

Memorandum 89-23

Subject: Study L-1036/1055 - Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative

Attached is a staff draft of statutory provisions relating to the compensation of the estate attorney and personal representative. This draft was prepared by the Executive Secretary and staff counsel Robert Murphy. We are working on the preliminary portion of the Recommendation and will send it to you before the meeting.

The draft retains the substance of existing provisions governing the compensation of the personal representative. This is discussed in more detail later in this memorandum.

The draft provides a new scheme for compensation of the attorney. General provisions cover the hiring and payment by the personal representative of persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisors, investment advisors, and other experts and agents. The compensation of these persons, including the estate attorney, is determined by agreement between the personal representative and the person hired.

The hiring and the agreed compensation of attorneys and other persons hired by the personal representative is not subject to approval or review by the court, except:

- (1) An interested person may file a petition for review.
- (2) The court may review the hiring and compensation on a contest of the accounts of the personal representative, subject to the limitations and restrictions on contests of accounts.

The personal representative may use the notice of proposed action under independent administration. A person who receives the notice of proposed action and fails to object to the hiring or compensation of the person hired is precluded from obtaining later review by the court. The notice of proposed action will include an estimated compensation so that the person will be advised of the financial consequences if the person fails to object. The personal representative may give another notice of proposed action stating a new

estimated compensation if it appears that the estimated compensation will exceed the amount of the previous estimate. A person receiving the notice who fails to object can obtain court review only of the excess over the last estimated compensation in a notice of proposed action. Use of the independent administration procedure is optional. Notice of proposed action is optional, not required.

At the meeting, we plan to go through the proposed legislation section by section. The following matters are noted for your special attention and consideration:

(1) Section 9680. Should the compensation provisions include all persons hired to assist the personal representative or just the attorney? The Commission previously requested the staff to draft a comprehensive provision relating to the hiring of persons to assist the personal representative.

(2) Section 9682 gives the court authority to grant relief from limiting provisions of the decedent's will concerning compensation of persons hired by the personal representative. This substitutes for the present ability of the lawyer to "renounce" the compensation provided in the will and to elect to receive the statutory compensation.

(3) Section 9683 provides a scheme for determining when the person hired is to be paid out of funds of the estate and when the person hired is to be paid out of the personal representative's own funds.

(4) Section 10565. The last sentence of the Comment refers in brackets to Section 10406, a transitional provision for the Independent Administration of Estates Act. The staff has not yet drafted a transitional provision for this recommendation. When that is done, the staff will adjust the reference to Section 10406.

(5) Section 10585.5 concerns the contents of the notice of proposed action when a person is hired by the personal representative and is to be paid out of funds of the estate. The staff believes that the notice will be informative to the consumer only if it contains an estimate of the amount to be paid to the person hired. A new notice of proposed action can be given if the estimated amount is too low, or the persons interested in the estate can be left to their other remedies—a petition for review of the hiring and compensation or a contest of the accounts of the personal representative.

(6) Section 10801. We have followed the prior Commission recommendation by omitting the statutory list of what constitutes extraordinary services to the estate. We are checking the list in the Comment of extraordinary services to be sure that the list is appropriate for the personal representative. Many of the cases cited involve services provided by the estate attorney.

(7) Section 10802. We have not permitted the personal representative to "renounce" the compensation provided in the will and then to receive the statutory compensation. Instead, we provide that the personal representative can petition the court to be relieved of the provisions of the will that provide for the compensation of the personal representative.

(8) Section 10833. We have continued the provision of the prior Commission recommendation that stated the matters to be considered in determining compensation for extraordinary services of the personal representative. One factor included in the statement is whether the amount of the statutory fee constitutes adequate compensation for all services rendered. We think that this statement may be useful in case of a professional personal representative.

(9) Sections 10900 and 10954 (pages 23-26 of attached Draft). In the report of administration which is a part of the account of the personal representative, we have added language to require that the report of administration include a statement of the hiring and payment of any persons under the authority of the personal representative to hire attorneys and others. In the final report of administration, which is required when a final account has been waived, we have deleted the requirement that the report include a statement of the amount of fees paid or payable to the attorney.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

RECOMMENDED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following statutory provisions.

HIRING AND PAYING ATTORNEYS, ADVISORS, AND OTHERS

Probate Code §§ 9680-9684 (added)

SEC. Chapter 2.5 (commencing with Section 9680) is added to Part 5 of Division 7 of the Probate Code, to read:

Chapter 2.5. Hiring and Paying Attorneys, Advisors, and Others

§ 9680. Authority to hire attorneys, advisors, and others

9680. Except as restricted or otherwise provided by the will or by court order, the personal representative, acting reasonably for the benefit of the estate and in the best interest of interested persons, may:

(a) Hire persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisors, investment advisors, or other experts or agents, even if they are associated or affiliated with the personal representative.

(b) Act without independent investigation on their recommendations.

Comment. Section 9680 is new and is drawn from paragraph (21) of Section 3-715 of the Uniform Probate Code and from California trust law (Section 16247). The broad authority granted by Section 9680 covers all aspects of estate administration from opening estate administration to closing estate administration, including but not limited to tax work. The authority may be exercised by the personal representative without prior court authorization (Section 9610), unless otherwise provided by the will or by court order. As to the right of an interested person to obtain court review of the reasonableness of the hiring and compensation, see Section 9684.

The notice of proposed action procedure under the Independent Administration of Estates Act may be used for the hiring and payment of persons under Section 9680. See Sections 10550, 10565, and 10580(b) (notice of proposed action permitted but not required) and Sections 10585.5 and 10590 (effect of giving notice of proposed action).

The introductory clause of Section 9680 makes clear that the personal representative must act reasonably in exercising the power granted. Thus, although Section 9680 gives the personal representative

the power to act without independent investigation on the recommendations of assistants, the circumstances may be such that they require the personal representative to investigate. This is consistent with California case law. See Estate of Barbikas, 171 Cal. App. 2d 452, 459, 341 P.2d 32 (1959) (lay personal representative may rely on attorney's advice unless "a lay person exercising common prudence would do otherwise").

