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June 24, 1965

To: All Members of the Oregon Probate Law Revision
Advisory Committee and Oregon State Bar Committee
on Probate Law and Procedure

From: William M. Keller, Secretary
Committee on Probate Law and Procedure
215 American Bank Building
Portland, Oregon 97205

MEETING NOTICE

DATE: Friday, August 13, 1965
Saturday, August 14, 1965

TIME: 9:00 A. M. to 2:00 P. M.

PLACE: Rogue Valley Country Club, Medford, Oregon

AGENDA: Continuation of discussion of ORS Chapters
111, 112, 113, 114, 115

NOTE: If you have not already made reservations
please write or telephone Mr. Otto J.
Frohmayer immediately.

Please indicate by signing and returning the enclosed colored copy to
William B. Keller, Secretary, 215 American Bank Building, Portland,
Oregon, whether or not you will be able to attend the meeting on August 13 and 14.

PROBATE LAW REVISION
ADVISORY COMMITTEE

MINUTES

August 14, 1965

MR. FROHNMAYER: In the meeting on Friday, August 13th, the committee, after some discussion of ORS 111.020, determined that it had better spend its time in discussing a proposed new draft of the sections 111.020 and 111.030, which deal with the descent and distribution of real and personal property. At its meeting on Friday, the Committee approved the definition section with the exception that Mr. Zollinger raised a question as to whether or not in the definition of claims there should be included encumbrances against property which had not been assumed by the decedent. That is in subsection (1). In subsection (2), which is the degree of kinship, we determined that this section should probably be taken out of the definition and rules of construction section and be placed into a separate section, since it is substantive law. We made a change in the definition 5, which defines now net estate as being real and personal property of the decedent, other than the property set apart to the surviving spouse or minor children, family allowances and claims against the estate. On section 6, which defines personal property, it was agreed that we probably should use the definition that is contained in the model probate code. Section 10, which discusses right of representation -- no decision was reached on that. The definition under the uniform code -- that is the one under consideration -- should be considered in connection with 10. Section 12 of the definition section we agreed should be taken out of the definition section and moved down in Article 6, which deals with the share

of other than surviving spouse, and should be made part of the subsection (3) of that section. The Committee approved Article 2 of the proposed new draft and we left our discussion of the question of title and possession of property, which is Article 3.

(Discussion of Article 3, Title and Possession of Property by Messrs. Frohnmayer and Zollinger.)

. . .

MR. ALLISON: What you have just read, I think, changes the law in this respect: It does in a sense, although perhaps not as clearly as I might think, state that the property becomes the property of the heirs at law, as far as the real property is concerned, but as I understand the law at the present time, the title to the personal property in the estate does not vest at the moment of death in the same sense that the real property does. In other words -- and I am subject to correction on this -- but as I understand the situation, the personal property of the estate is in the control of the administrator and in a sense rather different from that of the real property. At least, I think that should be discussed as to whether this is bringing in any changes in our present law --

MR. FROHNMAYER: I think this is well taken. I think the decisions are as you say. But I think it's also true that that was an anomaly in our law and is an anomaly, because really, you can have the same problems with personal property as you can with real property. Where is the title going to be to personal property if no administrator or executor is appointed? So really, I think it opens up a vacuum in the law.

MR. ALLISON: I have no quarrel with that, but I think it should be an understanding, if that is the law -- and I think it is at the present time in a certain way -- that this is a change in our rule and I don't think there is anything

wrong with it.

MR. FROHNMAYER: As we have said in this memo, we think the uniform code will come out this way.

THE CHAIRMAN: Is there any objection on the part of anyone to this particular change, if it be a change? Hearing none, then, let's approve the language as read. For the record, do you want to read that paragraph as corrected?

MR. FROHNMAYER: Yes.

"Article 3, Title and Possession of Property. When any person dies intestate, his estate shall be subject to the rights of the surviving spouse and minor children and any claims for which the estate is liable. Subject to the foregoing, the real and personal property shall pass to the persons who succeed to his estate as his heirs as provided in this chapter. Such property shall be subject to the possession of the personal representative, who shall have the power to sell the same as provided in this title."

MR. ZOLLINGER: Should we strike "the" before "power"?

MR. FROHNMAYER: I think that's agreeable.

