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ADMINISTRATION OF ESTATES OF DECEASED PERSONS UNDER THE REVISED CODE

CHARLES P. WILHELM

A generally neglected branch of law in West Virginia is that pertaining to the administration of estates—using the word "administration" in its broadest sense and including estates both of deceased persons and of persons under disability. Many citizens of the state will never appear in any proceeding in our general law courts, but every one, by personal representative, unless actually or nearly a pauper, will have an estate pass through the probate court of West Virginia, that is to say, through the county court, or will be interested in the proceedings in that court as an heir at law or as a taker under a will.

When the Legislature of West Virginia adopted the Revised Code of West Virginia (1931) there was added to the law pertaining to administration of estates an entire article dealing only with the estates of deceased persons. A comparison of the chapter dealing with the administration of estates in the new Revised Code with the chapters dealing with the same in Barnes’ West Virginia Code Annotated (1923) will show that this article makes a radical change in the law of administration of estates of deceased persons, chiefly by requiring much additional procedure and especially of commissioners of accounts. It is apparent that this article was intended to be a marked departure from the law in regard to the administration of deceased persons’ estates, in order to correct such defects in administration as had been made manifest by past legal experience; to facilitate the handling of these estates; and to give an element of permanence, which hitherto seemed to be lacking, to the settlement of such estates.

In the attempt to make this improvement the Code Revision Commission and the legislature were hampered by the provisions of the West Virginia Constitution which places jurisdiction of all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, in the county court,—the members of

* Member of the bar of Preston County, West Virginia.
1 W. VA. REV. CODE (1931) c. 44, art. 2.
2 Id. c. 44.
3 W. VA. CODE (Barnes, 1923) c. 85-87, but particularly c. 85.
4 Revisers’ Note, at the beginning of art. 2, c. 44, W. VA. REV. CODE (1931).
5 W. VA. CONST. Art. VIII, § 24.
which body do not have to be, and usually are not, attorneys at law. In an effort partly to correct this situation, the Code Revision Commission provided for one commissioner of accounts in each county and required that he be an attorney at law, but the legislature did not favor this view and each county is now allowed four such commissioners, — in addition to such special commissioners of accounts as may be named, — and without any requirement that these commissioners be attorneys at law.

A study, according to the latest figures available at this time, of the commissioners of accounts in the various counties of the state shows that the fifty-five counties have a total of one hundred and ninety-five commissioners of accounts actually named as such, of whom one hundred and forty-eight are members of the bars of their respective counties; from which it will be observed that only forty-seven are not members of the bars of the counties for which they are named. It is also interesting to note that four of the counties had only one commissioner of accounts, and that these counties were evenly divided as to the necessity of having that one commissioner an attorney at law, as in two of those counties the sole commissioner is a member of the local bar, while in the other two counties he is not. In twenty-one of the counties of the state having a full quota, or nearly so, of commissioners, all of the commissioners are members of the local bar, but two of these counties had each appointed a total of only three commissioners. In six West Virginia counties (including the two which have only one commissioner each) none of the commissioners of accounts is a member of the local bar. In the other counties the number of commissioners of accounts who are attorneys at law, where the total number of commissioners is four to the county, varies from

