ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA ASSEMBLY SESSION

MINUTES

March 20, 1975

Chairman Barengo called to order this meeting of the Assembly Judiciary Committee at the hour of 8:15 a.m. on Thursday, March 20, 1975.

MEMBERS PRESENT: Messrs. BARENGO, BANNER, HEANEY, HICKEY, LOWMAN, POLISH, SENA, Mrs. HAYES and Mrs. WAGNER.

MEMBERS ABSENT: NONE.

Guests present at this meeting included Earl Yamashita, from the Nevada State Welfare Department; Paul Alves, also from the Nevada State Welfare Department; Bill Richards, Nevada Supreme Court; John DeGraff, Supreme Court; James D. Salo, Attorney General's Office; George T. Bennett, Nevada State Board of Pharmacy; Dale Landon, Nevada State Welfare Department; John R. Kimball, 16-county Advisory Committee on the Aging; Jim Thompson, Attorney General's Office; and A. A. Campos, Parole and Probation Department. Guest Register from this meeting is attached to these Minutes.

First to testify was Jim Thompson, Chief Deputy Attorney General, whose testimony was relative to A.B.64. This bill was originally considered after the Nevada Tax Commission failed to respond to a summons and complaint, which was served and left with the Secretary of State. The Secretary of State's Office neglected to bring the service of these documents to the attention of the Tax Commission, and therefore, a default judgment against the state was obtained. This bill would add a requirement that the State of Nevada be sued in its own courts--not in the courts of another state. There have been three suits brought in the Superior Courts of the State of California against the State of Nevada. Mr. Thompson discussed in detail the proposed changes that this bill would make, and in addition, he passed out copies of proposed amendments to this bill to this Committee. The Tax Commission requests in this bill that they be allowed 40 days to answer a complaint. The normal period for citizens of this state is 20 days. The federal government has 60 days within which to answer. This Committee questioned Mr. Thompson at length.

Next to testify regarding A.B.331 was Bill Richards, Chief Legal Advisor for the Supreme Court. He told the Committee that the bill was self-explanatory and he would be happy to answer any questions. Mr. Hickey, the prime introducer of this bill, presented to Chairman Barengo a booklet entitled Standards for Publication of Judicial Opinions--A Report of the Committee on Use of Appellate Court Energies of the Advisory Council for Appellate Justice, which booklet is attached to the original Minutes only. Mr. Hickey then read portions of Standards for Publication of Judicial Opinions, which is attached hereto. The main idea of this bill is to reduce the number of decisions the Supreme Court writes by omitting the insignificant ones. These insignificant decisions would be, in the Court's discretion, ones which have no significance to the public or legal profession. The Supreme Court would have the total decision as to whether or not an opinion would be published. Mr. Hickey stated that there would be a 25% saving with this bill in regard to publication.

Mr. Richards noted that one-fourth of the appeals are totally without merit and need nothing more said than the opinion which is given when they are dismissed. Everyone involved in a case would get a copy of the decision, but if it is not published then it would not go in the books. It would, however, be available at the Court for reference if anyone wished to see it.

Mr. Barengo questioned Mr. Richards about the possibility of having an intermediate appeals court. Thereafter, the Committee questioned Mr. Richards at length.

Mr. Barengo questioned Mr. Richards by asking if all states by themselves are the official reporters. He replied, "No, Nevada is one of the very few states. West Publishing Co. does most states' reports." Mr. Richards told this Committee that he feels it would cost the State of Nevada less to have West do these reports. He, however, has no official statistics to determine this. Mr. Hickey requested that he be allowed to look into this aspect of having the reports complied. Mr. Heaney volunteered to assist Mr. Hickey in this regard. Chairman Barengo approved.

In regards to S.B.198, A. A. Campos, Department of Parole and Probation, testified. The primary purpose of this bill is to make the Nevada law conform to a Supreme Court decision, Morrissey v. Brewer, U. S. Supreme Court, June, 1972. This decision covers the area and spectrum of parole violation and revocation process, but it would not materially affect how the parole board conducts its revocation hearings.

The Morrissey decision required that an administrative preliminary hearing be held prior to the actual return of the individual to the prison setting. Mr. Campos then stated what rights the individual had in this hearing. The Supreme Court indicated that the hearing officer could be anyone, except the officer or officers involved directly with the case. So, someone from the Parole Department could be the hearing officer.