Section 9680 merely deals with the authority of the personal representative to employ agents. The question of whether the agent is to be paid out of estate funds or out of the personal representative's own funds is governed by Section 9683.

The court may grant relief from a restriction or other limiting provision of the decedent's will. See Section 9682.

§ 9681. Compensation determined by agreement

9681. (a) The compensation of persons hired under Section 9680, including the attorney for the personal representative, shall be determined by agreement between the personal representative and the person hired, and, except as provided in Section 9684 and in Chapter 3 (commencing with Section 11000) of Part 8, is not subject to approval or review by the court.

(b) Subject to Section 9682, if the decedent's will makes provision for the compensation of a person hired under Section 9680, including the attorney for the personal representative, the compensation provided by the will shall be the full and only compensation for the services of that person.

Comment. Subdivision (a) Section 9681 is a new provision that makes clear that the compensation of persons hired under Section 9680, including the attorney for the personal representative, is determined by agreement between the personal representative and the person hired. Subdivision (a) is comparable to Sections 13157 (court order determining succession to real property) and 13660 (confirming property to surviving spouse).

Subdivision (b) recognizes that the decedent's will may fix the compensation. If the will fixes the compensation, the person hired is entitled to the compensation provided in the will, and the court may not reduce the compensation so provided. But see Section 9682 (relief from limiting provision of the decedent's will).

Subdivision (b) supersedes a portion of former Section 900 and a portion of the first sentence of former Section 901 insofar as those provisions were made applicable to estate attorneys by the first sentence of former Section 910, and expands the provisions to apply to other persons hired by the personal representative.

As to the right of an interested person to obtain court review of the reasonableness of the hiring and compensation of the person, see Section 9684. The notice of proposed action procedure under the Independent Administration of Estates Act may be used. See Sections 10550, 10565, and 10580(b) (notice of proposed action permitted but not required) and Sections 10585.5 and 10590 (effect of giving notice of proposed action).

§ 9682. Relief from limiting provision of the decedent's will

9682. (a) The personal representative or a person hired under Section 9680, including the attorney for the personal representative, may petition the court to be relieved from a provision of the decedent's will that provides for the compensation of a person hired under Section 9680 or for relief from some other restriction or other limiting provision of the will on the hiring of persons by the personal representative. Notice of the hearing on the petition shall be given as provided in Section 1220.

(b) If the court determines that it is in the best interest of the estate and of those interested in the estate, the court may:

(1) Grant relief from the restriction or other limiting provision of the will upon such terms and conditions as the court shall specify in its order.

(2) Authorize compensation for the person hired under Section 9680 in an amount greater than provided in the will.

Comment. Section 9682 is a new and is similar in concept to the authority given the court under Section 10002 (order relieving personal representative of duty to comply with directions given in will as to the mode of selling property or the particular property to be sold).

The court may grant relief from a provision of the will fixing the compensation of the estate attorney, for example, because the passage of time has made the compensation provided in the will so inadequate that a competent lawyer can not be obtained to handle the estate proceeding.

Section 9682 supersedes the portions of former Sections 900 and 901, made applicable to estate attorneys by the first sentence of former Section 910, that permitted the estate attorney to renounce the compensation provided by the will and to receive the statutory compensation. Instead, Section 9682 imposes a requirement that court approval be obtained before the estate attorney may be relieved from provisions of the will governing compensation.

§ 9683. Payment out of funds of estate

9683. (a) Except as otherwise provided in this section, the personal representative may pay persons hired under Section 9680 out of funds of the estate.

(b) If a person, including a member of the State Bar of California, is hired to assist the personal representative in the performance of the services of the personal representative for which the personal representative is compensated under Part 7 (commencing

with Section 10800), the person shall be paid out of the personal representative's own funds and not out of the funds of the estate, except that, at the request of the personal representative, the court may order payment out of the estate directly to the person assisting the personal representative in the performance of these services, the payment to be charged against and deducted from the compensation that otherwise would be paid to the personal representative.

(c) Nothing in subdivision (b) limits the authority of the personal representative to pay out of funds of the estate for services of tax counsel, tax auditors, accountants, or other tax experts hired for the providing of services in the computation, reporting, or making of tax returns, or in negotiations which may be necessary for the final determination and payment of taxes.

Comment. Subdivision (a) of Section 9683 states the general rule that persons hired by the personal representative are paid out of estate funds. Subdivision (b) states an exception to this rule where the person is hired to assist the personal representative in duties for which the personal representative is compensated.

Subdivision (c) makes clear that a tax expert hired under Section 9680 is paid out of funds of the estate; the compensation to which the personal representative is entitled under Sections 10800-10805 is not reduced because the tax expert is employed to assist the personal representative to perform duties in connection with taxes. Subdivision (c) restates without substantive change the second sentence of former Section 902.

The estate attorney also is paid out of funds of the estate and the compensation of the personal representative under Sections 10800-10805 is not reduced because of such payment. However, under subdivision (b), if the personal representative hires another person (including the estate attorney) to assist in the performing of the duties of the personal representative, the person hired is paid out of the personal representative's own funds. This continues prior law. See *Estate of LaMotta*, 7 Cal. App. 3d 960, 86 Cal. Rptr. 880 (1970) (expenditure to compensate an investigator for locating estate assets not allowable because this is a statutory duty of the representative).

The authority to make an agreement with the estate attorney that the estate attorney will assist the personal representative in performing the duties for which the personal representative is compensated was recognized under prior practice. See Fresno County Probate Policy Memoranda § 9.4(c), reprinted in California Local Probate Rules (9th ed., Cal. Cont. Ed. Bar 1988); Los Angeles Superior Court Guidelines on Attorney Fees in Decedents' Estates, Part E, § 11.1, reprinted in California Local Probate Rules, *supra*.