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6 Revisers' Note, following § 1, art. 3, c. 44, W. VA. REV. CODE (1931).
7 Legislative Note, following § 1, art. 3, c. 44, W. VA. REV. CODE (1931).
8 W. VA. REV. CODE (1931) c. 44, art. 2, § 3; as amended W. VA. REV. CODE (Michie, Supp. 1934).
9 Id. c. 44, art. 3, § 1; as amended for Barbour County (Michie, Supp. 1933).
10 WEST VIRGINIA LEGISLATIVE HAND BOOK (1935) 337-483.
11 Calhoun, Clay, Lincoln and Logan.
12 Clay and Logan.
13 Calhoun and Lincoln.
14-Barbour, Berkeley, Braxton, Brooke, Doddridge, Hampshire, Jackson, Kanawha, Marion, Marshall, Mason, Mingo, Monongalia, Nicholas, Ohio, Pocahontas, Randolph, Summers, Taylor, Tyler and Upshur.
15 Braxton and Pocahontas.
16 Boone, Calhoun, Gilmer, Lincoln, Monroe and Morgan.
17 Calhoun and Lincoln.
one to three; three counties have one attorney at law, three counties have two attorneys at law and seventeen have three. Another county has named only two commissioners, but both are attorneys at law, while another also has named only two, but one of them is an attorney while the other is not. In view of the provision of the Revised Code that where there are two or more commissioners in a county the estates of decedents shall be referred by order of the county court to such commissioners in rotation, to the end that there may be an equal division of the work, the personal representative no longer has a power of selection, as was true in the past, by which a commissioner learned in the law could be selected by the personal representative for the protection of the estate, so that estates which now fall in the rotation of references to those commissioners not attorneys at law, are in effect thereby discriminated against. It is often necessary to incur extra expense in the administration of those estates by the engagement of an attorney at law properly to look after the administration thereof when the commissioner is not a member of the bar. To make the handling of estate settlements uniform the state over, it would seem that all commissioners of accounts should be attorneys at law and that the statute law should so specify. In this way, also, the objection to having the county courts, which are bodies of laymen, handle probate matters and administration of estates would be partly overcome without the usually long and difficult process of constitutional amendment. It is to be further observed that in all of the counties of the state, with the exception of three, there are at least four attorneys at law available for appointment from that standpoint, i.e., who are not unavailable by reason of being the circuit judge, or the prosecuting attorney, the latter of whom is of course the legal adviser of the county court.

18 Grant, Greenbrier and Jefferson.
19 Mercer, Pendleton and Pleasants.
20 Cabell, Fayette, Hancock, Hardy, Harrison, Lewis, Mineral, McDowell, Preston, Raleigh, Ritchie, Tucker, Wayne, Webster, Wetzel, Wood and Wyoming.
21 Roane.
22 Wirt.
24 West Virginia Legislative Hand Book (1935) 337-483 inclusive.
25 Id. at 423, 435 and 475. Morgan, Pendleton and Wirt.
26 W. Va. Rev. Code (1931) c. 7, art. 4, § 1, as modified by § 3 of said chapter and article, but there seems to be no legal restriction upon a prosecuting attorney being a commissioner of accounts, and in many counties such is now the fact.
An examination of the new article in the Revised Code dealing with procedure in administration of estates of deceased persons, shows that it specifically calls for certain things to be done by the commissioner of accounts to whom the estate is referred by the county court; by the personal representative; by the heirs and legatees; by the creditors of the deceased; and by any other persons interested in the estate. It is the intention here to discuss more particularly those things which are required of the commissioner, but reference to things required of the persons interested in the estate's administration necessarily will be included in connection therewith.

The commissioner must first publish a notice to creditors, within one month after reference, unless "within one month next succeeding" means within the month after the month in which the reference is made; and must fix a time and place therein, within six months after date of first publication, and within eight months after the representative qualifies, for presentation to him of claims against the estate. Publication must be for three successive weeks.

The commissioner must next, after the personal representative files with him a list of known creditors and of distributees and of legatees, mail a copy of the aforesaid notice to creditors to all of those named on the list. The Code further provides, however, that failure to mail, or to receive, these notices, does not affect the proceedings pursuant to such notice.

The commissioner then receives claims, and any objections thereto, and, if there is an objection hears the evidence for and against it and decides if it shall be allowed, and, if there is a contingent or unliquidated claim, provision is made for it as shown below.

With ten months from the date of qualification of the personal representative, and after hearings on claims have been completed, the commissioner is required to present a report to the county court, embracing the following:

27 Id. c. 44, art. 2.
28 Id. c. 44, art. 2, § 2.
29 Id. c. 44, art. 2, § 4.
30 Id. c. 44, art. 2, §§ 5-15.
31 Id. c. 44, art. 2, § 17.
32 Id. c. 44, art. 2, § 16; Hawley v. Falland, 188 S. E. 759, 760 (W. Va. 1936), with reference to commissioners' jurisdiction, and report.
(a) A list of all claims against the estate, whether the same were allowed in whole or in part, and the amount on each, if allowed, due to or from the estate.

(b) The assets in the hands of the personal representative, showing how the same shall be applied to the payment of debts and claims.

(c) The order of priority of payment of the said claims as allowed.

(d) What sum shall be reserved to pay contingent or unliquidated claims not mature, or the pro rata share to which the creditor may be entitled, when payment shall become proper, together with other creditors in that class.

