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The Uniform Probate Code—Does It Really Work?

*Terry L. Crapo**

INTRODUCTION

In early 1971, in an effort to reform and modernize its probate practice, Idaho became the first state in the Union to adopt the Uniform Probate Code (UPC) in its entirety.¹ Idaho's enactment of this comprehensive uniform law was not the result of a unified effort by Idaho's organized bar. Rather, its enactment was strongly urged by citizen groups and individual legislators, along with a small number of interested attorneys. In fact, the proponents of the legislation were largely critical of the Idaho Bar, banks and trust companies, and the probate process in general. Their criticism centered around the high cost and delays incident to estate administration, particularly aimed at the common practice of basing the fees of attorneys, executors, administrators, and trustees on a percentage of the estate being probated. Supporters of the Code pointed out that the percentage fee often produced extremely high administration fees for large estates, even though the estate had been well planned and its administration relatively simple.² Considerable criticism was also directed toward Idaho's

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1. Ch. 111, [1971] Idaho Laws 233-382 (codified at IDAHO CODE § 15 (Supp. 1975)). Since that date, ten other states have adopted the UPC: Alaska, ALASKA STAT. § 13 (1972); Arizona, ARIZ. REV. STAT. ANN. § 14 (Spec. Pamphlet 1974); Colorado, COLO. REV. STAT. ANN. §§ 15-10 to -17 (1973); Minnesota, MINN. STAT. ANN. § 524 (1975); Montana, MONT. REV. CODES ANN. § 91A (Spec. Uniform Probate Code Pamphlet 1974); Nebraska, NEB. REV. STAT. §§ 30-2201 to -2902 (Cum. Supp. 1974); New Mexico, N.M. STAT. ANN. § 32A (Spec. Probate Code Pamphlet 1975); North Dakota, N.D. CENT. CODE § 30.1 (Spec. Uniform Probate Code Supp. 1975); Utah, UTAH CODE ANN. § 75 (Spec. Uniform Probate Code Pamphlet 1975).

Regrettably, South Dakota, having once adopted the UPC, S.D. UNIFORM PROBATE CODE (Spec. Supp. 1974), repealed the Code in its entirety on February 27, 1976.

2. Prior to adoption of the UPC, Idaho Code § 15-1107 provided for mandatory allowance of the following fees to executors and administrators: 5% of the first \$1,000 of estate value; 4% of the next \$9,000 of value; and 3% of the balance of the value of the estate. The minimum fee schedule of the Idaho Bar Association contained a similar percentage fee schedule, with the bulk of the estate being charged at a rate of 3% of estate value.

then existing system of estate administration that in most instances required the use of a single unified proceeding regardless of the size or complexity of the estate.³ The proponents of the UPC claimed that its adoption would eliminate these defects by reducing fees and expenses in estate administration, eliminating unnecessary procedures, and frequently shortening the time required for administration.

When the Idaho State Bar Commission realized that the Idaho legislature was intent on enacting the UPC, its commissioners gave modest support to the legislation and appointed a group of attorneys to assist the legislature in the drafting process. Following the enactment of the UPC, the Idaho State Bar Commission conducted comprehensive legal education courses throughout the state to instruct and train Idaho lawyers in UPC procedures. Additionally, UPC manuals and form books were published and widely distributed, and the UPC became a regular topic in the Bar's continuing legal education program.

The Idaho Uniform Probate Code became effective July 1, 1972. Since that time, the attitude of the *organized* bar in Idaho toward the UPC has been very positive and much effort has been expended in assisting attorneys to effectively apply the UPC. Inasmuch as the Idaho bar and judiciary, as well as interested citizens, have now had almost 4 years of experience with the UPC, it is appropriate to inquire whether the UPC is achieving the expectations of those who urged its adoption.

To examine the impact of the Uniform Probate Code on Idaho's probate practice, the author, with the assistance of the J. Reuben Clark Law School at Brigham Young University, conducted a mail survey of practicing Idaho attorneys,⁴ interviewed selected bank trust officers, and examined summaries of all pro-

3. Idaho law did provide for several types of summary estate proceedings that simplified administration in many instances. Those summary proceedings included shortened administration of estates passing to a surviving spouse, ch. 138, [1971] Idaho Laws 587-90; shortened proceedings when the estate was less than \$1,500 in value, IDAHO CODE § 15-506 (1948); and a procedure for the determination of heirship and settlement of an estate after the lapse of 2 years from the date of death if no other administration had been commenced, *id.* § 15-1401 to -1405. Unfortunately, many Idaho estates did not qualify for these summary procedures.

4. As of December 1975, there were 1,015 attorneys (excluding judges) registered with the Idaho State Bar Commission who were living in Idaho. Questionnaires were sent to 470 attorneys selected from the rolls of the Idaho bar. So far as was possible, judges, court administrators, house counsel, and attorneys known not to be engaged in probate practice were omitted. An effort was made to include all attorneys known to have substantial probate practices. Of the 470 questionnaires sent, a total of 275 replies were received—a return of 58.5%.

bate filings in each county of the state for the past three years. The record of probate practice and the perceptions and attitudes of Idaho attorneys and bank trust officers, after having used the UPC for nearly 4 years, are valuable for several reasons. First, it permits an examination of the effectiveness of the UPC in fulfilling the primary expectations of its proponents: the streamlining of estate administration and the reducing of the costs and delays incident to probate. Second, this data permits an examination of the problems incident to the adoption of a new and unfamiliar probate code and the difficulty of educating an entire state bar and state populace in the use of an entirely different system of estate administration.

I. STREAMLINING ESTATE ADMINISTRATION PROCEDURES

Prior to adoption of the Uniform Probate Code, Idaho, like most other jurisdictions, had a probate system that provided a single basic method for administering estates. Regardless of the size or complexity of an estate, once administration began, each step of the statutory procedure usually had to be followed. Although previous efforts at probate reform had produced several types of summary proceedings designed to bypass the traditional form of probate,⁵ these shortened procedures were not applicable to many estates. These estates were uniformly required to use the lengthy process of court-supervised administration and to seek probate court approval of each phase of administration and each action to be taken by the personal representative.

The Idaho Uniform Probate Code was designed to resolve this particular problem by recognizing that different types of estates have different administration needs. Some estates need neither the appointment of a personal representative nor administration. Other estates, however, need substantial administration, and court approval of many transactions in these estates may be desirable. Accordingly, the UPC does not mandate a single unified method for the administration of decedents' estates, but instead permits selection from several different types of probate proceedings, each of which is designed for a particular purpose. These proceedings are independent; the use of one neither precludes nor requires the use of another. Nevertheless, under the UPC, the personal representative and his attorney are always free to obtain court approval of any transaction or matter,⁶ but are not

5. See note 3 *supra*.

6. See UNIFORM PROBATE CODE § 3-704 [hereinafter cited as UPC].

required to do so unless it would benefit the estate. Those interested in an estate can thus purchase and obtain as much or as little administration as appears necessary and proper. Given this broad flexibility, the Code draftsmen intended that estates would receive only the amount of administration and court supervision that is actually necessary and that superfluous proceedings would be eliminated.

