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New Requirements of Creditor Notice in Probate Proceedings

Marshall Wilson

New Requirements of Creditor Notice in Probate Proceedings

Tulsa Professional Collection Services, Inc. v. Pope[1]

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.[2]

Applying this requirement, the United States Supreme Court in *Mullane v. Central Hanover Bank and Trust Co.*[3] held that statutory notice by newspaper publication did not satisfy the requirements of due process with respect to "known present beneficiaries of known place of residence."[4]

The Supreme Court subsequently held unconstitutional other notice-by-publication provisions.[5] But before *Tulsa Professional Collection Services, Inc. v. Pope*, the vast majority of states took the position, through court decisions and statutes, that publication notice was sufficient in probate proceedings.[6]

The continued use and acceptance of publication notice in probate proceedings was due to the combination of the weight of custom,[7] third

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1. 108 S. Ct. 1340 (1988).
2. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). *See infra* notes 27-30 and accompanying text.
3. *Id.*
4. *Id.* at 318.
5. See *infra* notes 39-44 and accompanying text.
6. For an exhaustive tabulation, see Falender, *Notice To Creditors In Estate Proceedings: What Process Is Due?*, 63 N.C.L. REV. 659, 660-61 n.7, 8 (1985).
7. "The fact that a procedure is so old as to have become customary and well known in the community is of great weight in determining whether it conforms to due process for 'Not lightly vacated is the verdict of quiescent years.'" Anderson Nat'l Bank v. Luckett, 321 U.S. 233, 244 (1944) (quoting Cardozo's opinion in Coler v. The Corn Exch. Bank, 250 N.Y. 136 (1928).

Justice White, writing for the Court in Farrell v. O'Brien, 199 U.S. 89 (1905), reacted strongly to a due process challenge of the probate of a will without the statutory notice when he wrote "Indeed the contention made on this subject amounts to asserting that every state law which provides for a probate in common form is repugnant to the due process clause of the Constitution . . . ." *Id.* at 118. *See also* Jackson v. Rosenbaum Co., 260 U.S. 22 (1922). *But see* Sniadach v. Family Fin. Corp., 395 U.S. 337, 340 (1969) ("The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all

party reliance on the validity of the probate decree,[8] the in rem nature of probate,[9] and other practical and procedural reasons.[10]

The Supreme Court directly addressed *Mullane*'s applicability to nonclaim statutes for the first time[11] in *Pope*, and held that "If [the creditor's]

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property in its modern forms.").

This feeling was well stated in Gano Farms, Inc. v. Estate of Kleweno, 2 Kan. App. 506, 582 P.2d 742 (1978) when the court said "No one would suggest, we suppose, that the heirs must seek out the decedent's creditors and notify them of the death, or that their failure to do so deprives the creditor of his property without due process of law by the running of the statute of limitations, even though he may not have been aware that it was running." *Id.* at ____, 582 P.2d at 745.

8. *See* Note, *Due Process - The Requirement Of Notice In Probate Proceedings*, 40 Mo. L. REV. 552, 560 (1975) (pointing out that the problem of third party reliance on the final decree was not present in *Mullane*).

9. *See* Goodrich v. Farris, 214 U.S. 71 (1909); *see also* Comment, *Requirements of Notice in In Rem Proceedings*, 70 HARV. L. REV. 1257, 1269 (1957) [hereinafter Comment, *Requirements of Notice*]; Comment, *Probate Proceedings - Administration of Decedents Estates - The Mullane Case and Due Process of Law*, 50 MICH. L. REV. 124, 128 n.18 (1951) [hereinafter Comment, *Probate Proceedings*]. Mo. REV. STAT. § 473.013 (1986) states:

> The administration of the estate of a decedent from the filing of the application for letters testamentary or of administration until the decree of final distribution and the discharge of the last personal representative is deemed one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem.

Compare Wolff v. Rager, 30 S.W.2d 1005, 1008 (Mo. 1930), where the court stated, "Proceedings in the probate courts of this state are not strictly in rem; they are somewhat in the nature of proceedings in rem, in which persons in interest are afforded an opportunity to be heard."

10. John A. Borron Jr. points out that "Since the identity of all interested persons, *e.g.*, creditors, cannot be ascertained when letters are granted, publication of notice of letters granted is the only effective means of complying with the notice requirements of due process." Borron, *Independent Administration And Other Matters Under The New Code*, 37 J. Mo. BAR 13, 13 (1981).

11. In 1982, the Nevada Supreme Court affirmed the trial court's order barring a creditor's claim as not being timely filed. The estate had published notice pursuant to Nevada statute, and had taken no further action to notify the claimant of the probate proceedings. The estate had actual knowledge of the claim.

The United States Supreme Court vacated the Nevada Supreme Court's opinion and remanded the case for consideration in light of Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983), handed down one week earlier. Continental Ins. Co. v. Moseley, 463 U.S. 1202 (1983). On remand, the Nevada Supreme Court reversed the trial court and concluded that "more than service by publication was required in order to afford due process to [the known creditor]." Continental Ins. Co. v. Moseley, 683 P.2d 20, 21 (Nev. 1984).

Previously, the United States Supreme Court dismissed an estate creditor's appeal in Baker Nat'l Bank v. Henderson, 393 U.S. 530 (1969). The creditor had argued that the Montana nonclaim statute, MONT. CODE ANN. § 91-2704 (1947), was unconstitutional because it allowed "the taking of a person's property from him without notice by either mail or personal delivery when such actual notice can be accomplished with ease and little effort . . . ." Baker Nat'l Bank v. Henderson, 445 P.2d 374, 375 (1968).

identity was known or 'reasonably ascertainable,' then termination of [the creditor's] claim without actual notice violated due process.''[12]

This Note will review the treatment of the due process notice aspects of probate proceedings and discuss the possible effects of *Pope* on Missouri's probate practice, specifically upon the nonclaim statute.

In a probate proceeding the probate court and the decendent's personal representative collect the estate's assets, pay the decendent's debts, and distribute the remainder among the beneficiaries.[13] The purpose of a nonclaim statute is to promote a quick and orderly disposition of the estate.[14] Unlike a general statute of limitations which merely withholds the remedy,[15] nonclaim statutes destroy the claim a party may have against the estate.

