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Testimony in opposition to House Bill 2950 barring creditor claims after set period.

I practiced law in Portland, primarily in estate planning and probate, before I retired twelve years ago. For several years I was also a special assistant attorney general for Oregon representing the Department of State Lands, primarily in administration of escheat estates. I have a long-standing interest in legislation, and I was legislative committee chair for the Oregon State Bar Estate Planning and Administration Section and personally wrote significant revisions of the Oregon Probate Code in the areas of claims, small estates, will contest procedures and escheats, among others. Although retired I have continued to follow and contribute to probate legislation.

I do not look at this proposed legislation from the perspective of a litigator. I seldom dealt with contested probate matters. I bring the perspective of an attorney who attempted to manage routine probate matters as efficiently and inexpensively as practical.

The *Tulsa* Case and Claims in Probate

In 1988 the United States Supreme Court issued a decision that had profound impact of probate practice. In *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988) the court declared unconstitutional as a violation of the Due Process Clause a probate "non-claim statute" providing for the discharge of claims of creditors of a decedent on the basis of published notice without actual notice to the creditor. The court ruled that in a judicial proceeding such as probate actual notice must be given to "known or reasonably ascertainable creditors" before their claims could be discharged.

Virtually all states, including Oregon, had non-claim statutes. The Estate Planning and Administration Section of the Oregon State Bar Association formed a committee to review that decision and recommend appropriate changes to the Oregon Probate Code to comply with it. I was a member of that committee, and I had primary responsibility to drafting the legislation in response to the Supreme Court decision. The Legislative Assembly in 1989 adopted that legislation making major changes to ORS Chapter 115 and the Small Estates law.

Among the responses considered by the *Tulsa* response committee was a bar to claims a set period of date of death, as is proposed in HB 2950. However, there was a sense that although that approach would satisfy the letter of *Tulsa*, since the Due Process Clause is not implicated when there is no court proceeding, it was not in keeping with the spirit of the ruling that creditors were entitled to actual notice before their claims could be discharged. There was a sense that there are some very worthy creditors — and some very bad decedents — who would be affected by such legislation. My primary purpose today is to provide an example of such a case.

The Martha Carney Estate and Gregg Sylvester

I was on a list of attorneys — commonly referred to as the "bail out list" — used by the probate court in Multnomah County to deal with estates in which the court had removed personal representatives for malfeasance. On occasion I would receive notice from the court that I had been appointed successor personal representative of an estate about which I knew nothing other than that it must have serious problems. I would go to the courthouse and review the file to determine the scope of the problem, and then I would set out to fix it.

About 30 years ago I was notified that I had been appointed successor personal representative of the Estate of Martha V. Carney. Ms. Carney, who was single and childless, had a will leaving her substantial estate in equal shares to Shriners Hospital for Children, Doernbecher Children's Hospital Foundation, and a friend, a woman struggling with cancer. The will named the law firm of Ms. Carney's attorney as personal representative. However, by the time she died her attorney had retired and the practice had been purchased by an attorney named Gregg Sylvester. Mr. Sylvester was appointed personal representative.

Mr. Sylvester proceeded to systematically embezzle and waste virtually all the assets of the estate. By the time I was appointed only one piece of real property he had purchased remained, and I in 1996 obtained a judgment of about $310,000 against Mr. Sylvester. He was also convicted of multiple criminal offenses on account of his actions, sentenced to three years in prison, and ordered to pay restitution of $220,000, the remaining balance of the civil judgment at that time. Needless to say Mr. Sylvester was a failure as an attorney and resigned from the Oregon State Bar with the equivalent of disbarment.

Mr. Sylvester had no significant assets to pay the judgment he owed to Shriners Hospital for Children, Doernbecher Children's Hospital Foundation, and the woman struggling with cancer. I collected what I could from the real property and the Oregon State Bar Client Security Fund, but there was still a substantial judgment remaining.

In a case like this the creditors, as worthy as they may be, have no regular contact with the judgment debtor. I had on my calendar each year to check as best I could the status of Mr. Sylvester. I even checked the status of his mother, since I knew there was a possibility that on her death he would receive an inheritance. I renewed the judgment in 2006 so that it would remain in place until 2016. When I retired in 2011 I passed the file to another attorney for the victims.

Conclusion

The point of this (overly-long) testimony is simply this. HB 2950 tends to focus your attention on the heirs of a decedent, and ordinarily they share no fault in the circumstances giving rise to a debt the decedent owed. I believe that the more important focus is the creditors of the decedent. They may be credit card companies or whatever, but they may also be, as in the Carney Estate, Shriners Hospital for Children, Doernbecher Children's Hospital Foundation, and the woman struggling with cancer, all of whom were innocent victims of the decedent whose debts would be discharged by HB 2950.

Very truly yours,