(e) What persons shall share in the estate as legatees, and in what property or amounts.

(f) What persons are entitled to share as distributees, and in what proportions (apparently if legatees do not absorb all of the estate available for distribution after payment of all claims legally due against the estate).

(g) In addition to the foregoing, specifically set forth in the Code, it would seem that this report also must embrace sufficient further material to show that the other statutory requisites have been met, to wit: that notice has been given to all interested persons according to law,\(^\text{33}\) that notice to creditors has been published\(^ \text{34}\) and also the fiduciary notice,\(^\text{35}\) required for all estates; and that the report has been retained in the office of the commissioner for ten days for exceptions, and a list of the same if any, together with the action of the commissioner thereon.\(^\text{36}\)

The report is then turned in to the county court, together with the evidence of claims, and exceptions, if any, and is acted upon by the court at the first term thereof occurring not earlier than ten days after its return.\(^\text{37}\) After the court finally passes upon the report and all matters therewith, it is recorded,\(^\text{38}\) and, if it be not appealed to the circuit court of the county, “the same shall be forever binding and final”.\(^\text{39}\)


\(^{34}\) Id. c. 44, art. 2, § 2.

\(^{35}\) Id. c. 44, art. 4, § 11.

\(^{36}\) Id. c. 44, art. 2, § 18.

\(^{37}\) Id. c. 44, art. 2, § 19.

\(^{38}\) Id. c. 44, art. 2, § 20.

\(^{39}\) Id. c. 44, art. 2, § 19; and see, in regard to its being binding and final, In re Reynolds’ Estate, 116 W. Va. 249, 180 S. E. 6 (1935); and in regard to
It is first to be carefully noted that all of the foregoing is not a settlement, nor does it anywhere purport to answer the purpose of one. As is set forth in another section of this article, payment of claims by the personal representative, and then of legacies and distribution of the surplus, if any, to the parties entitled to the same, is not to be made until after one year elapses from the date of qualification of the personal representative, and after the foregoing report has been confirmed by the county court. The reason for this is plainly shown by other sections of this same article, which sections seek to accomplish the purpose of making the estate settlement final insofar as that may be done under the legal system in West Virginia. The settlement qua settlement comes later before the same commissioner, at the end of the year after qualification of the personal representative, and within four months after the end of such year, and is provided for in another article of the same chapter which deals with administration of estates and trusts generally.

To one accustomed to practice in a court of chancery, the resemblance, in many ways, of the foregoing procedure, to that in a chancery court, is obvious. It would seem that the Revisers, as was natural, drew heavily upon their knowledge of procedure involved in a reference in chancery to a commissioner of the circuit court. It will be recalled, however, that in the usual reference in chancery wherein a settlement of the estate of a deceased person by the personal representative is involved, what is actually done before the commissioner is a true settlement and not the basis of action of the personal representative thereafter as a prerequisite to the true settlement. The superficial resemblance of the procedure in this article of the Revised Code to that in a reference in chancery to a commissioner, it is to be observed, should not blind one interested therein to the obvious differences that also are present.

The procedure outlined in the article in the Revised Code dealing with administration of the estates of deceased persons has now been in operation in West Virginia for over six years, and it would seem that the pragmatic test may well be applied to it.

finality of the report of settlement see W. VA. REV. CODE (1931) c. 44, art. 4, § 20, and Revisers’ Note.

40 Id. c. 44, art. 2, §§ 24, 25.
41 Id. c. 44, art. 2, §§ 19, 26, 28.
42 Id. c. 44, art. 4, § 4.
43 The Revised Code of West Virginia went into effect on the first day of January, 1931.
Has it operated successfully, or has it merely complicated the handling of such estates? Is it a better system of handling such matters than the one which it superseded or should estates of deceased persons be handled in the same manner as is now provided for all other kinds of estates in which fiduciaries act?

An opinion can only be formed from personal experience or from a study of the experiences of others, or a combination of both, as to the correct answers to each of the foregoing questions. The matter set forth hereinafter, as a reply to the two questions set forth above, is derived from both sources.

