

Probate Court - Demands must be allowed by court  
in order for executor to receive credit therefor.

6-13  
June 12, 1935.



Honorable Robert F. Sevier,  
Judge of Probate Court,  
Clay County,  
Liberty, Missouri.

Dear Sir:

This department is in receipt of your letter  
requesting an opinion as to the following state of facts:

"A little controversy has arisen on which  
I should like a ruling from your office.

"Section 198 of R.S. 1929 states 'that the  
probate court shall hear all claims  
presented in a summary way, provided in  
claims under one hundred dollars, or one  
hundred dollars or less, if the administra-  
tor, either in open court or in his waiver  
of notice, shall certify that he is satis-  
fied with the correctness of said demand,  
the same may be allowed without further  
proof.

"Now the Sec. 206, R.S. 1909 states the same  
as above only it says 'ten dollars' in place  
of 'one hundred dollars'. It has been the  
rule here that if the demand is under ten  
dollars it may be paid without an allowance  
from the probate court, however, if it is  
an allowance or claim for any more than ten  
dollars, it should be waived upon by the  
administrator. And no matter how large the  
sum, if the administrators shall waive, it  
has been the custom to allow it, without  
proof.

"Now, it is my contention that now under the  
present statute if the claim is under one  
hundred dollars, the administrator may waive  
on it, and the court allow it without any

further proof, however if it is over \$100.00, proof must be heard on same.

"For fear I do not make myself clear, take this illustration, a party has a claim against an estate for three dollars; the attorneys here tell the administrator to pay it without an order from the probate court; however, if the claim is over \$100.00, they say that an order from the probate court is necessary before it can be paid.

"Now if that estate should not be fully solvent, would not the administrator be just as liable on those claims which he paid under ten dollars as those upon which he paid over ten dollars without an order or allowance?"

Section 198, R.S. Mo. 1929 provides:

"The court shall hear and determine all demands in a summary way without the form of pleading, and shall take evidence of competent witnesses or other legal evidence: Provided, in cases where the amount claimed is one hundred dollars or less, if the administrator, either in open court or in his waiver of notice, shall certify that he is satisfied of the correctness of said claim, or the claimant shall file the affidavit of a competent witness to the correctness of said demand, the same may be allowed without further proof."

In the case of Langston v. Canterbury, 173 Mo. 122, the Court said (l.c. 128):

"The requirements of our statutes in reference to the presentation and allowance of demands against the estate of a deceased person are so plain and unequivocal that one can scarcely misconstrue them. Claims must be exhibited to the administrator, presented to the probate court for allowance and established by proof. (Secs. 183 to 191, R.S. 1889; same secs. 184 to 193, R.S. 1899) Until

a claim has been so allowed by the probate court or established by judgment of a circuit or other court of competent jurisdiction and classed by the probate court, an administrator has no right to appropriate any of the assets of the estate to its payment."

In the case of Judson v. Bennett, 233 Mo. 607, l.c. 646, Judge Woodson said:

"If the claim paid was in fact a legitimate demand against the estate, and could have been legally probated against it, then the mere fact that it was not first presented to and allowed by the probate court would not of itself bar the executor's right to a credit for such payment.

\* \* \*

"But where the assets are ample to pay all the legal demands existing against the estate, and none but such have been in fact paid by the executors, then the heirs and devisees are not injured and have no legal grounds for complaint. However, in all such cases, the executors pay all such demands at their own risks; that is, if they should pay a demand presented against an estate without first requiring it to be probated, when, in fact, the claim was not a legal demand against the estate, then the loss would fall upon the executors, and the probate court would not be warranted in allowing the executors credit for such payment; whereas, upon the other hand, if the claim had been properly probated, and, after payment, it should develop that the claim was not in fact a lawful demand against the estate, nevertheless the executors should be allowed credit for the payment so made, for the reason that in such case they followed the law and performed their full duty, and the error which resulted in the loss could not be charged against them."

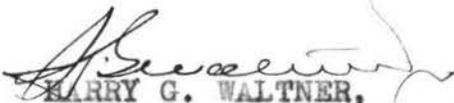
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CONCLUSION

In view of the foregoing, it is the opinion of this department that in order for an executor to be allowed credit for the payment of any claim, the claim must be presented to and allowed by the Probate Court unless it be that the assets are ample to pay all the legal demands existing against the estate and none but such have been in fact paid by the executor.

If the claim be \$100.00 or less, the demand may be allowed without proof if the administrator certify as to the correctness of the claim or an affidavit of a competent witness be filed as to the correctness of said demand.

Respectfully submitted,

  
HARRY G. WALTNER,  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

HGW:AH