

Section 6. Appointment of probate commissioner. The court may appoint the clerk of the circuit court or some other suitable person at the county seat to act as probate commissioner. If the clerk of the circuit court is appointed probate commissioner, his deputy has the power to perform any act as probate commissioner that his principal has, and his principal is responsible for his conduct.

Section 7. Powers of probate commissioner. (1) The probate commissioner may act upon uncontested petitions for appointment of special administrators, for probate of wills and for appointment of personal representatives, guardians and conservators, to the extent authorized by rule of court. Pursuant thereto he may make and enter orders on behalf of the court admitting wills to probate, appointing special administrators and personal representatives, guardians and conservators, and setting the amount of the bond as prescribed in ORS _____ and _____, subject to his orders being set aside or modified by the judge.

(2) Any matter presented to the probate commissioner may be referred by him to the judge.

(3) Unless set aside or modified by the judge, the orders of the probate commissioner shall have the same effect as if made by the judge.

Section 8. ORS 3.101 is amended to read:

3.101. District court judge acting as circuit court

Proof of the giving of notice must be made on or before the hearing and filed in the proceeding. Proof shall be by an admission of service, a return receipt from the postal authorities, or an affidavit or certificate of the person giving notice or by the publisher of the newspaper publishing the notice or by one of his employees.

Section 11. Waiver of notice. A guardian, a guardian ad litem, a conservator, or a person who is not incompetent or a minor may waive notice by a writing, signed by him or his attorney and filed in the proceeding, or by his appearance at the hearing.

Section 12. Filing objections to petition. Any interested person, on or before the day set for a hearing, may file written objections to a petition previously filed.

Section 13. Proof of documents; certification. (1)
Proof of documents pursuant to this code may be made as follows:

(a) Of a will, by a certified copy thereof.

(b) That a will has been probated or established in a foreign jurisdiction, by a certified copy of the order admitting the will to probate or evidencing its establishment.

(c) Of letters, by a certified copy thereof. The certification shall include a statement that the letters have not been revoked.

(2) A document or order filed or entered in a foreign jurisdiction may be proved by a copy thereof, certified by a

clerk of the court in which such document or order was filed or entered, or by such other official as shall have legal custody of the original document.

Section 14. Translations. If a document or part thereof is not in the English language, a translation certified by the translator to be accurate may be attached thereto and shall be regarded as sufficient evidence of the contents of the document, unless objection is made thereto. In the absence of objection, if any person relies in good faith on the accuracy of the translation he shall not be prejudiced thereafter because of its inaccuracy or because of proceedings to set aside or modify the probate on the ground of its inaccuracy.

Section 15. Stenographic record. The judge may of his own motion, or on the request of an interested person, direct the reporter of his court to attend any hearing and make a stenographic record of the same.

Section 16. ORS 3.130 is amended to read:

3.130. Transfer of judicial jurisdiction of certain county courts to circuit courts. (1) All judicial jurisdiction,

[circuit court and the] Supreme Court[, or either, as directed].

Section 23. Repeal of existing statutes. ORS 3.140,
3.180, 3.340, 5.040, 5.050, 5.070, 5.100, 109.345, 109.370,
116.535, 117.510, 117.520, 117.530, 117.540, 117.550, 117.560
and 118.500 are repealed.

in the county, in the absence or disability of the circuit court judge.

Section 9. Pleadings and mode of procedure. Section 9 is identical with ORS 115.010 with minor editorial changes. The only change in substance from the ORS section is that the proposed section provides for a verification by the attorney for a petitioner or by the agent of a corporation.

Section 10. Notice; method and time of giving. This useful informative section is taken verbatim from Section 1-205 of the 1967 draft Uniform Probate Code. No comparable provision appears in our present probate code.

Section 11. Waiver of notice. This is taken from Section 1-206 of the 1967 Draft Uniform Probate Code.

Section 12. Filing objections to petition. This is from Section 1-208 of the 1967 draft Uniform Probate Code.

Section 13. Proof of documents; certification. (1) This section is based on Section 7 of the Uniform Probate of Foreign Wills Act. For comparable legislation see ORS 43.110 and 115.160. Paragraph (1)(b) should be read with reference to Section 5 of the chapter on Initiation of Probate or Administration relating to establishing foreign wills.

The Uniform Probate of Foreign Wills Act differs from the present code in that it dispenses with the requirement that, in addition to the certification by the clerk, there must also be furnished "a certificate of the chief judge or presiding

magistrate that the certificate is in due form and made by the clerk or other person having the legal custody of the record." This double certification has caused problems in procuring copies of documents from other jurisdictions where the certifying clerk was not familiar with our requirements. It seemed to your committees that a simple certification is all that need be required.

Paragraph (1)(c) follows ORS 86.130 in requiring a statement in the certified copy of letters that the letters have not been revoked.

Section 14. Translations. This section is based on Section 7 of the Uniform Probate of Foreign Wills Act. There is no comparable provision in the present Oregon Revised Statutes, although the utility of such a provision seems obvious. The principal effect of the section, other than providing a guideline for the certification, is to provide protection to a person who relies upon the translation in good faith when no objection has been made to it.

Section 15. Stenographic record. This section merely codifies present practices.