The first objective of the mail survey of Idaho attorneys was to determine whether the use of the UPC procedures has reduced the time required to administer an estate and whether the alternative forms of probate have been helpful in meeting the needs of clients. The attorneys were specifically asked whether they felt that the procedures available under the Code have generally reduced the time required to administer an estate. The response to this inquiry, shown in table 1, was very positive, with 60% of the sample indicating that the UPC procedures had been effective in reducing the time of administration.⁷

TABLE 1.—Question Presented: *Do you feel that the procedures available under the Uniform Probate Code have generally reduced the time you require to administer an estate?*

| | |
|----------------|------|
| Yes | 60% |
| No | 19% |
| About the same | 21% |
| Total | 100% |

The perceived effectiveness of alternative probate forms was tested by asking the attorneys whether the alternative forms of administration had been helpful in meeting the probate needs of clients. As shown in table 2, 68% of the attorneys responded in the affirmative.

TABLE 2.—Question Presented: *Do you feel that the alternative forms of administration available under the Uniform Probate Code have been of benefit to you in meeting your clients' probate needs?*

| | |
|----------------|------|
| Yes | 68% |
| No | 13% |
| About the same | 19% |
| Total | 100% |

7. There was a significant difference in the response to the question presented in table 1 when the sizes of communities in which the attorneys practiced were compared. In communities of 15,000 or larger, 64% of the attorneys answering the question responded in the affirmative. In communities of less than 15,000, only 52% responded in the affirmative. The statistical significance of this comparison is .0201. As will be demonstrated in section III, B, 2 of this article, the attorneys in Idaho counties with large population

Although a substantial majority of the survey participants answered both of the foregoing questions in the affirmative, experienced attorneys were much less positive in their responses.⁸ Among attorneys who had been in practice less than 10 years, 76% felt that the UPC had reduced the time of administration and 85% felt that the alternative forms of administration were beneficial. Among attorneys who had been in practice more than 10 years, just 52%—a bare majority—felt that the time of administration had been reduced and only 58% felt that the alternative forms of administration aided in meeting their clients' probate needs.

Interestingly, the survey showed that regardless of their criticism of the UPC, practitioners with more than 10 years experience use the alternative forms of probate, including liberal use of the informal proceedings, with approximately the same frequency as the younger attorneys.⁹ This suggests that the response of some

centers made the most effective early use of the UPC's simplified probate forms. This may account for the difference in the response to the question presented in table 1 when community sizes are compared.

8. The following table shows the breakdown according to years of practice of affirmative responses to the question whether UPC procedures have reduced the time to administer estates:

| Years of Practice | Percent Indicating reduced Attorney Time |
|-------------------|---|
| 0-4 | 92 |
| 5-9 | 63 |
| 10-19 | 57 |
| 20-24 | 48 |
| 25 and up | 49 |

This second table shows the breakdown according to years of practice of affirmative responses to the question of whether the alternative forms of administration have been of benefit in meeting clients' needs:

| Years of Practice | Percent Indicating Greater General Benefit from UPC |
|-------------------|--|
| 0-4 | 92 |
| 5-9 | 79 |
| 10-19 | 64 |
| 20-24 | 58 |
| 25 and up | 54 |

A chi square test of these differences indicated that the above results had a low probability of resulting from sampling error. The respective chi square probabilities were .0034 and .0002.

9. The survey asked responding attorneys to indicate the approximate number of each type of the following probate procedures handled by them during the previous year: (1) informal probate without formal closing; (2) informal probate with formal closing;

experienced practitioners concerning the advantages of the UPC may be affected by negative emotional overtones resulting from a dissatisfaction with an enforced change from a familiar probate system to a new and radically different system rather than from a true dissatisfaction with the alternative forms. In any event, it is encouraging that despite their reservations concerning the UPC, older, as well as younger, attorneys are in fact using the shortened forms of probate and new alternative procedures.

The UPC is a radically new and often disturbing innovation to many probate practitioners. It requires the practitioner to become competent in choosing from and using a number of different types of estate proceedings. Furthermore, the practitioner is expected to direct the administration and closing of estates with a minimal number of transactions, usually with little or no court supervision. It is anticipated that the practitioner who is able to master the alternative procedures available under the UPC will reduce the number of transactions required in many estates and thereby shorten the time required for probate. In fact, the results of our survey demonstrate that the Idaho probate bar perceives that such economies have been achieved. It is also the general perception of Idaho attorneys that the alternative forms of probate available under the UPC have assisted them in better meeting the needs of their clients. Clearly, the UPC has in practice fulfilled a major goal of its proponents—it has served to streamline estate administration procedures.

II. REDUCING ESTATE ADMINISTRATION COSTS

A. *The UPC's Approach to Reducing Costs*

During recent years, criticism of existing probate laws from sources both within and without the bar has focused on the fees and costs incurred in the settlement of decedents' estates and the often pronounced disparity between the fee charged and the actual value of the services rendered.¹⁰ The Uniform Probate Code

(3) formal testacy; (4) supervised administration; and (5) surviving spouse short form proceeding. The survey revealed no significant difference in the frequency of type of estate administration proceeding selected based upon age, experience, or other demographic factor surveyed. Regardless of age or experience, the surveyed attorneys made liberal use of the informal proceedings and the surviving spouse short form proceeding.

10. See N. DACEY, *HOW TO AVOID PROBATE* (1968); Bauer, *Watch Those Fees!*, 104 *TRUSTS & ESTATES* 1117 (1965); Bloom, *Time to Clean Up Our Probate Courts*, 96 *READERS DIGEST*, Jan. 1970, at 112-15; Hauptfuhrer, *The Draft Statement of Principles Regarding Probate Charges and Expenses: A Commentary*, 7 *REAL PROPERTY, PROBATE & TRUST*

seeks to reduce the cost of estate administration in a variety of ways. Two important methods of reducing such costs are (1) streamlining estate administration procedures and (2) eliminating the percentage fee as the primary criterion for setting the compensation of attorneys and personal representatives.

1. *Method 1—Streamlining procedures*

Not only is the streamlining of probate procedures beneficial of itself as a means of allowing the attorney to better meet his clients' needs, it is also the UPC's primary approach to reducing costs. As previously discussed, the UPC seeks to eliminate unnecessary probate procedures by offering the estate practitioner a variety of simplified procedures to meet the differing needs of each estate. In addition, the Code eliminates or modifies certain antiquated formalities of probate practice.¹¹ The UPC assumes that greater flexibility in probate practice will reduce the number of procedures and the amount of time involved in estate administration. As discussed in section I, above, it is the general perception of Idaho attorneys that the Code has largely met this objective. Whether this successful streamlining of probate procedures, along with other factors, has correspondingly reduced the cost of estate administration is discussed below.

2. *Method 2—Eliminating the percentage fee*

A second approach to reducing estate administration costs is the UPC's somewhat controversial¹² rejection of fixed-percentage fee schedules as the primary means of determining the fees of personal representatives and their agents, especially attorneys. Under the UPC, a personal representative is to be paid "reason-

J. 740 (1972); *Statement of Principles Regarding Probate Practices and Expenses*, 8 REAL PROPERTY, PROBATE & TRUST J. 293 (1973).

11. For example, methods of giving notice have been simplified and made uniform. See UPC § 1-401. Indeed, informal probate, appointment, and formal closings may be instituted and concluded without the necessity of any type of publication. Idaho practitioners, however, frequently publish notice of hearings on formal closing under UPC § 3-1001 to broaden the res judicata effect of the closing order. Similarly, formal and expensive appraisals of estate assets by expert appraisers are no longer required; personal representatives are given wide discretion in determining the type and nature of appraisals in those instances where an appraisal would be beneficial to the estate. UPC §§ 3-706, -707.

