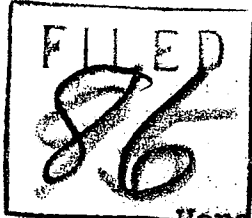


PROBATE COURTS: Sec. 472.040 RSMo 1949, Cum. Supp. 1955 prescribes rules for taxing costs in probate proceedings. Costs properly taxed against estate with insufficient funds not collectible. Fees taxable under Sec. 483.580 RSMo 1949 in counties of less than 30,000 inhabitants and remaining unpaid for one year after being reported under said statute are to be collected by State Director of Revenue. Fees accruing under Sec. 483.580 RSMo 1949 are to be collected from estate or from persons requiring services named in statute. Failure of executors and administrators to pay costs properly taxed necessitates looking to official bonds for collection.



This is filed

June 21, 1956

B. H. Stone

under the name of Stone as per original opinion request.

STONE

Honorable Edward C. Westhouse
Judge of the Probate Court
Madison County
Fredericktown, Missouri

Dear Judge Westhouse:

The following opinion is rendered at the request of Honorable B. H. Stone, Member of the Missouri House of Representatives, and is directed to your three inquiries as follows:

"1. Suppose a Will is deposited in the Probate Court for probate, a Commission to take proof of Will is issued to a notary public in another county of Missouri, the notary public returns the Commission with proof of Will along with his fees, witnesses' fees, sheriff's fees, etc., and the Will is admitted to probate and recorded or the Will is denied probate. If nothing further is done because there is no estate, who can be charged with the fees listed in Section 483.580, RSMo., 1949 and with the other fees of the notary, witnesses, sheriff, etc? Furthermore, if a voluntary collection is impossible, what methods can be used in attempting an involuntary collection by the court?

"2. Suppose the above is done with the further facts that Letters Testamentary are requested and granted, publication is made of the notice of the granting of Letters, witnesses and appraisers are appointed, but not until the witnesses and appraisers perform their duty is it realized that there is no estate. Who can be charged with the fees listed in Section 483.580 RSMo., 1949 and what methods can be used in attempting an involuntary collection?

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Furthermore, who can be charged, no voluntary payment having been made to those entitled, with the fees of the notary, witnesses and sheriff and with the cost of publication and compensation, travel and other expenses of the appraisers (witnesses and appraisers of the Inventory) and what methods can be used in attempting an involuntary collection by the court?

"3. Suppose all of the above except the deceased did have sufficient property at the time of his death to pay all costs, fees and expenses of administration; but the executors refuse to pay the costs because they have either mismanaged the estate so that nothing remains or maintain the costs are too high. Assuming that the costs are correctly stated, who can be charged with the costs and what methods can be used in attempting an involuntary collection by the court, judge or clerk?"

Section 483.580 RSMo 1949 is the general statute disclosing what fees are to be charged and collected in probate proceedings. Subparagraph 1 of Section 483.580 RSMo 1949, provides, in part:

"1. In the probate proceedings in the different probate courts in this state, there shall be charged against and collected from the estates or parties requiring the services of the probate judge, clerk or court, fees as follows: * * *. (Emphasis supplied.)

The underscored language in the above quotation discloses that in some instances the estate will be charged with the fees, and in other cases the parties requiring the services will be charged. Numerous services are outlined in Section 483.580 RSMo 1949, and it is reasonable to conclude that only in those instances where the service is rendered as a direct aid to the actual administration of an estate while the estate is in process of administration is it proper to charge the estate with the fees for statutory services. In other instances where fees for designated services are chargeable they should be charged to the persons requesting the services.