Mr. Campos outlined in detail the various changes in the bill. He stated that the new sections were 4, 5, 6 and 7.

Mr. Campos quoted from the present statutes. The language in the probation section is clear, but the language in the parole section is not clear.

Jim Thompson commented on S.B.198. He pointed out that in Section 4, the wording "probable cause or reasonable ground" is used, and in the rest of the bill just "probable cause" is used. He suggested that one or the other, or both, be used, but in any case, this should be made uniform.

Mr. Campos further pointed out that there seems to be a difference legally as to what the hearing procedure is called, i.e. hearing, inquiry, etc.

As to S.B.199, Dale Landon testified that the purpose of this bill was to delete the children's responsibility for their parents who might be the recipients of certain assistance. The main objection raised is that the SSI (Supplemental Security Income), and others, is a federally funded program, and the State is required to expend funds to follow up on this program. (The Supplemental Security Income Program aids the blind and disabled older person.)

Mr. Yamashita said they are concerned mainly with those people on ADC. It is unfair to ask a grown man or woman on ADC to be responsible for their parents. There are also many instances where a parent never did support, or even raise, the child while he was young. Under the federal programs, there are no requirements for follow-ups, so this falls to the state, at which point the state funds are expended. In most instances a child will provide support for the parents. However, you cannot legislate morality. Currently the law says that the state has to pursue relative responsibility for the federal government.

Mr. Thompson commented on S.B.199. He said the bill does not spell out which court would be involved and how to collect reasonable fees. He suggested that additional language be worked out for this. A copy of a proposed amendment to S.B.199, Page 1 only, is attached hereto.

Mr. Keith Ashworth, Speaker of the House, told this Committee that he received a meritorious piece of legislation regarding notaries public, which would take the power of appointment away from the Governor and give it to the Secretary of State. Mr. Ashworth spoke with the Governor this morning, and he had no objection to this. Mr. Ashworth requested a Committee introduction of this bill. Mr. Lowman moved to have this Committee introduce and study this bill. Mr. Banner seconded. There were 8 affirmative votes for Committee introduction of this bill. Mr. Polish was not present at the time this vote was taken--nor was he present for any vote taken from this time forward.

Next to testify was George Bennett, Secretary of the Nevada State Board of Pharmacy. His testimony was relative to S.B.213. This Board introduced this bill at the request of their legal counsel. The bill changes the penalty for furnishing a dangerous drug from a misdemeanor to a gross misdemeanor. Also, the bill would require a pharmacist when filling a prescription to initial or sign that he filled this prescription, rather than using a rubber stamp. Mr. Barengo questioned Mr. Bennett about the way the bill was written, which would enable one person to give another person a drug after the prescription was filled. Mr. Bennett said the Senate Judiciary Committee expressed concern if a person just transferred a tablet or so to someone else who took the same drug. The way the bill was originally written, that person would also be guilty of a gross misdemeanor. The Board of Pharmacy does not feel that this would be a problem.

Next to testify was Bart Jacka, Assistant Sheriff, Las Vegas Metro Police Department. He spoke of A.B.305, which was originally considered by this Committee on March 14, 1975. He was in touch with Dale Florian, Chief of Police at the University of Nevada Las Vegas. Mr. Jacka, in referring to correspondence from himself to the Sheriff's Department, told the Committee that in late 1973 after receiving information about trespassing from the Las Vegas Township Justices of the Peace, he wrote to the UNLV explaining what information he received. This is how that letter came to be written. Mr. Jacka feels that there is no particular problem with the bill, and Chief of Police Parker in Reno feels that a bill of this type would work, as it does in California. However, Mr. Jacka does not necessarily feel that the bill is needed because the current trespassing law is adequate.

Mr. Barengo told the Committee that another bill relative the the University Police Department, A.B.353, would be considered by this Committee at a future date. He then read the bill to this Committee. Mr. Barengo asked Mr. Jacka if he would like to comment on that bill at this time.

Relative to A.B.353, Mr. Jacka stated that he feels that when the police system was created at the University of Nevada, it was not the intention of the Legislature to create another acting police department. He said that this State has many police agencies, and every time the law expands police activities, it multiplies police power. Mr. Jacka personally feels there is enough of this.