Two adjoining counties, — each having as its northern boundary the Pennsylvania state line, — in West Virginia, and having a population generally similar in many respects, but one \(^{44}\) of which has nearly one-third of its total population in one city \(^{45}\) while the other \(^{46}\) has no town \(^{47}\) in it containing more than six per cent of the total population of the county, have had a full list of commissioners of accounts handling estates in rotation as required by the Code since the Revised Code went into effect. An examination of the books in those counties in which are recorded the reports or settlements of estates of deceased persons, in the respective offices of the clerks of the county courts, shows a wide range of ideas upon interpretation of the procedural requirements of the article of the Code dealing with the estates of deceased persons. The same wide range is shown in the county in which one-third of the population lives in the one large city in the county as is shown in the rural county. In the first county the commissioners seem finally to have settled upon a form for the settlement of estates of deceased persons which embraces some of the points required in the said article of the Code, including when the notice to creditors was published, \(^{48}\) and showing that notice was given interested parties, \(^{49}\) but otherwise having the general features of the settlement form used before the new Code went into effect. In the rural county there is less uniformity, the form varying from the simple form of settlement used before the new Code went into effect, with some slight attempt to show publication of notices and a statement as

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\(^{44}\) *West Virginia Legislative Hand Book* (1935) 417. Monongalia County, population (1930) 50,083.

\(^{45}\) Id. at 658. Morgantown, population (1930) 16,186.

\(^{46}\) Id. at 441. Preston County, population (1930) 29,043.

\(^{47}\) Id. at 657. Kingwood, population (1930) 1709.


\(^{49}\) Id. c. 44, art. 2, § 18.
to claims presented and proved, to a full report following the article aforesaid in the new Code, but with the settlement worked in, so that one recordation will place in the book containing estate settlements in the county clerk's office both the matter contained in the report of claims and also the final settlement. In neither county did any of the commissioners, — except as to one commissioner in the rural county, for a few large estates. — first make the report required by the article of the Code now in question, and then later file the final settlement, in strict conformity with the time limits set for both of these in the chapter in the Code dealing with both of these steps in closing up estates of deceased persons.

It is believed that the two counties above are fairly representative of the counties in West Virginia of the rural and of the semi-urban type, and it is also believed that the commissioners of accounts in those counties, most of whom are members of the bars of their respective counties, are capable commissioners and that those who are attorneys at law are fully up to the standard of the bar in other parts of the state. It is believed that in many of the counties in West Virginia there will be shown a like failure to comply, even rather loosely, with the requirements of this article of the Revised Code. No doubt in other parts of the state commissioners will be found who are strictly complying with the requirements of the Code, but certainly there are enough who are not so doing to raise the question as to the reason therefore.

When considered in theory it would seem difficult to work out a better way of handling the estates of deceased persons than is shown in the Revised Code, and yet, in practice, it has not functioned, in many ways, as was intended. One reason for this may be that every estate in West Virginia, no matter how small, is subject, if a personal representative qualify, to the same procedural requirements as is the large estate. This may seem perfectly reasonable in theory, but it may be questioned if it is equally sound as a practical matter. When the assets of an estate to be administered amount to only a few dollars, — and many do not have assets of a value of as much as one hundred dollars, — and yet, for some reason, an administration thereof is desired, it seems

50 Id. c. 44, art. 2, § 16.
51 Id. c. 44, art. 2.
52 Id. c. 44, art. 4, § 4.
53 Id. c. 44, art. 2, §§ 2, 16, and art. 4, § 4.
54 Id. c. 44.
to be natural for the commissioner to whom the case is referred and for the personal representative of the deceased to take the line of least resistance and in so doing to omit much of the matter required in the report of claims, and to put the balance thereof in with the settlement at the end of the year after date of qualification. With assets of small value and with, usually, only a few claims for small sums of money to each claimant, to the commissioner the report of claims may seem superfluous and to the personal representative the extra recording fee for the same may well seem unnecessary, since the settlement is to be recorded later in any event. On the other hand, when the assets of the estate to be administered are considerable, both the Commissioner and the personal representative should, it would seem, be glad to make use of the protection furnished the personal representative by first filing the full report of claims, and then the settlement, after making payments as provided in the report strictly according to the procedure provided by the Revised Code.