Under Missouri's probate procedures, the application for letters testamentary or of administration must state the names and addresses of the surviving spouse, heirs, devisees and legatees of the decedent.[16] Once the application is filed the clerk of the court publishes a notice of the appointment of the personal representative.[17] This notice is published in a newspaper once a week for four consecutive weeks.[18] The clerk also sends a copy of the notice by ordinary mail to each heir and devisee listed in the application.[19] She then files proof of publication of notice and proof of mailing of notice within ten days of the completion of publication.[20] The first publication of notice triggers the six month nonclaim period.[21]

Section 473.360 of the Revised Statutes of Missouri is the nonclaim statute of the Missouri Probate Code. Section 473.360 provides:

> Except as provided in section 473.370 [pertaining to judgment creditors], all claims against the estate of a deceased person, other than costs and expenses of administration, . . . claims of the United States and claims of any taxing authority . . . which are not filed . . . or are not paid by

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12. *Pope*, 108 S. Ct. at 1348.
13. *E.g.*, North v. Hawkinson, 324 S.W.2d 733, 745 (Mo. 1959).
14. Rhodes v. Lockwood, 695 S.W.2d 130 (Mo. Ct. App. 1985); *accord* Minor v. Lillard, 306 S.W.2d 541 (Mo. 1957).

> One of the purposes of the nonclaim statutes is to provide a method whereby at the termination of a reasonable period the real and personal property not needed to meet the obligations of the estate will be free for distribution to the rightful owners without waiting until every claim has been finally adjudicated, which could take several years as it has in this case.

Id. at 544.

15. Estate of Thomas, 743 S.W.2d 74, 78 (Mo. 1988) (en banc) (Donnelly, J., dissenting).
16. Mo. Rev. Stat. § 473.017.1(2) (1986).
17. *Id.* § 473.033.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* § 473.360.1.

> the personal representative, within six months after the first published notice of letters testamentary or of administration, are forever barred against the estate, the personal representative, the heirs, devisees and legatees . . . .

Section 473.433.1 of the Revised Statutes of Missouri prohibits the *court* from *allowing* a claim, except costs of administration, unless the claim "has been served upon the personal representative and has either been filed with the court or acknowledged by the personal representative in writing to be a just claim" within the six month nonclaim period.[22]

Courts and the Missouri Revised Statutes characterize probate proceedings as in rem.[23] Notice by publication has traditionally been deemed sufficient for such proceedings.[24] The Supreme Court rarely has addressed the due process characteristics of probate notice because the statutory publication notice infrequently has been challenged as inadequate.[25] Further, when statutes were attacked on constitutional grounds, the Court routinely upheld statutory publication notice.[26]

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22. *Id.* § 473.433; Rhodes v. Lockwood, 695 S.W.2d 130, 131 (Mo. Ct. App. 1985). *See generally* Comment, *Recent Developments In Missouri: Probate Code - Claims*, 49 UMKC L. REV. 534 (1981); *see also* Falender, *supra* note 6; Borron, *supra* note 10.

23. *See supra* note 9. American probate procedures have evolved from English law with very little change. In England, the ecclesiastical courts had jurisdiction over the estates of deceased persons. A will was presented by the executor either in common form or solemn form. Common form probate consisted of an ex parte proceeding, with the executor proving the wills execution by his own oath. Probate in solemn form required notice to interested persons, with no reexamination except upon appeal. Probate in common form could be contested at any time within thirty years.

Missouri has adopted what is essentially common form probate with the possibility of a will contest and the equivalent of solemn form probate, if filed in the circuit court within six months. *See* MO. REV. STAT. § 473.083 (1986); Comment, *Requirements of Notice*, *supra* note 9, at 1269 n.86; Comment, *Probate Proceedings*, *supra* note 9, at 131; Note, *supra*, note 8, at 556-57 n.26.

24. Comment, *Requirements of Notice*, *supra* note 9, at 1260-70.

25. Comment, *Probate Proceedings*, *supra* note 9, at 132.

26. In *In re* Broderick's Will, 88 U.S. (21 Wall.) 503 (1874), the Court denied the challenge of a California probate statute which provided for notice by publication, followed by a one year period during which the will could be contested. The probate was challenged by a party who had received no actual notice until the one year period had passed. The Court upheld the California statute, declaring:

> Parties cannot thus, by their seclusion from the means of information, claim exemption from the laws that control human affairs, and set up a right to open up all the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings in rem.

Id. at 519.

In 1887, the Court again upheld publication notice of probate proceedings in

In other contexts, however, the United States Supreme Court has dealt with notice issues. In *Mullane v. Central Hanover Bank and Trust Co.*,[27] the Court defined the notice standard required by the fourteenth amendment's due process clause. In *Mullane*, the trust company petitioned for a judicial settlement of its accounts pursuant to New York law.[28] The statute required newspaper publication of notice containing only a minimum of information.[29] The court-appointed special guardian and attorney for the beneficiaries objected, claiming that the statutory notice violated the due process rights of the absent beneficiaries. The Court held this statutory notice to be inadequate because "it is not reasonably calculated to reach those who could easily be informed by other means at hand."[30]

The Supreme Court refined the *Mullane* doctrine with its 1983 decision in *Mennonite Board of Missions v. Adams*.[31] In *Mennonite*, the State of Indiana initiated tax lien foreclosure proceedings against a mortgagor's property. The state foreclosure statute required that the "owner" receive actual notice of the proceedings, but did not require notice to the mortgagee.[32] The Court reaffirmed *Mullane*, requiring actual notice to mortgagees who are reasonably ascertainable.[33]

But one commentator argues that *Mennonite* departs from *Mullane* rather than refine it:[34] "The *Mennonite* Court, though purporting to rely on *Mullane*, ignored the balancing approach used in that decision. Justice Marshall's opinion [in *Mennonite*] considered only the interests of the party adversely affected and cursorily labelled the burden on [the party giving notice] as 'relatively modest.'"[35]

Culbertson v. H. Witbeck Co., 127 U.S. 326 (1887) saying "Unless the necessary parties in such cases could be brought before the court by publication there would be in many cases an impossibility of doing it at all." *Id.* at 333. *See also* Christianson v. King County, 239 U.S. 356 (1915) (notice by publication was an appropriate form of notice to interested persons); Goodrich v. Ferris, 214 U.S. 71 (1909) (upholding California's probate notice provision); Ferrell v. O'Brien, 199 U.S. 89 (1905) (Washington common form probate statute satisfied fourteenth amendment).