MR. ALLISON: Mr. Chairman, this may not be too important, but I think the language, if it can, should stress the fact that the transfer of the title is instantaneous at the time of death, and for that reason, I would prefer that it would read, "Subject to the foregoing, the real and personal property pass --". I don't like "shall pass". That sounds as though it's something that happens in the future. Can't we say, "the real and personal property pass to the persons who succeed --"?

(Discussion of Mr. Allison's suggestion by Chairman Judge Dickson, Mr. Frohnmayer, Mr. Allison and Mr. Zollinger.)

. . .

THE CHAIRMAN: All right. Now, Allison, will you read that for the record?

MR. ALLISON:

"When any person dies intestate, the title to his real and personal property passes to the persons who succeed to his estate as his heirs, as provided in this chapter, subject to the rights of the surviving spouse and

minor children and any claims for which the estate is liable. The personal representative -- "

--Will you dictate your part of it?

MR. ZOLLINGER:

"The personal representative shall be entitled to possession of the property during administration and shall have power to sell the same as provided in this title."

(Further discussion of language changes followed.)

. . .

THE CHAIRMAN: All right. In order to pass this and get along, I'll delegate the redrafting of this section to Dave and to Mr. Allison and Mr. Zollinger and you can revamp it at our first opportunity. Would that be satisfactory?

(Further discussion of language changes.)

. . .

THE CHAIRMAN: Well, let's let it stand, with the understanding that if there is any cleanup in the language to be accomplished, why Cliff and Stanton will take care of it.

. . .

(Discussion of the language of Article 4, Share of Surviving Spouse If Decedent Has Left Issue by Messrs. Frohnmayr, Allison, Zollinger, Jaureguy and Shetterly.)

. . .

MR. FROHNMAYER: This is paragraph 4, Share of Surviving Spouse If Decedent Left Issue.

"If decedent dies intestate, leaving surviving spouse and issue, the surviving spouse shall have an undivided one-half interest in the net estate of the decedent in addition to the portion of the estate set apart to him for family allowances, homestead rights and exempt properties."

(Further discussion resulted in noting change in the title of Article 4 by deleting the words "has left" and inserting the word "leaves", so that the

title of Article 4 reads, "Share of Surviving Spouse If Decedent Leaves Issue.")

. . .

(Discussion of language of Article 5, Share of Surviving Spouse If Decedent Leaves No Issue by Messrs. Frohnmayr, Zolliner, Jaureguy, resulted in no conclusion about language changes.)

. . .

THE CHAIRMAN: Let's pass that for the moment and go to number 6 and come back to it if need be, because there seems to be some diversity of opinion on the merits.

(Discussion of the language of Article 6, Share of Other Than Surviving Spouse by Messrs. Frohnmayr, Jaureguy, Zollinger and Gilley.)

. . .

MR. ZOLLINGER: Well, I think my motion would be that we preserve the substance of Section 6 as it is now offered in this memorandum.

THE CHAIRMAN: Is there a second to that motion?

MR. FROHNMAYER: I second the motion.

(A vote is taken on the motion by a show of hands of the Advisory Committee and the same by the Bar Committee.)

THE CHAIRMAN: The motion is carried by both the Bar Committee and the Advisory Committee, so we then have, by our action today, I take it, reversed our position, and we will approve Section 6, unless there are some other --

MR. FROHNMAYER: We have some other provisions here.

(Further discussion of Section 6 by Messrs. Allison and Gooding.)

THE CHAIRMAN: Now, Tom, you restate your motion, His motion will be directed to Roman numeral six, Share of Others Than Surviving Spouse.

MR. GOODING: And it will be as follows:

"The part of the net estate not taken by the surviving spouse shall pass (a) to the issue of the intestate equally if they are in the same degree of kinship, or if in unequal degree, those of more remote degrees take by representation."

THE CHAIRMAN: Is there a second to that motion?

MR. ALLISON: I'll second it.

THE CHAIRMAN: It has been moved and seconded that the language of

Sections 1 and 2 and the introductory phrase of Roman numeral six be changed to read as follows:

"The part of the net estate not taken by the surviving spouse shall pass (a) to the issue of the intestate equally if they are in the same degree of kinship, or if in unequal degree, those of more remote degrees take by representation."

Now, is there any discussion on the motion?

(Further discussion on the motion.)

. . .

THE CHAIRMAN: Mr. Tom Gooding moves and Mr. Stanton Allison seconds that we adopt the following language for paragraph number Roman numeral six in lieu of the introductory statement and subsections number (1) and (2):

"The part of the net estate not taken by the surviving spouse shall pass (1) to the issue of the intestate equally if they are in the same degree of kinship, or if they are in unequal degree, those of more remote degree take by representation."

Now, is there any further discussion on the motion?

(There was no further discussion. A vote was taken on the motion first by a show of hands of the Advisory Committee and then the same by the Bar Committee, the motion being carried on behalf of both committees.)

. . .

THE CHAIRMAN: Let me make this correction in the language here, which I think would be satisfactory to all concerned, in the introductory part of Roman

numeral six:

"The part of the net estate not passing to a surviving spouse shall pass (1) to the issue of the intestate equally if they are in the same degree of kinship, or if in unequal degree, those of more remote degree take by representation;"

MR. ZOLLINGER: This is acceptable only if we define representation substantially conforming to the model code.

THE CHAIRMAN: Yes, that's right.

(Discussion of Article 6, (3), as augmented by Article 1, definition 12, dealing with the right of survivorship in personal property descending to surviving parents of the intestate.)

. . .

THE CHAIRMAN: Mr. Butler has moved that we consider the estate of inheritance in personal property vesting in the surviving parents as a separate estate rather than a joint one with right of survivorship as far as personal property is concerned, and the motion is seconded by Mr. Duncan McKay. Now, is there any further discussion on this?

(Further discussion by Messrs. McKay, Shetterly, Zollinger and Bettis.)

. . .

MR. BUTLER: Well, my motion was that where real property of an intestate is descending to parents, that they take as tenants in common, not as tenants by the entirety.

THE CHAIRMAN: Do you wish to second that motion, Mr. McKay?

MR. MCKAY: Yes.

(The motion was voted upon by a show of hands by the Advisory Committee and the same by the Bar Committee and was lost in both instances.)

MR. BUTLER: I make the same motion with respect to personal property, except instead of being tenants by the entirety, it's joint ownership with right of survivorship.

THE CHAIRMAN: And you want it to descend to them separately?

MR. BUTLER: As tenants in common.

(The motion was voted upon by a show of hands by the Advisory Committee and was lost, and then was carried by a vote of the Bar Committee. There was then further discussion of the motion by Messrs. Bettis, Shetterly, Riddlesbarger, McKay and Frohnmayer.)

. . .

THE CHAIRMAN: I concur with what Otto has just said, and it seems to me, in summarizing the situation, the Advisory Committee, which is the one that has the primary burden of doing the work, has agreed by a preponderance that we should leave it in as suggested and we meet opposition from the Bar Committee evenly divided if we excluded Mr. Butler, who is also on the Advisory Committee. The Bar Committee is not here in force today, and probably, for our discussion this morning, we should take it as accepted by the Advisory Committee and later on, when we have the full Bar Committee, we could go back to the matter and discuss it, because as Otto has suggested, it is a point of variance and we are certainly going to have some repercussions from the Bar on all points of variance. So we could take it up at a later time, and if there is no objection, we'll pass it now for the time being as being acceptable to the Advisory Committee and review it later. Would that be satisfactory?

(Discussion of subparagraph 3.)

. . .

THE CHAIRMAN: Tom Gooding makes the motion and Mr. Allison seconds the motion that the language of the uniform act be adopted for our subparagraph 3, that language being as follows:

"If no issue or parent survive the intestate to the issue of either parent by representation."

Now, is there any further discussion on the motion?

(There was no further discussion. The motion was voted upon and was accepted unanimously by both the Advisory Committee and the Bar Committee.)

. . .

(Discussion of subsections (4) and (5) by Messrs. Frohnmayer, Zollinger and Gooding.)

. . .

THE CHAIRMAN: It has been moved by Mr. Zollinger and seconded by Mr. Frohnmayer that we adopt the language of subparagraphs D, E and F of the model code with the word "Oregon" inserted in the parentheses. Now, these subsections D, E and F will be renumbered to be subsections (4), (5) and (6), and the language of (4) will read as follows:

"If no issue, parent or issue of either parent survives the intestate to the surviving grandparents of the intestate."