It may be said that there need not be administration of a small estate, so that the matter above is not of great moment, but while that is true in some cases, it is not always true. It may, for instance, be advisable to have a small estate administered in order to show a clear title of record to real estate of the decedent, although the real estate may not be very valuable, in view of the fact that it will be even of less worth if the title is not clear. In addition to such cases, there is the difficulty raised when the decedent left a will. Under the provision in the Revised Code there is no choice in such case, it would seem, except to present the will for probate, regardless of the size of decedent's estate.

The point can be made validly here that this is not a difficulty with the procedure provided for in the Code in the article in question, but goes to the matter of having classes of estates and different requirements for administration being granted on them. It would seem that this entire difficulty could be corrected by having some named minimum of assets below which it would not be necessary to have formal administration as now provided for, with provision that any person acting for the deceased could file with the county court, for recordation in a suitable book for that purpose,

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55 Id. c. 44, art. 2, § 16.
56 Id. c. 44, art. 4, § 4.
57 Id. c. 41, art. 5, §§ 1, 2, 3; In re Hawley's Estate, 189 S. E. 305, 306 (W. Va. 1936), with reference to duty to probate will.
in some fixed time limit, if that be thought desirable, a statement of receipts and disbursements of the personal property belonging to the deceased and showing what deficiency or surplus, as the case might be, then existed; and which statement could be verified before the clerk, before recordation. Therewith could also be recorded a will, if any, without the formalities of probate, in order to make a title of record to real estate, and also to preserve the records, if the family desired that, without the expense of more than the recordation fee. In view of the fact that, under certain circumstances, personal assets to the value of two hundred dollars may now be exempted when estates are administered, such a sum might be a proper minimum for such exemption from formal administration.

Another classification for purposes of administration, according to the value of the estate in personal property, would well be from the said amount of two hundred dollars to an amount as high, perhaps, as five thousand dollars. The principle of such classification by value has already been recognized by the Revised Code, in that section of the chapter dealing with the administration of estates in the article thereof dealing with accounting by fiduciaries, which requires an accounting only every three years, instead of every year as is required of all estates not so excepted, for estates with an annual income of less than three hundred dollars a year. Such an income, at six per cent per year, would seem to presuppose a corpus of five thousand dollars, although at the present time it would more nearly represent a corpus of ten thousand dollars with most kinds of legal investment. This classification could well call for the formalities of the article dealing with administrations of estates of deceased persons as to publication and as to notices, but without the report, and with the settlement at the end of the year setting forth the items now called for in the report of claims. The objection can be made to this that if the two are combined the purpose of the report of claims no longer exists and it might as well be dispensed with entirely. This, however, is not necessarily true, since the information furnished by the report of claims is pertinent to the settlement itself, and when the court approves the settlement it also approves the payment of items, as such, in the settlement which are what would have been

in the report of claims had it first been submitted. This, for instance, would be important when there is real estate, but not enough personalty to pay all claims against the estate, so that the unpaid claims would be of record, as such, against the land. In other words, the ordinary settlement does not furnish much necessary information which the report of claims does furnish and the above suggested combination of the settlement and of the report of claims does furnish it as well as show the actual receipts and disbursements set up in the settlement proper.

For all estates above the top figure set for the preceding class the full procedure, including report of claims in proper time, and payment of claims and other items by the personal representative only after the county court has duly approved the report, would seem both necessary and reasonable.

In most counties it is believed that the bulk of estates administered would fall in the second class, suggested as within a range of two hundred dollars to five thousand dollars worth of personalty. A suggested combination form of settlement and of report of claims follows:

COMMISSIONER’S REPORT OF CLAIMS
AND SETTLEMENT

In the Matter of John Smith, )
                      )  Report.
Administrator of the Estate of )
                      )
Adam Jones, deceased. )

CLAIMS AGAINST THE ESTATE

The following claims have been filed with the Commissioner, and are allowed as filed for the amounts shown and to the parties named:

(Here list name of claimant, address and net amount due.)

The sworn statement of settlement filed herewith shows the following disbursements:

(Here insert expenditures of personal representative, as shown in his settlement, giving date, to whom paid and amount, and the total of all items.)

The Commissioner allows the said payments as shown, in the amounts and to the persons named.
The appraisement of said estate, recorded in the Office of the Clerk of the Adams County Court, West Virginia, in Record of Inventories and Appraisement Book number 1, page 1, as made by appraisers John Doe, Richard Roe and Charles Slow, as named in Law Order Book number 1, page 1, said County Clerk’s records, shows the following:

Real Estate:

(Here insert, briefly, the real estate, with value.)