The court does not review the hiring or compensation when the attorney is paid by the personal representative from the personal representative's own funds. See Section 9684 (court review limited to cases where the person hired has been or is to be paid out of estate funds). This changes the former practice in at least one court. See

Fresno County Probate Policy Memoranda § 9.4(c), reprinted in California Local Probate Rules, *supra* (court approval of contract required). Compare Los Angeles Superior Court Guidelines on Attorney Fees in Decedents' Estates, Part E, § 11.1, reprinted in California Local Probate Rules, *supra*.

Probate Code § 9684. Court review of employment and compensation

9684. (a) On petition of the personal representative or an interested person, the court may review the following:

(1) The propriety of employment by the personal representative of any person under Section 9680 who has been or is to be paid out of funds of the estate.

(2) The reasonableness of the agreed compensation under subdivision (a) of Section 9681 of any person who has been or is to be paid out of funds of the estate.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) The person whose employment or compensation is in question.

(2) The persons specified in Section 1220.

(c) If the court determines that the agreed compensation is unreasonable, the court shall fix a reasonable amount as compensation. A person who has received excessive compensation from the estate for services rendered may be ordered to make an appropriate refund.

(d) Nothing in this section limits the right to contest the account of the personal representative under Chapter 3 (commencing with Section 11000) of Part 8.

Comment. Section 9684 is drawn from Section 3-721 of the Uniform Probate Code. In determining whether the compensation for the estate attorney is unreasonable, the court should be guided by the standard set out in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California (fees for legal services).

The last sentence of subdivision (c) avoids the need for a separate action or proceeding to recover an excess payment of compensation, thus providing a quick and efficient remedy.

The right of an interested person to obtain court review of the reasonableness of the hiring and compensation of the person may be limited by use of the notice of proposed action procedure under the Independent Administration of Estates Act. See Sections 10550, 10565, and 10580(b) (notice of proposed action permitted but not required) and Sections 10585.5 and 10590 (effect of giving notice of proposed action).

Section 9684 provides an alternate procedure to Section 11001, pursuant to which the court may review, in a contest on settlement of the final account, the propriety of employment and reasonableness of compensation of any person employed under Section 9680, including the estate attorney. See also Section 10900 (report of administration to show hiring and payment of persons hired under Section 9680).

INDEPENDENT ADMINISTRATION OF ESTATES ACT

Probate Code § 10501 (amended). Matters requiring court supervision

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of the personal representative's ~~emissions~~ compensation.

~~(2) Allowance of attorney's fees.~~

~~(3) (2) Settlement of accountings.~~

~~(4) (3) Preliminary and final distributions and discharge.~~

~~(5) (4) Sale of property of the estate to the personal representative or to the attorney for the personal representative.~~

~~(6) (5) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.~~

~~(7) (6) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.~~

~~(8) (7) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.~~

~~(9) (8) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.~~

~~(10) (9) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.~~

(b) Notwithstanding any other provision of this part, a personal representative who has obtained only limited authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

- (1) Sale of real property.
- (2) Exchange of real property.
- (3) Grant of an option to purchase real property.
- (4) Borrow money with the loan secured by an encumbrance upon real property.

(c) Paragraphs ~~(5)~~ (4) to ~~(10)~~ (9), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction.

(2) The period for filing creditor's claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction.

Comment. Section 10501 is amended to delete from subdivision (a) the former requirement that court supervision be obtained for allowance of attorney's fees. This is consistent with the new provision in supervised administration that compensation of the attorney for the personal representative is fixed by private agreement and that court approval is not required. See Section 9681. See also Section 9684 (court review of compensation of attorney).

Section 10501 also is amended to substitute "compensation" for "commission" in paragraph (1) of subdivision (a). This conforms to the language used in the provisions relating to compensation of the personal representative. See Sections 10800-10805.

Probate Code § 10565 (added). Hiring and paying attorneys, advisors and others

10565. (a) The personal representative has the power to hire persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisors, investment advisors, or other experts or agents, even if they are associated or affiliated with the personal representative.

(b) The personal representative has the power to agree to and pay the compensation of the persons described in subdivision (a) out of funds of the estate unless the person is hired to assist the personal representative in the performance of services of the personal representative for which the personal representative is compensated under Part 7 (commencing with Section 10800).

Comment. Section 10565 is a new provision. For the comparable provisions under supervised administration, see Sections 9680-9684. Concerning the exercise of the powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the powers granted by Section 10562. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550. If notice of proposed action is given to a person who fails to object to the proposed action, that person waives the right to have the court later review the action. Section 10590. But see Section 10585.5 (another notice of proposed action required if compensation exceeds estimate in notice of proposed action). As to the application of this section where the estate proceeding was commenced before July 1, 1990, see Section [10406?].

Note. The Comment to Section 10565 contains a reference to the Comment to Section 10550, the relevant portion of which is set out below.

This section [10550] permits the exercise of the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580). However, subdivision (b) of Section 10580 permits a personal representative to use the notice of proposed action procedure provided in Chapter 4 with respect to an action that the personal representative proposes to take even though the action is not one for which notice of proposed action is required. For example, the personal representative may want to proceed under Chapter 4 where the proposed action is the compromise of a claim by or against the estate (see Section 10552). This action is one that ordinarily does not require notice of proposed action. If the procedure provided by Chapter 4 is used with respect to the proposed action, the person who fails to object to the proposed action waives the right to have the court later review the action taken. See Section 10590 and the Comment to that section. See also Section 10589(b) and the Comment to that section. Use of the notice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise (unless there is an objection to the proposed action) in order to preclude a later challenge to the accounts of the personal representative.

The personal representative is required to exercise a power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). See also the Comment to Section 10502. As to the effect of court authorization or approval, see Section 9612. See also Section 10590 (court review of action taken pursuant to independent administration authority).

The decedent's will may limit the powers of the personal representative under this part. See Section 10502. As to

the application of this part where independent administration authority was granted prior to January 1, 1985, see Section 10406.