Subsection E, which will be renumbered (5), will read as follows:

"If no issue, parent, issue of either parent or grandparent survives the intestate to the issue of deceased grandparents in the nearest degree of kinship to the intestate within the fifth degree, computed according to rules of the civil law per capita without representation."

Subparagraph F will be renumbered to be (6) and will read as follows:

"If no person takes under the preceding paragraphs, to the state of Oregon."

Now, is there any discussion on the motion? If no, are you ready for the question?

(The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Zollinger moves that we adopt the language of the uniform act, and it's seconded by Mr. Allison. Is there any discussion on the motion?

MR. JUAREGUY: I think the motion ought to specify the section, which is section 302.

MR. ZOLLINGER: I would like to include, as long as it is my motion, a provision that this shall be separately stated and not among the definitions.

MR. FROHNMAYER: We would agree with that.

(The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Otto Frohnmayer moves that we adopt the language of section 303 of the uniform code and Mr. Zollinger seconds the motion. Are you ready for the question?

(The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Frohnmayer moves that we adopt the language of section 304 and the motion is seconded by Mr. Zollinger and section 304 will then read as follows:

"(Partial intestacy) If a will validly disposes of only part of the net estate of the decedent, the part not disposed of by the will shall pass according to the law governing intestate succession."

Is there any discussion on the motion?

(There was no discussion on the motion. The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Otto Frohnmayer moves and the motion is seconded by Mr. Zollinger that we adopt the language of section 305, which reads as follows:

"(Time of determining relationship: After born heirs.) The relationships existing at the time of the death of the intestate govern the inheritance of the net estate of the intestate, but persons conceived before his death and born alive thereafter inherit as though they were alive at the time of the death of the intestate."

Is there any discussion?

(There was no discussion on the motion. The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Frohnmayer moves we adopt the language of section 306 and the motion is seconded by Mr. Clifford Zollinger and that section reads as follows:

"Section 306 (Persons of the half blood) Persons of the half blood inherit the same share that they would inherit if they were of the whole blood."

(The motion was voted upon and carried by both committees.)

. . .

THE CHAIRMAN: Mr. Otto Frohnmayer moves the adoption of the language of section 307 and Mr. Zollinger seconds the motion. The language will read as follows:

"(Persons related through two lines.) A person related to the intestate through more than one line is entitled only to the share which is largest."

(The motion was voted upon and carried by both committees.)

. . .
THE CHAIRMAN: Mr. Otto Frohnmayer moves the adoption of section 308 and the motion is seconded by Mr. Clifford Zollinger. The language reads as follows:

"(Adopted children.) For the purpose of inheritance to, through, and from a legally adopted child, the child shall be treated as the natural child of the adopting parents and he shall not be treated as the child of his natural parents for the purpose of intestate succession."

Is there any discussion?

(Discussion of the motion followed and Mr. Zollinger suggested deletion of the word "Legally". There was no objection to Mr. Zollinger's amendment.)

THE CHAIRMAN: Now I'll put the question this way: It has been moved by Mr. Otto Frohnmayer and seconded by Mr. Zollinger that we adopt the language of section 308, reading as follows:

"(Adopted children.) For the purposes of inheritance to, through, and from an adopted child, the child shall be treated as the natural child of the adopting parents and he shall not be treated as the child of his natural parents for the purpose of intestate succession."

(Further discussion.)

. . .
THE CHAIRMAN: Now the language will read:

"(Adopted children.) For the purposes of inheritance to, through, and from an adopted child, the child shall be regarded as the natural child of the adopting parent, and he shall not be regarded as the child of his natural parent for the purpose of intestate succession."

(The motion was voted upon and carried by both committees.)

. . .
THE CHAIRMAN: Mr. Otto Frohnmayer moves the adoption of this language, seconded by Mr. Zollinger:

"(Illegitimate children.) For the purposes of inheritance to, through, and from an illegitimate child (subparagraph 1) the child shall be treated as the legitimate child of his mother; and (subparagraph 2) the child shall also be treated as the legitimate child of the father if (subparagraph A) the father marries the mother; (subparagraph B) the father acknowledges in writing that the child is his own; (subparagraph C) a court establishes the paternity of the child during the father's lifetime."

