

To: OLC Simple Estate Affidavit Work Group

From: Brian Thompson

RE: Tulsa Professional Collection Services, Inc. v. Pope (485 US 478 (1988))

Date: October 20, 2026

Starting from the beginning, a probate case is an *In Rem* proceeding. Jurisdiction is based the location of the property within the borders of the state. An *In Rem* matter can decide title the property located within the state. Due process is satisfied by seizing the property (the PR takes possession) and notice to all that have, or may have, interests in the property.

Historically, constructive notice was sufficient. *Arndt v. Griggs*, 134 US 316 (1890); *Kieffer v. Victor Land Company*, 53 OR 174 (1909).

However, *Tulsa Professional Collections Services v. Pope*, 485 US 478 (1988) changed the historical rule. **Now actual notice is required.**

“Where the legal proceedings themselves trigger the time bar, even if those proceedings do not necessarily resolve the claim on its merits, the time bar lacks the self-executing feature that Short indicated was necessary to remove any due process problem. Rather, in such circumstances, due process is directly implicated, and actual notice generally is required. Cf. *Mennonite*, 462 U. S., at 793-794 (tax sale proceedings trigger 2-year redemption period); *Logan v. Zimmerman Brush Co.*, *supra*, at 433, 437 (claim barred if no hearing held 120 days after action commenced); *City of New York v. New York, N. H. & H. R. Co.*, 344 U. S. 293, 294 (1953) (bankruptcy proceedings trigger specific time period” Tulsa at 487.

A link to a 1988 California State Bar commission report is here:

<https://clrc.ca.gov/pub/1988/M88-49.pdf>. From the report (at page 7):

“Most fundamentally, the issue comes down to the ultimate purposes of the probate process and the place of probate in relation to competing interests. From our long work in this area, we may have a tendency on the Commission to view the probate process from a probate practitioner's perspective as a way to get the decedent's assets to the beneficiaries as nearly intact as possible. Yet an equally valid perspective is that probate is a process for satisfying the decedent's just debts--basically a bankruptcy-type proceeding--and only what is left over passes to beneficiaries. The effect of the Tulsa case is to refocus attention on this second perspective that tends to be lost in state probate statutes.”

Thus, in a regular probate in Oregon, the PR has affirmative duties to notify all persons with claims and to search for **reasonably ascertainable** creditors.

“In addition, Mullane disavowed any intent to require "impracticable and extended searches . . . in the name of due process." [339 U. S., at 317-318](#). As the Court indicated in *Mennonite*, all that the executor or executrix need do is make "reasonably diligent efforts," [462 U. S., at 798, n. 4](#), to uncover the identities of creditors. For creditors who are not "reasonably ascertainable," publication notice can suffice. Nor is everyone who may conceivably have a claim properly considered a creditor entitled to actual notice. Here, as in *Mullane*, it is reasonable to dispense with actual notice to those with mere "conjectural" claims. [339 U. S., at 317](#).” *Tulsa* at 490.

In a small estate, there is no notice requirement at all prior to the closing of the case and expiration of the creditor period. The affiant just makes a statement that reasonable efforts have been made to ascertain creditors (ORS 114.525((1)(m))). There is no standard for reasonable notice. There is no provision for notice to creditors by publication or any other way to get constructive notice.

It is important to note that the SCOTUS discussed cases in which there was no court involvement (such as the expiration of a period of time for non-use of a mining claim). The SCOTUS noted that it is the involvement of the court, that triggered due process requirements.

Therefore, my reading is that the current statute (OR 114.515 eq seq) does not meet the constitutional requirements of due process under the 14th amendment.

I found the following review of small probate cases on Justia. The link is below.

<https://www.justia.com/probate/probate-administration/small-estates/small-estates-laws-and-procedures-50-state-survey/>

Many states have filing limits that are quite low. Others require all of the parties to file a bond. I am most interested in the Iowa procedure. An affidavit for \$50,000 and under and a streamlined procedure for \$50,000 to \$200,000. (see the link for Iowa at the linked website, above).

This seems to mesh with the rule of *Tulsa*: “The focus is on the reasonableness of the balance, and, as *Mullane* itself made clear, whether a particular method of notice is reasonable depends on the particular circumstances.” *Tulsa* at 484.