Probate Code § 10585.5 (added). Estimated amount of compensation to be included in notice of proposed action; copy of fee contract

10585.5. (a) If, pursuant to subdivision (b) of Section 10580, the personal representative gives notice of proposed action with respect to the exercise of the powers granted by Section 10565 (hiring and paying attorneys, advisors, and others to advise or assist in the administration of the estate):

(1) The notice of proposed action shall include, in addition to the information required by Section 10585, an estimate of the total amount of compensation to be paid to the person hired.

(2) A copy of any written contract governing the hiring and compensation of the person hired or, if the person hired is an attorney, the copy of the written fee contract made pursuant to Section 6148 of the Business and Profession Code, shall be attached to the notice of proposed action.

(b) If it appears that the total amount of compensation to be paid to the person hired will exceed the amount of a previous estimate given in a notice of proposed action, the personal representative may give another notice of proposed action stating a new estimate of the total amount of compensation to be paid to the person.

(c) Section 10590 does not apply to the extent that the compensation paid or to be paid exceeds the amount of the estimate contained in the notice of proposed action most recently given.

Comment. Section 10585.5 is a new provision governing the permissive notice of proposed action under Section 10565 with respect to the hiring and paying attorneys, advisors, and others to advise or assist in the administration of the estate. The section requires that the notice of proposed action contain the information required by Section 10585 and, in addition, the information required by Section 10585.5. Section 10585.5 is designed to give the person receiving notice of proposed action sufficient information so that the person can determine whether or not to object to the proposed action.

If the personal representative uses the permissive provisions of Section 10580(b) to give notice of proposed action with respect to the hiring and paying attorneys, advisors, and others to advise or assist in the administration of the estate under Section 10565, the notice of proposed action must include an estimate of the total amount of compensation to be paid to the person hired. Another notice of proposed action may have to be given if it appears that the total

amount of compensation may exceed the amount estimated in a previous notice of proposed action. The provisions of Section 10590 that preclude court review of the hiring and paying of the agreed compensation will apply so long as the compensation does not exceed the amount estimated in the latest notice of proposed action. However, if the compensation paid or to be paid exceeds the amount estimated in the latest notice of proposed action, Section 10590 does not apply.

Section 10585.5 also requires that a copy of the contract be attached to the notice. In the case of an attorney, a copy of the written fee contract required by Section 6148 of the Business and Professions Code must be attached to the notice of proposed action.

COMPENSATION OF PERSONAL REPRESENTATIVE

Outline of Proposed New Part 7 of Probate Code

CHAPTER 1. AMOUNT OF COMPENSATION

- § 10800. Compensation for ordinary services
- § 10801. Additional compensation for extraordinary services
- § 10802. Compensation provided by decedent's will
- § 10803. Agreement for higher compensation void
- § 10804. No compensation as estate attorney unless authorized by will
- § 10805. Apportionment of compensation

CHAPTER 2. ALLOWANCE OF COMPENSATION BY COURT

- § 10830. Partial allowance of compensation
- § 10831. Final compensation
- § 10832. Limitation on allowance of compensation for extraordinary services
- [§ 10833. Matters to be considered in determining compensation for extraordinary services]

CHAPTER 1. AMOUNT OF COMPENSATION

§ 10800. Compensation for ordinary services

10800. (a) Subject to the provisions of this part, for ordinary services the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

- (1) Four percent on the first fifteen thousand dollars (\$15,000).
- (2) Three percent on the next eighty-five thousand dollars (\$85,000).
- (3) Two percent on the next nine hundred thousand dollars (\$900,000).
- (4) One percent on the next nine million dollars (\$9,000,000).
- (5) One-half of one percent on the next fifteen million dollars (\$15,000,000).

(6) For all above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

Comment. Subdivision (a) of Section 10800 restates the first sentence of former Section 901 without substantive change. Subdivision (b) restates the first sentence of the second paragraph of former Section 901 without substantive change.

Compensation is computed using the total amount of the appraisal of property in the inventory (see Sections 8800-8802, 8850, 8900), plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property. Property is appraised at its fair market value at the time of the decedent's death. See Section 8802. The amount of any liens or encumbrances on the property is not subtracted from the fair market value used for the purpose of computing the compensation under this section.

The last sentence of former Section 901 is not continued. Before 1965, the usual practice was to use gross value of real property to calculate the statutory fee unless the property was sold during probate, in which case only the decedent's equity in the property was used. Under the 1965 revision to former Section 901, gross value was used, whether or not a sale had taken place. See Review of Selected 1965 Code Legislation, at 222 (Cal. Cont. Ed. Bar 1965). Subdivision (b) of Section 10800 continues the substance of the 1965 revision. The last sentence of former Section 901 was included in 1965 to make clear that the former practice was being changed; it is no longer necessary to continue this sentence.

A court order allowing the compensation to the personal representative is required before the compensation may be paid, and the compensation allowed is paid out of funds of the estate. See Sections 10850 and 10851. As to allowing a portion of the compensation of the personal representative (on account of services rendered up to the time of allowance), see Section 10850. See also Section 12205 (reduction of compensation for delay in closing estate administration).

The personal representative may employ or retain experts, technical advisors, and others to assist in the performance of the duties of the office. As to when these persons may be paid out of funds of the estate and when they must be paid out of the personal representative's own funds, see Section 9683.

As to the right of an attorney to receive dual compensation for services as personal representative and as estate attorney, see Section 10804.

§ 10801. Additional compensation for extraordinary services

10801. Subject to the provisions of this part, in addition to the compensation provided by Section 10800, the court may allow additional compensation for extraordinary services by the personal representative in an amount the court determines is just and reasonable.

Comment. Section 10801 restates the first sentence of former Section 902 without substantive change. See also Section 12205 (reduction of compensation for delay in closing estate administration).

Even though services are extraordinary, the court still has discretion whether or not to award compensation for them. Estate of Walker, 221 Cal. App. 2d 792, 795-96, 34 Cal. Rptr. 832 (1963) (attorney compensation under former statutory fee schedule system).