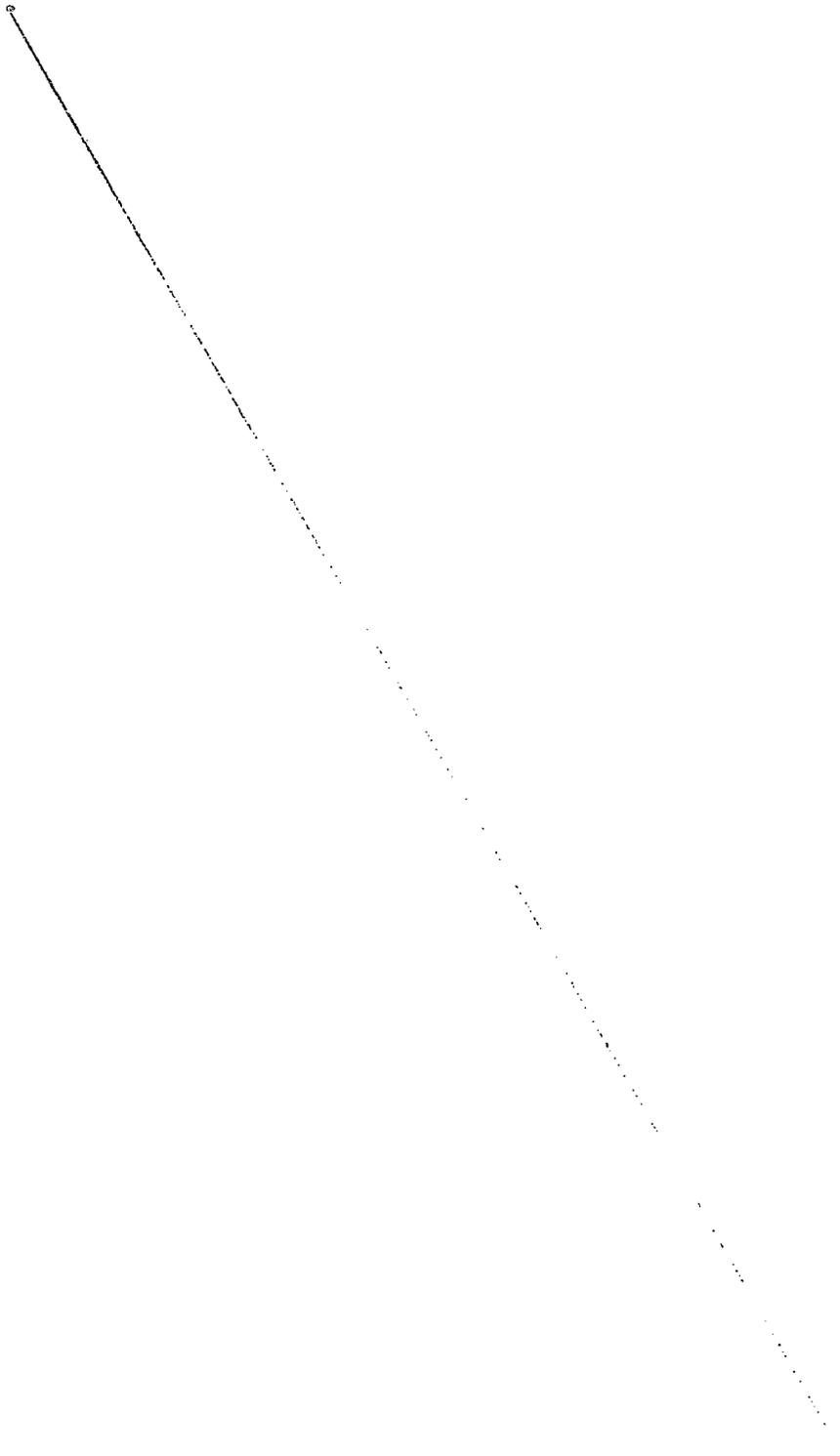
Sections 16 through 22 amend existing sections of the Oregon Revised Statutes to implement the transfer of probate jurisdiction to the circuit court.

determination of title to and rights in property claimed by or against personal representatives, guardians and conservators; administration, settlement and distribution of estates of decedents; construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding; guardianships and conservatorships, including the appointment and qualification of guardians and conservators, and the administration, settlement and closing of guardianships and conservatorships and supervision and disciplining of personal representatives, guardians and conservators.

Section 5. Powers of probate court. The circuit court's general legal and equitable powers are applicable to effectuate its probate jurisdiction, punish contempts, and carry out its determinations, orders, judgments and decrees as a court of record with general jurisdiction in law and equity, and the same validity, finality, and presumption of regularity shall be accorded to its determinations, orders, judgments and decrees, including determinations of its own jurisdiction, as to those of a court of record with general jurisdiction in law and equity. The court sitting in probate shall have full, legal and equitable powers to make declaratory judgments, as provided in ORS 28.010 to 28.160, in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. No issue determined in a probate court shall be tried again on appeal or otherwise

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reexamined in a manner other than those appropriate to
issues determined by a court of record with general juris-
diction in law and equity. Appeals shall be to the Supreme
Court as in other cases.



AMENDED COMMENTS

Introduction

The proposed chapter would accomplish the following: First, it would vest all jurisdiction of probate matters in the Circuit Court. Second, it would broaden the powers of the district judge to act as circuit court judge in the absence of the circuit judge in all probate matters, and would appoint court commissioners to act on behalf of the circuit court judge in ex parte initiation of probate proceedings and probate of wills; thirdly, it would spell out the general jurisdiction and powers of the probate court and the mode of procedure to be followed in probate matters; and, fourthly, it would include amendments or repeals of existing statutes to transfer all probate matters to the circuit court and provide for pending matters.

We quote a memorandum by Mr. Robert W. Lundy, Legislative Counsel, outlining the present situation in Oregon.

"At the present time in Oregon original probate jurisdiction is vested in three courts -- county courts, district courts and circuit courts. Prior to July 1, 1967, of the 36 counties of the state, the county court was the probate court in 14, the district court in 11 and the circuit court in 11. That lineup of probate courts will change somewhat as a result of legislation enacted at the 1967 regular session of the Oregon legislature. The new lineup will show the county court as the probate court in 12 counties, the district court in 9 and the circuit court in 15.

