

Get lawyers to pay for legal notices they place

Court or attorney, not the estate, owes you

In the more than 20 years I've served MPA's members as the hotline attorney, writing these monthly notes to all of you has been one of my most enjoyable tasks. I've always tried to have something different each month to tell you and to not repeat what we've discussed before.

Sometimes that is hard. I am reminded repeatedly that sometimes folks need to hear the same thing more than once. And that's reflected in this month's column.

I know I've written this before, because it's a subject that touches a sensitive nerve to me. I may be a lawyer, but my heart is still in journalism and I have a warm spot for community papers. I see how hard many of you work to make ends meet and yet produce a quality product, while dealing with rising costs and postal industry challenges, among others.

When you provide a service, you deserve to be paid. Granted, we all make mistakes – we provide services to folks who cannot pay our bill.

It is up to us to use good common sense and due diligence so that we don't have to waste time after the fact collecting our bills. But twice in the last month I've had calls to the hotline about lawyers not paying for legal notices.

First, I apologize on behalf of my chosen profession. There are good journalists and bad journalists; there are good lawyers and bad lawyers. The challenge for you, as good journalists, is to avoid doing business with bad lawyers!

Just recently I answered an email from a newspaper that ran a legal notice for the closing of a probate estate and now was hearing from the lawyer that the

estate had insufficient funds to pay for the legal notice.

Don't let yourself get in this position. I suspect this happens most often in this exact set of facts – probate estates often don't have funds to pay all their creditors. So here's what you need to know to protect yourself.

First, I'd go over to the courthouse and have a talk with the probate court. Tell the judge you've been having this problem and you are looking for a solution.

In cases where the court places the probate notice, you can have the court collect legal notice fees and then, when the notice comes directly to

you from the court, you can bill the court and they can pay you. Notices from the court should not be billable back to the attorney. Certainly the court is not going to let itself get stiffed for these fees. If the notices come to you directly from the court, then I assume the court is going to collect for payment and you won't have this issue.

When the notice comes from an attorney, don't just run it and assume you will get paid. You are NOT a general creditor of the probate estate. You need to collect these funds from the attorney, because they can add this to their bills and get reimbursed from the estate.

The law contains a specific ranking of how bills are paid from a probate estate that doesn't have enough money to pay all its creditors. The first bills to be paid, of course, are the administrative costs incurred by the court.

The second level of bills to be paid includes the attorney fees and the bills of the personal representative of the estate. That means if the ATTORNEY pays

the bill for publication of legal notices, the attorney gets those funds reimbursed before creditors of the estate. There is, therefore, NO reason for the attorney not to use the firm's funds to pay that expense of publication.

Furthermore, the newspaper is publishing this legal notice at the request and for the benefit of the estate. It is an expense incurred AFTER the death of the person. It is NOT a bill of the dead person, and therefore the paper is not a creditor of that person's estate, like credit card folks or doctors or others to whom the dead person owed money when he or she died.

You are a cost of the administration of the estate, which means you should be paid at a higher level. Costs of administration of the estate are technically a CLASS 1 CLAIM under the Missouri Statute governing how the estate expenses are allocated in the case of an insolvent estate, which means you are supposed to be paid even BEFORE the attorney for the estate.

Don't let them put you off. If they want the estate closed, they must run a legal notice in a valid legal notice paper. They should pay that bill and add it to their bill for the estate. The court can place the ad and the court can collect the money up front and then pay you.

In short, don't be afraid to demand to be paid in advance for these legal notices, especially if you've had a bad experience with a lawyer before.

In fact, there is no reason, if you choose to do so, that your paper can't adopt a policy of requiring ALL legal notices to be paid in advance. And there's no law that says you cannot make one policy for some lawyers and another policy for other lawyers (so long as you are not discriminating on the basis of age, race, sex, etc.).

After all, lawyers call these advance payments "retainers!"



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Talk to the probate court if you're having trouble collecting from an attorney.