The listing in former Section 902 of examples of what constitutes extraordinary services is not continued. The former list was incomplete. See Estate of Buchman, 138 Cal. App. 2d 228, 291 P.2d 547 (1955). Omission of the list is not intended to change the law. Under Sections 10800 and 10801, the following services may be considered as extraordinary:

(1) Sales or mortgages of real or personal property. See Estate of Fraysher, 47 Cal. 2d 131, 301 P.2d 848 (1956); Estate of McSweeney, 123 Cal. App. 2d 787, 798, 268 P.2d 107 (1954).

(2) Contested or litigated claims against the estate. See *In re Estate of Keith*, 16 Cal. App. 2d 67, 68-69, 60 P.2d 171 (1936); *In re Estate of Dunton*, 15 Cal. App. 2d 729, 734, 60 P.2d 159 (1936).

(3) Tax services. See Estate of Bray, 230 Cal. App. 2d 136, 144, 40 Cal. Rptr. 750 (1964).

(4) Defense of eminent domain proceeding involving estate property. See Estate of Blair, 127 Cal. App. 2d 130, 273 P.2d 349 (1954).

(5) Litigation to defend the estate against imposition of a constructive trust on estate assets. See Estate of Turino, 8 Cal. App. 3d 642, 87 Cal. Rptr. 581 (1970).

(6) Other litigation concerning estate property. See *In re Estate of Keith*, 16 Cal. App. 2d 67, 70, 60 P.2d 171 (1936) (shareholders' liability suit).

(7) Carrying on decedent's business. See Estate of Scherer, 58 Cal. App. 2d 133, 136 P.2d 103 (1943); Estate of King, 19 Cal. 2d 354, 358-60, 121 P.2d 716 (1942); *In re Estate of Allen*, 42 Cal. App. 2d 346, 353, 108 P.2d 973 (1941).

(8) Will contest under some circumstances. See *In re Estate of Dunton*, 15 Cal. App. 2d 729, 731-33, 60 P.2d 159 (1936) (will contest after will admitted to probate); Estate of Schuster, 163 Cal. App. 2d 337, 209 Cal. Rptr. 289 (1984) (defense of will contest before probate).

(9) Litigation to construe or interpret a will. See Estate of Halsell, 138 Cal. App. 2d 680, 292 P.2d 300 (1956); Estate of Feldman, 78 Cal. App. 2d 778, 793-94, 178 P.2d 498 (1947).

(10) Defense of personal representative's account. See Estate of Beach, 15 Cal. 3d 623, 644, 542 P.2d 994, 125 Cal. Rptr. 570 (1975); Estate of Beirach, 240 Cal. App. 2d 864, 866-68, 50 Cal. Rptr. 5 (1966); Estate of Raphael, 128 Cal. App. 2d 92, 97, 274 P.2d 880 (1954).

(11) Securing a loan to pay debts of the estate. See *In re Estate of O'Connor*, 200 Cal. 646, 651, 254 P. 269 (1927).

(12) Heirship proceedings. See *Estate of Harvey*, 103 Cal. App. 2d 192, 195, 199, 229 P.2d 68 (1951).

(13) Appeal from a judgment adverse to the estate. See *Ludwig v. Superior Court*, 217 Cal. 499, 19 P.2d 984 (1933).

(14) Successful defense of personal representative in removal proceeding. See *Estate of Fraysher*, 47 Cal. 2d 131, 136, 301 P.2d 848 (1956).

(15) Unlawful detainer action for the estate. See *Estate of Isenberg*, 63 Cal. App. 2d 214, 217-18, 146 P.2d 424 (1944).

The foregoing is not an exhaustive list. Other extraordinary services may be added to this list by case law or court rule. See generally Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.28 (Cal. Cont. Ed. Bar 1987); Los Angeles County Probate Policy Memorandum § 15.08, reprinted in California Local Probate Rules (9th ed., Cal. Cont. Ed. Bar 1988).

§ 10802. Compensation provided by decedent's will

10802. (a) Subject to subdivision (b), if the decedent's will makes provision for the compensation of the personal representative, the compensation provided by the will shall be the full and only compensation for the services of the personal representative.

(b) The personal representative may petition the court to be relieved from the provisions of the will that provide for the compensation of the personal representative. Notice of the hearing on the petition shall be given as provided in Section 1220. If it is in the best interest of the estate and of those interested in the estate, the court may order that the personal representative be compensated as provided in this part rather than as provided in the will.

Comment. Section 10802 supersedes former Section 900 and a portion of the first sentence of former Section 901. Subdivision (a) of Section 10802 restates a portion of former Section 900 without substantive change. Subdivision (a) permits the personal representative to receive a greater amount of compensation than the statutory compensation if the decedent's will makes provision for the greater amount of compensation. Cf. *Estate of Van Every*, 67 Cal. App. 2d 164, 153 P.2d 614 (1944) (\$4,000 bequest to attorney in lieu of \$1,696.33 statutory fee).

Subdivision (b) is new, and supersedes the portions of former Sections 900 and 901 that permitted the personal representative to renounce the compensation provided by the will. Subdivision (b) imposes a new requirement that court approval be obtained for the personal representative to be relieved from the provisions of the will governing compensation.

§ 10803. Agreement for higher compensation void

10803. An agreement between the personal representative and an heir or devisee for higher compensation than that provided by this part is void.

Comment. Section 10803 restates former Section 903 without substantive change. This section applies to compensation for both ordinary and extraordinary services. Nothing prevents the personal representative from waiving all compensation or agreeing to take less than the statutory compensation. See *In re Estate of Marshall*, 118 Cal. 379, 381, 50 P. 540 (1897) (statutory compensation allowed when evidence of alleged agreement for lower compensation was insufficient). See also Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.5 (Cal. Cont. Ed. Bar 1987).

§ 10804. No compensation as estate attorney unless authorized by will

10804. Unless expressly authorized by the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation but not compensation for services as the estate attorney.