Tangible personal property of every kind:

(Here insert same, briefly, grouping as much as possible, and referring to appraisement record for items, and give values as grouped.)

(Here follow with such other items of the estate as are shown on the standard appraisement form.)

(Here give total of all appraised property.)

(Next would follow any other assets of the estate either not theretofore appraised, for some reason, or otherwise now appearing in the matter for the first time.)

(Various details of the settlement necessary to a clear understanding of the estate would be inserted here, and which might be as follows, as suggestive material.)

The said sworn statement of settlement shows that the administrator has in his hands none of the personal property of said estate for distribution, the distribution having been made as shown hereinbefore under disbursements. All of the said personal property has either been sold at least at the appraised value thereof,—or distributed in kind to those entitled to take the same as hereinafter shown. The administrator, as shown in said disbursements, has paid to himself $100.00 at 5% commission on the total receipts of $2,000.00. The foregoing are all approved as made and as shown.

The total receipts of the administrator, as shown in his sworn statement filed herewith, are as follows:

(Here insert receipts, giving date, from whom paid and amount, and the total of all items.)
All costs and expenses of, and all claims against, this estate having been paid in full, the persons to take the real and personal property belonging to said estate are Eve Jones, widow of Adam Jones, and John Jones, only child and sole heir at law of the decedent. The said widow will take one-third of the personal property in full title to the same, and the said John Jones will take the other two-thirds. The real estate will be taken by the said John Jones, but subject to the dower estate therein of the said widow.

The heirs of the decedent, as shown in said County Clerk's Office in Record of Fiduciaries and Their Bonds number 1, page 1, under date of January 7, 1936, are as follows:

- Eve Jones, age 60, Philadelphia, West Virginia.
- John Jones, age 30, Philadelphia, West Virginia.

The amount of bond given is $4,000.00, which was executed with the Blank Fidelity and Surety Company as surety.

The persons to take the said property are as shown above.

No sums need be reserved for payment of contingent, unliquidated or unmatured claims of creditors, as none such have been proved in this matter.

The only persons to be paid from the proceeds of said estate, or who are to receive any part thereof, are as hereinbefore shown.

(Here insert certificate showing date of completion of report, on what day the interested parties were notified of same and by what method, and that it has remained in the Commissioner's Office for ten days thereafter, date of certificate and signature of Commissioner.)

(Here insert certificate showing date of settlement of personal representative, exhibition of vouchers for disbursements, publication dates and paper for fiduciary notice, the same for notice to creditors and day matter was set for final presentation of claims against the estate, that the settlement and claims were supported according to law and that the bond is satisfactory, the date of Commissioner signing same, and his signature.)

60 Id. c. 42, art. 2, § 1.
61 Id. c. 42, art. 2, § 1.
62 Id. c. 43, art. 1, § 1.
The foregoing suggested form of report of claims\textsuperscript{3} and of settlement\textsuperscript{4} would necessarily have to be modified according to the facts in each matter, the framework only remaining the same. It is to be noted that if the settlement embraced in the above is removed, there is left with slight modification the framework of a suggested form for a report of claims as such.

Uniformity of reports and of settlements as filed by commissioners of accounts with their respective county courts would be much more likely to result throughout the state, it is believed, if the framework for the same would be enacted by the legislature and the use of that form required.

The suggested form for report of claims and of settlement, containing, it is believed, the essentials required by the Revised Code of the report of claims\textsuperscript{5} (in addition, the settlement\textsuperscript{6} also, which the Code now requires to be made after the report of claims has been confirmed by the county court) sets forth itself much of the objection to the full procedure now required for administration of the estates of deceased persons, as advanced by attorneys at law and by commissioners of accounts, as well as by laymen who are familiar with it. It may be briefly summarized as requiring the repetition of too much material already on the records in the county clerk's office, and as being unnecessary detail for administration of many of the small estates which now pass through West Virginia county courts. In other words, many criticize the report of claims as being not necessary, and insist that the settlement alone, as had prior to the Revised Code, is all that is necessary. This has already been discussed herein and will not be repeated.