27. 339 U.S. 306 (1950).

28. N.Y. BANKING LAW § 100-c(12) (1937). This settlement, and the resulting court decree act to terminate all rights of persons having an interest in the trust fund. *Mullane*, 339 U.S. at 311.

29. "[T]he only notice required, and the only one given was by newspaper publication setting forth merely the name and address of the trust company, the name and the date of establishment of the common trust fund, and a list of all participating estates trusts or funds." *Id.* at 310.

30. *Id.* at 319.

31. 462 U.S. 791 (1983).

32. *Id.* at 794.

33. *Id.* at 801.

34. *See* Comment, Mennonite Board of Missions v. Adams: *Expansion Of The Due Process Notice Requirement*, 46 LA. L. REV. 311 (1985).

35. *Id.* at 315-16.

Justice O'Connor's dissent in *Mennonite*, joined by Chief Justice Rehnquist, criticized the majority's apparently inflexible rule[36] and urged an adherence to the balancing approach in *Mullane*:

> Today, the Court departs significantly from its prior decisions and holds that before the state conducts *any* proceeding that will affect the legally protected property interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable."[37]

A more moderate reading of the majority opinion, however, simply reasons that the Court in *Mennonite* narrowed the analysis from whether the notice was reasonably calculated under all the circumstances to reach interested parties, to whether the names of such persons were reasonably ascertainable.[38]

The *Mullane* decision launched a new evaluation of statutory notice provisions in many areas. Appellate courts have subsequently held that publication notice is constitutionally inadequate in bankruptcy proceedings,[39] condemnation proceedings,[40] forcible entry and detainer actions,[41] tax sales,[42] automobile forfeiture proceedings[43] and others.[44]

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36. The *Pope* decision was also authored by Justice O'Connor. Albeit narrower, it is just as inflexible as *Mennonite*. O'Connor criticized the majority in *Mennonite* for failing to weigh the abilities of the party "to safeguard its interests" in determining the notice due, but there is no such discussion in *Pope*. *Mennonite*, 462 U.S. at 808.

37. *Id.* at 802.

38. Bender v. City of Rochester, 765 F.2d 7, 11 (2d Cir. 1985).

39. *E.g.*, New York v. New York, N.H. & H. R.R., 344 U.S. 293, 294 (1953) (bankruptcy proceedings trigger specific time period in which creditors' claim must be filed).

40. *See* Schroeder v. City of New York, 371 U.S. 208 (1962) (publication was inadequate when owner's name was readily ascertainable); Walker v. City of Hutchinson, 352 U.S. 112 (1956) (notice of condemnation proceedings published in a local newspaper inadequate as to known landowner).

41. *E.g.*, Greene v. Lindsey, 456 U.S. 444 (1982) (posting a summons on tenant's door inadequate means of providing notice).

42. *E.g.*, Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983) (publication notice to interested parties other than owner of property inadequate). The Missouri Supreme Court immediately reached a similar result when it held that when the deed of trust is recorded, "notice [of tax sale] by publication alone is insufficient and must be supplemented by notice mailed to the beneficiary's last known available address or by personal service." Lohr v. Cobur Corp., 654 S.W.2d 883, 886 (Mo. 1983) (en banc).

43. *E.g.*, Robinson v. Hanrahan, 409 U.S. 38 (1972) (per curiam) (proceeding was invalid because notice was mailed to appellant's home when state knew he was being held in jail).

44. *See* Williams v. Berrey, 492 S.W.2d 731 (Mo. 1973) (en banc) (replevin); *In re* Barger, 365 S.W.2d 89 (Mo. Ct. App. 1963) (parental rights). *But see* Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951) (notice by publication naming the last known owner sufficient in escheat action).

While requiring notice in other actions affecting property rights,[45] Missouri courts have steadfastly upheld Missouri's probate notice statutes. In *Haas v. Haas*,[46] the Missouri Supreme Court upheld the validity of the nonclaim provisions of section 473.083[47] of the Revised Statutes of Missouri. The appellant had challenged the constitutionality of the will contest notice provisions,[48] saying that "absent a requirement for due diligence on the part of the applicant, [these statutes] are unconstitutional for their failure to require a good faith attempt to give an heir or legatee the notice to which he is entitled under the fifth and fourteenth amendments . . . ."[49] The court held that section 473.083 controlled, and that fraud did not toll the running of the period during which a party may contest a will.[50]

The definitive statement by the Missouri Supreme Court came in *Estate of Busch v. Ferrell-Duncan Clinic, Inc.*[51] The court unequivocally held that due process does not require any more than publication notice to a creditor.[52] It distinguished *Mullane*, saying:

> In *Mullane*, and the cases following it, the person to be notified was, in effect, made an actual party to the litigation by the notice, and the judgment of the court operated directly on that person's property. Notice under a nonclaim statute does not make a creditor a party to the proceeding; it merely notifies him that he may become one if he wishes.[53]

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45. *E.g.*, Lohr v. Cobur Corp., 654 S.W.2d 883 (Mo. 1983) (en banc). In 1966, the court in Clapper v. Chandler, 406 S.W.2d 114 (Mo. Ct. App. 1966), set aside an order of sale of intestate's property to satisfy creditors' claims, when the probate court's hearing on the petition to sell was held twenty-four days after publication of notice to heirs instead of thirty to forty-two as mandated in statute. The court held that since personal notice was not given to the heirs, the order of sale was void, "not merely irregular or erroneous." *Clapper*, 406 S.W.2d at 120. The Missouri Supreme Court later held in Bollenger v. Bray, 411 S.W.2d 65 (Mo. 1967), that final settlement of a will without additional notice, after published notice eight years before, did not satisfy due process.

46. 504 S.W.2d 44 (Mo. 1973).