"The following table shows the probate court in each county prior to July 1, 1967. The effect of the 1967 legislation (i.e., Senate Bill 117, now chapter 533,

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Oregon Laws 1967) is indicated by [bracketing] those counties deleted and underscoring those counties added. Dates, in parentheses, following counties added are the effective dates of the probate jurisdiction transfers.

<u>"County Court</u>	<u>District Court</u>	<u>Circuit Court</u>
Baker	Benton	Clackamas
[Columbia]	Clatsop	Columbia (7/1/68)
Crook	Coos	Douglas
Gilliam	Curry	Jackson
Grant	Deschutes	Josephine
Harney	Hood River	Klamath
Jefferson	Lincoln	Lake
Malheur	[Linn]	Lane
Morrow	[Umatilla]	Linn (7/1/68)
Sherman	Wasco	Marion
[Tillamook]	Washington	Multnomah
Union		Polk
Wallowa		Tillamook (7/1/68)
Wheeler		<u>Umatilla</u> (7/1/67)
		<u>Yamhill</u>

"Taking into consideration 1967 legislation, there will be 11 counties with no mandatory resident circuit court judge, no district court and probate jurisdiction not in the circuit court. However, circuit court judges in fact reside in 3 of these 11 counties (i.e., Grant, Malheur and Union Counties). The 11 counties are: Crook*, Gilliam#, Harney, Jefferson*, Malheur, Morrow, Sherman, Union, Wallowa and Wheeler#.

(Notes: *A circuit court judge must be a resident of or have his principal office in Crook, Deschutes or Jefferson County. #A circuit court judge must be a resident of or have his principal office in Gilliam, Grant or Wheeler County. See subsection (4) of ORS 3.041, as amended by section 7, chapter 533, Oregon Laws 1967.)"

The proposed chapter was presented to the two committees by a subcommittee consisting of the Honorable John C. Warden, Coquille, the Honorable Joseph J. Thalhofer, Bend, Mr. John M. Copenhaver, Redmond, Mr. R. Thomas Gooding, LaGrande, and Mr. Duncan L. McKay, Bend. It was felt that this subcommittee

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would be familiar with the problems covered by this chapter.

Detailed comments follow:

Section 1. Transfer of probate jurisdiction to circuit court. This is the general section transferring present jurisdiction from county and district courts to the circuit court.

Section 2. Transfer of pending proceedings: appeals. In addition for providing for transfer of pending matters from the lower courts to the circuit court, this makes it clear that pending appeals in the circuit court under the sections cited shall be conducted under the provisions of law existing prior to the effective date of the new code.

Section 3. Probate jurisdiction vested in the circuit court. As noted above, we have over past legislative sessions achieved a partial and piecemeal transfer of probate jurisdiction from many of the county courts. The problem has been not one of theory, in that there has been agreement among attorneys and legislators that jurisdiction in probate matters should not be vested in a county court which does not require the county judge to have legal training or background. The problem has been one of practical application. Your committees agreed that the appointment of probate commissioners in those counties where they are needed to institute noncontested probate proceedings, plus giving full probate jurisdiction to district judges in the absence of the circuit court judge, would meet the present objections to vesting all probate jurisdiction in

the circuit court.

Section 4. Probate jurisdiction. It seemed advantageous that a section outlining the general areas of probate jurisdiction be included in the probate code, rather than be placed in piecemeal fashion in a large number of separate chapters, as in the present Oregon Revised Statutes. An examination of the present code sections, particularly ORS 3.140, will indicate that the enumerated jurisdiction is that presently granted to and exercised by our probate circuit courts. The general language is taken from Section 1-201 of the 1967 draft of the Uniform Probate Code.

Section 5. Powers of probate court. The general language of this section is from Section 1-201 of the 1967 draft Uniform Probate Code, but the reference to the power to make declaratory judgments is taken from Section 10 of the 1963 Iowa Probate Code. Although it is not believed that the section alters, restricts or increases the present powers of our circuit probate court, it seems proper that these powers be enumerated.

The chapter would repeal ORS 117.510 to 117.560 entitled "Determination of Heirship". This chapter was originally enacted as chapter 331, Session Laws of 1913. Many years later, in 1927, the Uniform Declaratory Judgments Act, ORS 28.010 to 28.160, was enacted. The present chapter on

Determination of Heirship and the Uniform Declaratory Judgments Act are discussed in Sections 864 and 865, Oregon Probate Law and Practice, Jaureguy and Love. The work mentions the ambiguities in the Determination of Heirship chapter and suggests that the Uniform Act gives broader powers, particularly in regard to rights to real property. Since under the Uniform Act a declaratory judgment proceeding may now be brought in the probate court it seemed advisable to your committees that the present jurisdiction of the probate court to operate under this Act should be preserved, and that the more limited chapter on Determination of Heirship be repealed. The inclusion in the proposed chapter of the power of the probate court to operate under the Uniform Act seems advisable in view of the proposed repeal of the present chapter on Determination of Heirship.

Section 6. Appointment of probate commissioner. The necessity and utility of this provision to meet the problems of temporary absence of the circuit judge in many of our counties has been commented upon already. It is more and more the pattern in the new probate codes to have purely formal matters handled by a registrar or a court commissioner, or the clerk

of the court. For a comparable section see section 22 of the 1963 Iowa Probate Code.

