

District Clerk, Duties Of. Clerk of the District Court,
Duties Of.

It is the duty of the clerk of the district court to prepare summons for publication and notice in probate proceedings when the same are not prepared and furnished by the party to the action, or his attorney.

February 24, 1911.

Hon. Jas. G. Ramsey,
Clerk District Court,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of February 16, 1911, transmitted to me by Honorable Sharpless Walker, county attorney of Custer county, wherein you submit and request an opinion upon the following:

"Am I, as clerk of the district court obliged to write out summons for publication and prepare notices in probate proceedings in suits of estates which are pending in court?"

Section 3048, Revised Codes, provides that among the duties of the clerk of the district court, it shall be his duty "to issue all process and notices required to be issued."

Section 6514 requires that summons must be issued by the clerk, and section 6516 prescribes that alias summons must be issued by the clerk. The question then arises as to the meaning of the term issue—Webster defines issue to mean, "to send out, to deliver for use, to deliver by authority." The Century dictionary gives the following definition of the term as applicable to legal proceedings "The sending out

or delivery of a document." As a rule the duties of the clerk are in general purely ministerial, but some of the functions imposed him by statutory enactment are quasi judicial, such as, for instance, the order of the publication of a summons, and certain probate orders, which the clerk is authorized to issue, but the rule seems to be that the issuing of a summons is the issuing or delivery of such summons accompanied with everything necessary to enable the party to whom it is delivered, when he receives it, to make it available for the purpose of effecting a valid service—in other words, the summons must be complete in itself at the time it is issued by the clerk. This proposition is supported by the case of Reynolds vs. Page, 35 Cal. 300.

The forms of process to be issued by the clerk are prescribed by the Revised codes and the mere filling out of the form or the preparation of the same in accordance with the prescribed forms constitute the duty of the clerk. It seems hardly probable that in any litigation or administration of an estate where the process required to be issued by the clerk would contain any matter not prescribed by the statute, that the attorney for the party requiring the issuance of such process would depend upon the clerk to formulate or draft the same, but would rather prepare such process or alias summons in behalf of his client, nevertheless, it is my opinion that should any attorney or party to any litigation pending in your court fail to furnish you with necessary process or notices for your signature, that it would then become your duty under statutory provisions to prepare, sign, and attest such process and notices.

Yours very truly,

ALBERT J. GALEN,

Attorney General.