Is the present method of handling estates of deceased persons, then, better than that in use prior to the Revised Code of 1931? It would seem that, if it is made to function, it is undoubtedly better than the old method for large estates, but that for small estates there is much to be said for the old method of requiring only a settlement. For very small estates, as discussed herein before, it is believed that some new method more simple and inexpensive even than only requiring the settlement would be better than either the new or the old method. Then there is the further question as to the functioning of the new procedure as set forth

\textsuperscript{3} Based upon \textit{W. VA. REV. CODE} (1931) c. 44, art. 2.

\textsuperscript{4} Based upon \textit{W. VA. REV. CODE} (1931) c. 44, art. 4, §§ 4, 7, 11, 12, 15, 16, 17, 18.

\textsuperscript{5} Based upon \textit{W. VA. REV. CODE} (1931) c. 44, art. 2.

\textsuperscript{6} Based upon \textit{W. VA. REV. CODE} (1931) c. 44, art. 4.
in the Revised Code. It must be frankly admitted that it does not seem to be functioning, in many places in the state at least, as it was originally intended to function. Partly this seems to be due, as shown above, to the difficulty of applying it to all estates, both large and small, without discrimination; and partly, too, it is probably due to the fundamental change made by the legislature in the whole system of handling all estates in the county court from the method proposed by the Code Revision Commission. Under the Revisers' proposed system of having one attorney at law in each county as commissioner of accounts, it is easily possible that the new procedure would have worked well, although it would seem that under any system there should be some way for very small estates to be handled cheaply and easily outside of the regular machinery set up in the court of probate and for administration of estates.

It is, perhaps, generally agreed that the sole jurisdiction for probate and for administration of estates should be in some court of law, now existing or to be created, but as the West Virginia Constitution would have to be changed to deprive the county court thereof, and as there appears but slight evidence at the present time of any such change, it would seem that any hope of improvement in the present system will have to be obtained otherwise. The next most obvious method of improvement would be to have a requirement by statute that all commissioners of accounts be attorneys at law; and if the number could be limited to one to each county it would seem that the efficiency of the system would thereby be greatly promoted. If, however, this cannot be accomplished, then it would seem that only changes in the procedure itself will help correct the difficulties now apparent in its functioning; and the two changes which seem most obvious are to classify estates by the value of the personal property thereof with the suggested differences in handling each class, and to have definite forms for a report of claims and of settlement enacted into law by the legislature, and their use required in all of the counties of the state. If the seemingly impossible could happen, and all of the foregoing suggested reforms in our system of handling administration of estates of deceased persons could be had, it is believed that it would then be the equal of that of any state in the country, in its practical efficiency and in its low cost of operation to the estate.

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67 Revisers' Note, following § 1, art. 3, c. 44, W. VA. REV. CODE (1931).
68 W. VA. CONST. Art. VIII, § 24.
One further question which can fairly be raised is that of finality as to all of the persons concerned in the matter. Does the present system achieve that? It would now seem that in some ways it does not. The opinion of the Supreme Court of Appeals of West Virginia in the case of In re Reynolds Estate, permitting an appeal to that court, is an instance, but that opinion otherwise, as *dictum*, seems to uphold the finality of the proceedings as to the personal representative. The net effect of the decision itself, however, would seem to allow matters to proceed long past the time set in the article of the Revised Code under discussion and after the time the same were to be finally settled. It will also be noted that in this case the notice to creditors was published twice, according to the opinion of the court, and that the report in the matter was not filed until two years after the day set in the second notice to creditors, although the Code requires the report of claims to be filed with the county court not later than ten months from the date of the qualification of the personal representative.

What is the duty of an attorney at law representing an estate and the personal representative under the present procedure? It would seem that he should insist upon strictly following the method of report of claims and report of settlement required by the Revised Code, even though the commissioner of accounts is not inclined to that view. If the goal of finality is to be reached, it seems reasonable to believe that that is more likely to be the result when all of the steps required in the Revised Code for administration of estates of deceased persons are strictly followed than when the commissioner follows his own views of how such a matter should be conducted and omits some of the statutory items. Since the fact is, however, that many commissioners of accounts in West Virginia do not strictly follow the Code in handling estates of deceased persons there is risk that litigation may result to test the sufficiency of what they have actually done. It may, in the long run, be better to adapt the required procedure, at least to some degree, to what the commissioners will actually do, than to have what is, in theory, an excellent method of handling estates of deceased persons but which in actual practice is followed in part only, and more or less as the individual commissioner desires. There are so many different points of law involved in estate set-

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70 W. Va. REV. CODE (1931) c. 44, art. 2, § 16.
tlements in any case that, at least as regards small and medium sized estates, it may be better to aim at simplicity in handling them in course of administration than at completeness.

