members be in abbreviated or summary form, rather than verbatim form, and that a copy of a suggested agenda be furnished to members before each meeting. Lundy indicated that every effort would be made to comply with this request.

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4. Next Meeting of Advisory Committee. The next meeting of the advisory committee was scheduled for Saturday, May 16, at 9:30 a.m., in Chairman Dickson's courtroom, 244 Multnomah County Courthouse, Portland.

The meeting was adjourned at 12 noon.