Mr. Jacka said that he believes that this piece of legislation was originated by Mr. Shumway, Chief of Police, UNR. He said he believes that the police at UNLV support it.

Regarding A.B.64, discussion was had, and then Mr. Lowman moved to indefinitely postpone. Mrs. Wagner seconded. Further discussion resulted, and it was decided that the section referring to this State being sued only in courts of this State may be of some merit. Amending language to this effect will be worked out. Thereafter, Mr. Lowman withdrew his original motion and moved DO PASS A.B.64 AS AMENDED. Mrs. Wagner seconded. After a vote, there were 8 votes in favor of passing A.B.64 as amended. Mr. Polish was absent for this vote. Legislation Form attached.
MOTION CARRIED DO PASS A.B.64 AS AMENDED.

Next to be considered was S.B.213, and Mr. Lowman moved DO PASS. Mrs. Wagner seconded. A vote was taken--8 in favor of DO PASS. Mr. Polish was absent for the vote. Form attached.
MOTION CARRIED DO PASS S.B.213.

As to S.B.199, Mr. Hickey moved indefinitely postpone, and Mrs. Hayes seconded. Discussion followed. A vote was taken--6 in favor of indefinite postponement, with Mr. Heaney and Mrs. Wagner dissenting. Form attached. Mr. Polish absent.
MOTION CARRIED INDEFINITELY POSTPONE S.B.199.

Considering S.B.198, during discussion by this Committee it was suggested that in regard to the wording "reasonable ground and probable cause", that we use instead "probable cause" throughout for consistency. It was also suggested to amend S.B.198 regarding having counsel appear for the revocation hearing by adding "appear and speak on his own behalf or obtain legal counsel". Mr. Hickey moved DO PASS S.B.198

WITH AMENDMENTS, and Mr. Lowman seconded. A vote followed, which resulted in 8 members of this Committee in favor of passage with amendments. Mr. Polish was absent for the vote. Legislation Action Form is attached hereto.
MOTION CARRIED DO PASS S.B.198 WITH AMENDMENTS.

Next, the Committee discussed A.B.305, and Mrs. Hayes moved INDEFINITE POSTPONEMENT with Mrs. Wagner seconding that motion. A vote followed with 7 in favor of indefinite postponement, and Mr. Lowman dissenting. Mr. Polish was absent for the vote. Form attached.
MOTION CARRIED INDEFINITELY POSTPONE A.B.305.

Attached hereto is a Memorandum from the Legislative Counsel Bureau relative to A.B.38.

There being no further business, and after a motion and a second, Chairman Barengo adjourned this meeting.

ASSEMBLY JUDICIARY COMMITTEE

GUEST REGISTER

DATE: March 20, 1975

NAME	BILL NO.	SPEAKING	REPRESENTING
EARL YAMASHITA	SB 199	✓	STATE WELF. DIV.
PAUL ALVES	"		"
BILL RICHARDS	AB 331	?	Supreme Court
John DeGraff	"	NO	Supreme Ct
James D. Lalo	AB 64	?	Attorney General
George Bennett	SB 213	yes	Bd of Pharmacy
Dale L Lambert	SB 199	?	State Welfare Member of 16 county adv. Commission Agency
John R. Kimball	S.B. 199		
Jim Thompson	A.B. 64	✓	Attorney General's Office
A. A. Campos	S.B. 198	✓	Parole + Probation

STANDARDS FOR PUBLICATION OF JUDICIAL OPINIONS

I. BASIC PROPOSAL

Principles and procedures should be adopted that will reduce the publication of appellate opinions that are without general significance to the public, to the legal profession, or to advancing the functions of the law.

It is clear to every lawyer and judge that many written opinions do not warrant publication. It is also clear that in many cases extended opinions are not needed. These two different ideas should be kept separate. Different criteria can be suggested for deciding that any opinion once written should be published or for deciding whether or not an extended opinion should be written. If a tentative determination can be made at a very early stage in the process of decision-making that a case is one that does not warrant a published opinion, drafting will be facilitated. Non-published opinions can be short. They do not need to cite all of the law, and can deal mainly with facts as they relate to law. They can be written especially for the parties. They need not be published. On the other hand, opinions that are designated for publication will, under the standards, involve cases that have broader importance; therefore the written expression of the court's decision deserves more intensive craftmanship.

The limits on the capacity of judges and lawyers to produce, research and assimilate the substances of judicial opinions are dangeroulsy near; in some systems they may already have been exceeded. Non-publication alone will not solve the problem, but non-publication combined with other procedures suggested in this report can help redress the balance between what must be produced and assimilated and the resources available for production and assimilation.

II. PRINCIPLES AND PROCEDURES FOR DETERMINING PUBLICATION.

1. The standards for publication should be promulgated by rule of the highest court to govern its publication practice and that of courts under its supervision.

2. Unless directed by a higher court, opinions should be published only if a majority of the judges particpating in the decision determine that publication is required under standards set out herein. Concurring opinions should be published only if the majority opinion is published. Dissenting opinions may be published if the dissenting judge determines that a standard for publication has been satisfied.

3. To avoid wasted effort, a tentative decision not to publish should be made by the panel at the earliest feasible point. This will be at the conference on the case before the opinion is assigned, or at the time of assignment.

4. Even if the opinion does not warrant publishing in its entirety, excerpts that meet the standards should be published.

III. STANDARDS FOR PUBLICATION

No opinion in an appellate court should be published unless it satisfies one or more of the following standards.

1. The opinion lays down a new rule of law, or alters or modifies an existing rule.

2. The opinion involves a legal issue of continuing public interest.

3. The opinion criticizes existing law.

4. The opinion resolves an apparent conflict of authority.

IV. CITATION

Opinions not designated for publication should not be cited as precedent by any court or in any brief or other materials presented to the court.

One of the major objectives of efforts to curb publication is to institute a procedure whereby judges can write opinions for the benefit of the parties without having to include all the factual background and detailed rationale that is required for opinions that will enter the body of precendential law.

MODEL RULE ON PUBLICATION OF JUDICIAL OPINIONS

1. Standard for Publication

An opinion of the (highest court) or of the (intermediate court) shall not be designated for publication unless:

a. The opinion establishes a new rule or law or alters or modifies an existing rule; or
b. The opinion involves a legal issue of continuing public interest; or
c. The opinion criticizes existing law; or
d. The opinion resolves an apparent conflict of authority.

2. Opinions of the court shall be published only if the majority of the judges participating in the decision find that a standard for publication as set out in section (1) of this rule is satisfied. Concurring opinions shall be published only if the majority opinion is published. Dissenting opinions may be published if the dissenting judge determines that a standard for publication as set out in section (1) of this rule is satisfied. The (highest court) may order any unpublished opinion of the (intermediate court) or a concurring or dissenting opinion in that court published.

3. If the standard for publication as set out in section (1) of the rule is satisfied as to only a part of an opinion, only that part shall be published.

4. The judges who decide the case shall consider the question of whether or not to publish an opinion in the case of the conference on the case before or at the time the writing assignment is made, and at that time, if appropriate, they shall make a tentative decision not to publish.

5. All opinions that are not found to satisfy a standard for publication as prescribed by section (1) of this rule shall be marked, Not Designated for Publication. Opinions marked, Not Designated for Publication, shall not be cited as precedent by any court or in any brief or other materials presented to any court.

APPENDIX II

CALIFORNIA

Rule 976. Publication of Court Opinions

(a) [Supreme Court] All opinions of the Supreme Court shall be published in the Official Reports.

(b) [Standard for opinions of other courts] No opinion of a Court of Appeal or of an appellate department of the Superior court shall be published in the Official Reports unless such opinion (1) establishes a new rule of law or alters or modifies an existing rule, (2) involves a legal issue of continuing public interest, or (3) criticizes existing law.

GEORGIA

NEW YORK

NEW JERSEY

WASHINGTON

U.S. COURT OF APPEALS (SEVENTH CIRCUIT)

Circuit Rule 28. (The following rule is the Plan for Publication of Opinions of the Seventh Circuit promulgated pursuant to resolution of the Judicial Conference of the United States):

POLICY

It is the policy of this circuit to reduce the proliferation of published opinions.

U.S. COURT OF APPEALS (TENTH CIRCUIT)

Rule 17. Opinions.

(a) It is unnecessary for the court to write opinions in every case. The disposition without opinion does not mean that the case is considered unimportant. It does mean that no new points of law, making the decision of value as precedent, are believed to be involved.