47. Mo. Rev. Stat. § 473.083 (1986) provides in part:

> Unless any person interested in the probate of a will appears within six months after the date of the probate . . . thereof . . . or within six months after the first publication of notice of granting of letters on the estate of the decedent, which ever is later, and by petition filed . . . contests the validity of a probated will, . . . then probate . . . of the will is binding.

48. Mo. Rev. Stat. § 473.017 (1986) requires that the personal representative shall state in the application for letters testamentary or administration the names and addresses of the surviving spouse and heirs, devisees and legatees of the decedent. Mo. Rev. Stat. § 473.033 (1986) then directs the clerk of the probate division to mail a copy of the published notice to each heir and devisee named in the application.

49. *Haas*, 504 S.W.2d at 46.

50. *Id.*

51. 700 S.W.2d 86 (Mo. 1985) (en banc).

52. *Id.* at 89.

53. *Id.* at 88.

The Missouri court, in a critical footnote,[54] announced that it was unpersuaded by the United States Supreme Court's treatment of *Continental Insurance Co. v. Moseley*.[55] In *Moseley*, the United States Supreme Court remanded a Nevada Supreme Court decision for consideration in light of *Mennonite Board of Missions*.[56] The Missouri Supreme Court dismissed the importance of the United States Supreme Court's decision: "The Supreme Court's procedure - granting certiorari, vacating and remanding for further consideration in light of *Mennonite Board of Missions* - does not conclusively indicate that the Supreme Court has held, or will hold, *Mullane* applicable in the circumstances of the remanded case".[57]

One year later, in *Cool v. Reed*,[58] the Missouri court faced a similar challenge of the statute barring will contests not filed within six months of publication.[59] The court upheld that notice provision stating "the notice precepts of *Mullane* and *Mennonite* do not apply and hence do not save [the heir's] cause of action from her own failure to file a timely will contest."[60]

In 1987, the Oklahoma Supreme Court faced a due process challenge to its nonclaim statute.[61] Appellant Tulsa Professional Collection Services, Inc. [hereinafter Tulsa] was the assignee of a debt owed to St. John's Medical Center for expenses incurred during the last illness of H. Everett Pope, Jr.. The personal representative[62] of the decedent's estate published

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54. *Id.* at 87 n.2.

55. 463 U.S. 1202 (1983). *Moseley* is discussed *supra* note 11.

56. 100 Nev. 337, 683 P.2d 20 (1984) (on remand from the Supreme Court, 463 U.S. 1202 (1983). *See supra* note 11.

57. *Busch*, 700 S.W.2d at 87 n.2 (citation omitted).

58. 717 S.W.2d 518 (Mo. 1986) (en banc).

59. Mo. REV. STAT. § 473.083 (1986). *See supra* note 47 and accompanying text.

60. The court also flatly refused to disturb *Haas*, and stated "What was said about § 473.360 in *Busch* is equally applicable to § 473.083 in this case." *Cool*, 717 S.W.2d at 520.

61. Tulsa Professional Collection Serv., Inc. v. Pope, 733 P.2d 396 (Okla. 1986), *rev'd*, 108 S. Ct. 1340 (1988). Oklahoma's nonclaim statute, OKLA. STAT., tit. 58, § 331 (1981), differs from Missouri's statute in its provision for a two month period in which to file a claim, instead of the six months provided for in Mo. REV. STAT. §§ 473.360 and 473.083 (1986).

The Oklahoma Supreme Court was also presented with a question as the effect of statutory provisions related to the expenses of the last illness. The United States Supreme Court did not deal with this aspect of the case and it will not be discussed in this Note.

62. This Note will not differentiate between executors and administrators. The Missouri Probate Code uses the term "personal representative" in those sections added or amended in 1980 or later. Mo. REV. STAT. § 472.010.26 (1986) provides:

> "Personal Representative" means executor or administrator. It includes an administrator with the will annexed, an administrator de bonis non, an administrator pending contest, an administrator during minority or

notice as required by the statute,[63] and no timely claim was presented to the personal representative within the prescribed four month period.[64]

The trial court and the court of appeals held the claim barred because it was not timely filed.[65] Tulsa raised the issue of due process in its petition for rehearing, arguing that due process required that actual notice be given to a known creditor. The court of appeals denied rehearing, saying that the notice argument could not be raised for the first time in the petition for rehearing.[66]

The Oklahoma Supreme Court, after stating that a question of notice is directed at the court's jurisdiction and can be raised at any time, addressed for the first time the question of the notice required under its probate nonclaim statute.[67] Relying principally on Missouri's decision in *Busch*, the Oklahoma court held "actual notice of the potential operation of the statute of nonclaims is not required to constitute due process."[68]

On appeal, the United States Supreme Court conclusively addressed the question whether publication notice, followed by a specified period in which to file claims against the estate, satisfies the due process clause of the fourteenth amendment.[69]

Justice O'Connor, writing for the majority, first discussed whether the fourteenth amendment protected Tulsa's interest. The Court found the issue to be "affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."[70]

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absence, and any other type of administrator of the estate of a decedent whose appointment is permitted. It does not include an executor de son tort.

63. OKLA. STAT. tit. 58, § 331 (1981) requires the personal representative to give notice to the creditors of the deceased that they must file their claims within two months of the date of the first publication. This notice must be published in a newspaper in the county in which probate is filed once each week for two consecutive weeks. Notice was published on July 17, 1979 and July 24, 1979. *Pope*, 108 S. Ct. at 1343.

64. *Pope*, 733 P.2d at 397. These facts were stipulated by the parties.

65. *Id.* This ruling was based on that court's construction of the statute relating to will contests.

66. *Id.* at 399.

67. *Id.* at 399-400.

68. *Id.* at 400.

69. *Pope*, 108 S. Ct. at 1342.

