INSANE PERSONS:
REASONABLE NOTICE OF PROCEEDINGS:
QUESTION OF FACT:

Reasonableness of written notice of insanity inquiry served upon alleged insane person prior to hearing as provided by Section 9336 Mo. R.S.A. 1939, a question of fact to be determined from circumstances of each individual case.

June 2, 1950

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Mr. J. W. Thurman
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Mr. Thurman:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which request reads as follows:

> "Quite frequently matters arise in this county involving sanity hearings which seem to require immediate attention. It is not unusual for someone to appear before the Clerk of the Probate Court at a late hour at night alleging that certain members of their family have become violent and insisting that there is immediate necessity for a sanity hearing in such cases. It has been the practice where at all possible to handle those matters promptly and in many instances with very little notice to the person who is proposed to be confined.
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> "I am not unmindful of the law as it relates to notice to the person charged in such instances, however I find it rather difficult to apply the law in all cases. Apparently the courts hold that the notice should be reasonable and of course what is reasonable notice is to be determined from the circumstances. I therefore should like to have an opinion from your office as to what would be considered reasonable notice in an instance involving a person who becomes violent rather suddenly or at a time which would not seem to require the giving of two or three days notice before the hearing is actually held.
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> "In the event a complaint should be made charging someone with being violently insane and dangerous to himself and the community, should such person be arrested and confined in jail until at least two or three days have

elapsed in order to justify the question of notice under the statute or is it your opinion that the Probate Court would be justified in serving such party with the charge and if other statutory processes are followed and the hearing held immediately would this in your opinion suffice as reasonable notice.

"I shall be very grateful to you for your written opinion in due course."

Section 9335, Mo. R.S.A. 1939, provides for the necessary procedure to be followed for the admission of the insane poor to the state hospitals for nervous diseases, to which section we may refer to later. We assume that you are familiar with this procedure and shall not take the time to discuss this matter further.

Section 9336, Mo. R.S.A. 1939, sets out in detail the form of notice, the substance, and the service of same upon the alleged insane person a reasonable length of time before the date set for the hearing as well as the procedure for the arrest and temporary confinement of such persons pending the hearing against them. We shall find it necessary to refer to and to discuss the provisions of this section in detail hereafter. Said section reads as follows:

"Thereupon the Clerk shall cause the alleged insane person to be notified of the proceeding by written notice stating the nature of the proceeding, time and place when such proceedings will be heard by the Court, and that such person is entitled to be present at said hearing and to be assisted by counsel. Such notice shall be signed by the Clerk under the seal of the Court and served in person on the alleged insane person a reasonable time before the date set for such hearing: Provided, however, if the affidavit filed in compliance with Section 9335 of this act states that the alleged insane person is so deranged as to endanger himself or others or would be dangerous to the safety of the community by being at large and is not being confined or restrained, the Judge or Clerk of the Probate Court may issue a warrant authorizing the sheriff to apprehend such alleged insane person and confine him or her in some suitable place for such time as may be necessary to carry to a determination the proceedings to inquire into the condition of the said alleged insane person and may, if in the opinion of the judge issuing the warrant it is necessary, authorize one or more assistants to be employed. Said warrant shall be substantially in the following form:

Warrant

State of Missouri)
) ss.
County of .....)

The State of Missouri, to .....
WHEREAS, it appears that proceedings have been instituted for inquisition into the sanity of ....., and it appears to the satisfaction of the undersigned that the said alleged insane person is so deranged as to endanger himself or others and would be dangerous to the safety of the community by being at large, you are, therefore, commanded forthwith to arrest said person and confine him in some suitable place until the proceedings herein instituted have been determined, and you are authorized to take to your aid ..... assistants, if deemed necessary by you. After executing this warrant make return thereof to the office of the probate clerk.
Witness my hand this .... day of...., 19...
Judge of the Probate Court.

"The clerk shall also issue subpoenas for the persons named as witnesses and such other persons as he may think proper, commanding them to appear before the probate court on the day set for the hearing, to testify concerning facts set forth in the said statement. Subpoenas may also be issued for witnesses in behalf of the alleged insane person."

