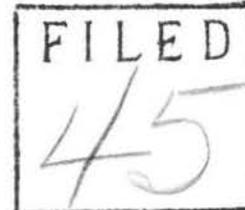


INSANE PERSONS: It is necessary to the validity of the court order committing an insane person to an asylum that said order show notice and that the same recite the alleged insane person appeared in person or by attorney.

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January 28, 1937

1-29



Honorable W. Ed Jameson  
Chairman, Board of Managers  
State Eleemosynary Institutions  
Jefferson City, Missouri

Dear Sir:

You recently submitted to this Department the form of the order of a county court committing indigent patients to state hospitals for the insane. There is also inclosed letters from Honorable J. R. Baker, Judge Berryman Henwood and Honorable James W. Davis. This Department concurs in the views as expressed in the individual letters. The question of notice to an insane person was discussed on December 12, 1936, in an opinion to Honorable G. Logan Marr, Prosecuting Attorney, Morgan County, Versailles, Missouri; we are inclosing a copy of the same. We believe that the conclusion reached with reference to notice co-incides with that of Mr. Baker and others.

As stated above, in our opinion, the inclosed form meets the requirements of the statute. However, we make the following suggestions: On page 2 of the form under the certification of the county clerk, we think instead of using the phrase "by our county court," it would be better form to use "by the county court of \_\_\_\_\_ County, Missouri;" the second main paragraph of the form contains the expression, "and that said alleged insane person is represented in this court at this time by a regular practicing attorney of the State of Missouri;" ordinarily, in a civil action it is not necessary or essential to the validity of the judgment of a court that a person be represented by an attorney or that he need to appear at the hearing, the essential feature being the service of the notice or summons.

As stated in 12 Corpus Juris, 1211, section 987,

"Where given notice and an opportunity for a hearing

Honorable W. Ed Jameson

-2-

January 28, 1937

have been given, the presence  
of the alleged insane person  
at the hearing is not essential  
to due process."

We think it unnecessary to due process of law  
for the defendant to appear in person or by attorney  
providing he receives proper notice or summons. But  
in the event that the alleged insane person does appear  
by attorney or in person the order should contain this  
allegation. The facts in the individual cases would  
govern the contents of the order with reference to the  
presence of the alleged insane person or his attorney.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

OWN:LC

Inclosure