12. In contrast to the UPC draft proposed by the Commissioners on Uniform Laws, Utah and Montana both enacted provisions in their codes that include statutory fee schedules which set forth percentages representing maximum fees for attorneys and personal representatives. UTAH CODE ANN. § 75-3-78 (Spec. Uniform Probate Code Pamphlet 1975); MONT. REV. CODES ANN. § 91A-3-719 (Spec. Uniform Probate Code Pamphlet 1974).

able compensation for his services"¹³ and is to establish the fees of his agents and employees.¹⁴ Although the personal representative is given great latitude in initially determining the amount of compensation, the Code provides a quick and efficient procedure for review of his determination.¹⁵ The UPC thus marks a sharp departure from the existing practice in many states in which fees are determined by the courts, frequently according to statutory or bar association fee schedules. Although the UPC does not expressly prohibit the use of a percentage fee, the thrust of both the UPC and recent decisions holding bar association minimum fee schedules violative of the antitrust law¹⁶ has been to encourage attorneys and personal representatives to adopt procedures for setting fees that depend upon factors more directly related to the value of the services rendered.

B. *The UPC's Impact on Costs*

1. *Reduction in attorneys' fees*

Although there are no certain means of determining the methods used to establish attorneys' fees prior to the adoption of the UPC, it is common knowledge that a great majority of Idaho attorneys relied heavily on the percentage fee scale to determine probate fees. In fact, this was the recommended method of determining a probate fee under the old minimum fee schedule of the Idaho State Bar.¹⁷

In the survey, Idaho attorneys were asked to identify the methods they currently use to determine attorneys' fees for services rendered under the Uniform Probate Code. As shown in table

13. UPC § 3-719.

14. UPC §§ 3-715(21), -720.

15. UPC § 3-721 permits any interested person to petition for court review of the reasonableness of any compensation paid to any personal representative or agent he employs.

16. *E.g.*, *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

17. The last fee schedule published in the Idaho State Bar Deskbook (before the practice was discontinued) contained the following recommendation for setting attorneys' fees in matters of decedents' estates:

To be based on all the separate property, all community property up to \$10,000.00, and one-half the remaining community property:

| | | |
|-------|------------|----|
| First | \$1,000.00 | 7% |
| Next | 4,000.00 | 5% |
| Next | 5,000.00 | 4% |
| Over | 10,000.00 | 3% |

3, only 14% of the attorneys responding to the survey indicated that they presently charge a percentage of the value of the estate as their fee. Rather, 82% responded that they charge on an hourly basis or an hourly basis adjusted for the size of the estate and the degree of expertise required.

TABLE 3.—Instruction: *Please indicate the method you now use to determine attorneys' fees for services under the Uniform Probate Code.*¹⁸

| | |
|--|-------------|
| Hourly basis | 23% |
| Hourly basis adjusted for size of estate and expertise required | 59% |
| Percentage of Estate | 14% |
| Other ¹⁹ | 4% |
| Total | <u>100%</u> |

Although there may be other forces operating to discourage the use of the percentage fee schedule by attorneys, the survey results indicate that the adoption of the UPC in Idaho has caused a rapid and substantial change from the percentage fee to the adjusted hourly rate fee. One must therefore conclude that, in practice, the UPC has been largely successful in eliminating the percentage fee. It is interesting that among those attorneys who have practiced less than 5 years, only 8.3% still use the percentage fee, while 23.4% of those who have practiced more than 25 years still do so. It may be surmised, then, that much of the continued use of the percentage fee is a carryover from previous probate practice and that use of percentage fee scales will continue to diminish as new generations of attorneys gradually assume the responsibility of probate practice. Regardless of whether elimination of the percentage fee has had any effect on reducing the cost of administration, this change should be considered beneficial since the percentage fee often bears no reasonable relationship to the value of the services actually performed, and its indiscriminate use has caused much criticism of the probate bar.

The diminishing use of the percentage fee and the availability of simplified forms of probate under the UPC appear to have

18. Thirty attorneys answering the questionnaire checked more than one method of determining fees, indicating the use of a combination of methods.

19. Among those who checked the "other" category, the most common method of determining a fee was the use of a flat fee for a single procedure, often for one of the summary or informal procedures.

been significant in reducing the overall attorneys' fees incurred in estate administration. As shown by table 4, the majority of Idaho attorneys who responded to our survey feel that fees for probate work have been reduced as the result of Uniform Probate Code procedures.

TABLE 4.—Question Presented: *Do you feel attorneys' fees for probate work have in general been reduced as a result of Uniform Probate Code procedures?*

| | |
|----------------|---------------|
| Yes | 57.6% |
| No | 16.6% |
| About the same | 25.8% |
| Total | <u>100.0%</u> |

Of those who felt that attorneys' fees have been reduced, the estimates of the amount of the reduction in fees ranged from 10% to 60%, with the median being 30% and the average 33.5%. This reduction, although based upon estimates, represents the perceptions of the probate bar and should be considered significant.²⁰ Moreover, the accuracy of the bar's opinion concerning the reduction in attorneys' fees is supported by a study made by Robert W. Kinsey.²¹ While an employee of the Idaho State Tax Commission, Kinsey made a comparison of the claims for attorneys' fees in Idaho inheritance tax return files for 1971 and 1973. Kinsey found that in 1971 the average attorneys' fee was 3.582% of the gross estate, with the median fee being 3.151% of the gross estate. In 1973, 2 years after enactment of the UPC, the average attorneys' fee was only 1.8017% of the gross estate and the median fee was 2.3329% of the gross estate.²² Although claims for attorneys'

20. One typical comment by a responding attorney concerning the fee situation was as follows: "Well-planned estates can be handled more efficiently under the UPC with significant savings of attorneys' fees. Unplanned, or very small estates, usually generate approximately the same fee as before." Another attorney, however, commented: "Some attorneys who were gouging under the old law charge even more now."

21. Kinsey, *A Contrast of Trends in Administrative Costs in Decedents' Estates in a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota)*, 50 N.D. L. REV. 523 (1974) [hereinafter cited as Kinsey].

22. Kinsey reported 1,449 claims for attorneys' fees in 1971, with an average fee of \$1,441.33 and a median fee of \$750.00. In 1973, there were 892 claims totaling \$1,008,082.93, with an average attorneys' fee of \$1,130.13 and a median fee of \$500.00. In 1971, the average gross estate was \$39,748.39 and the median gross estate was \$27,707.60. In 1973, the average gross estate was \$62,723.29 and the median gross estate was \$28,788.63. The Kinsey study shows a decrease in the average attorneys' fee of 50% between 1971 and 1973 and a decrease in the median fee of 26% between the same two years. The decrease in the median fee is probably more reflective of the UPC's effect. In 1973, the average gross estate was more than 50% larger than the average gross estate in 1971. Some of the decrease in the average attorneys' fee in 1973 probably reflects the fact that a proportionately smaller fee is normally charged larger estates. *Id.* at 526.

fees were filed in only 33% of the inheritance tax files in 1971 and 19% of the files in 1973, the comparison is of sufficient scope to corroborate our finding of a substantial reduction in attorneys' fees following the adoption of the UPC.²³

2. *Reduction in personal representatives' fees*

An even more abrupt change is found in the method of determining estate administration fees of institutional personal representatives. Prior to Idaho's adoption of the Uniform Probate Code, banks and trust companies uniformly charged the percentage fees authorized by statute.²⁴ Interviews conducted in January and February, 1976 with officers of the trust departments of Idaho's four major banking systems,²⁵ however, revealed that all four have discontinued use of percentage fee scales in determining charges for their services as personal representatives. Instead, these bank systems now charge basic hourly rates adjusted for complexity, size of the estate, other risk factors, and expertise required.²⁶ In each instance, these trust departments now attempt to charge fees equal to the value of the services actually rendered.