Investigation discloses that Madison County is a county of the Fourth Class with a population under thirty thousand inhabitants. Subparagraph 3 of Section 483.580 RSMo 1949, when alluding

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to counties of less than thirty thousand inhabitants provides, in part, as follows:

"Each judge or clerk of the court shall, within thirty days after the expiration of each calendar year file with the director of revenue a written report, verified by his affidavit specifying the name and court number of each estate in which fees accrued in his court in such calendar year, and the amount of fees unpaid and due in each estate at the end of such year. Such judge or clerk of the court shall also specify in said written report to the director of revenue all fees which have been due and unpaid for more than one year, the amounts thereof and the name of the estate in which the same are due, which report shall be verified by affidavit of the judge or clerk of the court that he has been unable after the exercise of diligence to collect the same; and it shall thereupon be the duty of the director of revenue to cause the same to be collected by law and turned over to the state treasurer." (Emphasis supplied.)

The underscored language in the above extract from subparagraph 3 of Section 483.580 RSMo 1949 places the duty on the State Director of Revenue to collect by law those fees properly charged under said statute and which have been reported unpaid for more than one year in counties of less than thirty thousand inhabitants.

f Section 472.040 RSMo 1949, Cumulative Supplement, 1955 (L. 1955, H.B. 30, Sec. 5) of Missouri's new probate code is a general statute dealing with costs in proceedings in the probate court, and provides:

"In all suits and other proceedings in the probate court, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. Whenever costs are given against executors and administrators, the estate shall pay the costs.

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Parties presenting claims against estates, for the same causes and in the same manner, may be ruled to give security for costs, as is provided in practice in civil cases."

Section 472.040, just quoted above, covers adversary proceedings, actions to enforce claims against the estate, and ex parte proceedings. "Other proceedings" referred to in the statute may be as varied in character as are the services to be rendered by the court or clerk under the outline of services found in Section 483.580 RSMo 1949. Absent consideration of adversary proceedings or proceedings to establish claims against the estate, or cases where a different provision is made by law, the probate court, in taxing fees required to be charged by Section 483.580 RSMo 1949, should tax the same against the party or parties requiring the service.

We next consider the collection of costs which have been assessed against an estate in which there are not sufficient assets to defray such costs. The following rule is quoted from Ex Parte Nelson, 253 Mo. 627, l.c. 628:

"At the common law no costs were recoverable. * * Costs in Missouri being, therefore, purely creatures of the statute, enactments in relation thereto must be strictly construed."

No statute has been found directing how costs in the probate court are to be collected when assessed against an estate which is without funds, and in the absence of such a statute the costs are not collectible. This is a subject to which the attention of the probate judge should be directed in the earliest stages of administration, and it is difficult to see how such a situation can arise, or even become acute, if the probate judge exercises close supervision over estates being administered under his jurisdiction.

In directing remarks to the first two specific inquiries quoted in the forepart of this opinion it should be observed that those persons who seek to establish a will and probate the same are interested in the devolution of property described in the will, and administration of the estate with its consequent costs may or may not be required by law. In those cases where the probable value of the estate described in the will is not comparable to the probable costs of administration, such fact should be evident to the probate court at the time the will is presented for probate, and the fees for services to be rendered by the probate court and described in Section 483.580 RSMo 1949 preliminary to full administration on the estate should be taxed against the persons

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requiring such services. If, at a later date it is ascertained that full administration is required by law and that the estate will support costs properly taxable against the estate, a re-taxing of costs would be in order. The third inquiry involves an allegation of misconduct on the part of administrators or executors who refuse to pay costs properly taxed. In such instances it will be necessary for the official charged with collecting delinquent fees to look to the official bond of the administrators and executors.

CONCLUSION

It is the opinion of this office that fees in probate proceedings are to be taxed according to rules laid down in Section 472.040 RSMo 1949, Cumulative Supplement, 1955 (L. 1955, H.B. 30, Sec. 5); that costs properly taxed against an estate without funds to meet such costs are not collectible; that fees taxable under Section 483.580 RSMo 1949 in counties of less than thirty thousand inhabitants, and remaining unpaid for one year after being reported under said statute are to be collected by the State Director of Revenue; that fees accruing under Section 483.580 RSMo 1949 are to be collected from the estate or from parties requiring services set out in the statute; and that failure of executors and administrators to pay costs properly taxed will necessitate looking to the official bonds of such executors and administrators for collection.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO:M:hw