Comment. Section 10804 codifies case law. See *In re Estate of Parker*, 200 Cal. 132, 251 P. 907 (1926); *Estate of Downing*, 134 Cal. App. 3d 256, 184 Cal. Rptr. 511 (1982); *Estate of Haviside*, 102 Cal. App. 3d 365, 368-69, 162 Cal. Rptr. 393, 395 (1980). The provision that dual compensation may be paid if expressly authorized by the decedent's will also codifies case law. See *Estate of Thompson*, 50 Cal. 2d 613, 328 P.2d 1 (1958); *Estate of Crouch*, 240 Cal. App. 2d 801, 49 Cal. Rptr. 926 (1966).

An attorney who serves as personal representative may not become entitled to compensation as attorney by waiving compensation as personal representative. *Estate of Hart*, 204 Cal. App. 2d 634, 22 Cal. Rptr. 495 (1962). See generally Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.10-20.12 (Cal. Cont. Ed. Bar 1987).

§ 10805. Apportionment of compensation

10805. If there are two or more personal representatives, the personal representative's compensation shall be apportioned among the personal representatives by the court according to the services actually rendered by each personal representative or as agreed to by the personal representatives.

Comment. Section 10805 restates the second sentence of former Section 901 without substantive change, with the addition of the reference to an agreement between the personal representatives concerning apportionment of their compensation. The added language is drawn from Section 8547 (division of compensation between special administrator and general personal representative).

CHAPTER 2. ALLOWANCE OF COMPENSATION BY COURT

§ 10830. Partial allowance of compensation

10830. (a) At any time after four months from the issuance of

letters, the personal representative may file a petition requesting an allowance on the compensation of the personal representative.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate is affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate is affected by the payment of the compensation.

(4) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the compensation.

(c) On the hearing, the court may make an order allowing the portion of the compensation of the personal representative, on account of services rendered up to that time, that the court determines is proper. The order shall authorize the personal representative to charge against the estate the amount allowed.

Comment. Section 10830 continues the substance of former Section 904. As to the priority for payment, see Section 11420.

The court for good cause may dispense with the notice otherwise required to be given to a person under Section 10830. See Section 1220(f). Nothing in Section 10830 excuses compliance with the requirements for notice to a person who has requested special notice. See Section 1220(e). The court may require further or additional notice, including a longer period of notice. See Section 1202. The court may, for good cause, shorten the time for giving notice. See Section 1203. For additional provisions relating to notice, see Sections 1200 to 1265. For the matters to be considered in determining the amount of compensation for extraordinary services, see Section 10833. For a limitation on the court's authority to award a partial allowance of fees for extraordinary services, see Section 10832. See also Sections 8547 (compensation of special administrator), 10954(c) (final report to show compensation), and 12205 (reduction of compensation for delay in closing estate administration). See also Section 52 (defining "letters").

§ 10831. Final compensation

10831. (a) At the time of the filing of the final account and petition for an order for final distribution, the personal representative may petition the court for an order fixing and allowing the personal representative's compensation for all services rendered in the estate proceeding.

(b) The request for compensation may be included in the final account or the petition for final distribution or may be made in a separate petition.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate is affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate is affected by the payment of the compensation.

(4) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the compensation.

(d) On the hearing, the court shall make an order fixing and allowing the compensation for all services rendered in the estate proceeding by the personal representative. The order shall authorize the personal representative to charge against the estate the amount allowed, less any amount previously charged against the estate pursuant to Section 10830.

Comment. Section 10831 is a new provision drawn from Section 10830. Final compensation is not to be paid until there is a final account or a final distribution. As to the priority for payment, see Section 11420. Section 10831 is in accord with existing practice. See Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.34 (Cal. Cont. Ed. Bar 1987).

The court for good cause may dispense with the notice otherwise required to be given to a person under Section 10831. See Section 1220(f). Nothing in Section 10831 excuses compliance with the requirements for notice to a person who has requested special notice. See Section 1220(e). The court may require further or additional notice, including a longer period of notice. See Section 1202. The court may, for good cause, shorten the time for giving notice. See Section 1203. For additional provisions relating to notice, see Sections 1200 to 1265. For the matters to be considered in determining the amount of compensation for extraordinary services, see Section 10832. See also Sections 8547 (compensation of special administrator), 10954(c) (final report to show compensation), and 12205 (reduction of compensation for delay in closing estate administration).

Note. As to local court rules, see Alameda County Probate Policy Manual § 1002 (fees must be stated in petitions for distribution); Contra Costa County Probate Policy Manual §§ 603 (petition for distribution must show computation of fees), 605 (total fees not allowed before approval of final account and decree of distribution); Fresno County Probate Policy Memoranda § 9.3 (total fees ordinarily not

allowed before approval of final account and decree of distribution); Humboldt County Probate Rules § 12.15(c) (petition for final distribution must show computation of fees requested); Lake County Probate Rules § 13.4(g) (extraordinary fees ordinarily not allowed before court approval of final accounting); Los Angeles County Probate Policy Memorandum §§ 15.02, 16.01 (total fees not fixed until approval of final account and decree of distribution); Madera County Probate Rules §§ 10.14 (total fees not allowed until approval of final account and decree of distribution), 10.19 (petition for final distribution must contain computation of fees requested); Marin County Rules of Probate Practice § 1203 (extraordinary fees usually not allowed before court approval of final accounting; partial allowance of fees not allowed before filing of inventory); Merced County Probate Rules §§ 1103 (petition for distribution must show calculation of fees), 1104 (total fees ordinarily not allowed until approval of final accounting), 1108 (court prefers to consider extra compensation at time of final account); Monterey County Probate Rules § 4.31 (total fees normally not allowed until approval of final account and decree of distribution); Orange County Probate Policy Memorandum § 8.04 (court prefers to fix fees when an account is considered; total fees not allowed before approval of final account and decree of distribution; court prefers to consider extraordinary fees at time of final distribution); Riverside County Probate Policy Memoranda § 6.1004 (accounts or petitions for distribution must show computation of fees requested; total fees ordinarily not allowed before approval of final account and judgment of distribution; court prefers to consider extraordinary fees at time of final distribution); Sacramento County Probate Policy Manual §§ 706 (petition for distribution must show calculation of fees), 707 (total fees normally not fixed before approval of final account and judgment of distribution), 708 (court prefers to consider extra fees with final account); San Bernardino County Probate Policy Memorandum § 906 (petition for distribution must show calculation of fees; extraordinary fees ordinarily requested with petition for final distribution); San Diego County Probate Rules §§ 4.110, 4.111 (no partial allowance of fees before first accounting; total fees not allowed before approval of final account and decree of distribution); San Francisco Probate Manual §§ 13.03 (total fees generally not allowed before final distribution), 13.04 (application for fees may be included in petition for settlement of account or for distribution, or in separate petition); San Joaquin County Probate Rules §§ 4-705 (petition for distribution must show calculation of fees), 4-706 (total fees ordinarily not allowed before approval of final accounting), 4-1001 (petition for final distribution must contain computation of fees or waiver); San Mateo County Probate Rules, Rules 486 (total fees generally not allowed before final distribution), 487 (application for fees may be included in petition for settlement of account or for distribution, or in separate petition); Santa Barbara County Probate Rules § 414(H) (petition for distribution must state fees requested; total fees normally not allowed before approval of final account and decree of distribution); Santa Clara County Probate Rules §§ 5.6(c) (unless waived, computation of fees must be included in petition for final distribution), 5.7(d) (allowances on extraordinary fees ordinarily not allowed); Santa Cruz County Probate Rules § 405 (ordinarily extraordinary fees not allowed before approval of final accounting); Solano County Probate Rules