70. *Id.* at 1345 (quoting Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982)). The Court in *Logan* commented that "the types of interests protected as 'property' are varied and, as often as not, intangible, relating 'to the whole domain of social and economic fact.'" *Logan*, 455 U.S. at 430 (quoting National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting). The *Logan* Court also listed other property interests found to have due process protection, including a horse trainer's license, disability benefits, high

The Court next examined the state's involvement in the operation of the nonclaim statute. "The Fourteenth Amendment protects this interest, however, only from a deprivation by state action."[71] The Court had spoken to a related issue before. It had held that the operation of a general statute of limitations does not involve sufficient state action to warrant due process protection,[72] and that plaintiffs are not entitled to notification from either the state or the defendant that their claim is about to be time-barred.[73] Further, "private use of state sanctioned private remedies or procedures does not rise to the level of state action."[74]

With this background of authority, the personal representative in *Pope* relied on *Texaco, Inc. v. Short*,[75] in which the Supreme Court held that the potential plaintiffs do not have a due process right to notice that a statute of limitations is about to expire. But the *Pope* Court drew a critical distinction between a self-executing statute of limitation and a statute of limitation where "the legal proceedings themselves trigger the time bar . . . ."[76] Accordingly, the Court distinguished *Texaco, Inc.* on the ground that the statute dealt with in that case was a self-executing statute of limitations. The *Texaco, Inc.* statute was characterized as "a rule of law uniformly affecting all citizens that establishes the circumstances in which a property interest will lapse through the inaction of its owner."[77] The

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school education, utility service, government employment, a driver's license, and welfare benefits. *Id.* at 432.

The Missouri Supreme Court had reached a similar conclusion as early as 1912 when it stated "[n]o authority need be cited to demonstrate that an equity in incumbered real estate is property, and therefore under protection of the Constitution." State *ex rel.* Deems v. Holtcamp, 245 Mo. 655, 670, 151 S.W 153, 157 (1912).

71. *Pope*, 108 S. Ct. at 1345.

72. *Id.* at 1345; Estate of Busch v. Ferrell-Duncan Clinic, Inc., 700 S.W.2d 86, 89 (Mo. 1985) (en banc).

73. Texaco, Inc. v. Short, 454 U.S. 516, 537 (1982).

74. *Id.* The question arises as to whether the holding in *Pope* would apply to an independent administration. While the independent personal representative must abide by all of the probate code provisions, "it is clearly possible to conduct an entire administration without a single judicial act by the court." Borron, *supra* note 10, at 14-15.

75. 454 U.S. 516 (1982).

76. *Pope*, 108 S. Ct. at 1346. Chief Justice Rehnquist, in his forceful dissent, disputes this distinction. He writes that the majority's determination that the probate court's involvement is inconsistent with a self-executing time bar is:

> [O]ut of context and contrary to common sense. That term refers only to the absence of a judicial or other determination that *itself* extinguishes the claimant's rights. This is made clear by the *Texaco, Inc.* Court's juxtaposition of "the self executing feature of the [Indiana] statute and a subsequent judicial determination that a particular lapse did in fact occur."

Id. at 1349 (quoting *Texaco, Inc.*, 454 U.S. at 533).

77. *Texaco, Inc.*, 454 U.S. at 537.

only state action involved is the enactment of the statute, which "falls short of constituting the type of state action required to implicate the protections of the Due Process Clause."[78]

Having drawn this distinction between the two types of statutes acting to terminate property interests, the Court examined the level of the state involvement in Oklahoma's nonclaim statute's operation. This is the point at which the Court's reasoning differed from that of those courts which had upheld the constitutionality of nonclaim statutes.[79] The Court noted that the probate court must appoint the personal representative before notice can be given. Additionally, the personal representative must file an affidavit of publication and copies of the notice with the court. Having found this to be "significant state action,"[80] the Court stated "in such circumstances, due process is directly implicated and actual notice generally is required."[81]

The last step in the court's analysis was application of *Mullane*'s balancing test. The *Mullane* Court had declared: "Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment."[82]

Here, after a cursory examination of the interests of the creditors, the personal representative, and the state,[83] the Court determined "a requirement of actual notice to known or reasonably ascertainable creditors is not so

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78. *Pope*, 108 S. Ct. at 1345.

79. The *Busch* court stated "We agree with this distinction and believe that the nonclaim statute, and its potential for barring a creditor's claim, does not constitute an adjudicatory proceeding. The due process requirements of *Mullane* are not applicable to these probate proceedings. Section 473.360 is a self-executing statute of limitations. The bar created by operation of a statute of limitations operates independently of any adjudicatory process." Estate of Busch v. Ferrell-Duncan Clinic, Inc., 700 S.W.2d 86, 89 (Mo. 1985) (en banc) (citations omitted). *See also* Cool v. Reed, 717 S.W.2d 518, 520 (Mo. 1986) (en banc); Haas v. Haas, 504 S.W.2d 44, 46 (Mo. 1973).

80. Pope, 108 S. Ct. at 1345. This conclusion is by no means inescapable. In Chief Justice Rehnquist's dissent, he points out that "Virtually meaningless state involvement, or lack of it, rather than the effect of the statute in question on the rights of the party whose claim is cut off, is held dispositive." *Pope*, 108 S. Ct. at 1349.

81. *Id.* at 1346.

82. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-14 (1950).

83. The Court recognized the interest of the creditor in pursuing the claim against the estate, and that the creditor may well be unaware of a debtor's death. Significant, too, was the potentially adversarial relationship between the personal representative and the creditor, making it unlikely that the personal representative would voluntarily advise the creditor of the expiration of the claim period. These factors outweighed the state's interest in the prompt and efficient settlement of decedent's estates. The Court stated that actual notice to those creditors who are reasonably ascertainable is "not inconsistent with the goals reflected in nonclaim statutes." *Pope*, 108 S. Ct. at 1347.

cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted."[84]

The Court reached that determination after reviewing the length to which the personal representative need go to satisfy this requirement.[85] The applicable standard set out in *Mullane*, and refined in *Mennonite*, is based on reasonableness.[86] The *Pope* Court concluded "all that [the personal representative] need do is make 'reasonably diligent efforts' to uncover the identities of creditors."[87]

The Court remanded the case to the trial court for a determination of whether the personal representative made this effort. The Court added the explicit instruction: "If [Tulsa's] identity was known or 'reasonably ascertainable,' then termination of [Tulsa's] claim without actual notice violated due process."[88]

There can be no doubt that the *Pope* decision will have a significant impact on the administration of decedents' estates.[89] As the duties of the personal representative increase, there is a corresponding increase of liabilities for breach of that duty. The remainder of this Note will discuss the duties and liabilities of the personal representative, and the remedies available to the creditor whose fourteenth amendment rights are violated by destruction, without notice, of his cause of action against the estate.

