

PROBATE COURTS: Notices of Final Settlement should be directed to the first day of term of Probate Court and not to day during the term at which settlement is docketed.

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September 11, 1941

Jessie B. Harrison  
Acting Probate Judge of Dunklin Co.  
Kennett, Missouri



Dear Madam:

We are in receipt of your request for an official opinion under date of August 6, 1941 relative to the legal sufficiency of certain newspaper notices of final settlements of estates in the Dunklin County, Missouri Probate Court, as follows:

"I am writing you requesting an opinion on the legality of notices of final settlement which I have caused to be published in the Dunklin Democrat. \* \* \* \* An objection has been made to the publication based upon the fact that the date of final settlement as contained in the notice is the date on which the case was docketed to be held (during the term), rather than the date of the first day of the term. \* \* \* \* In each instance the date of settlement contained in each notice conforms to that of the docket. Objection is made that all of the final settlement notices should have contained the date, the 11th day of August, 1941, which is the first day of the August Term, rather than the date that the settlement is actually scheduled to be made (after that date and during the term.) \* \* \* \*"

The Missouri Constitution, Article VI, Section 34, and Section 2436 R. S. Missouri 1939 provide for the establishment in every county of the state of a Probate Court as a court of record. Section 2441 R.S. Missouri 1939, provides for

the holding of terms of the Probate Court in the various counties of Missouri on the second Mondays in the months of February, May, August and November of each year and provides for holding of special and adjourned terms at any time required.

Section 229 R. S. Missouri 1939, provides as follows:

"Section 229. Final settlement made--when--notice. At the first regular term of the court after the expiration of one year from the date of granting of the first letters on the estate, as required by this chapter, unless further time has been given by the court by an order entered of record, every executor and administrator shall make final settlement, having first published once a week for two consecutive weeks in cities or counties having a population of over six hundred thousand as shown by the last preceding federal census and in all other counties once a week for four consecutive weeks prior thereto in some newspaper published and circulated in the county where such settlement is to be made, if there be one, and if there be none published in such county, then by ten printed handbills put up in ten public places in said county, a notice to all creditors and others interested in the estate that he intends to make such final settlement at the next term of the court. If any executor or administrator fail to so advertise and make such final settlement at such term or when required by the court at any time thereafter, he shall be proceeded against as for his failure to make annual settlements, unless for good cause shown the court shall continue same. If the first insertion of the publication required by section 75 is not published within ten days from the date of the granting of the letters, then the one year above mentioned shall begin to run from the date of the first publication of such notice: Provided, that where publication is made in a daily newspaper, publication for each week after the first shall fall on the corresponding day of the week as did the first publication."

The notices of final settlement of estates caused by you to be published in the Dunklin Democrat as shown by a copy of said newspaper enclosed, with the exception of certain estates where arranged by clerk on the

docket for settlement on the first day of the term, are shown to be directed to the day of the settlement as you arranged the docket, rather than to the first day of the term which was the 11th day of August, 1941.

One of said notices which is illustrative of all those in question being as follows:

"Notice of Final Settlement.

"Notice is hereby given to all creditors and others interested in the estate of Edward F. Robinson, deceased, that I, Everett J. Ezell, Administrator of said estate, intend to make final settlement thereof at the next term of the Probate Court of Dunklin County, State of Missouri to be held at Kennett, on the 15th day of August, 1941.

Signed EVERETT J. EZELL,  
Administrator."

By the plain language and the meaning of the notice it is stated that the final settlement of the estate will be made by the Administrator at the next term of the Probate Court of Dunklin County, State of Missouri, to be held at Kennett on the 15th day of August, 1941. The regular term of Probate Court was to commence on the second Monday which was August 11, 1941 and the notices are inaccurate and confusing in that they refer in most instances to the next term of said Probate Court to be held on various dates after the 11th day of August, 1941, the commencement of the term. The arrangement of the Probate docket for the making of settlements is in proper order but the notices of final settlement should in all cases have been directed to the first day of the term, August 11, 1941 and then the settlements could be legally made at and during the term as shown by the Probate docket arranged for the August Term of Court.

The Probate Court is a regularly established court of record with statutory terms and the plain intent and meaning of Section 229 is as stated, "\* \* \* Notice to all creditors and others interested in the estate that he intends to make such final settlement at the next term of Court."

Kelley's Missouri Probate Law and Practice, Fifth Edition, Section 350, states with reference to the requirements of notice of final settlement that "There must be four weeks between the first insertion in the newspaper and the beginning of the term at which the settlement is to be made". See also Limbaugh's Missouri Practice in Probate Courts, Vol. II, Section 860, sub-paragraphs (A, D & H), the latter paragraph containing an approved form of notice of final settlement.

Section 229, supra, is construed in State ex rel. Knisely vs. Holtcamp, 266 Missouri 347, 181 SW 1007. Also prior to the amendment of 1911 the statute was construed in the leading case of Ratliff vs. Magee, 165 Missouri 461, 65 SW 713. See also State ex. rel. Aufderheide vs. Stolte (app.) 1 SW (2d) 209.

Legal notices of final settlement in Probate Court should be directed to the first day of a term of court during which the estates may be docketed for settlement by the judge on different days during the term, but the term of the court and the day of the commencement thereof, and not the day during the term at which the settlement is to be made, is the date to which the notice of final settlement of the estate should be directed. In the early case of Holladay vs. Cooper, 3 Missouri 286, it was held that a writ made returnable to a term of court known to the law, but to a day not the commencement of the term, is void. The case of Brown vs. Marshal, 241 Missouri 707, 145 SW 810 which involved the question of the legality of an order of publication giving notice of application of administrator in Probate Court for an order to sell real estate to pay debts of the estate, approves the holding of the Supreme Court in the case of Holladay vs. Cooper, supra, notwithstanding that the case was distinguished by the court from the case of Holladay vs. Cooper, supra, because of a changed term of Probate Court in St. Louis County. See also Overton vs. Johnson, 17 Missouri 442, 1. c. 451.

Furthermore, we call your attention to Sections 877, 903 and 1690 R. S. Missouri 1939 relative to return days of writs, notices and orders of publication required in circuit courts with regular statutory terms similar to the terms of probate courts.

#### CONCLUSION.

It is, therefore, the opinion of this department that in order to comply with the plain intent and meaning of Section 229 R. S. Missouri 1939, all notices of final settlement should be directed to the first day of the term of Probate Court and not to the day upon which the particular estate is set for final settlement on the docket during the term. It is true that the notices in question were for four weeks prior to the day of final settlement and more, but they are insufficient in law in order to enable the administrator to make a binding final

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settlement in Probate Court, as they do not strictly comply with requirements of the statute for a four weeks' publication prior to the next term of Probate Court, stating the day of the commencement of the term, which term of Probate Court was to be held and commenced on a day certain as fixed by Section 2441 R. S. Missouri 1939.

Respectfully submitted,

R. WILSON BARROW

Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General