

PROBATE JUDGES: Judges of probate courts and clerks of such
PROBATE CLERKS: courts are neither required nor permitted to
prepare pleadings for presentation to such
courts in connection with the administration
of estates of deceased persons.

February 10, 1955



Hon. William J. Hensley
Prosecuting Attorney
Johnson County
Johnson County Courthouse
Warrensburg, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department reading as follows:

"This office respectfully request your opinion
on the following two questions:

"1. Does the judge or clerk of the Probate
Court have the duty to prepare applications
for letters testamentary, letters of admin-
istration and applications for orders of
court; and/or any other papers or pleadings
that are necessary to complete the adminis-
tration of an estate?

"2. If the judge or clerk does not have the
duty to prepare the above mentioned papers
then are they prohibited from doing so?

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Probate courts are courts of record pursuant to the pro-
visions of Article V, Section 17 of the Constitution of Missouri,
1945, which reads as follows:

"Probate courts shall be courts of record
and uniform in their organization, juris-
diction and practice, except that a separate
clerk may be provided for, or the judge may
be required to act ex officio as his own
clerk."

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Similar statutory declarations with respect to the status of such courts appear in Sections 476.010 and 481.010, RSMo 1949, which sections, in the interest of brevity, are not quoted verbatim herein. Another constitutional provision is also pertinent to your inquiry, we believe, it appearing as Article V, Section 24, which reads in part as follows:

" * * * No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. * * *" (Emphasis ours.)

We further direct your attention to the provisions of Section 476.290, RSMo 1949, which reads as follows:

"No judge of any court of record shall practice or act as counselor or attorney in any court within this state nor shall any clerk or deputy clerk, while he continues to act as such, plead, practice or act as counselor or attorney in any court within the county for which he is such clerk or deputy clerk, in his own name or in the name of any other person, under any pretense whatever."
(Emphasis ours.)

We also direct your attention to Section 476.300, providing a penalty for the last quoted statute, and Section 476.310, which reads as follows:

"No judge, magistrate, clerk or deputy clerk of any court shall have any partner practicing in the court of which he is judge or magistrate, clerk or deputy clerk."

One additional statute relating to practice in probate courts we believe to be germane to the subject of your inquiry. It appears as Section 484.030, RSMo 1949, and reads, in part, as follows:

"1. No person whomsoever shall practice in the probate court, it being a court of record, other than a regular, licensed, practicing and reputable attorney, so

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authorized in this state; and no person shall receive any pay nor compensation for any legal service, for making settlements, annual or final, filing petitions or other documents in any estate, other than such regularly licensed attorney, and no probate court shall allow nor permit any pay or fee for any such services to any person, to be taxed, in any estate, other than to a reputable attorney, either directly or indirectly, for any purpose. Nor shall any administrator or executor or guardian employ or pay to any such person other than an attorney." (Emphasis ours.)

The foregoing evidences a public policy exemplified by both constitutional and statutory enactments prohibiting judges and clerks of courts of record from either doing a law business or practicing law in the courts of which they are officers. The terms "practice of law" and "law business," appearing in both the Constitution and statutes, are defined in Section 484.010, RSMo 1949, which reads as follows:

"1. The 'practice of the law' is hereby defined to be be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.

"2. The 'law business' is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to

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obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever."

The general prohibition against persons engaging in such practices without having been licensed as attorneys at law appears in Section 484.020, which reads, in part, as follows:

"1. No person shall engage in the practice of law or do law business, as defined in section 484.010, or both, unless he shall have been duly licensed therefor and while his license therefor is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business as defined in section 484.010, or both."

The preparation of applications for letters testamentary, letters of administration, and the various other pleadings incident to the administration of an estate, are within the definition of the terms "practice of law" and "law business" as these terms have been defined by statute. Therefore, we are constrained to the belief that the General Assembly has surrounded the administration of estates in the probate courts with a prohibition depriving the judges and clerks of such courts of either the duty to prepare such pleadings or the right to do so. Such a public policy is in accord with that of the State of Missouri in relation to other courts of record, in that it removes from the judges of such courts the power to pass upon the sufficiency, legality and validity of pleadings filed in such court prepared by the judge or clerk thereof.

CONCLUSION

In the premises, we are of the opinion that neither the judge of a probate court nor the clerk thereof has the duty to prepare pleadings for filing in such court in connection with the administration of the estate of a deceased person.

We are further of the opinion that neither such judge nor such clerk may prepare such pleadings, for the reason that such officers are prohibited therefrom by constitutional or statutory provisions, or both.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl