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## How Many Times?

BY HUBERT D. HENRY\*

How many times do you publish that summons or that notice? Under Rule 4(h) of the Colorado Rules of Civil Procedure publication of process "shall be made at least once a week for four successive weeks". This language is not unfamiliar (even though the interpretation of it might cause heated arguments among the members of the bar) as this language has been on our statute books for many years in substantially this form.

The notices on determination of heirship required to be published by Sections 13 and 29 of Chapter 176 of 1935 Colorado Statutes Annotated must be published for the same length of time as summons, as in the case of those two sections the language varies from Rule 4(h) only in one word—the word "each" rather than the word "a", Sections 13 and 29 reading, "at least once *each* week for four successive weeks". In Section 166 of Chapter 176 the notice on sale of real estate is required to be published "once each week for two successive weeks". The Colorado Legislature in 1941, in an apparent effort to clarify language which up to that time was clear only to those persons unfamiliar with the provisions of Section 6 of Chapter 130, 1935 Colorado Statutes Annotated, changed the old wording of Sections 197 and 227 of Chapter 176, 1935 Colorado Statutes Annotated, which provided for the notice of adjustment day and notice of final settlement respectively. Sections 197 and 227 as amended in 1941 now read, "at least once a week during each of four successive calendar weeks". There are two other sections of the probate law which refer to printed notices, those sections being Section 51 of Chapter 176, 1935 Colorado Statutes Annotated, relating to the notice to nonresident heirs on probate of a will, and Section 19 of Chapter 176 relating to another notice on determination of heirship. The notice in Section 51 is required to be published "for four successive weeks", and the notice in Section 19 is required to be published "at least three successive weeks."

In what seems to me to have been an attempt to define what is sufficient publication where the published notice is not published every day of the week, but is required to be published for a given number of weeks, Section 6 of Chapter 130 of the 1935 Colorado Statutes Annotated was passed. This section reads in part:

"Where publication for three weeks is required, then publication once each week for four successive weeks in any daily, weekly, semi-weekly or tri-weekly newspaper shall be sufficient.

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\*Of the Denver Bar.

“Where publication for four weeks is required, then publication once each week for five successive weeks in any daily, weekly, semi-weekly or tri-weekly newspaper shall be sufficient.”

This formula as applied to Section 51 of Chapter 176 and Section 19 of Chapter 176 would have the effect of making Section 51 read that publication once each week for five successive weeks in any daily, weekly, semi-weekly or tri-weekly newspaper shall be sufficient; and in the case of Section 19, that publication once each week for four successive weeks in any daily, weekly, semi-weekly or tri-weekly newspaper shall be sufficient.

The next question is, what does “once a week for ..... successive weeks mean?” Section 6 of Chapter 130 offers no solution. If in the latter of the two sentences from Section 6 above quoted the words “once a week for four successive weeks” were to be substituted in the first part of the sentence for the words now appearing there, the sentence would then read, “Where publication once a week for four successive weeks is required, then publication once each week for five successive weeks in any daily, weekly, semi-weekly or tri-weekly newspaper shall be sufficient.” Then by making a similar substitution in the following sentence of the section we find that publication once a week for five successive weeks means once a week for six successive weeks. Therefore, publication once a week for four successive weeks means publication once a week for six successive weeks. But publication once a week for six weeks means once a week for seven weeks, and therefore once a week for four weeks means once a week for seven weeks, etc., to infinity.

After Rule 4(h) there appears in the published copy of the Rules of Civil Procedure a committee note that, “four weeks means five publications”. However, the note, though correctly interpreting the words “four weeks”, does not attempt to explain the words “once a week for four successive weeks”. In the absence of authority to the contrary, and to avoid the impossible situation outlined above, it would seem that the publication of the summons under Rule 4(h), the publication of the notices on determination of heirship under Sections 13 and 29 and Chapter 176, the publication of notice to creditors under Section 197 of Chapter 176, as amended, and the publication of notice of final settlement under Section 227 of Chapter 176, as amended, should each be for four times, one of which publications shall be in each of four successive calendar weeks, and the notice in Section 166 on sale of real estate should be for two publications, one in each of two successive calendar weeks.

However, the situation is different as to Sections 51 and 19. In the case of Section 51, as above stated, the notice should be published

five times if published in a weekly newspaper; and in Section 19 the notice should be published four times if published in a weekly newspaper.

There has been some discussion as to whether or not the word "successive" includes the first publication. In other words, is the first publication one of the successive notices? It has been determined by the Montana Supreme Court in the case of *Scilley v. Red Lodge-Rosebud Irrigation District*,<sup>1</sup> that the first publication is one of the successive notices, and therefore, publication once a week for four successive weeks means four publications, as each of the four publications is in succession.

It would now seem that in the event of the inability of the members of the bar to reach an agreement as to the meaning of the words "once a week for four successive weeks", the legislature should render a public service by enacting a statute interpreting this phrase.

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### President Visits Local Bar Associations

W. W. Platt, president of the Colorado Bar Association, will complete his term of office with a record of having visited all but two of the local associations in the state.

On June 9th he addressed a combined meeting of the Otero and Southeastern Bar Associations held at Las Animas. Judge Herman A. Bailey of Las Animas presided at this meeting and there were lawyers present from every county within the areas covered by these two associations. Calling upon lawyers to aid actively in the war work of the nation, Mr. Platt pointed out that it was also a duty of lawyers to criticize constructively those efforts which did not aid in the prosecution of the war. The foundation of the vital criticism, in those circumstances which warrant criticism, will do an important job in preserving the civil rights of the individual citizen both during the war and at its conclusion, he pointed out.