Section 7. Powers of probate commissioner. It will be noted that the powers of the probate commissioner are limited to ex parte proceedings for initiation of probate, including the appointment and qualification of personal representatives and the probate of wills. Any order of the probate commissioner may be set aside or modified by the judge. The probate commissioner is given a right to refer a matter upon which he may have doubt or uncertainty to the circuit judge.

Your committees felt that problems caused by temporary unavailability of the circuit court judge or the district court judge were primarily those of delaying the institution of the probate proceeding. Matters which must be set for hearing, approval of accounts and orders for partial and final distribution may well await the availability and convenience of the circuit court judge. With the broad powers given to the personal representative under the present code it is felt that there will be no material delay or inconvenience in the few matters which would have to be considered and heard by the circuit court judge.

Section 8 would amend present ORS 3.101 to provide that the district court judge can exercise the powers and duties of the circuit court judge in any matter in probate pending in

in the county, in the absence or disability of the circuit court judge.

Section 9. Pleadings and mode of procedure. Section 9 is identical with ORS 115.010 with minor editorial changes. The only change in substance from the ORS section is that the proposed section provides for a verification by the attorney for a petitioner or by the agent of a corporation.

Section 10. Notice; method and time of giving. This useful informative section is taken verbatim from Section 1-208 of the 1967 Uniform Probate Code. No comparable provision now appears in our present probate code.

Section 11. Waiver of notice. This is taken from Section 1-209 of the 1967 Uniform Probate Code.

Section 12. Filing objections to petition. This is from Section 1-211 of the Uniform Probate Code.

Section 13. Stenographic record. This section is found in Section 1-212 of the 1967 Uniform Probate Code.

The following sections 14 through 20 inclusive amend existing sections of the Oregon Revised Statutes to carry out the transfer of the probate jurisdiction to the circuit court.

Proposed revised Oregon probate code
POWERS AND JURISDICTION OF PROBATE COURT
Amended 2nd Draft
February 2, 1968

Prepared by
Stanton W. Allison

Amended Comparative Section Table

<u>Draft Sections</u>	<u>ORS Sections</u>
1	3.180, 5.040, 5.070, 5.100, 109.345, 109.370, 116.535
2	5.050, 109.370, 116.535, 118.500, 118.700, 179.650
3	
4	3.140, 3.340
5	3.340, 117.510, 117.520, 117.530, 117.540, 117.550, 117.560
6	
7	
8	3.101
9	115.010
10	
11	
12	
13	
14	3.130
15	5.080
16	7.230
17	21.313
18	46.092
19	179.650
20	179.670
21	Repealer

Proposed revised Oregon probate code
POWERS AND JURISDICTION OF PROBATE COURT
2nd Draft
November 9, 1967

Prepared by
Stanton Allison

POWERS AND JURISDICTION OF PROBATE COURT

Section 1. Transfer of probate jurisdiction to circuit court. All probate jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof and the district courts and the judges thereof in all counties are transferred to the circuit courts and the judges thereof.

Section 2. Transfer of pending proceedings; appeals.

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

(2) Appeals pending in a circuit court under ORS 109.370, 116.535, 118.500, subsection (3) of 118.700 or subsection (1) of ORS 179.650 on the effective date of this Act shall be conducted and completed pursuant to the provisions of law in effect immediately before that date.

Section 3. Probate jurisdiction vested in the Circuit Court. Jurisdiction of all probate matters shall be vested in the circuit court.

Section 4. Probate jurisdiction. Probate jurisdiction of the circuit court shall include, but not be limited to, appointment and qualification of personal representatives; probate and contest of wills; determination of heirship;

determination of title to and rights in property claimed by or against personal representatives, guardians and conservators; administration, settlement and distribution of estates of decedents; construction of wills, whether incident to the administration or distribution of an estate or as a separate proceeding; guardianships and conservatorships, including the appointment and qualification of guardians and conservators, and the administration, settlement and closing of guardianships and conservatorships and supervision and disciplining of personal representatives, guardians and conservators.

Section 5. Powers of probate court. The circuit court's general legal and equitable powers are applicable to effectuate its probate jurisdiction, punish contempts, and carry out its determinations, orders, judgments and decrees as a court of record with general jurisdiction in law and equity, and the same validity, finality, and presumption of regularity shall be accorded to its determinations, orders, judgments and decrees, including determinations of its own jurisdiction, as to those of a court of record with general jurisdiction in law and equity. No issue determined in a probate court shall be tried again on appeal or otherwise reexamined in a manner other than those appropriate to issues determined by a court of record with general jurisdiction in law and equity. Appeals shall be to the Supreme Court as in other cases.

Section 6. Appointment of probate commissioner. The court may appoint the clerk of the circuit court or some other suitable person at the county seat to act as probate commissioner. If the clerk of the circuit court is appointed probate commissioner, his deputy has the power to perform any act as probate commissioner that his principal has, and his principal is responsible for his conduct.

Section 7. Powers of probate commissioner. (1) The probate commissioner may act upon uncontested petitions for appointment of special administrators, for probate of wills and for appointment of personal representatives, to the extent authorized by rule of court. Pursuant thereto 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.

(2) Any matter presented to the probate commissioner may be referred by him to the judge.

(3) Unless set aside or modified by the judge, the orders of the probate commissioner shall have the same effect as if made by the judge.

Section 8. ORS 3.101 is amended to read:

3.101. District court judge acting as circuit court

judge in certain cases; orders; effect. (1) Whenever by reason of absence, illness or injury there is not within a county in which a district court organized under ORS 46.025 is located, a judge of the circuit court able to preside over and conduct the business of the circuit court, any judge of the district court for the county may, within the county, exercise the powers and duties of judge of the circuit court for the county in so far as they pertain to:

(a) The commencement, trial and disposition of juvenile court matters and proceedings.