It appears that your inquiry is summarized in the following sentence in your letter:

"I therefore should like to have an opinion from your office as to what would be considered reasonable notice in an instance involving a person who becomes violent rather suddenly or at a time which would not seem to require the giving of two or three days notice before the hearing is actually held."

While the request relates primarily as to what might be considered as reasonable notice to the alleged insane person, yet from reading an earlier portion of your letter it appears to have been the practice in your county in cases of this nature to give very little notice to the person whose sanity is to be inquired into at such hearing and that little significance has been attached to the giving of the notices. We feel that a complete discussion of the matter of the inquiry cannot be had without some reference herein as to what constitutes proper notice and service of same upon the alleged insane person.

It is our opinion that the importance of the issuance of proper notice and service of same upon such person a reasonable length of time before the hearing as provided by law cannot be overemphasized. In this connection we desire to call your attention to a few Missouri decisions in which we believe our position in this matter is fully sustained.

In the case of Johnson vs. Hodgon, 251 S.W. l.c. 132, the court said:

> "* * * In cases of this character, in which it is sought to deprive a citizen of his liberty or property or both, it is essential to the court's jurisdiction in the premises that the mandatory requirements of the law be fully complied with. An inquiry into one's sanity is a proceeding in invitum, and of the gravest character; and the law regulates with no little precision the jurisdictional steps to be taken therein. Notice thereof to the alleged insane person is not to be classed with notices of mere incidental steps in a proceeding duly instituted and wherein the court has acquired jurisdiction. The filing of a proper information and the service of notice thereof in accordance with the mandatory terms of the statute are jurisdictional. In this case the information is not assailed. But it clearly appears that the notice served upon relator failed to comply with the statutory requirements and therefore was, in law, no notice; and that consequently the probate court of St. Louis county, presided over by respondent, acquired no jurisdiction whatsoever to adjudge relator insane and to appoint a guardian for his person and estate. * * *"

In the case of Boatmen's National Bank of St. Louis vs. Wurdeman et al., 127 S.W. (2d) 438, it was held that the requirement that written notice must be served on a person whose sanity is the subject of inquiry is jurisdictional and cannot be waived by authorizing an attorney to appear for him. See also State ex rel. Terry vs. Holtkamp, 51 S.W. (2d) 13.

From these decisions it appears that the proper written notice required to be served under the statute is mandatory and that without proper notice, as provided by what is now Section 9336, supra, the court acquires no jurisdiction of the person and cannot legally adjudge him insane, appoint a guardian of his person and curator of his estate, or commit him to one of the state hospitals for treatment and that in such instance the entire proceeding is void.

Said Section 9336, provides what the notice shall contain, by whom issued and that it shall be served upon the alleged insane person a reasonable time before the date set for the hearing. It is noted that the section makes no exception with reference to the service of the notice where a person has become so deranged that he is likely to inflict death or great bodily harm upon himself or others of the community if he were allowed to run at large unrestrained. The same notice and service on such persons alleged to be violently insane is required as in the instance of persons who are alleged to be insane but of not such violent characteristics.

In those instances in which the affidavit required by Section 9335, states that the alleged insane person is so deranged as to endanger himself or others of the community by being at large, Section 9336 provides that the judge or the clerk of the Probate Court may issue a warrant authorizing the sheriff of such county to arrest the alleged insane person and confine him in some suitable place temporarily pending the inquiry and determination of his mental condition. The form of the warrant provided by said section is set out in detail and should be followed in all cases where it is necessary to confine the alleged insane person in order to keep him from doing violence to himself or other persons.