All of the bank trust officers interviewed felt that their administration fees had been reduced somewhat since the adoption of the UPC. They attributed that fact in large part to the elimination of the percentage fee and to the more streamlined probate process. Although three of the trust departments did not keep comparative records of fees charged under the two systems, one department indicated that it had kept partial records which revealed an overall reduction of bank administration fees of between 23% and 30% under the UPC. An officer of one of the other banks estimated that the average administration fee had been

23. In 1971, there were 1,449 claims filed in 4,456 inheritance tax files; in 1973, there were 892 claims filed in 4,634 tax files. An inheritance tax file is normally established for every estate proceeding commenced in the Idaho courts. However, Idaho does not impose an inheritance tax upon the transfer of community property from one spouse to another. It is common Idaho practice not to file an expense deduction schedule on inheritance tax returns when only transfers of community property to a surviving spouse are involved, or when the gross estate does not exceed the statutory exemptions. The number of claims would largely represent inheritance tax returns filed in which a tax was imposed and therefore a deduction schedule showing attorneys' fees was filed. *Id.*

24. For a listing of authorized percentage fees see note 2 *supra*.

25. *Viz* Idaho First National Bank, First Security Bank of Idaho, Bank of Idaho, and Idaho Bank & Trust Company.

26. Some trust departments use rather complex schedules which attempt to determine the value of the various services rendered and set an appropriate charge for each type of service.

reduced by approximately one-third since adoption of the Code. Furthermore, Kinsey's study of Idaho inheritance tax returns revealed that between 1971 and 1973, the average commission paid to all types of personal representatives declined by 13% and the median commission declined by 7%.²⁷ A further reduction in the fees of institutional personal representatives is likely, however, since not all of the bank trust departments had completed the change in their method of determining administration fees by early 1973, the last year of the Kinsey study.

One final point should be mentioned. All the trust officers interviewed felt that the new methods of determining fees were more equitable than the previous percentage fee arrangements and that larger estates had particularly benefited from the change in methods. All of the trust officers were positive toward the UPC, feeling that probate procedures were now quicker and more efficient and that estates were being closed earlier than under the old probate system.

C. *Conclusions*

The results of the survey, as well as data available from other sources, indicate that the UPC has been effective in reducing the costs of estate administration. It is important to note that prior to the adoption of the UPC, Idaho already had a reasonably modern probate system that provided for several types of summary proceedings. Accordingly, if adoption of the UPC results in fee reductions in a state like Idaho, it may be concluded that states operating under older and often more rigid probate systems may be able to achieve even more substantial reductions in fees and costs through probate reform legislation.

Although it is difficult to estimate the relative effect on estate administration costs of the UPC's streamlining of probate procedures vis-à-vis its elimination of the percentage fee, the demise of the percentage fee has been a much needed reform. The statewide change to more equitable methods of determining es-

27. According to Kinsey:

In 1971 there were 437 claims for commissions to personal representatives totaling \$808,244.03, or an average commission of \$1,849.52. The median commission paid to a personal representative in 1971 was \$860.34. In 1973, after the enactment of the Uniform Probate Code, there were 198 claims for commissions to personal representatives totalling \$320,013.56 or an average commission of \$1,616.23. The median commission paid to a personal representative in 1973 was \$800.00.

Kinsey 527.

tate administration fees has clearly been a factor in fee reductions by both attorneys and personal representatives; it should have a positive effect on the layman's perception of the probate bar and others involved in the probate process. Any further reductions in costs of administration in Idaho will probably have to come through more effective education of the probate bar and the public in the use of the simpler and less expensive methods of probate. As subsequent portions of this article will indicate, there are still a substantial number of Idaho estates being administered under unnecessarily long and cumbersome proceedings despite the availability of shorter and more appropriate proceedings. As the probate bar makes more effective use of the alternative UPC procedures, further reduction in the cost of administration is both possible and probable.

III. IMPLEMENTING THE UPC: THE IDAHO EXPERIENCE

A substantial majority of the attorneys surveyed felt that the UPC educational and training materials furnished by the Idaho State Bar were adequate and that, at the time of the survey in 1975, they had a good working knowledge of the UPC. Yet, a review of probate filings in Idaho during the past several years indicates that the transition to the new Code has been difficult for many attorneys and that significant education and training problems still exist. Following a discussion of the survey results and an analysis of the recent probate filings in Idaho, several observations are presented to assist Code states in effectively implementing the UPC.

A. *Perceptions of Idaho Attorneys Concerning Their Training and Working Knowledge of the UPC*

As discussed above, the Idaho State Bar expended considerable time and effort to train and educate Idaho attorneys in UPC procedures. Several statewide training seminars were conducted, handbooks and form manuals were published and widely circulated, and UPC topics were made a part of the bar's continuing legal education program. One objective of the mail survey was to ascertain the bar's perceptions concerning this training effort. Specifically, attorneys were asked about the adequacy of the seminars, handbooks, and forms provided by the bar association. As shown in table 5, 80% of the respondents felt that the training materials were adequate.

TABLE 5.—Question Presented: *Do you feel that the seminars, handbooks and forms provided by the Idaho State Bar Association in connection with educating the Idaho bar about the UPC are adequate or inadequate?*

| | |
|------------|-------------|
| Adequate | 80% |
| Inadequate | 20% |
| Total | <u>100%</u> |

Although the statewide response was very positive, attorneys in smaller communities were less likely to view the educational and training materials as adequate. In communities with populations in excess of 15,000, 84% of the attorneys felt that the educational materials were adequate,²⁸ while in communities of less than 15,000, only 70% responded in the affirmative.²⁹ This finding corroborates information presented later in this section which reveals that attorneys in some of Idaho's less populous counties experienced significant difficulty in effectively implementing the UPC. The responses to the survey suggest that this difficulty may have been caused by a lack of adequate training in the more rural areas of the state.

Another objective of the mail survey was to evaluate the attorneys' perception of their *present* level of proficiency with respect to the UPC. When asked whether they individually had a good working knowledge of the UPC and the alternative proceedings available for estate administration, fully 75% of the respondents answered in the affirmative, as shown in table 6.

TABLE 6.—Question Presented: *Do you now feel that you have a good working knowledge of the Uniform Probate Code and the various alternative proceedings available for estate administration?*

| | |
|-------|-------------|
| Yes | 75% |
| No | 25% |
| Total | <u>100%</u> |

B. *Difficulties in Implementing the UPC's Alternative Forms of Administration*

The intensive education and training programs of the Idaho State Bar helped produce an early acceptance of the informal proceedings in many counties of the state. Nevertheless, an analysis of the probate filings in Idaho during 1973, 1974, and 1975

28. A number of responses to the survey included a plea for better indexing of the Code and related form books. Others called for more guidance on when to use the various alternative procedures. The need for such guidance was also demonstrated by many comments on the survey forms that indicated an incomplete understanding of UPC procedures.

29. The probability that this difference was due to sampling error was only .03.

reveals that attorneys in some areas had a difficult time at the outset in effectively using the alternative forms of probate. Even today, Idaho probate practitioners are not making maximum use of the simplified procedures available under the UPC. Specifically, the probate records show a continuing unnecessarily high incidence of formal testacy and an early excessive use of the supervised administration mode of probate.