(b) Sanity inquests and the commitment of mentally diseased persons.

(c) The appointment of guardians ad litem for infants and others under legal disability.

(d) The granting of orders to make service of summons by publication.

(e) The granting of preliminary injunctions.

(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) If the district court judge is not a party to, or directly interested in, the suit, action or proceeding, and if the question or matter passed upon by him has not been presented to, or passed upon by, any circuit court judge, any decree, judgment or order given and made by a district court judge pursuant to his powers and duties under this section, when filed and entered in the suit, action or proceeding, has the same effect as though given and made by a circuit court judge.

Section 9. Pleadings and mode of procedure. No particular pleadings or forms thereof are required in the exercise of jurisdiction of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of a suit in equity except as otherwise provided by statute. The proceedings shall be in writing and upon the petition of a party in interest or the order of the court. All petitions, reports and accounts shall be verified by at least one of the persons making them or by his attorney, or in case of a corporation by its agent. The court exercises its powers by means of:

- (1) A petition of a party in interest.
- (2) A notice to a party.
- (3) A subpoena to a witness.
- (4) Orders and decrees.
- (5) An execution or warrant to enforce its orders and decrees.

Section 10. Notice; method and time of giving. Except

as otherwise specifically provided in this Code, whenever notice is required to be given of a hearing on any petition or other matter upon which an order is sought, the petitioner or other person filing the same shall cause notice of the time and place of hearing thereof to be given to all persons interested in the subject of the hearing or to their attorney, if they have appeared by attorney or requested that notice be sent to their attorney, in any one or more of the following ways and within the following times:

(1) By mailing a copy thereof at least 14 days before the time set for the hearing by ordinary, certified or registered mail addressed to them at their post-office address given in their request for notice or at their offices or places of residence, if known;

(2) By delivering a copy thereof to them personally or to their attorney at least 5 days before the time set for the hearing;

(3) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy thereof in a newspaper of general circulation in the county where the hearing is to be held at least once a week for three weeks, the last publication of which is to be at least 10 days before the time set for the hearing.

Upon good cause shown the court may change the requirements as to the method or time of giving notice for any hearing.

Proof of the giving of notice must be made on or before the hearing and filed in the proceeding. Proof shall be by an admission of service, a return receipt from the postal authorities, or an affidavit or certificate of the person giving notice or by the publisher of the newspaper publishing the notice or by one of his employees.

Section 11. Waiver of notice. A guardian, a guardian ad litem, a conservator, or a person who is not incompetent or a minor may waive notice by a writing, signed by him or his attorney and filed in the proceeding, or by his appearance at the hearing.

Section 12. Filing objections to petition. Any interested person may file written objections to a petition for probate of a will or appointment of a personal representative at any time before the court admits the will to probate or makes an appointment pursuant to the petition. Any interested person, on or before the day set for a hearing may file written objections to a petition previously filed.

Section 13. Stenographic record. The judge may of his own motion, or on the request of an interested person, direct the reporter of his court to attend any hearing and make a stenographic record of the same.

Section 14. ORS 3.130 is amended to read:

3.130. Transfer of judicial jurisdiction of certain county courts to circuit courts. (1) All judicial jurisdiction,

authority, powers, functions and duties of the county courts and the judges thereof, except the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the circuit courts and the judges thereof:

(a) In Clackamas, Columbia, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Marion and Tillamook Counties.

(b) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790, to the extent that the judicial jurisdiction, authority, powers, functions and duties were not previously transferred as provided by law.

(2) All judicial jurisdiction, authority, powers, functions and duties of the county court and the judge thereof, except [probate jurisdiction, authority, powers, functions and duties and] the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the circuit court and the judges thereof in Coos County.

(3) All matters, causes and proceedings relating to judicial jurisdiction, authority, powers, functions and duties transferred to the circuit courts and the judges thereof under this section, and pending in a county court on the effective date of the transfer, are transferred to the circuit court for the county.

Section 15. 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, it] shall be proceeded with in this circuit court as upon appeal from the county court to the circuit court.

Section 16. ORS 7.230 is amended to read:

7.230. Probate and juvenile court records to be kept separate. In so far as may be practicable and convenient the records and proceedings pertaining to probate and juvenile matters shall be kept separate from the other records and proceedings of the circuit courts [described in ORS 3.130].

Section 17. ORS 21.313 is amended to read:

21.313. Probate contest filing fees. There shall be collected by the county clerk of each county, at the time of filing of the initial papers in any will contest proceedings in the [probate department of those] circuit courts [having probate jurisdiction], a fee of \$6, in addition to all other fees; and from each defendant appearing separately in any such will contest proceeding, a fee of \$3 in addition to all other fees.

On the first working day of each month, the clerk shall forward all money so collected during the preceding month to the State Treasurer, with a detailed statement showing the purposes for which the fees were paid. The money shall be deposited in the General Fund and become available for general governmental expenses.

Section 18. ORS 46.092 is amended to read:

46.092. Transfer of certain judicial jurisdiction of certain county courts to district courts. [(1)] All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except juvenile court jurisdiction, authority, powers, functions and duties and the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the district courts and the judges thereof:

(a) In Benton, Clatsop, Curry, Deschutes, Hood River, Lincoln, Linn, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

(b) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790, to the extent that the judicial jurisdiction, authority, powers, functions and duties were not previously transferred as provided by law.

[(2) All probate jurisdiction, authority, powers, functions and duties of the county court and the judge thereof are transferred to the district court and the judge thereof in Coos County.]

