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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Mark Knackendoffel

DATE: January 31, 2023

RE: H.B. 2127 amending probate code provisions relating to publication notice and hearing deadlines

The Judicial Council and its Probate Law Advisory Committee recommend H.B. 2127, a bill amending two statutes in the probate code relating to publication notice and hearing deadlines. This topic was brought to the Council's attention by a study request from an attorney who practices in the area of probate law.

When ordered by the court, publication notice is accomplished by publishing notice once a week for three consecutive weeks in a newspaper authorized to publish legal notice. K.S.A. 59-2209 sets out two different time requirements for publication notice that are problematic:

- 1) The first publication must be made within 10 days after the court enters an order fixing the time and place of hearing; and
- 2) The date set for the hearing must be no earlier than 7 days nor later than 14 days after the last publication date.

With the decline in print newspapers, especially in rural areas, and as more newspapers are being published weekly rather than daily, these deadlines have become difficult or impossible to comply with. For example, when an order for hearing is entered, it can sometimes be impossible to get a first notice published within 10 days. At the same time, it is extremely difficult to choose a hearing date within a 7-day window that will coincide with the final publication date. When these deadlines are missed, attorneys often feel obligated to start the publication process over to ensure compliance with the statute, even though there has been no prejudice to the rights of the parties.

The Probate Committee reviewed the publication notice provisions of the Uniform Probate code, which requires only that the last publication of notice be made at least 10 days before the date set for the hearing. See Uniform Probate Code § 1-401. The Committee concluded that this approach protects the rights of the parties to adequate notice without imposing additional unnecessary time restrictions that serve no real purpose. H.B. 2127 would follow the uniform approach by amending K.S.A. 59-2209 and 59-2308 to require that a hearing or sale date be set no earlier than 10 days after the last publication of notice.