In the application for letters testamentary or of administration, the personal representative promises to pay the debts and legacies and to perform all things required by law.[90] The personal representative is required to preserve the estate for all interested persons, including creditors.[91] While

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84. *Id.*
85. *Id.*
86. *See supra* notes 27-33 and accompanying text.
87. *Pope*, 108 S. Ct. at 1347 (citation omitted).
88. *Id.* at 1348.
89. "The court came as close to invalidating our [nonclaim] statute as they could have without actually having the statute before them." Borron, *Probate Attorneys Turn Creative In Notices To Estate Creditors*, Missouri Law. Weekly, Oct. 10, 1988, at 21, col. 4 (quoting Jack Challis, chairman of the Missouri Bar Probate and Trust Committee).
90. Mo. REV. STAT. § 473.017 (1986) provides:
1. An application for letters testamentary or of administration shall state all of the following:
. . . .
(9) That if letters are issued, the applicant will make a perfect inventory of the estate, pay the debts and legacies, if any, as far as the assets extend and the law directs, and account for and distribute or pay all assets which come into the possession of the personal representative, and perform all things required by law touching the administration of the estate.
91. In Kahmann v. Buck, 446 S.W.2d 457, 460 (Mo. Ct. App. 1969), the court stated:
It has long been understood that [a personal representative] serves in a

personal representatives do not represent the creditors against the estate,[92] they hold "the property of deceased as a trustee for the benefit of creditors, legatees, heirs and distributees . . . ."[93]

Should the personal representative breach this duty, the probate court has the power to remove her,[94] reduce the compensation due,[95] or surcharge for any loss caused by the breach.[96] By statute, the personal representative is held personally liable only if she is personally at fault.[97]

Since the clerk of the probate division, rather than the personal representative, publishes the notice of letters required by Section 473.033 of the Revised Statutes of Missouri, there is no case law defining the liability of a personal representative for failure to give notice to a known creditor.

The 85th General Assembly has before it House Bill No. 145, which is designed to bring the Missouri Probate Code into conformity with the holding of *Pope*. That bill includes the addition of section 473.034 which makes it the duty of the personal representative to "mail a copy of [the published notice] by ordinary mail to all known or reasonably ascertainable creditors . . . ."[98] This Note will proceed on the assumption that it shall be the duty of the personal representative to provide this additional notice required by *Pope*.[99]

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fiduciary capacity. It is his duty and he is required to look after the interests and to act for and on behalf of all persons who have an interest, immediate or remote, in the estate. These persons include not only the heirs, devisees and legatees, but creditors, including taxation claimants.

Accord State *ex rel.* Madden v. Sartorius, 349 Mo. 1054, 163 S.W.2d 987 (Mo. 1942) (en banc); Wenzlick v. Wenzlick, 715 S.W.2d 262 (Mo. Ct. App. 1986).

92. Runnion v. Paquet, 233 S.W.2d 803, 808 (Mo. Ct. App. 1950).

93. Rhodes v. Rhodes' Estate, 246 S.W.2d 98, 103 (Mo. Ct. App. 1952).

94. Mo. REV. STAT. § 473.140 (1986).

95. *Id.* § 473.153.4.

96. *Id.* § 473.597.

97. Mo. REV. STAT. § 473.820.2 (1986) provides: "A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault." Although located among the independent administration statutes, this statute applies to all personal representatives. Borron, *supra* note 10, at 19. Section 473.820 has been interpreted to apply specifically to the liability of the personal representative to the creditors of the estate. Estate of Gangloff, 743 S.W.2d 498, 502 (Mo. Ct. App. 1987).

After proof is made of distribution in accordance with the final decree, the court will enter an order of discharge. This discharge triggers a one year period during which claims may be filed against the personal representative and his surety. Mo. REV. STAT. § 473.660 (1986). Claims of fraud must be brought within two years of the discovery of the fraud, and will be barred as against one not a perpetrator of the fraud after ten years after the commission. Mo. REV. STAT. § 472.013 (1986).

98. H.B. 145, 85th Gen. Assembly, 1st Regular Sess. (1989).

99. Prior to amendment, *voluntary* notice by mail or otherwise may not be

The Court in *Pope* defined the personal representative's duty, saying that the personal representative must make "reasonably diligent efforts to uncover the identities of creditors."[100] The Court stated that actual notice is not required for those creditors who are not reasonably ascertainable[101] nor for those with merely conjectural claims.[102]

It has long been the recommended practice for personal representatives to assemble all available information concerning debts of the decedent.[103] Certainly, current bills or statements in the papers of the decedent would render the creditor reasonably ascertainable. One commentator stated that reasonable diligence would include "an inquiry of those of the decedent's relatives, acquaintances, business associates, and professional advisers whom the representative believes to be fertile sources of information."[104]

The Court in *Pope* declined to decide whether the knowledge of the personal representative, the wife of the decedent, that the decedent had a long stay at the assignor hospital "translates into a knowledge of appellant's claim."[105] However, it is inconceivable that reasonable diligence would not include inquiring of the hospital.

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constitutionally sufficient. In Orange v. Harrington, 649 S.W.2d 930 (Mo. Ct. App. 1983), the Eastern District stated:

> It is irrelevant that actual notice was afforded defendants because actual notice given in any manner other than that provided by statute, cannot supply constitutional validity to service under it, since due process requires notice directed by the statute itself and not a voluntary gratuitous notice resting in favor or discretion.

Id. at 933 (citing Harris v. Bates, 364 Mo. 1023, 1031, 270 S.W.2d 763, 769 (1954)). In *Orange*, the mailed notice was service of summons, authorized only after filing an affidavit stating why personal service cannot be served. This was not done in that case. The holding in *Orange* seems to be based on the fact that there was not technical compliance with the statute within the statutory time period.

The language quoted above is broader than the holding necessitated. It is unlikely that the requirements of due process dictate this result. In State *ex rel.* Deems v. Holtcamp, 245 Mo. 655, 670, 151 S.W 153, 157 (1912), the Missouri Supreme Court, after determining that due process required notice to heirs or creditors of a proceeding to sell incumbered land, stated "And though the statutes do not in terms require notice, the law will imply that notice was intended." It is not an illogical step to apply this concept to a statute which provides for insufficient notice, and imply sufficient notice.