Section 19. ORS 179.650 is amended to read:

179.650. Appeal from order declaring financial ability; order effective until modified. (1) An appeal may be taken from the determination of the court under ORS 179.640, [to the circuit court within 30 days in the ordinary manner for taking appeals from orders of the probate court and,] within 30 days from the entry of the order of the [circuit] court, to the Supreme Court.

(2) An order declaring the financial ability of the person at the state institution, his estate or his responsible relatives to pay for care and maintenance of such person under ORS 179.640 shall remain in full force and effect, unless modified by subsequent court or board orders.

Section 20. ORS 179.670 is amended to read:

179.670. District attorney's duties in proceedings under ORS 179.640. (1) The district attorney, on request of the Board of Control or on request of the probate court, shall appear in the probate court proceedings under ORS 179.640 and present evidence with respect to the ability of the person at the state institution or his estate or responsible relatives to pay the cost of his care and maintenance in the state institution.

(2) If the Board of Control feels aggrieved by the order of the probate court under ORS 179.640, the district attorney on request of the board shall appeal such cause to the

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[circuit court and the] Supreme Court [, or either, as
directed].

Section 21. ORS 3.140, 3.180, 3.340, 5.040, 5.050,
5.070, 5.100, 109.345, 109.370, 116.535 and 118.500 are
repealed.

POWERS AND JURISDICTION OF PROBATE COURT
2nd Draft
November 24, 1967

Prepared by
Stanton Allison

COMMENTS

Introduction

The proposed chapter would accomplish the following: First, it would vest all jurisdiction of probate matters in the Circuit Court. Second, it would broaden the powers of the district judge to act as circuit court judge in the absence of the circuit judge in all probate matters, and would appoint court commissioners to act on behalf of the circuit court judge in ex parte initiation of probate proceedings and probate of wills; thirdly, it would spell out the general jurisdiction and powers of the probate court and the mode of procedure to be followed in probate matters; and, fourthly, it would include amendments or repeals of existing statutes to transfer all probate matters to the circuit court and provide for pending matters.

We quote a memorandum by Mr. Robert W. Lundy, Legislative Counsel, outlining the present situation in Oregon.

"At the present time in Oregon original probate jurisdiction is vested in three courts -- county courts, district courts and circuit courts. Prior to July 1, 1967, of the 36 counties of the state, the county court was the probate court in 14, the district court in 11 and the circuit court in 11. That lineup of probate courts will change somewhat as a result of legislation enacted at the 1967 regular session of the Oregon legislature. The new lineup will show the county court as the probate court in 12 counties, the district court in 9 and the circuit court in 15.

Comments

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"The following table shows the probate court in each county prior to July 1, 1967. The effect of the 1967 legislation (i.e., Senate Bill 117, now chapter 533, Oregon Laws 1967) is indicated by [bracketing] those counties deleted and underscoring those counties added. Dates, in parentheses, following counties added are the effective dates of the probate jurisdiction transfers.

<u>"County Court</u>	<u>District Court</u>	<u>Circuit Court</u>
Baker	Benton	Clackamas
[Columbia]	Clatsop	Columbia (7/1/68)
Crook	Coos	Douglas
Gilliam	Curry	Jackson
Grant	Deschutes	Josephine
Harney	Hood River	Klamath
Jefferson	Lincoln	Lake
Malheur	[Linn]	Lane
Morrow	[Umatilla]	<u>Linn</u> (7/1/68)
Sherman	Wasco	<u>Marion</u>
[Tillamook]	Washington	Multnomah
Union		Polk
Wallowa		<u>Tillamook</u> (7/1/68)
Wheeler		<u>Umatilla</u> (7/1/67)
		<u>Yamhill</u>

"Taking into consideration 1967 legislation, there will be 11 counties with no mandatory resident circuit court judge, no district court and probate jurisdiction not in the circuit court. However, circuit court judges in fact reside in 3 of these 11 counties (i.e., Grant, Malheur and Union Counties). The 11 counties are: Crook#, Gilliam#, Grant#, Harney, Jefferson#, Malheur, Morrow, Sherman, Union, Wallowa and Wheeler#. (Notes: *A circuit court judge must be a resident of or have his principal office in Crook, Deschutes or Jefferson County. #A circuit court judge must be a resident of or have his principal office in Gilliam, Grant or Wheeler County. See subsection (4) of ORS 3.041, as amended by section 7, chapter 533, Oregon Laws 1967.)"

The proposed chapter was presented to the two committees by a subcommittee consisting of the Honorable John C. Warden,

Coquille, the Honorable Joseph J. Thalhofer, Bend, Mr. John M. Copenhaver, Redmond, Mr. R. Thomas Gooding, LaGrande, and Mr. Duncan L. McKay, Bend. It was felt that this subcommittee would be familiar with the problems covered by this chapter.

Detailed comments follow:

Section 1. Probate jurisdiction vested in the Circuit Court. As noted above, we have over many legislative sessions achieved a partial and piecemeal transfer of probate jurisdiction from some of the county courts. The problem has been not one of theory, in that there has been agreement among attorneys and legislators that jurisdiction in probate matters should not be vested in a county court which does not require any legal training or background in the county judge. The problem has been one of practical application. Your committees agree that the appointment of probate commissioners in those counties where they are needed to institute non-contested probate proceedings plus giving full probate jurisdiction to district judges in the absence of the circuit court judge would meet the practical objections to vesting all probate jurisdiction in the circuit court.

Section 2. Probate jurisdiction. It seemed advantageous that a section outlining the general areas of probate jurisdiction should be included as a part of the probate code, rather than be included in piecemeal fashion in a large number of separate chapters, as in the present Oregon Revised

Statutes. An examination of the present code, particularly ORS 3.140, will make clear that the enumerated powers are those now authorized and exercised by our probate circuit courts. The general language is taken from Section 1-201 of the 1967 draft of the Uniform Probate Code.