U.S. COURT OF APPEALS (DISTRICT OF COLUMBIA)

Rule 8. Citations in briefs. .... Unpublished orders including explanatory memoranda of this Court are not to be cited in briefs or memoranda of counsel as precendents.

U.S. COURT OF APPEALS (FIRST CIRCUIT)

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT **S. B. 199**

SENATE BILL NO. 199—COMMITTEE ON JUDICIARY

FEBRUARY 14, 1975

Referred to Committee on Judiciary

SUMMARY—Revises aid to dependent children relative responsibility requirements and repeals relative responsibility provisions for adult categories of public assistance. Fiscal Note: No. (BDR 38-152)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to public assistance; revising requirements as to financial responsibility of relatives under the aid to dependent children program; repealing certain other relative responsibility provisions; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 425 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

SEC. 2. *1. Spouse and parents for minor children are the responsible relatives liable for the support of an applicant or recipient.*

2. The welfare division shall investigate the ability of responsible relatives to contribute to the support of an applicant or recipient and shall determine the amount of such support for which such relative is responsible.

SEC. 3. *Written statements of information required from responsible relatives of applicants or recipients need not be under oath, but any person signing such statements who willfully states therein as true any material matter which he knows to be false shall be subject to all the penalties for perjury as provided by law.*

SEC. 4. *The welfare division shall advise the attorney general of the failure of a responsible relative to contribute to the support of a recipient as required by law,* [*The attorney general shall cause appropriate legal action to be taken to enforce such support, and in addition may collect a reasonable fee which shall be added to the costs of the action in any court of the state, the expense of such fee and costs to be borne by the responsible relative. Any fees collected by the attorney general under the provisions of this section shall be deposited in the general fund in the state treasury.*] and the attorney general shall take appropriate action, including instituting proceedings in the appropriate court, to enforce such support.

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA SESSION

LEGISLATION ACTION

DATE Mar. 20, 1975

BILL NO. A.B. 64

MOTION: _____

Do Pass ✓ Amend as amended. Indefinitely Postpone ____ Reconsider ____

Moved By Mr. Lowman Seconded By Mrs. Wagner

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Barengo	✓					
Banner	✓					
Hayes	✓					
Heaney	✓					
Hickey	✓					
Lowman	✓					
Polish						
Sena	✓					
Wagner	✓					

Mr. Polish absent for vote.

TALLY:

ORIGINAL MOTION: Passed ✓ Defeated ____ Withdrawn ____

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes Mar. 20, 1975
Date

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA SESSION

LEGISLATION ACTION

DATE Mar. 20, 1975

BILL NO. S.B. 213

MOTION: _____

Do Pass ✓ Amend ____ Indefinitely Postpone ____ Reconsider ____

Moved By Mr. Lowman Seconded By Mrs. Wagner

AMENDMENT: _____

Moved By _____ Seconded By _____

AMENDMENT: _____

Moved By _____ Seconded By _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Barengo	✓					
Banner	✓					
Hayes	✓					
Heaney	✓					
Hickey	✓					
Lowman	✓					
Polish						
Sena	✓					
Wagner	✓					

Mr. Polish absent for vote.

TALLY:

ORIGINAL MOTION: Passed ✓ Defeated ____ Withdrawn ____

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes Mar. 20, 1975
Date

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA SESSION

LEGISLATION ACTION

DATE March 20, 1975

BILL NO. S.B. 199

MOTION: _____

Do Pass _____ Amend _____ Indefinitely Postpone ✓ Reconsider _____

Moved By Mr. Hickey Seconded By Mrs. Hayes

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Barengo	✓					
Banner	✓					
Hayes	✓					
Heaney		✓				
Hickey	✓					
Lowman	✓					
Polish						
Sena	✓					
Wagner		✓				

Mr. Polish absent for vote.

TALLY:

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes March 20, 1975
Date

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA SESSION

LEGISLATION ACTION

DATE Mar. 20, 1975

BILL NO. S.B. 198

MOTION: _____

Do Pass ~~✓ as amended~~ Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By Mr. Hickey Seconded By Mr. Lowman

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

AMENDMENT: _____

_____

Moved By _____ Seconded By _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Barengo	✓					
Banner	✓					
Hayes	✓					
Heaney	✓					
Hickey	✓					
Lowman	✓					
Polish						
Sena	✓					
Wagner	✓					

Mr. Polish absent for vote.