**SUMMARY AND CONCLUSIONS**

1. Article two of chapter forty-four, Revised Code of West Virginia, 1931, to accomplish certain purposes radically changed the procedure required for administration of estates of deceased persons.

2. The attempted change in the machinery to handle this procedure,—to have one attorney at law a commissioner of accounts in each county, and only the one commissioner,—failed, and each county can now have four commissioners of accounts and these need not be members of the county bar.

3. In practice, about seventy-five per cent of commissioners of accounts in the state are members of the county bar; although in some counties all or a majority of the commissioners of accounts are not attorneys at law.

4. In all but about three counties it would seem that there are enough members of the local bar to permit all four commissioners of accounts in each county in the state to be selected from attorneys at law if the legislature would so enact. The law now allows four commissioners, but does not require that full number.

5. Article two of the Revised Code requires certain definite things to be done in administration of estates of deceased persons, as are enumerated therein, within specified time limits, and particularly a report of claims upon which the personal representative is to base his disbursements; with subsequent settlement, under another article in chapter forty-four of the Code, after such disbursements, of all matters involved in the handling of the estate.

6. There is evidence to show that the procedure set forth in said Article is not followed by many commissioners of accounts. Among the reasons advanced for this are:

   (a) That the whole of said procedure is unnecessary, and that the method of settlement, as provided for other types of estates, is sufficient.

   (b) That for the ordinary small or medium-sized estate the procedure therein is unnecessarily detailed and expensive.

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71 Pilson, *Information and Suggestions for ... Fiduciaries* (1932) 18 Va. L. Rev. (N. S.) 803 et seq.
That a combination of the report of claims and of the settlement would answer all purposes and would save time except that for large estates the present form of procedure is satisfactory.

7. It is believed that a classification of estates by the value of personalty appraised, with suggested variations in the method of handling each in the administration thereof, would meet much of the criticism against the present method of procedure:

(a) All estates under two hundred dollars in value of personalty, no administration required, whether decedent did or did not leave a will; with provision for recordation in the county clerk’s office of receipts and disbursements, balance, if any, as shown, and unpaid bills, verified and filed by the person having handled same; and recordation of the will, if any, therewith, without formal probate.

(b) All estates having between two hundred dollars and five thousand dollars of personal assets, administration required, and formal probate of will, if any, but following only the publication requirements of article two, with provision for a combination report of claims and settlement one year after date of qualification of the personal representative.

(c) All estates having over five thousand dollars of personal assets, administration required, with formal probate of will, if any, and full procedure therein as now required in said article two, and subsequent settlement or settlements as now provided for in chapter forty-four.

8. A suggested form for a combined report of claims and of settlement is shown; or of report of claims only, if the settlement is eliminated therefrom (and it is otherwise slightly modified).

9. The whole system of handling estates in West Virginia could be improved, it is believed, as follows:

(a) By a constitutional amendment putting jurisdiction of same in a court of law, now existing or to be created.

(b) By having one commissioner of accounts in each county, with the requirement that the commissioner be an attorney at law.

(c) By classifying estates, with differences in procedure required to handle same, according to the size thereof in personal assets (as shown hereinbefore).

(d) By having enacted a framework of a report of claims, and also of a report of settlement (and of the two combined,
if that would be permitted, as hereinbefore suggested), as a form for each, and requiring the use thereof by all commissioners of accounts in West Virginia.

10. One of the strongest reasons, it is believed, for adopting the present procedure for handling administration of estates of deceased persons as in article two of the Revised Code, was to achieve finality in the settlement thereof.

(a) It is questionable whether this has been accomplished. Query 1: Is, then, the present method of procedure as set forth in said article two, Revised Code, justifiable except for large estates?

(b) Query 2: Shall the procedure be adapted to the practice, as it is believed it now exists, or shall the endeavor be made to have the practice conform to the procedure required by article two of the Revised Code?