

PROBATE CODE:
EXECUTORS AND ADMINISTRATORS:
EMPLOYMENT OF ATTORNEY:

Effect of new probate code law as to
attorneys and executors or administrators
in the administration of an estate.



April 23, 1956

Honorable Lee C. Sutton
Member, House of Representatives
Sixty-Eighth General Assembly
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your opinion request of
March 27, 1956, a copy of which is set out as follows:

"A serious question has arisen as to whether
or not section 473.153, RSMo 1955 Supplement
(Section 73 of House Bill No. 30, 1955 General
Assembly) prevents an executor or administrator
from applying for letters in the Probate Court,
managing an estate and filing inventories and
settlements without employing an attorney. I
have been advised that the employment of an
attorney is no more necessary under this pro-
vision than it was under Section 484.030, RSMo
1949.

"I wish to request your opinion, therefore, as
to whether or not an executor or administrator
is required to employ an attorney in connection
with the administration of an estate where con-
troversies do not arise."

In answering your question, certain statutes should be in-
spected.

Section 465.100, RSMo 1949 reads as follows:

"1. In all settlements of executors or adminis-
trators the court shall settle the same accord-
ing to law, allow all disbursements and appro-
priations made by order of the court, and all
reasonable charges for funeral expenses, leas-
ing real estate, legal advice and service, and
collecting and preserving the estate, also a
reasonable cost for a surety company bond, if
the court deems it just and proper under all

Honorable Lee C. Sutton

the circumstances connected with the estate to allow cost of such bond, and as full compensation for their services and trouble a commission of five per cent, on personal property and on money arising from the sale of real estate; and that a surviving partner or partners, in administering upon the effects of the copartnership, shall be allowed a commission of three per cent on the interest of the deceased partner for like services and trouble.

"2. Provided, that whenever the executor or administrator dies, resigns or is incapacitated during the time he is acting as an executor or administrator, and before he is finally discharged from his duties by the probate court, and before any final distribution has been made of the assets of the estate the probate judge may allow compensation based upon the proportionate part of the services and trouble rendered for the period of time such deceased, resigned or incapacitated executor or administrator actually served as such executor or administrator, and provided that such compensation for services rendered by the deceased, resigned or incapacitated executor or administrator and that of the executor or administrator who completes the work as such executor or administrator shall not exceed a commission of five per cent on personal property and all money arising from the sale of real estate."

Section 484.030, RSMo 1949 reads 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 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.

Honorable Lee C. Sutton

"2. The probate court shall not allow any unreasonable, excessive or unjust fee or compensation to be taxed to any attorney, in any estate, and in no case shall such court allow any fee whatever when the work, service or device done or performed or given by any attorney is wrong, improper or injurious to the estate. Any person whomsoever practicing, charging or receiving fees in the probate court without being an attorney as herein required shall be guilty of a misdemeanor and upon a conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment not to exceed thirty days in the county jail or by both such fine and imprisonment; provided, nothing in this section shall be so construed as to prevent any executor, administrator or guardian from making their own settlements and management of their estates if in the opinion of the court entered of record such persons are capable of so doing and the estate will not be injured thereby but be legally and properly administered."

The new section replacing Sections 465.100 and 484.030 is Section 473.153, Cum. Supp. 1955, which is a part of the new probate code of Missouri and reads as follows:

"1. If a testator by will makes provision for the compensation of his executor or administrator, that shall be allowed and taken as his full compensation unless he files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as executor or administrator. When no compensation is provided in the will, or when there is no will, or when the executor or administrator renounces all claim to the compensation provided in the will, the compensation of the executor or administrator shall be determined pursuant to this section. When there is only one executor or administrator he shall be allowed as the minimum compensation for his services the following percentages of the value of the personal property administered and of the proceeds of all real property sold under order of the probate court.

Honorable Lee C. Sutton

On the first....\$	5,000,	5	per cent;
On the next.....	20,000,	4	per cent;
On the next.....	75,000,	3	per cent;
On the next.....	300,000,	2 3/4	per cent;
On the next.....	600,000,	2 1/2	per cent;
On all over.....	1,000,000,	2	per cent.

In any case where reasonable compensation to the executor or administrator is in excess of the minimum provided in the above schedule, the court shall allow such additional compensation as will make the compensation of the executor or administrator reasonable and adequate. Performance by the executor or administrator of extraordinary services is not necessary to entitle him to such additional compensation. Such percentages shall be computed on the value of the personal property at the time of disbursement or distribution thereof, except that where it is necessary to allow compensation before the property is disbursed or distributed, or to allow compensation to an executor or administrator who has been succeeded by another executor or administrator, the court may determine the fair market value of property at the time of making the allowance and base such percentage thereon.

"2. When there are two or more joint or successor executors or administrators they shall be allowed in the aggregate reasonable compensation for their services, not exceeding twice the minimum provided for in the schedule set forth in subsection 1 or five per cent of the value of the personal property administered and of the proceeds of the real property sold under order of the probate court, whichever is less, except that this maximum limitation shall not apply if possession has been taken of real property pursuant to order of the probate court but such real property has not been sold under order of the probate court, or if extraordinary services have been performed. Where there are two or more joint or successor executors or administrators the compensation allowed them shall be apportioned among them by the court according to the services actually rendered by each, or as they may agree.

"3. Attorneys performing services for the estate at the instance of the executor or administrator shall be allowed out of the estate as the minimum compensation for their services sums equal to the percentages set forth in the schedule contained in

Honorable Lee C. Sutton

subsection 1. In any case where reasonable compensation to the attorneys is in excess of the minimum provided in the schedule the court shall allow such additional compensation as will make the compensation of the attorneys reasonable and adequate. Performance by the attorneys of extraordinary services is not necessary to entitle them to such additional compensation. If the executor or administrator is an attorney, no allowance shall be made for legal services performed by him or at his instance unless such services are authorized by the will or by order of the court or are consented to by all heirs and devisees whose rights may be adversely affected by the allowance.

"4. Compensation properly allowable hereunder may be allowed to executors, administrators or attorneys upon final settlement, or partial compensation upon application therefor, at any time or times during administration. If the court finds that an executor or administrator has failed to discharge his duties as such in any respect it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. If the court finds that any attorney's services or actions in connections therewith are wrong, improper or injurious to the estate, no attorney fee whatever shall be allowed.

"5. No executor or administrator, other than one who is an attorney, may appear in court except by attorney, and such attorney may not be a salaried employee of the executor or administrator, but when the executor or administrator is an attorney, nothing herein shall prevent his being represented in court by a partner, associate or employee who is an attorney. Any executor or administrator may prepare and file his own inventories and settlements."

Under subsection 5 of the latter section (473.153, supra) no executor or administrator may appear in court unless he is an attorney. This would indicate that when the executor or administrator is not an attorney then he must employ one before making an appearance in court. It is provided in the same subsection that any executor or administrator may prepare and file his own inventories

Honorable Lee C. Sutton

and settlements. The intention of the Legislature, it seems, is to require an executor or administrator who is not an attorney to employ an attorney when an appearance in court is to be made. The last sentence in the subsection sets out specifically two instances which are not intended to constitute an appearance in court.

CONCLUSION

It is, therefore, the opinion of this office that, the Legislature having prescribed the method of administration of an estate and the rules and regulations to be observed in relation thereto-- "that no executor or administrator, unless he is an attorney, may appear in court except by attorney," and "that any executor or administrator may prepare and file his own inventories and settlements," we are bound to follow, and may not prescribe a practice in contravention to, the provisions as enacted by the Legislature.

Yours very truly,

JOHN M. DALTON
Attorney General

HLH/b1