§ 8.11(d) (partial payment of fees ordinarily disallowed until first accounting and showing of need for additional administration; total fees not allowed before approval of final account and final distribution); Stanislaus County Probate Policy Manual §§ 1003 (petition for distribution must show calculation of fees), 1004 (total fees ordinarily not allowed before approval of final accounting), 1008(b) (court prefers to consider extraordinary fees at time of final account), 1102(e) (petition for final distribution must contain computation of fees requested or waiver); Tuolumne County Probate Rules, Rules 12.11(e) (no allowance of extraordinary fees will be made except for good cause shown), 12.14 (final account or petition for final distribution must contain computation of fees requested); Ventura County Probate Rules § 11.12(c) (account or petition for distribution must show fees paid and calculation; total fees ordinarily not allowed before approval of final accounting and decree of distribution); Yolo County Probate Rules § 20.5 (petition for distribution seeking approval of fees must show calculation); Probate Rules of Third District Superior Courts, Rules 12.12(E) (no allowance of extraordinary fees made except for good cause shown), 12.15 (petition for final distribution shall contain computation of fees requested).

§ 10832. Limitation on allowance of compensation for extraordinary services

10832. Notwithstanding Sections 10830 and 10831, the court may allow compensation to the personal representative for extraordinary services before final distribution when any of the following requirements is satisfied:

(a) It appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long time.

(b) Present payment will benefit the estate or the beneficiaries of the estate.

(c) Other good cause is shown.

Comment. Section 10832 is a new provision drawn from local court rules. In many cases, present payment will benefit the estate; compensation will be allowed near the end of a tax year to absorb estate income so that the income will not be taxable.

Note. For the local court rules from which Section 10832 is drawn, see Lake County Probate Rules § 13.4(g); Marin County Rules of Probate Practice § 1203; Merced County Probate Rules § 1108; Orange County Probate Policy Memorandum § 8.04; Riverside County Probate Policy Memoranda § 6.1004; Sacramento County Probate Policy Manual § 708; San Bernardino County Probate Policy Memorandum § 906; San Francisco Probate Manual § 13.03(a); San Mateo County Probate Rules, Rule 486(a); Santa Clara County Probate Rules § 5.7(d); Santa Cruz County Probate Rules § 405; Stanislaus County Probate Policy Manual § 1008(b); Tuolumne County Probate Rules, Rule 12.11(e); Probate Rules of Third District Superior Courts, Rule 12.12(E).

§ 10833. Matters to be considered in determining compensation for extraordinary services

10833. In determining what is just and reasonable compensation for extraordinary services performed by the personal representative, the court shall consider all of the relevant circumstances, which may include but are not limited to the following:

- (a) The nature and difficulty of the task performed.
- (b) The results achieved.
- (c) The benefit to the estate as a whole rather than the interests of particular beneficiaries.
- (d) A detailed description of the services performed, demonstrating the productivity of the hours spent.
- (e) The expertise, experience, and professional standing in the community of the personal representative.
- (f) The amount of the fee provided by Section 10800, and whether it constitutes adequate compensation for all services rendered.
- (g) The hours spent.
- (h) The usual hourly rate of the personal representative.
- (i) The total amount requested.
- (j) The size of the estate and the length of administration.

Comment. Section 10833 is a new provision drawn from the attorney fee standard in Los Angeles County. See Los Angeles County Probate Policy Memorandum § 15.08, *reprinted in California Local Probate Rules* (9th ed., Cal. Cont. Ed. Bar 1988).

Even though services are extraordinary, the court still has discretion whether or not to award compensation for them. *Estate of Walker*, 221 Cal. App. 2d 792, 34 Cal. Rptr. 832 (1963). It is not anticipated that the court will require a showing under subdivision (f) of the ordinary services provided to the estate unless there is some objection to the request for the additional fee for the extraordinary services.

As to what constitutes an extraordinary service, see the Comment to Section 10831.

Note. Section 10833 closely follows the language of Section 15.08 of the Los Angeles Probate Policy Manual, the relevant part of which reads:

- 1. In evaluating the justification for an award of fees for extraordinary services, the court will take into consideration:
 - A. Nature and difficulty of the task performed.
 - B. Results achieved.

- C. Benefit to the estate as a whole rather than the interests of particular beneficiaries.
- D. Detailed description of services performed demonstrating productivity of hours spent.
- E. Expertise, experience and professional standing of the attorney in the community.
- F. The statutory fee and whether it constitutes adequate compensation for all the services rendered by the attorney.
- G. Hours spent.
- H. Hourly rate per person performing services.
- I. Total amount requested.
- J. Size of the estate and length of administration.