1. Continuing excessive use of formal testacy

Table 7 shows a statewide summary of the various types of probate proceedings initiated in Idaho during each of the past 3 years.

TABLE 7.—*Probate proceedings filed in Idaho during 1973, 1974, and 1975*³⁰

| Type of Proceeding | 1973 | 1974 | 1975 ³¹ |
|---|------------|------------|--------------------------|
| Informal Probate and Appointment Proceedings | 36% | 45% | -- |
| Summary Surviving Spouse Proceedings ³² | 25% | 22% | -- |
| Total Informal Proceedings | 61% | 67% | 72% |
| Supervised Administration | 6% | 3% | -- |
| Formal Testacy | 33% | 30% | -- |
| Total Formal Proceedings | 39% | 33% | 28% ³³ |

30. Data on probate filings was obtained from the Idaho Courts Annual Report for 1973, 1974, and 1975, prepared by the office of the Idaho Court Administrator. The data for 1975 was corrected for the counties of Ada, Canyon, Twin Falls, and Benewah for the reasons discussed in note 33 *infra*. A listing of estate filings in Idaho by county during the years 1973, 1974, and 1975 is found in the appendixes.

31. In 1975, the office of the Idaho Court Administrator, for reporting purposes, combined the categories of "Informal Probate & Appointment" and "Summary Surviving Spouse Proceedings" into a single category of "Informal Proceedings" and combined the categories of "Formal Testacy" and "Supervised Administration" into a single category of "Formal Proceedings."

32. The summary surviving spouse proceeding, permitted under previous Idaho law, was added to the Uniform Probate Code upon enactment as IDAHO CODE § 15-3-1205 (Supp. 1975). This proceeding is a method of confirming title to property in a surviving spouse without the necessity of administration. Notice to creditors is not published and the property passes to the surviving spouse subject to the claims of creditors. The procedure is very popular in some Idaho counties and is generally considered a form of informal probate even though there is an adjudication of title to the marital property and the decree entered is considered a final judgment.

33. Although the Idaho Court Administrator had instructed all county clerks to report informal probate and appointment proceedings and summary surviving spouse proceedings as informal proceedings, and to report formal testacy and supervised administra-

Although table 7 clearly demonstrates a discernible state-wide trend in Idaho toward the use of informal and summary administration procedures, attorneys and courts in the various counties of the state have demonstrated a marked difference in their effectiveness in adapting to the alternative forms of probate. In certain counties, a high percentage of the simpler modes of probate have been consistently used. For example, the percentage of all filings in Bannock County during the past 3 years that involved informal proceedings was as follows: 1973—77%, 1974—87%, and 1975—90%. Attorneys in a second group of counties, although experiencing initial difficulties in implementing the informal proceedings available under the UPC, radically increased their usage of these forms in later years. For instance, the percentage of informal proceedings in Bingham County during the past 3 years was as follows: 1973—61%, 1974—51%, and 1975—91%. Finally, practitioners in a third group of counties have consistently used a low percentage of informal proceedings. For example, in Latah County the use of informal proceedings was as follows: 1973—39%, 1974—22%, and 1975—30%. The record of probate practice in counties like Bannock and Bingham indicates that a probate bar can make effective use of the alternative forms of probate and that the simpler procedures should eventually be used to administer most estates. Nevertheless, the Idaho statistics demonstrate a continued high use of formal testacy proceedings in many counties and thus indicate that effective implementation of the UPC has been a slow process and that much education and training remains to be done.

Education of attorneys and courts in the proper use of formal testacy should be directed at discouraging the improper use of formal testacy to initiate estate administration. Beginning administration with formal testacy proceedings merely delays the commencement of administration and incurs the added expenses

tion proceedings as formal proceedings, interviews with county clerks in Ada, Canyon, Twin Falls, and Benewah counties revealed that they were reporting summary surviving spouse proceedings as formal proceedings because a decree was entered at the conclusion of the matter. In order to make the statistics for 1975 conform to the earlier 2 years, we asked those county clerks to remove summary surviving spouse proceedings from the formal proceedings category and return them to the informal proceedings category. Table 7 reflects the corrected data. Thus, although the change in method of categorization in 1975 raises some question whether statistics reflect an unduly high number of formal proceedings, as far as possible we have corrected the data from those counties that use a categorization format different from that requested by the Idaho Court Administrator's office.

of notice and a court hearing. Except in cases involving potential will contests, disputes over heirship, or disputes as to the designation of a personal representative, there is no significant advantage in commencing an administration with formal testacy.

Even where the protection of court adjudication is desired, many Idaho attorneys have found that the most effective method of administering an estate is to commence administration through an informal appointment of a personal representative and to conclude with a formal closing under section 3-1001 of the UPC. This procedure has the advantage of permitting an early and inexpensive start to administration, but provides the protection of a court order determining testacy or heirship, approving the accounts of the personal representative, finding adequate publication of notice to creditors, and ordering the manner of distribution of estate assets. This procedure is equally applicable to testate or intestate estates.

2. *Excessive early use of supervised administration*

Table 7 shows that the supervised administration mode was used in 6% of the probate filings in 1973 and 3% of the probate filings in 1974. While this might appear to be an acceptably small percentage of the filings over the entire state, this level of use actually demonstrates a substantial failure of some Idaho attorneys and courts to understand the concept of alternative proceedings available under the UPC.

Supervised administration under the UPC is a single in rem proceeding which invokes the continuing supervision of the court and requires a formal opening and closing of the estate. It is the type of UPC proceeding that most closely resembles Idaho's old probate system and it mandates some of the extra procedures and delays that were inherent in the former system. In supervised administration, the personal representative's powers may be restricted by endorsements upon his letters of appointment. In addition, he may not distribute the assets of the estate without court approval. With these restrictions, supervised administration is no different than formal testacy with administration.

Supervised administration is intended to be used when there are sharp disagreements over estate management or the proper distribution of estate assets among those interested in the estate, or when there is distrust of, or concern about, the conduct of the personal representative. Other than in these unusual situations, there is no need for the supervised administration mode. Its frequent use, therefore, is a waste of judicial and attorney time and

energy and requires an unnecessary expenditure of estate funds.

Despite its very limited practicality, supervised administration was used 272 times during the UPC's first full calendar year of operation in Idaho. As shown in table 7, estates being administered in this manner constituted 6% of all probate filings in 1973. That number dropped to 115, 3% of all probate filings, in 1974.³⁴ It is important to note that the use of supervised administration during those 2 years was not uniform throughout the state, but was concentrated primarily in a few counties, most of which are not major population centers. Table 8 shows the number of supervised administrations filed in 1973 and 1974 in Idaho's five most populous counties, and the seven counties that made the most frequent use of this method of estate administration.