Section 6. Powers of probate court. The comments under section 2 are generally applicable to this section, which has no specific counterpart in our present code. The language is taken from Section 1-201 of the 1967 Uniform Probate Code. It is not believed that the section alters, restricts or increases the present powers of our circuit probate courts. It seems desirable that these specific powers be spelled out in the probate code.

Section 7. Appointment of probate commissioner. The necessity and utility of this provision to meet the problems of temporary absence of the circuit judge in many of our present counties has been commented upon already. It should be noted that it is more and more the pattern in the new probate codes to have purely formal matters handled by a registrar or a court commissioner, or the clerk of the court. For a comparable section see section 22 of the 1963 Iowa Probate Code.

Section 8. Powers of probate commissioner. It will be noted that the powers of the probate commissioner are limited to ex parte proceedings for initiation of probate including the appointment and qualification of personal representatives

and the probate of wills. Any order of the probate commissioner may be set aside or modified by the judge. The probate commissioner is given a right in every case to refer a matter upon which he may have some doubt or uncertainty to the circuit judge.

Your committees felt that problems caused by temporary unavailability of the circuit court judge or the district court judge were primarily those of delaying the institution of the probate proceeding. Matters which must be set for hearing, approval of accounts and orders for partial and final distribution may well await the availability and convenience of the circuit court judge. With the broad powers given to the personal representative under the present code it is felt that there will be no material delay or inconvenience in the few matters which would have to be considered and heard by the circuit court judge.

Section 9. would amend present ORS 3.101 to provide that the district court judge exercising the powers and duties of the circuit court judge can operate in any matter in probate pending in the county, in the absence or disability of the circuit court judge.

Section 10. Pleadings and mode of procedure. Section 10 is identical with ORS 115.010 with minor editorial changes. The only change in substance from the ORS section is that the proposed section provides for a verification by the attorney for a petitioner or by the agent of a corporation.

Section 11. Notice; method and time of giving. This useful and informative section is taken verbatim from Section 1-208 of the 1967 Uniform Probate Code. No comparable provision now appears in our present probate code.

Section 12. Waiver of notice. This is taken from Section 1-209 of the 1967 Uniform Probate Code.

Section 13. Filing objections to petition. This is from Section 1-211 of the Uniform Probate Code.

Section 14. Stenographic record. This section is found in Section 1-212 of the 1967 Uniform Probate Code.

The following sections 15 through 24 inclusive amend existing sections of the Oregon Revised Statutes to carry out the transfer of the probate jurisdiction to the circuit court.

Proposed revised Oregon probate code
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1st Draft
May 3, 1967

This draft is not intended to be a final draft, and there will be other sections of the code, outside of the probate chapters, that will have to be amended. This draft is intended to serve as a point of departure by the committees.

PROBATE COURT

Section 1. The circuit court shall have exclusive jurisdiction in the first instance, pertaining to a court of probate, including jurisdiction of:

- (1) Estates of decedents and absentees, and:
 - (a) The probate and contest of wills;
 - (b) The appointment of personal representatives;
 - (c) The granting of letters testamentary and of administration; and
 - (d) The administration, settlement and distribution of estates of decedents and absentees.
- (2) The construction of will and trust instruments during the administration of the estate or trust, whether the construction is incident to the administration or a separate proceeding.
- (3) Conservatorships and guardianships, and:
 - (a) The appointment of conservators and guardians;
 - (b) The granting of letters of conservatorship or guardianship; and
 - (c) The administration, settlement and closing of conservatorships and guardianships.

- (4) Trusts and trustees, and:
 - (a) The appointment of trustees;
 - (b) The granting of letters of trusteeship;
 - (c) The administration of testamentary trusts;
 - (d) The administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument;
 - (e) The administration of express trusts where the administration of the court is invoked by the trustee, beneficiary or any interested party;
 - (f) The administration of trusts which are established by a decree of court and result in the administration thereof by the court; and
 - (g) The settlement and closing of all trusts provided in this subsection.

Section 2. (1) All probate jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof and the district courts and the judges thereof in all counties are transferred to the circuit courts and the judges thereof.

(2) 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 subsection (1) of this section, in so far as they are applicable, as though the circuit courts and the judges thereof were originally referred to in the existing laws.

Section 3. (1) All matters, causes and proceedings relating to probate jurisdiction, authority, powers, functions and duties transferred to the circuit courts and the judges thereof under section 1 of this Act, and pending in a county court or a district court on the effective date of this Act, are transferred to the circuit court for the county.

(2) Appeals pending in a circuit court under ORS 109.370, [116.535,] 118.500, subsection (3) of ORS 118.700 or subsection (1) of ORS 179.650 immediately before the effective date of this Act shall be conducted and completed pursuant to the provisions of law in effect immediately before that date, except that the circuit court shall be considered the court appealed from.

Section 3. Circuit courts are always open for the transaction of the business pertaining to a court of probate whenever the particular business may be transacted without the presence of or notice to another.

Section 4. 3.130 is amended to read:

3.130. Transfer of judicial jurisdiction of certain county courts to circuit courts. (1) All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the circuit courts and the judges thereof:

(a) In Clackamas, Douglas, Jackson, Josephine, Klamath, Lake, Lane and Marion Counties.

(b) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790, to the extent that the judicial jurisdiction, authority, powers, functions and duties were not previously transferred as provided by law.

(2) All judicial jurisdiction, authority, powers, functions and duties of the county court and the judge thereof, except [probate jurisdiction, authority, powers, functions and duties and] the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the circuit court and the judges thereof in Coos County.