100. *Pope*, 108 S. Ct. at 1347.

101. *Id.*

102. *Id.* The Court cites *Mullane* for this proposition. Immediately after the *Mullane* Court said that it did not "consider it unreasonable for the State to dispense with more certain notice to those beneficiaries whose interests are either conjectural or future . . . .", the Court cautioned "Whatever searches might be required in another situation under ordinary standards of diligence, in view of the character of the proceedings and the nature of the interests here involved we think them unnecessary." *Mullane*, 339 U.S. at 317.

103. Mo. Estate Administration § 4.6 (Mo. Bar 3d ed. 1984).

104. Falender, *supra* note 6, at 695.

105. *Pope*, 108 S. Ct. at 1348.

Once a creditor is identified, he is entitled to better notice than that afforded by publication. The Supreme Court has held that notice by mail is constitutionally sufficient.[106] Due process also requires an accurate description of the actions required by the creditor in order to present his claim.[107]

If a personal representative fails to make "reasonably diligent efforts," or negligently or fraudulently fails to mail the required notice to the creditor, the creditor's constitutional rights are violated.[108] This violation is the effect of the denial of the claim, not the failure to give notice.[109] If his claim is not allowed, the creditor is deprived of his property without due process of law. Generally, one whose due process rights are violated is not bound by the action which afforded him those rights.[110] Nevertheless, this question remains: "What are the remedies available to a creditor entitled to notice who did not receive it?"

Certain situations are easily analyzed. *Pope* made it clear that creditors who are not reasonably ascertainable, or whose claims are conjectural are not entitled to actual notice.[111] If the creditor does not appear and assert the claim before the applicable statute of limitations has run, then the claim is barred not by the nonclaim statute, but by the general statute of limitations.[112]

If there was not enough money in the estate to pay the debt had the creditor been notified and the claim presented, the creditor was not damaged

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106. The *Mennonite* Court stated "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition . . . ." *Mennonite*, 462 U.S. at 800. *See also* Greene v. Lindsey, 456 U.S. 444, 455 (1982); *Mullane*, 339 U.S. at 319. The Second Circuit Court of Appeals recently stated that "Even if beneficial, means of notice beyond those reasonably calculated to reach interested parties are not required by due process in the context of foreclosures." Weigner v. City of New York, 852 F.2d 646, 650-51 (2d Cir. 1988). *But cf. Mullane*, 339 U.S. at 315 ("[method of notice] must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it"). In Rau v. Cavenaugh, 500 F. Supp. 204 (D.S.D. 1980), the court held that neither publication, nor certified letter were sufficient when the defendant had previously hand delivered certified letters in foreclosure proceedings.

107. *See Mullane*, 339 U.S. at 314; Grannis v. Ordean, 234 U.S. 385 (1914); *see also* Delta Realty Co. v. Hunter, 347 Mo. 1108, 152 S.W.2d 45 (1941); Epperson v. Sheldon, 729 S.W.2d 46 (Mo. Ct. App. 1987).

108. *Pope*, 108 S. Ct. at 1348.

109. The fourteenth amendment protects against deprivation of property *by state action.*

110. *Mullane*, 339 U.S. at 320.

111. *Pope*, 108 S. Ct. at 1347.

112. Thompson v. Lyons, 281 Mo. 430, 452-53, 220 S.W. 942, 948 (1920); State *ex rel.* Emmons v. Hollenbeck, 394 S.W.2d 82, 90 (Mo. Ct. App. 1965). *See* One 1964 Cadillac Sedan Seville v. United States, 378 F. Supp. 416 (E.D. Mo. 1974) (statute of limitations barred plaintiff's claim against government after government had seized his car in violation of his due process rights).

by the personal representative's noncompliance.[113] Similarly, if the creditor filed a claim within the nonclaim period without having received mailed notice, he has not been damaged.

If the creditor is damaged by the personal representative's failure to make a reasonably diligent effort, the creditor is entitled to relief.[114] This relief will come from the personal representative, either personally or in his capacity as personal representative, or from the estate before distribution or from the distributees.[115]

When courts are presented with this situation, they must deal with several variables. Perhaps foremost among these is the culpability of the personal representative. Did he conceal the creditor's identity, or merely "miss one" in his investigation? This fact will surely affect the remedy which the court provides. Policy considerations weigh against imposing strict liability on the personal representative. The courts and the legislature would hesitate to make the position of personal representative so "risky" as to deter people from serving. However, policy also necessitates the imposition of some liability as an incentive to act with due diligence.[116]

Courts must also consider the time at which the claim is brought forward. If the claim is not brought forward until after the final distribution and discharge of the personal representative, the balance of the equities may tip in favor of holding the personal representative liable for the amount of the claim.[117] The creditor would be further harmed if forced to locate and serve all the distributees, then prosecute his claim pro rata against them.[118] The personal representative could be held liable, at a minimum, for the cost of prosecuting such an action.

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113. *See, e.g.* State *ex rel.* Bovard v. Weill, 353 Mo. 337, 182 S.W.2d 521 (1944).

114. More precisely, the creditor's claim is not barred by the non-claim statute. The creditor retains his contract rights, subject to diminution according to the statutory distribution formula.

115. Another possibility arises when a person does not respond honestly to the inquiry of the personal representative. If the personal representative has performed the duty laid out in *Pope*, the creditor's action would appear to be a tort action against the inquiree.

116. Falender, *supra* note 6, at 696.

117. "It is clear that all claims against the estate of a deceased person must be paid in the order of their priority, and a personal representative who pays a claim out of order or in the wrong proportion may be liable for the overpayment." Estate of James, 431 S.W.2d 660, 662 (Mo. Ct. App. 1968). However, Mo. REV. STAT. § 473.820.2 (1986) limits the individual liability of the personal representative to obligations arising out of "ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault." If the personal representative acted fraudulently, a claim must be brought against the personal representative within two years of the discovery of the fraud. Mo. REV. STAT. § 472.013 (1986).