TABLE 8.—*Filings of supervised administration proceedings in selected Idaho counties in 1973 and 1974*

| County | 1974 Population Estimate ³⁵ | 1973 Filings | | 1974 Filings | |
|----------------------|--|--------------|---------------------------|--------------|---------------------------|
| | | Number | Percent of all Filings | Number | Percent of all Filings |
| Ada | 131,700 | 1 | 0.1 | 0 | 0.0 |
| Bannock | 55,200 | 5 | 2.2 | 0 | 0.0 |
| Bonneville Canyon | 56,000 | 0 | 0.0 | 0 | 0.0 |
| Twin Falls | 72,900 | 4 | 1.1 | 0 | 0.0 |
| | 45,900 | 1 | 0.3 | 1 | 0.4 |
| 5 Counties | | 11 | 0.6 | 1 | 0.06 |
| Benewah | 6,900 | 10 | 20 | 3 | 7 |
| Bingham | 31,900 | 53 | 30 | 39 | 31 |
| Cassia | 18,400 | 21 | 19 | 1 | 2 |
| Custer | 3,300 | 14 | 30 | 1 | 6 |
| Gooding | 10,600 | 40 | 48 | 3 | 5 |
| Kootenai | 44,100 | 68 | 16 | 6 | 2 |
| Madison | 15,800 | 12 | 20 | 29 | 64 |
| 7 Counties | | 218 | 23 | 82 | 14 |

In Idaho's five most populous counties, which contain approximately 45% of the state's entire population, only 11 supervised administration proceedings were filed in 1973; in 1974, only

34. Information concerning the number of supervised administrations filed in 1975 is not available since the reporting system used by the Idaho courts now combines supervised administration and formal testacy proceedings into a single category "formal proceedings."

35. The 1974 estimates of county populations were obtained from the IDAHO BLUE BOOK 222 (P. Cenarrusa, secretary of state of Idaho comp. 1975-76).

one. In contrast, in the seven counties listed in the lower half of table 8, which contain only 16% of the state's population, fully 218 supervised administration proceedings were filed in 1973, or 80% of the total number filed in the entire state. Probate practitioners in five of these seven counties sharply reduced their use of supervised administration in 1974. Attorneys in Bingham and Madison Counties, however, continued the use of this procedure through 1974, accounting for 59% of all of the supervised administration filings in Idaho during that year. Fortunately, the excessive use of supervised administration was discontinued in these two counties in 1975.³⁶

The twofold message of these statistics is clear. First, Idaho's experience strongly supports the conclusion that supervised administration will be used very infrequently by knowledgeable probate practitioners. Second, Idaho's experience demonstrates the difficulty of teaching the proper use of the alternative methods of estate administration throughout an entire state in a short period of time. Apparently, the attorneys and courts in many of the larger counties were adequately trained in the use of the UPC's alternative proceedings and recognized that supervised administration is appropriate only in rare circumstances. In the seven smaller counties listed above, however, some attorneys, courts, or both were not adequately trained initially in the use of the alternative proceedings.³⁷ They apparently recognized supervised administration as the procedure most closely resembling the old probate code, and used it on occasions when shorter and less expensive probate methods were available. Such misconcep-

36. Although the method of reporting probate filings prevents a determination of the exact number of supervised administration proceedings filed in Bingham and Madison counties in 1975, the available records do show that there were only 11 formal proceedings filed in Bingham County in 1975 and 13 formal proceedings filed in Madison county that year. Even though that category of filings includes both formal testacy and supervised administration, the records indicate an abrupt departure from the use of this supervised administration in both counties.

37. It should not be inferred that all rural Idaho counties experienced difficulty in implementing the UPC's alternative proceedings. In fact, in the UPC's first calendar year of use, attorneys in several of the small rural counties led the state in the use of the simplified forms of probate. For example, the 1973 probate filings in Valley County (pop. 4,400) were as follows: informal probate and appointment—17 cases; formal testacy—2 cases; supervised administration—0 cases; and summary surviving spouse proceedings—0 cases. Caribou County (pop. 7,000) probate filings in 1973 were equally impressive: informal probate and appointment—31 cases; formal testacy—3 cases; supervised administration—1 case; and summary surviving spouse proceedings—0 cases. Both of these rural counties continued their heavy use of the simplified modes of estate administration in 1974 and 1975.

tions concerning the use of UPC procedures have died slowly in Idaho.

C. Implementing the Code: Observations

The overriding lesson to be learned from Idaho's experience with the UPC is that successful implementation of the Code requires an intensive initial educational effort and a heavy commitment to continuing UPC education and training programs. This educational effort must be designed to: (1) develop proficiency in the use of Code procedures, and (2) convince the members of the bar of the overall benefits of the UPC.

The difficulty of attaining the first objective is demonstrated by the Idaho experience. Although the organized bar provided extensive continuing legal education programs on the UPC, some Idaho attorneys and courts failed to apply the concept of multiple alternative methods of estate administration. This fact is illustrated by the continued substantial use of formal testacy as a method of commencing estate administration and by the excessive early use of supervised administration. Thus, analysis of the probate filings in Idaho demonstrates that teaching probate practitioners to maximize their utilization of the alternative forms of probate may be more difficult than originally anticipated, particularly in outlying areas.

The difficulty of obtaining the second objective—converting practitioners to the overall benefits of the UPC—was also demonstrated by the survey. Despite the overall positive response to the survey questions, it should not be inferred that the implementation of the UPC in Idaho during the past 4 years has been an easy matter. Comparison of survey comments with answers to survey questions on an individual return basis frequently indicated that the respondent had negative feelings toward the UPC even though he felt it was effective in achieving its goals. In addition, the Code has generated considerable controversy and discussion among Idaho attorneys, and there remains substantial resistance and dissatisfaction with the UPC. Although apparently only a minority of the bar are opposed to the Code, they have very strong feelings. In fact, several of those answering the survey urged total repeal of the UPC. The following is typical of such comments:

Repeal it! The UPC seems to me to have increased the delays and complexities of probate procedures in many instances, lessened the protections of heirs and creditors in most instances, and increased the resentment and suspicion of the public toward probate procedures and toward lawyers

This type of response shows that proponents of the UPC have been somewhat less than successful in convincing all of the practicing bar of the overall merits of the Code.

One additional observation is warranted. The educational effort must be focused not only on attorneys, but also on others involved in the probate process. Several attorneys in their comments called for the adoption of uniform statewide estate administration procedures and forms, indicating that there is frequently a disparity of practice between the courts in different counties with respect to the manner in which attorneys are allowed to use the alternative forms of probate. Additionally, some courts and title companies have been hesitant in their acceptance of the alternative forms of probate and have encouraged the use of unnecessary procedures. Clearly, states adopting the UPC will need to intensify efforts to educate not only attorneys, but also courts, banks, trust companies, title insurance companies, and taxing authorities in the practical application of the various methods of estate administration.

Although the survey results presented in sections II and III demonstrate that the UPC has substantial benefits in practice, Idaho's experience to date also teaches us that adoption of the Code is merely the first step in a long process of teaching and encouraging the practical application of its varied concepts, and of convincing the probate bar and others involved in the probate process of the advantages of those concepts.

IV. IMPROVING THE PUBLIC IMAGE OF PROBATE PRACTICE

It had been hoped by many of the draftsmen of the Idaho UPC that, as probate procedures were streamlined and costs reduced, the public image of attorneys, personal representatives, trust officers, and others engaged in the process of administering estates would be improved. It was also hoped that many of the negative feelings about probate practice in general would be dispelled and that the public might be brought to a better understanding of the advantages and benefits of estate administration. Unfortunately, following the adoption of the UPC, no concerted effort was made by state government or the organized bar to educate or inform the general public. Members of the public generally learned about the UPC, if at all, through limited news commentaries and reports and through contacts with their own attorneys.