(3) All juvenile court jurisdiction, authority, powers, functions and duties and the jurisdiction, authority, powers, functions and duties set forth in ORS chapters 418, 419, 420 and 444 relating to the welfare and health of juveniles and of delinquent and dependent children of the county courts and the judges thereof are transferred to the circuit courts and the judges thereof in Columbia, Curry, Lincoln, Polk, Tillamook, Umatilla, Washington and Yamhill Counties.

(4) All matters, causes and proceedings relating to judicial jurisdiction, authority, powers, functions and duties transferred to the circuit courts and the judges

thereof under this section, and pending in a county court on the effective date of the transfer, are transferred to the circuit court for the county.

Section 5. 3.140 is amended to read:

3.140. Application of laws governing county courts to circuit courts exercising judicial jurisdiction formerly vested in county courts; power to make rules. (1) The circuit courts and the judges thereof are governed by the existing laws relating to the exercise of the judicial jurisdiction, authority, powers, functions and duties transferred under ORS 3.130, in so far as they are applicable, as though the circuit courts and the judges thereof were originally referred to in the existing laws [; except that, in those counties in which probate jurisdiction, authority, powers, functions and duties are transferred under ORS 3.130, the circuit courts and the judges thereof shall have in the first instance exclusive jurisdiction in equity in all matters pertaining to probate, including the construction and declaration of rights under wills and the determination of questions of title to real, personal or mixed property thereunder, and in a probate proceeding in which a claim is rejected by the executor or administrator, the claimant may present the claim to the circuit court for allowance as provided in ORS 116.525 and 116.530, or he may, and if the executor or

administrator demands it in writing, he shall, in the first instance bring a separate plenary action or suit against the executor or administrator on the claim].

(2) The judges of the circuit courts may make all rules and regulations, not inconsistent with law, to facilitate the transaction of business and render effectual the provisions of ORS 3.130, 3.140 and 7.230.

Section 6. 5.070 is amended to read:

5.070. When court open to probate business. The [county] court is always open for the transaction of the business pertaining to a court of probate, whenever the particular proceeding or transaction is authorized to be had or done without the presence of, or notice to, another.

Section 7. 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, it shall be proceeded with in this circuit court as upon appeal from the county court to the circuit court.]

Section 8. 5.100 is amended to read:

5.100. Order of docketing and disposal of business; records of proceedings. (1) The business of the county court at each term shall be docketed and disposed of [in the following order:]

[(a) The business pertaining to a court of probate as specified in ORS 5.040.]

[(b)] by first considering county business.

(2) The proceedings and records of the court pertaining to the respective classifications of business specified in this section shall be kept in separate books.

Section 9. ORS 7.230 is amended to read:

7.230. In so far as may be practicable and convenient the records and proceedings pertaining to probate and juvenile matters shall be kept separate from the other records and proceedings of the circuit courts [described in ORS 3.130].

Section 10. ORS 21.313 is amended to read:

21.313. There shall be collected by the county clerk of each county, at the time of filing of the initial papers in any will contest proceedings in the probate department of those circuit courts [having probate jurisdiction], a fee of \$6, in addition to all other fees; and from each defendant appearing separately in any such will contest proceeding, a fee of \$3 in addition to all other fees. On the first working day of each month, the clerk

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shall forward all money so collected during the preceding month to the State Treasurer, with a detailed statement showing the purposes for which the fees were paid. The money shall be placed to the credit of the General Fund of the state, and is appropriated as provided in ORS 3.060.

Section 11. ORS 46.092 is amended to read:

46.092. (1) All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the district courts and the judges thereof in Clatsop and Hood River Counties.

(2) All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except juvenile court jurisdiction, authority, powers, functions and duties, the jurisdiction, authority, powers, functions and duties set forth in ORS chapters 418, 419, 420 and 444 relating to the welfare and health of juveniles and of delinquent and dependent children and the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the district courts and the judges thereof:

(a) In Benton, Curry, Deschutes, Lincoln, Linn, Polk, Umatilla, Wasco, Washington and Yamhill Counties.

(b) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790, to the extent that the judicial jurisdiction, authority, powers, functions and duties were not previously transferred as provided by law.

[(3) All probate jurisdiction, authority, powers, functions and duties of the county court and the judge thereof in Coos County.]

Section 12. ORS 179.650 is amended to read:

179.650. (1) An appeal may be taken from the determination of the court under ORS 179.640, [to the circuit court within 30 days in the ordinary manner for taking appeals from orders of the probate court and,] within 30 days from the entry of the order of the [circuit] court, to the Supreme Court.

(2) An order declaring the financial ability of the person at the state institution, his estate or his responsible relatives to pay for care and maintenance of such person under ORS 179.640 shall remain in full force and effect, unless modified or appealed.

(3) Any order or modified order and appeal shall only be altered upon a new hearing upon citation to all persons interested. Where there has been a change in the ability of the persons to pay as specified in the order, and, upon a change of ability to pay, the order shall be modified accordingly.

Section 13. ORS 179.670 is amended to read:

179.670. (1) The district attorney, on request of the Board of Control or on request of the probate court, shall appear in the probate court proceedings under ORS 179.640 and present evidence with respect to the ability of the person at the state institution or his estate or responsible relatives to pay the cost of his care and maintenance in the state institution.

(2) If the Board of Control feels aggrieved by the order of the probate court under ORS 179.640, the district attorney on request of the board shall appeal such cause to the [circuit court and the] Supreme Court [, or either, as directed].

Section 14. ORS 3.340, 5.040, 5.050, 5.070, 109.345, 109.370, 116.535 and 118.500 are repealed.

Section 15. This Act takes effect on January 1, 1970.