Is there any discussion ?

(There was further discussion but no conclusion reached. The meeting was adjourned for the lunch hour.)

. . .

(The meeting was reconvened after the lunch hour.)

THE CHAIRMAN: Now, dealing with intestate succession, we are back to the point of whether or not we want to deal any further with adopted children and illegitimate children at this meeting. I take it from what has been said before lunchtime that in the absence of some report from Mr. Shetterly, we prefer to continue that until our next meeting. Is that correct? Hearing no voice to the contrary, I assume it is. So do you want to go now to section 310 on advancements, Otto?

MR. FROHNMAYER: No, Mr. Shetterly has that one assigned to him, too. I would suggest that we try to clarify our thinking on 111.060, which is one of our sections having to do with felonious death.

(Then followed discussion of section 111.060, corruption of the blood, discussion of whether or not felonious death of the decedent should preclude lineal descendants of the killer from inheritance, and discussion of whether conviction for the felonious death of the decedent should conclusively prevent the killer from inheritance so that the necessity of a subsequent civil trial would be eliminated, contributions to the discussion being made by Messrs. Frohnmayer, Zollinger, Chairman Dickson and Allison.)

MR. FROHNMAYER: To get this thing to a head, Mr. Chairman, I move that we approach this problem on the basis that -- to defeat the inheritance the killing must be with a felonious intent. And these might not be the precise

words, but it would mean that the murderer would have to be convicted of either first or second degree murder.

(Further discussion.)

. . .

MR. ZOLLINGER: Mr. Chairman, just as a matter of interest, I would like to read what I have just been jotting down here. I don't think it is anything we want to adopt, but I think it raises some of the ideas we have been talking about: One who with felonious intent takes or procures the taking of the life of another shall not inherit from such person or receive any part of his estate by will or otherwise or receive any part of the proceeds of insurance upon the life of such person. Upon intestate death of such decedent, his estate shall pass as though he were not survived by such person. Conviction of the crime of murder in the first or second degree shall establish conclusively that the life of the decedent was taken with felonious intent. In the absence of such conviction, the fact may be determined in civil litigation.

THE CHAIRMAN: That does cover the sense of our meeting here today.

. . .

(Mr. Shetterly returns to the meeting.)

THE CHAIRMAN: Ken, while you were out, we found we were stymied in connection with considering the inheritance rights of adopted children and illegitimate children and Otto indicated that you had or would be willing to do some work on that. I wonder if you could tell us what --

(Discussion of the subject by Mr. Shetterly, Frohnmayer, Allison, Zollinger and Riddlesbarger.)

. . .

THE CHAIRMAN: Well, at least we are at this stage: We haven't anything concrete that we are ready to act upon today. Now, the question arises, Ken -- do you want to develop it further and present it at our next meeting?

MR. SHETTERLY: I would be glad to do that.

THE CHAIRMAN: And there will be these three sections, then, dealing with adopted children, illegitimate children and advancements. I think the effect of adoption and illegitimacy is treated in 111.210 and the following section and advancements in 111.110.

. . . .

THE CHAIRMAN: Mr. Zollinger moves that we adopt section 311 of the uniform code and that was seconded by Mr. Allison.

(Discussion of the motion.)

THE CHAIRMAN: In lieu of section 311, Mr. Zollinger moves that we incorporate a provision to abolish dower and curtesy and that we use the language that is used in the bill presented to the Legislature.

MR. ZOLLINGER: No, not necessarily. Let's leave that open -- that we add language which preserves existing rights.

THE CHAIRMAN: Yes, all right.

. . . .

THE CHAIRMAN: In summary, the matters on the agenda for the next meeting will be, number 1, the revision of these proposed code provisions by Otto and Dave Frohnmayer; secondly, the report from Ken Shetterly on the appropriate provisions to be used for adopted and illegitimate children; next, the provisions relating to advancements by Ken Shetterly; next, the provisions relating to the so-called laws concerning corruption of the blood by the

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Frohnmayers; and last, the abolition of dower and curtesy by Mr. Allison.
And it will be hoped that at that September meeting we can conclude our
discussions on those.

. . .

MEETING ADJOURNED