TALLY:

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes Mar. 20, 1975
Date

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA SESSION

LEGISLATION ACTION

DATE Mar. 20, 1975

BILL NO. A.B. 305

MOTION: _____

Do Pass ____ Amend ____ Indefinitely Postpone ✓ Reconsider ____

Moved By Mrs. Hayes Seconded By Mrs. Wagner

AMENDMENT: _____

Moved By _____ Seconded By _____

AMENDMENT: _____

Moved By _____ Seconded By _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Barengo	✓					
Banner	✓					
Hayes	✓					
Heaney	✓					
Hickey	✓					
Lowman		✓				
Polish						
Sena	✓					
Wagner	✓					

Mr. Polish absent for vote.

TALLY:

ORIGINAL MOTION: Passed ✓ Defeated ____ Withdrawn ____

Amended & Passed _____ Amended & Defeated _____

Amended & Passed _____ Amended & Defeated _____

Attach to Minutes Mar. 20, 1975
Date

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CARSON CITY, NEVADA 89701

ARTHUR J. PALMER, *Director*

March 6, 1975

M E M O R A N D U M

TO: Assemblyman Virgil M. Getto

FROM: J.C. Smith, Office of Research

RE: Attorney Fee Provisions in Idaho and Arizona

Both of the above states, in adopting the Uniform Probate Code (Idaho in 1971 and Arizona in 1974), included the provision in which the personal representative can employ an attorney to advise and assist the personal representative in the performance of his administrative duties.

In both states, the personal representative is entitled to reasonable compensation for his services, and attorneys are entitled to receive from the estate necessary expenses and disbursements including reasonable attorney's fees incurred. Please see the enclosed photostats.

Please do not hesitate to contact me if I can be of further assistance in this matter.

JCS/jd
Encl.

emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative. [I. C., § 15-3-717, as added by 1971, ch. 111, § 1, p. 233.]

COMMENT TO OFFICIAL TEXT

With certain qualifications, this section is designed to compel corepresentatives to agree on all matters relating to administration when circumstances permit. Delegation by one to another representative is a form of concurrence in acts that may result from the delegation. A corepresentative who abdicates his responsibility to co-administer the estate by a blanket delegation breaches his duty to interested persons as described by Section 3-703. Sections 3-716(21) authorizes some limited delegations, which are reasonable and for the benefit of interested persons.

15-3-718. Powers of surviving personal representative.—Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one (1) or more remaining after the appointment of one (1) or more is terminated, and if one (1) of two (2) or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office. [I. C., § 15-3-718, as added by 1971, ch. 111, § 1, p. 233.]

1974 Cummalative Pocket Supplement Idaho Code Volume 3

COMMENT TO OFFICIAL TEXT

Source, Model Probate Code section 102. This section applies where one of two or more co-representatives dies, becomes disabled or is removed. In regard to co-executors, it is based on the assumption that the decedent would not consider the powers of his fiduciaries to be personal, or to be suspended if one or more could not function. In regard to co-administrators in intestacy, it is based on the idea that the reason for appointing more than one ceases on the death or disability of either of them.

15-3-719. Compensation of personal representative.—A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative may also renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court. [I. C., § 15-3-719, as added by 1971, ch. 111, § 1, p. 233.]

DECISIONS UNDER PRIOR LAW

Fees and Services.

Where the executor and administrator, under the statute, must account for the entire community estate, it would follow that an executor and his attorney were entitled to compensation as fixed by statute computed upon the entire community estate accounted for plus the separate estate of the deceased, and not upon the half of the community property belonging to the deceased, plus his separate estate. Davenport v. Simons, 68 Idaho 21, 189 Pac. (2d) 90.

COMMENT TO OFFICIAL TEXT

This section has no bearing on the question of whether a personal representative who also serves as attorney for the estate may receive compensation in both capacities. If a will provision concerning a fee is framed as a condition on the nomination as personal representative, it could not be renounced.

serve the estate, or when a corepre-
act for the others. Persons dealing
ly unaware that another has been
ad[illegible]ed by the personal representa-
he has authority to act alone for
ein, are as fully protected as if the
been the sole personal representative
ch. 111, § 1, p. 233.]