118. If the creditor was fraudulently deprived of notice, the creditor must

If the assets have not been distributed, and the estate has not been closed, ease of administration would make ordering the claim paid from the estate attractive. If the personal representative has not been discharged or received his compensation, the court may conceivably order the claim paid from the compensation he is due,[119] or impose a surcharge for the breach of duty.[120] If the personal representative has been discharged, the damaged creditor must sue within one year.[121]

As personal representatives' potential liability increases, the bond requirement will become more important.[122] As distributions become more subject to outstanding claims, refund provisions will also become more crucial. If the personal representative makes a partial distribution without obtaining security for return of the property, he can be held liable to an interested party for any loss that results.[123] Thus the prudent personal representative should obtain a receipt for any distribution providing for the return of the property upon demand, at any time, when needed for satisfaction of lawful claims against the estate.[124]

Another possible remedy available to the creditor would be to file an action to impose a constructive trust for the amount of the claim. As discussed above, a personal representative serves in a fiduciary capacity toward both potential distributees and creditors.[125] A constructive trust is an equitable device available to prevent unjust enrichment "where a party has been wrongfully deprived of some right, title, benefit, or interest in property as a result of fraud or violation of confidence or faith reposed in another."[126] The creditor must show by "clear, cogent and convincing evidence"[127] that the establishment of a constructive trust is justified. This

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bring the action within two years of the discovery of the fraud, and "no proceeding may be brought against one not a perpetrator of the fraud later than ten years after the time of commission of the fraud." Mo. REV. STAT. § 472.013 (1986).

119. *Id.* § 473.153.4.

120. *Id.* § 473.597.

121. *Id.* § 473.660.

122. Mo. REV. STAT. § 473.157 (1986) requires that every personal representative obtain a bond in an amount fixed by the court for the protection of interested parties. Mo. REV. STAT. § 473.160 (1986) eliminates the bond requirement (1) when the testator expressed in the will that no bond be required, (2) when an asset may be deposited as security, (3) when the personal representative is a corporation which has met certain financial requirements, or (4) when the court finds that a bond is otherwise not required.

123. *Id.* § 473.613.3.

124. Mo. REV. STAT. § 473.660 (1986) requires that receipts or other evidence of distribution shall be filed prior to obtaining an order of discharge.

125. *See supra* notes 91-93 and accompanying text.

126. Schultz v. Schultz, 637 S.W.2d 1, 4 (Mo. 1982) (en banc).

127. Sauer v. Hicks, 662 S.W.2d 310, 312 (Mo. Ct. App. 1983); Mahler v. Tieman, 550 S.W.2d 623, 628 (Mo. Ct. App. 1977).

would involve proving that the creditor was reasonably ascertainable[128] and that the claim would have been allowed if presented during the claims period. The creditor would not have to prove actual fraud on the part of the personal representative, in that the breach of the fiduciary relationship is considered constructive fraud.[129]

The fact that the alleged trustee, the distributee, is blameless should not prevent the establishment of a constructive trust.[130] Distributees are not entitled to the assets of the estate until the debts are paid.[131] If the creditor's claim exhausts the estate, no assets reach the heirs at law.[132] The distributee is no worse off than he would have been had the personal representative exercised due diligence and discovered the creditor initially.[133]

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128. Section 473.034.2 of the House Bill No. 145 provides: "The burden of proof on any issue as to whether a creditor was known or reasonably ascertainable by the personal representative shall be on the creditor." H.B. 145, 85th Gen. Assembly, 1st Regular Sess. (1989).

129. *See* Ward Parkway Shops, Inc. v. C.S.W. Consultants, 542 S.W.2d 308, 313 (Mo. Ct. App. 1976) ("The breach of the fiduciary relationship . . . was a constructive fraud sufficient to support the constructive trust and to prevent the unjust enrichment . . . ."); *see also* Thompson v. Williams, 671 S.W.2d 442 (Mo. Ct. App. 1984).

130. A constructive trust acts to "provide a remedy in cases of fraud, actual or constructive, by making the person who . . . has acquired property under such circumstances as make it inequitable for him to retain it, a trustee for the person defrauded or injured by such fraudulent or wrongful conduct." Suhre v. Busch, 343 Mo. 679, 123 S.W.2d 8, 15 (1938). But, in the case of fraud the claim must be brought within two years after discovery, and within ten years after the commission of the fraud. Mo. REV. STAT. § 472.013 (1986).

131. *In re* Carlin's Estate, 226 Mo. App. 622, 47 S.W.2d 213 (1932). Mo. REV. STAT. § 473.397 (1986) sets out the priority in which claims are to be paid:

1. Costs;
2. Expenses of administration which include compensation for the personal representative and attorney;
3. Exempt property, family and homestead allowances;
4. Funeral expenses;
5. Debts and taxes due the United States of America;
6. Expenses of the last sickness, wages of servants, claims for medicine and medical attendance during the last sickness, and the reasonable cost of a tombstone;
7. Debts and taxes due the State of Missouri, any county, or any political subdivision of the State of Missouri;
8. Judgments rendered against the decedent during his lifetime;
9. All other claims not barred by Mo. REV. STAT. § 473.360.

No claim of one class may be paid until all claims within superior classes are paid. "If there are not sufficient assets to pay the whole of any one class, claims shall be paid in proportion to their amounts." Mo. REV. STAT. § 473.430 (1986).

132. Estate of Igoe v. United States Internal Revenue Serv., 717 S.W.2d 524 (Mo. 1986) (en banc).

133. The fact that the distributee may have disposed of the asset, or altered his position in reliance on the asset, illustrates the complexity of this situation. This is one of the problems that the nonclaim statute was intended to prevent.

While this is but one possible resolution, it serves to point out that there are conflicting interests involved in the problem of probate notice. The objectives of our whole probate system are in direct competition with the need to protect the due process rights of creditors.

Until courts and legislatures better define these duties and liabilities, it would seem unreasonable to err on the side of too little effort. In view of the possible consequences, specifically an unknown, reasonably ascertainable creditor who could conceivably be granted relief from the personal representative, personal representatives would be well advised to publish the notice of letters granted, investigate thoroughly, and mail a copy of the published notice to all imaginable creditors.

MARSHALL WILSON