It is therefore our thought that under no circumstances can the proper notice and its service upon such person be dispensed with, but since none of the statutes referred to, nor any court decisions in this state define the term "reasonable time," with reference to what length of time the notice must be served upon such person prior to the sanity hearing, we shall decline to state that a notice served a certain number of days before the hearing will be reasonable, and sufficient under the law. As indicated in your letter the reasonablenessof the notice is a question of fact and will vary with the circumstances of each particular case. However, it appears that as close an approximation to the meaning of the above terms that we have been able to discover is found in the case of Sterling Mfg. Co. vs. Hough, 49 Nebraska 618, in which it was held:

> "A reasonable time, within the meaning of the rule that notice must be served a reasonable time before the hearing, means such time that the party notified will have ample time to prepare himself, and be able to be present at the time and place set for the hearing."

While we have no Missouri decisions which declare what length of time is considered to be reasonable for the issuance and service of notice upon the alleged insane person in cases of this kind, we do have a few decisions of a negative character, which declare that the alleged insane person was not given reasonable notice under the circumstances.

In the case of Ex parte Trant, 175 S.W. (2d) l.c. 163, the court said:

> "From the admitted and undisputed facts, it seems clear that petitioner was not served with written notice 'a reasonable time before the date set for such hearing.' In State ex rel. Terry v. Holtkamp, supra (330 Mo. 608, 51 S. W. (2d) 18), in discussing a similar provision in a statute relating to insanity hearings in the probate court, the supreme court said: 'Thus section 450 (Mo. R.S.A. Sec. 449) requires that a written notice stating the nature of the proceeding signed by the judge shall be served in person on the alleged insane person a reasonable time before the date set for such hearing. * * * Certainly a reasonable time "before the date" set for the hearing would not be notice to appear on the same day the notice was served.'
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> "To like effect is the ruling of this court in Ex parte McLaughlin, 105 S.W. (2d) 1020.* * *"
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> "We hold that the notice given in this case was not served 'a reasonable time before the date set for such hearing'; and as it did not comply with the statute it was, in legal effect, no notice, and the order committing petitioner to the state hospital was and is ineffective."

In the case of State ex rel. Terry vs. Holtkamp, 51 S.W. (2d) 13, it was held that a notice in an insanity hearing to the alleged incompetent to appear December 4, held not to authorize hearing and adjudication on November 27th, the day on which the notice was served.

In the case of Holthaus vs. Holtcamp, 277 S.W. 607, it appears that the notice served upon the alleged insane person three days prior to the insanity inquiry against him was regarded as sufficient or reasonable notice. However, the court held that the reasonableness of the notice could not be determined in a prohibition proceeding as the case at bar. This is the only Missouri case we have been able to find in which the service of the notice a certain number of days before the hearing was held sufficient but for the reasons stated in the opinion it does not appear that the court intended to say that a notice served three days (or any other specified number of days) prior to the hearing would be sufficient to constitute reasonable notice.

It is therefore our conclusion that the written notice to be served upon the alleged insane person is not required by the statutes or any court decisions to be served a specified number of

days in advance of the date set for the hearing, in order to constitute reasonable notice of such hearing. It appears that what would or would not constitute reasonable notice is in reality a question of fact to be determined from the circumstances of each particular case. The circumstances in each individual case may vary so widely from the circumstances in every other case, it is felt that the legislature and the courts have wisely refrained from fixing an arbitrary rule as to what shall constitute reasonable notice in all cases of this kind and not being aided by statutory authority or court decisions clarifying the meaning of reasonable notice, it is impossible for us to attempt a definition of the term at this time.

CONCLUSION

It is therefore the opinion of this department that the written notice required under the provisions of Section 9336, Mo. R.S.A. 1939, must be served upon an alleged insane person a reasonable length of time before the date set for an insanity inquiry against him regardless of the physical or mental condition of such person at the time of the service of the notice. That such statutory requirement as to notice is mandatory, and being jurisdictional cannot be waived by the alleged insane person or his attorney. That in the absence of statutory provisions requiring notice to be served upon the alleged insane person a specified period of time prior to the insanity inquiry in order to constitute reasonable notice of said hearing to such person, it is our further opinion that the reasonableness or unreasonableness of such notice is a question of fact to be determined from the circumstances of each individual case.

Respectfully submitted,

PAUL N. CHITWOOD,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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