OFFICIAL TEXT

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le, every power exercisable by per-
ercised by the one (1) or more re-
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OFFICIAL TEXT

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nal representative.—A personal rep-
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ion of the personal representative
decedent regarding compensation,
efore qualifying and be entitled to
al representative may also renounce
mpensation. A written renunciation
[I. C., § 15-3-719, as added by 1971,

ER PRIOR LAW

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FFICIAL TEXT

in both capacities. If a will provision concerning a fee is framed as a condition on the nomination as personal representative, it could not be renounced.

15-3-720. Expenses in estate litigation.—If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred. [I. C., § 15-3-720, as added by 1971, ch. 111, § 1, p. 233.]

COMMENT TO OFFICIAL TEXT

Litigation prosecuted by a personal representative for the primary purpose of enhancing his prospects for compensation would not be in good faith.

A personal representative is a fiduciary for successors of the estate (Section 3-703). Though the will naming him may not yet be probated, the priority for appointment conferred by Section 3-203 on one named executor in a probated will means that the person named has an interest, as a fiduciary, in seeking the probate of the will. Hence, he is an interested person within the meaning of Sections 3-301 and 3-401. Section 3-912 gives the successors of an estate control over the executor, provided all are competent adults. So, if all persons possibly interested in the probate of a will, including trustees of any trusts created thereby, concur in directing the named executor to refrain from efforts to probate the instrument, he would lose standing to proceed. All of these observations apply with equal force to the case where the named executor of one instrument seeks to contest the probate of another instrument. Thus, the Code changes the idea followed in some jurisdictions that an executor lacks standing to contest other wills which, if valid, would supersede the will naming him, and standing to oppose other contests that may be mounted against the instrument nominating him.

15-3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.—After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds. [I. C., § 15-3-721, as added by 1971, ch. 111, § 1, p. 233.]

DECISIONS UNDER PRIOR LAW

Compensation.

It is the duty of the executor to collect all debts due to decedent or to the estate for which services the statute fixes his compensation, and allowance of an additional fee for extraordinary services in collecting accounts is void in the absence of a showing of any extraordinary services. Davenport v. Simons, 68 Idaho 21, 189 Pac. (2d) 90.

COMMENT TO OFFICIAL TEXT

In view of the board jurisdiction conferred on the probate court by Section 3-105, description of the special proceeding authorized by this section might be unnecessary. But, the Code's theory that personal representatives may fix their own fees and those of estate attorneys marks an important departure from much existing practice under which fees are determined by the court in the first instance. Hence, it seemed wise to emphasize that any interested person can get judicial review of fees if he desires it. Also, if excessive fees have been paid, this section provides a quick and efficient remedy.

PART 8. CREDITORS' CLAIMS

15-3-801. Notice to creditors.—Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three (3) successive weeks in

and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

Added Laws 1973, Ch. 75, § 4, eff. Jan. 1, 1974.

§ 14-3719. Compensation of personal representative

A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Added Laws 1973, Ch. 75, § 4, eff. Jan. 1, 1974.

ARIZONA REVISED STATUTES ANNOTATED Special Pamphlet Effective 1/1/74.

Law Review Commentaries

Estate planning under the new Arizona Probate Code. Richard W. Effland, 1 Ariz.State L.J., 1974, p. 1.

Proposed probate code, fees of executor and administrator. Roland R. Kruse, 7 Ariz.Bar J. No. 4, p. 6 (1972).

§ 14-3720. Expenses in estate litigation

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

Added Laws 1973, Ch. 75, § 4, eff. Jan. 1, 1974.

Law Review Commentaries

Proposed probate code, expenses, source of payment. Roland R. Kruse, 7 Ariz.Bar J. No. 4, p. 7 (1972).

Will contests, state standing and costs. 15 Ariz.Law Rev. 761 (1973).

§ 14-3721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate

After notice to all interested persons, on petition of an interested person, including any person employed by the personal representative, or on appropriate motion if administration is supervised, the court may review the propriety of employment of any person by the personal representative, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refund.

Added Laws 1973, Ch. 75, § 4, eff. Jan. 1, 1974.

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STANDARDS FOR PUBLICATION OF JUDICIAL OPINIONS

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