On July 11th, Mr. Platt addressed the meeting of the Eleventh Judicial District Bar Association, which was presided over by George H. Wilkes of Florence, and on July 21st he attended the meeting of the Southwestern Bar Association held at Durango. Ten days later he addressed the Larimer County Bar Association meeting in Fort Collins on the subject, "The Lawyer's Part in the War Effort".

During August, he attended local bar association meetings at Delta and at Grand Junction.

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<sup>1</sup>83 Mont. 282, 272 Pac. 543, 552 (1929).

## Two Local Associations Hold Interesting Meetings

The annual meeting of the Midwestern Colorado Bar Association was held at Delta on August 20 with every member attending except five. Because of the wide area over which the bar association extends, this attendance commands very laudable commendation.

W. W. Platt attended the meeting and gave a very interesting and instructive talk. The association elected officers for the forthcoming year. They are Charles N. Fairlamb of Telluride, president; E. L. Dutcher of Gunnison, vice-president, and Jerome Paul of Ouray, secretary-treasurer. Robert G. Porter of Gunnison was elected for a two-year term on the board of governors of the Colorado Bar Association.

The meeting of the Mesa County Bar Association was held at Grand Junction on August 21 with Cecil S. Haynie of Grand Junction presiding. W. W. Platt, president of the state bar association, delivered a talk dealing with the efforts of the state association and of the lawyers' duties in the present emergency. E. B. Adams of Grand Junction read an interesting paper on "The Lawyer's Religion." Fourteen members of the association attended the meeting.

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## Frank Burris Goudy Appointed to Fill Vacancy on Supreme Court

Frank Burris Goudy, of Monte Vista, Colorado, has been appointed by Governor Ralph Carr to the Supreme Court to fill the vacancy caused by the death of Justice Otto Bock. Justice Goudy, who was born at Ouray 61 years ago, was a member of the firm of Goudy and Shaw at the time of his appointment, and he was one of the leading candidates for the vacancy on the district bench created by the death of Judge Palmer. Educated in the Denver public schools and a graduate of the Los Angeles High School, his college work was undertaken at Stanford, from which he was graduated with a B.A. degree in 1905. He received his M.A. degree from Columbia in 1908. His legal education was obtained at the University of Denver. Admission to the Colorado bar was granted him in 1915, and his first practice was undertaken at Denver. After practicing in Denver for several years he moved to Omaha. He returned to Colorado a few years later and set up law offices in Monte Vista.

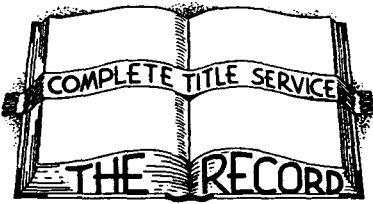
LEGEND MISERA

*The lawyer's path is often hard;  
Yet courage lifts his head,  
And a smile will often light his face,  
Tho' his heart is girt with lead.*

*Neither flood nor drought will him dismay,  
Nor juries' verdicts read,  
Will make his hair stand up on end,  
Or his ears grow puffed and red.*

*But if by God! you'd see him squirm—  
Blast joy from his dominion,  
Just let the court say on appeal:  
"Affirmed without opinion."*

—JUDGE FLOYD F. MILES

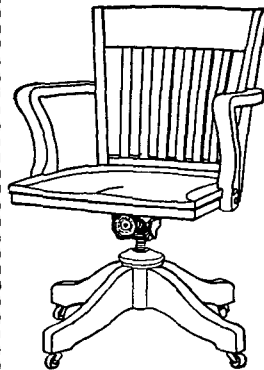


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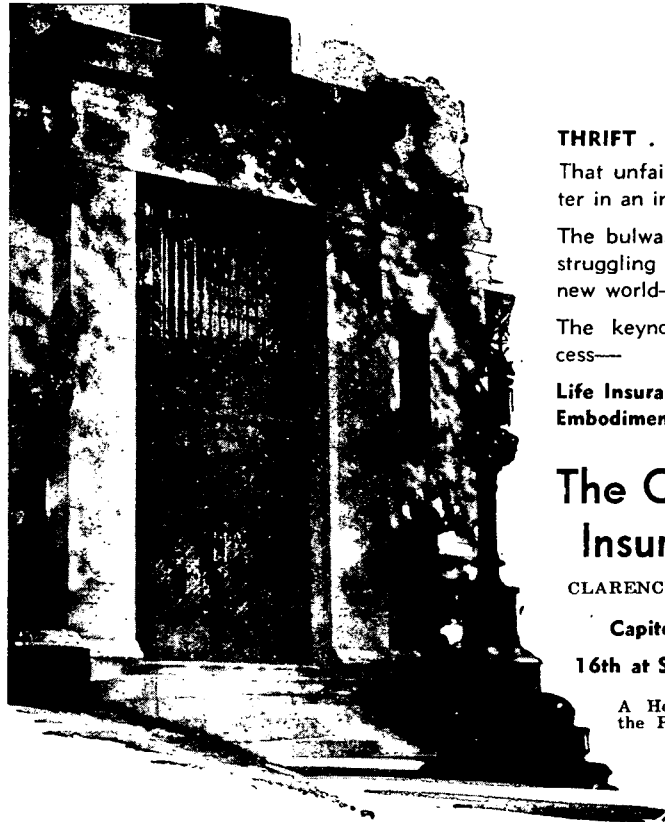
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