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New Probate Bill

Dicta Editorial Board

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New Probate Bill

The special session of the legislature passed a new probate bill which amended Chapter 260 of the regular session in 1945, which became effective July 4, 1945. The following bill became effective December 7, 1945:

HOUSE BILL NO. 1

BY REPRESENTATIVE EVANS

A BILL

for

An Act Relating to the Estates of Deceased Persons, Minors and Mental Incompetents.

Be It Enacted by the General Assembly of the State of Colorado:

Section 1. Section 253 of Chapter 176, 1935 Colorado Statutes Annotated, as amended by Section 12 of House Bill 109, being Chapter 260, Session Laws of Colorado, 1945, is hereby amended to read as follows:

Section 253. (A). If any person to whom is directed a citation issued pursuant to Section 50 of this Chapter, or a notice issued pursuant to Section 163 of this Chapter, does not admit, accept or waive service by an instrument duly acknowledged, or enter his appearance, such citation or notice shall, at least five days prior to the hearing if served by personal service in the state of Colorado or if served in any other manner at least ten days prior to the hearing, be served on such person in one of the three following ways at the option of the person desiring service:

1. By personal service in accordance with the rules of civil procedure then in effect relating to service of process in proceedings in rem; provided, however, that in complying with this sub-paragraph 1, the delivery of no instrument other than a copy of the citation or notice shall be necessary.

2. By mailing. The person desiring to serve by mail, or his attorney, shall make and file a verified petition, stating:

- (a) The name and address of the person to be served; and
- (b) That the person to be served is without the State of Colorado.

If the court shall find, upon a showing satisfactory to it, that such person is without the State of Colorado, the court shall order the clerk to send, and the clerk shall send and make and file a certificate that he has sent, a copy of the citation or notice addressed to such person at the address given, by registered mail, postage prepaid, with request for return receipt signed by addressee only. Upon delivery to him of the return receipt, the clerk shall make and file a certificate stating the date of delivery to him of the return receipt; the return receipt shall be attached to such certificate. Service shall be complete upon the date, as shown by

the clerk's certificate, of the delivery to him of the return receipt signed by the addressee.

3. By publication. The person desiring service by publication, or his attorney, shall make and file a verified petition, stating:

- (a) The name of the person to be served, if known, or if unknown a statement of that fact;
- (b) The last known address of the person, if known, or, if no address of such person is known, a statement of that fact; and
- (c) That the person to be served: is unknown; or is a non-resident of the state; or is without the state; or has departed from the state without intention of returning; or conceals himself to avoid service of process; or is a person whose whereabouts is unknown; or cannot be served by personal service in the state.

If the court shall find, upon a showing satisfactory to it, that such person is unknown, or is a non-resident of the state, or is without the state, or has departed from the state without intention of returning, or conceals himself to avoid service of process, or is a person whose whereabouts is unknown, or cannot be served by personal service in the state, the court shall order that a copy of such citation or notice be published once a week during each of four successive calendar weeks, and if an address of such person is given, the court shall order the clerk to mail and the clerk of the court shall mail a copy of such citation or notice, postage prepaid, addressed to such person at the address given, and he shall make and file a certificate of mailing, stating the name and address of the person to whom the copy was mailed, that it was mailed, postage prepaid, and the date of mailing. Service shall be complete on the date of last publication or the date of mailing, whichever is later. Alias and pluries citations and notices may be issued and the hearing continued in order to effectuate service.

(B). Whenever, in this chapter citation or notice is required to be published at least once a week for four successive weeks or at least once a week during each of four successive calendar weeks, the publication of such notice four times, once during each week of four successive calendar weeks, and at least nineteen days elapsing between the first and last publications, shall be a compliance with such requirement for publication.

(C). Except as in this chapter otherwise provided or permitted, service and proof of service of any process, notice, citation, writ, or order of court, the taking of depositions, and all other procedure under this chapter, shall be governed by the Colorado rules of civil procedure then

in effect with regard to actions in rem; provided, however, that such rules shall not be applicable to proceedings to prove a will or proceedings during the administration of an estate for construction or interpretation of a will, determination of the identity or status of a member of a class, or for instructions, but in such cases notice may be given to such persons and in such manner as the court may direct.

Section 2. The General Assembly hereby finds, determines and declares that this act is necessary for the immediate preservation of the public peace, health and safety.

Section 3. In the opinion of the General Assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage.

New Members of Denver Bar Association

The following persons were elected to membership in the Denver Bar Association at the December 3, 1945, meeting:

Paul F. Goldsmith
M. Marshall Smith

December Bar Examinations

The following persons took the bar examinations in December, 1945:

William Bodan, Jr., 3091 South Washington St., Englewood, Colorado.
Elmer James Brittain, 1617 Lincoln St., Boulder, Colorado.
Bernice M. Buchler, 1127 Broadway, Boulder, Colorado.
H. Harold Calkins, 28 Vrain St., Denver, Colorado.
Barkley L. Clanahan, 140 South Birch St., Denver, Colorado.
Albert Cohen, 2541 West Colfax Ave., Denver, Colorado.
George W. Currier, 1121 Willow St., Denver, Colorado.
Mary Louise Yeager Duvall, 973 14th St., Boulder, Colorado.
Hunter Dumas Hardeman, Jr., 847 Arizona Ave., Trinidad, Colo.
James J. Johnston, 25 East Sixteenth Ave., Denver, Colorado.
Virgil Albert Lininger, 1623 Bellaire St., Denver, Colorado.
William Earl McCarthy, Jr., 897 Fifteenth St., Boulder, Colo.
Donald Carl McKinlay, 4556 Alcott St., Denver, Colorado.
Earl A. Wolvington, 1735 Jasmine St., Denver, Colorado.
William D. Wright, III, 2081 Bellaire St., Denver, Colorado.

Newly Admitted Members of the Bar

The Colorado Supreme Court recently admitted three ex-service-men to practice under the special rules of the court. They are:

Benjamin F. Sapleton, Jr., Denver
James Henderson Rogers, Denver
Carl Parlapiano, Pueblo