The mail survey did not extend to the general public, and no effort has been made to directly evaluate the public image of

probate. Nevertheless, the attorneys surveyed were asked whether the adoption of the UPC had improved the public image of attorneys engaged in probate practice and the public attitude toward the probate process in general. As shown in table 9, less than a majority of the respondents felt that the UPC had improved the public image of attorneys and the public attitude toward probate.³⁸

TABLE 9.—Question Presented: *Do you feel that the adoption of the Uniform Probate Code has improved the public image of attorneys engaged in probate practice and public attitude toward the probate procedure generally?*

| | |
|----------------|------|
| Yes | 42% |
| No | 28% |
| About the same | 30% |
| Total | 100% |

Although a substantial number of the attorneys questioned felt that the public image of the probate bar had been improved, this was the only question in the entire survey that elicited a positive response from less than a majority of the sample. Numerous comments from survey participants focused on the need for an increased effort to explain to the public the advantages of the UPC and the benefits of proper estate administration. The following are typical of the respondents' comments on this issue:

1. Public education is needed on a continuing basis to inform the people who benefit from the Code what options and flexibility are available to them. This is a responsibility of the bar and has been largely ignored in Idaho.

2. Perhaps we need better education of the general public in understanding probate procedures, the necessity of probate, and the service performed by attorneys in those matters to dispel the suspicion and mystery the general public conceives about probate procedures. Particularly, many people have an erroneous understanding as to costs of probate procedures.

38. There was also a significant difference in the response to this question when the size of communities in which the respondents practiced was compared. In communities with populations in excess of 15,000, 48% of the attorneys felt that the public image of attorneys and the public attitude toward probate procedure had generally been improved, while in communities of less than 15,000, only 30% indicated that there had been an improvement in these areas. The probability that this difference was due to sampling error was only .0005. This finding is consistent with the observation previously discussed that some of the less populated counties experienced difficulty in implementing the alternative procedures available under the UPC.

3. NEEDED! More education of the public about the new Code and what they should expect of attorneys using it

4. I doubt if the public really appreciates the effect of the UPC except for those directly involved in probates.

5. Educate people that probate is still necessary and that they should not expect probate for free. This impression has been given and causes people to not seek advice on probate and if they do, they expect it for little or no cost.

6. The public won't even give the bar credit for its work in trying to reduce costs, and the public feels passage of the law was a put-down to attorneys.

7. I believe that publicity regarding the Code has been misleading to the general public and caused problems for attorneys.

Examination of these and similar survey responses indicates a strong feeling on the part of the Idaho probate bar that the general public has not been adequately informed about the need for estate administration, the proper role of attorneys and institutional personal representatives, and the costs of probate. Furthermore, there is some indication that the limited publicity initially given to the adoption of the UPC may have given some members of the public the erroneous impression that estate administration is no longer necessary, or that extensive estate planning is no longer essential.

It is also the author's perception, as a practicing member of the Idaho probate bar, that the enactment of the UPC has not substantially improved the public attitude toward probate procedures or the probate bar. This is largely due to a failure to provide the public with adequate information about the UPC on a continuing basis. The author agrees with the comment recorded above that the organized bar has a direct responsibility in educating the general public concerning probate matters. Indeed, the image of attorneys engaged in probate practice will probably not improve substantially until the bar takes affirmative steps to educate the general public. Valuable assistance can be obtained from various quarters, but the primary responsibility rests upon the bar itself.

Bar associations in jurisdictions recently adopting the UPC or contemplating its adoption should, therefore, be aware that the adoption and implementation of the UPC will not of itself have an immediate positive effect upon the public image of the probate bar. In addition to implementing extensive educational and training programs for attorneys and others engaged in estate administration, state bar associations should give serious consid-

eration to the development of a comprehensive continuing program for the education of the general public. Such a program could well include materials on each of the following topics: (1) the benefits of estate administration and probate; (2) the need for estate planning; (3) the advantages of the alternative procedures available under the UPC; (4) the roles of institutional personal representatives, attorneys, and others engaged in estate administration; and (5) the costs of estate administration and estate planning. Adequate public education, in conjunction with the adoption of a modern system of probate such as the UPC, should eventually improve the public attitude toward the probate bar and the probate process in general.

V. CONCLUSION

It is the general perception of the Idaho attorneys surveyed and the bank trust officers interviewed that the enactment of the Uniform Probate Code has been of significant benefit to the citizens of Idaho. The streamlining of estate administration procedures has produced overall reductions in both the length and cost of probate. The inequities of the percentage fee have been largely eliminated, and administration fees are now being determined by means that equate the fee with the value of the service rendered. Over the past 3 years, most of the Idaho probate bar has successfully adapted to the UPC's alternative forms of administration; each year has seen an increase in the use of the informal and simplified methods of estate administration on a statewide basis.

Idaho's experience indicates, however, that it is difficult to quickly educate the probate bar in the use of a completely new probate system. The early years of implementing the UPC in Idaho saw an unnecessary use of formal testacy and supervised administration proceedings. While much progress is being made in effectively applying the simpler modes of administration, Idaho's probate records indicate that there is still much opportunity to simplify and streamline probate practice.

Perhaps the most significant insight gained from the survey and interviews is that additional programs and publicity are required to educate the general public and those involved in the probate process. Only when public relations and legal education programs are effectively coupled with enactment of the Code will the full potential of the UPC be attained. Our study indicates that the objectives of the Code draftsmen are largely being achieved in Idaho and can be fully realized through vigorous, continuing legal and public education programs.

APPENDIX 1

New Probate Filings in Idaho by County—1973

| County | Informal Probate and Appointment Proceedings | Summary Surviving Spouse & Other Proceedings | Formal Testacy Proceedings | Supervised Administration Proceedings |
|--------------------------|--|---|----------------------------------|---|
| Judicial | | | | |
| <u>District 1</u> | | | | |
| Benewah | 29 | 6 | 6 | 10 |
| Bonner | 51 | 13 | 65 | 1 |
| Boundary | 15 | 11 | 15 | 0 |
| Kootenai | 126 | 5 | 240 | 68 |
| Shoshone | 40 | 77 | 6 | 0 |
| Judicial | | | | |
| <u>District 2</u> | | | | |
| Clearwater | 14 | 7 | 19 | 0 |
| Idaho | 26 | 31 | 41 | 2 |
| Latah | 23 | 32 | 83 | 2 |
| Lewis | 10 | 12 | 22 | 1 |
| Nez Perce | 112 | 42 | 133 | 11 |
| Judicial | | | | |
| <u>District 3</u> | | | | |
| Adams | 9 | 4 | 8 | 0 |
| Canyon | 42 | 166 | 149 | 4 |
| Gem | 22 | 13 | 26 | 1 |
| Owyhee | 6 | 13 | 13 | 0 |
| Payette | 23 | 48 | 25 | 2 |
| Washington | 7 | 29 | 27 | 0 |
| Judicial | | | | |
| <u>District 4</u> | | | | |
| Ada | 282 | 232 | 192 | 1 |
| Boise | 3 | 0 | 8 | 0 |
| Elmore | 45 | 1 | 34 | 0 |
| Valley | 17 | 0 | 2 | 0 |
| Judicial | | | | |
| <u>District 5</u> | | | | |
| Blaine | 40 | 7 | 10 | 2 |
| Camas | 1 | 0 | 6 | 0 |
| Cassia | 49 | 9 | 32 | 21 |
| Gooding | 19 | 1 | 23 | 40 |
| Jerome | 8 | 64 | 12 | 0 |
| Lincoln | 13 | 22 | 13 | 0 |
| Minidoka | 27 | 27 | 16 | 6 |
| Twin Falls | 118 | 65 | 75 | 1 |
| Judicial | | | | |
| <u>District 6</u> | | | | |
| Bannock | 134 | 37 | 46 | 5 |
| Bear Lake | 36 | 1 | 11 | 0 |
| Caribou | 31 | 0 | 3 | 1 |
| Franklin | 20 | 1 | 4 | 2 |
| Oneida | 13 | 3 | 5 | 2 |
| Power | 10 | 3 | 10 | 0 |

| County | Informal Probate and Appointment Proceedings | Summary Surviving Soue & Other Proceedings | Formal Testacy Proceedings | Supervised Administration Proceedings |
|----------------------------|--|---|----------------------------------|---|
| <u>Judicial District 7</u> | | | | |
| Bingham | 96 | 13 | 18 | 53 |
| Bonneville | 38 | 57 | 53 | 0 |
| Butte | 11 | 3 | 3 | 0 |
| Clark | 2 | 0 | 0 | 0 |
| Custer | 15 | 9 | 8 | 14 |
| Fremont | 23 | 33 | 14 | 4 |
| Jefferson | 5 | 54 | 40 | 0 |
| Lemhi | 52 | 15 | 5 | 5 |
| Madison | 31 | 2 | 15 | 12 |
| Teton | 7 | 0 | 14 | 1 |
| State Totals | 1701 | 1168 | 1550 | 272 |

Source: 1973 IDAHO COURTS ANN. REP.

APPENDIX 2

New Probate Filings in Idaho by County—1974

| County | Informal Probate and Appointment Proceedings | Summary Surviving Spouse & Other Proceedings | Formal Testacy Proceedings | Supervised Administration Proceedings |
|-------------------|--|---|----------------------------------|---|
| Judicial | | | | |
| <u>District 1</u> | | | | |
| Benewah | 33 | 0 | 9 | 3 |
| Bonner | 46 | 23 | 31 | 0 |
| Boundary | 7 | 7 | 16 | 0 |
| Kootenai | 116 | 5 | 130 | 6 |
| Shoshone | 25 | 38 | 12 | 1 |
| Judicial | | | | |
| <u>District 2</u> | | | | |
| Clearwater | 26 | 7 | 21 | 4 |
| Idaho | 18 | 50 | 21 | 3 |
| Latah | 17 | 12 | 101 | 0 |
| Lewis | 17 | 11 | 26 | 2 |
| Nez Perce | 195 | 5 | 25 | 0 |
| Judicial | | | | |
| <u>District 3</u> | | | | |
| Adams | 3 | 5 | 2 | 0 |
| Canyon | 47 | 135 | 127 | 0 |
| Gem | 29 | 9 | 10 | 1 |
| Owyhee | 11 | 13 | 11 | 1 |
| Payette | 13 | 41 | 31 | 1 |
| Washington | 25 | 7 | 12 | 1 |
| Judicial | | | | |
| <u>District 4</u> | | | | |
| Ada | 319 | 175 | 304 | 0 |
| Boise | 2 | 0 | 7 | 0 |
| Elmore | 33 | 0 | 2 | 0 |
| Valley | 18 | 3 | 6 | 0 |
| Judicial | | | | |
| <u>District 5</u> | | | | |
| Blaine | 38 | 7 | 4 | 0 |
| Cassia | 7 | 2 | 2 | 0 |
| Cassia | 39 | 0 | 18 | 1 |
| Gooding | 38 | 2 | 17 | 3 |
| Jerome | 2 | 45 | 3 | 0 |
| Lincoln | 8 | 2 | 1 | 0 |
| Minidoka | 18 | 32 | 11 | 2 |
| Twin Falls | 108 | 78 | 42 | 1 |
| Judicial | | | | |
| <u>District 6</u> | | | | |
| Bannock | 147 | 9 | 26 | 0 |
| Bear Lake | 28 | 0 | 3 | 0 |
| Caribou | 26 | 3 | 2 | 0 |
| Franklin | 22 | 8 | 0 | 0 |
| Oneida | 23 | 3 | 3 | 0 |
| Power | 13 | 0 | 12 | 0 |

| County | Informal Probate and Appointment Proceedings | Summary Surviving Soue & Other Proceedings | Formal Testacy Proceedings | Supervised Administration Proceedings |
|---------------------|--|---|----------------------------------|---|
| Judicial | | | | |
| District 7 | | | | |
| Bingham | 61 | 3 | 22 | 39 |
| Bonneville | 54 | 68 | 50 | 0 |
| Butte | 6 | 0 | 3 | 0 |
| Clark | 0 | 0 | 0 | 0 |
| Custer | 13 | 1 | 2 | 1 |
| Fremont | 7 | 4 | 7 | 0 |
| Jefferson | 9 | 29 | 13 | 0 |
| Lemhi | 26 | 1 | 0 | 11 |
| Madison | 5 | 2 | 9 | 29 |
| Teton | 4 | 4 | 5 | 5 |
| State totals | 1702 | 849 | 1159 | 115 |

Source: 1974 IDAHO COURTS ANN. REP.

APPENDIX 3

New Probate Filings in Idaho by County—1975

| County | Informal Proceedings (Informal Probate and Appointment Proceedings, Summary Surviving Spouse Proceedings) | Formal Proceedings (Formal Testacy, Supervised Administration) |
|----------------------------|--|---|
| <u>Judicial District 1</u> | | |
| Benewah | 14 | 14 |
| Bonner | 79 | 25 |
| Boundary | 11 | 14 |
| Kootenai | 174 | 67 |
| Shoshone | 73 | 16 |
| <u>Judicial District 2</u> | | |
| Clearwater | 26 | 17 |
| Idaho | 56 | 27 |
| Latah | 45 | 104 |
| Lewis | 23 | 32 |
| Nez Perce | 212 | 0 |
| <u>Judicial District 3</u> | | |
| Adams | 17 | 4 |
| Canyon | 200 | 90 |
| Gem | 34 | 15 |
| Owyhee | 3 | 17 |
| Payette | 19 | 43 |
| Washington | 30 | 16 |
| <u>Judicial District 4</u> | | |
| Ada | 370 | 138 |
| Boise | 1 | 4 |
| Elmore | 26 | 10 |
| Valley | 18 | 4 |
| <u>Judicial District 5</u> | | |
| Blaine | 26 | 2 |
| Camas | 4 | 3 |
| Cassia | 67 | 12 |
| Gooding | 41 | 20 |
| Jerome | 29 | 19 |
| Lincoln | 11 | 4 |
| Minidoka | 48 | 6 |
| Twin Falls | 206 | 67 |
| <u>Judicial District 6</u> | | |
| Bannock | 175 | 20 |
| Bear Lake | 19 | 1 |
| Caribou | 21 | 2 |
| Franklin | 13 | 1 |
| Oneida | 18 | 7 |
| Power | 9 | 7 |

| County | Informal Proceedings (Informal Probate and Appointment Proceedings, Summary Surviving Spouse Proceedings) | Formal Proceedings (Formal Testacy, Supervised Administration) |
|----------------------------|--|---|
| <u>Judicial District 7</u> | | |
| Bingham | 111 | 11 |
| Bonneville | 124 | 41 |
| Butte | 13 | 0 |
| Clark | 1 | 1 |
| Custer | 10 | 10 |
| Fremont | 10 | 2 |
| Jefferson | 21 | 34 |
| Lemhi | 32 | 0 |
| Madison | 19 | 13 |
| Teton | 7 | 8 |
| State Totals | 2,466 | 948 |

Source: 1975 IDAHO COURTS ANN. REP. The data for Benewah, Canyon, Ada, and Twin Falls Counties were corrected from information furnished by the county clerks. See note 23 *supra*.