CONFORMING REVISIONS

Probate Code § 7666 (technical amendment), Compensation of public administrator

7666. (a) Except as provided in subdivision (b), the ~~emissions~~ compensation payable to the public administrator ~~and the attorney, if any,~~ for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, ~~are those~~ is that set out in ~~Sections 901, 902, and 910~~ Part 7 (commencing with Section 10800) of Division 7 .

(b) The public administrator is entitled to a minimum ~~emission~~ compensation of three hundred fifty dollars (\$350).

Comment. Section 7666 is amended to delete the reference to compensation of the attorney for the personal representative (this matter being covered by Section 9681), to change "commission" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative), and to substitute a reference to that part which superseded the former provisions for determining compensation of the personal representative.

Probate Code § 8547 (technical amendment), Compensation

8547. (a) Subject to the limitations of this section, the court shall fix the ~~emission~~ and ~~allowances~~ compensation of the special administrator and the ~~fees of the attorney of the special administrator.~~

(b) The ~~emission~~ compensation of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator's ~~emission~~ compensation or the court in its discretion so allows. ~~Extra-allowances~~ Compensation for extraordinary services of a special administrator may be allowed on settlement of the final account of the special administrator. The total ~~emission~~ compensation paid and ~~extra allowances~~ made to the special administrator and general personal representative shall not, together, exceed the sums provided in ~~this code~~ Part 7 (commencing with Section 10800) of Division 7 for ~~emission and extra allowances~~ compensation for the ordinary and extraordinary services of a personal representative. If the same person does not act as both special administrator and general personal representative, the ~~emission~~ and

allowances compensation shall be divided in such proportions as the court deems determines to be just or as may be agreed to by the special administrator and general personal representative.

(e) The total fees paid to the attorneys both of the special administrator and the general personal representative shall not, together, exceed the sums provided in this code as compensation for the ordinary and extraordinary services of attorneys for personal representatives. When the same attorney does not act for both the special administrator and general personal representative, the fees shall be divided between the attorneys in such proportions as the court deems just or as agreed to by the attorneys.

(d) Fees of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative, except that the award of fees to the attorney may be made on settlement of the final account of the special administrator.

Comment. Section 8547 is amended to change "commission and allowances" and "fees" to "compensation", consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative, estate attorney, and other assistants), and to delete subdivisions (c) and (d) which concerned attorneys' compensation. Attorneys' compensation is now governed by Sections 9681-9684.

Probate Code § 9651 (technical amendment). Taking possession of property of estate; delivery of property to person entitled thereto

9651. (a) A personal representative who in good faith takes into his or her possession real or personal property, and reasonably believes that the property is part of the estate of the decedent, is not:

- (1) Criminally liable for so doing.
- (2) Civilly liable to any person for so doing.

(b) The personal representative shall make reasonable efforts to determine the true nature of, and title to, the property so taken into possession.

(c) During his or her possession, the personal representative is entitled to receive all rents, issues, and profits of the property. If the property is later determined not to be part of the estate of

the decedent, the personal representative shall deliver the property, or cause it to be delivered, to the person legally entitled to it, together with all rents, issues, and profits of the property received by the personal representative, less any expenses incurred in protecting and maintaining the property and in collecting rents, issues, and profits. The personal representative may request court approval before delivering the property pursuant to this subdivision.

(d) The court may award allow the personal representative ~~and the personal representative's attorney~~ reasonable compensation for services rendered in connection with the duties specified in this section as to property later determined not to be part of the estate of the decedent, if the court makes one of the following findings:

(1) That the services were of benefit to the estate. In such case, the compensation and the expenses and costs of litigation, including attorney's fees of the attorney retained by the personal representative to handle the matter, shall be a proper expense of administration.

(2) That the services were essential to preserve, protect, and maintain the property. In such case, the court shall award compensation and the expenses and costs of litigation, including attorney's fees of the attorney retained by the personal representative to handle the matter, as an expense deductible from the rents, issues, and profits received by the personal representative, or, if these are insufficient, as a lien against the property.

Comment. Section 9651 is amended to make it consistent with the new provisions relating to compensation of the estate attorney. See Sections 9681-9684.

Probate Code § 10900 (amended). Contents of account

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.

- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, the hiring and payment of any persons under Section 9680, and all other matters necessary to show the condition of the estate. The statement of liabilities shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

Comment. Subdivision (c) of Section 10900 is amended to require the report of administration to include a report concerning the hiring and payment of any persons hired under Section 9680 (persons hired to assist personal representative, including attorneys, accountants, auditors, technical advisors, and investment advisors).

Probate Code § 10954 (technical amendment). When account not required

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary

devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed as follows:

(1) If the person entitled to distribution is an adult and competent, by that person.

(2) If the person entitled to distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver or acknowledgment is executed by a guardian of the estate of the minor, the waiver or acknowledgment may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court. In the case of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9, the waiver or acknowledgment may be executed without the need to obtain approval of the court.

(5) If the person entitled to distribution is an estate, by the personal representative of the estate. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the estate is being administered.

(6) If the person entitled to distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to distribution, by the guardian ad litem.

(c) Notwithstanding subdivision (a):

(1) The personal representative shall file a final report of administration at the time the final account would otherwise have been

required. The final report shall include the amount of fees and ~~commissions~~ compensation paid or payable to the personal representative ~~and to the attorney~~ and shall set forth the basis for determining the amount.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

Comment. Section 10954 is amended eliminate the reference to the fees and commissions paid or payable to the attorney and to change "fees and commissions" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative).

Probate Code § 11003 (technical amendment). Litigation expenses

11003. (a) If the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the ~~fees, commissions,~~ compensation and costs of the personal representative and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.

(b) If the court determines that the opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the ~~fees and commission~~ compensation or other interest of the personal representative in the estate and the personal representative is liable personally and on the bond, if any, for any amount that remains unsatisfied.

Comment. Section 11003 is amended to change "fees" and "commissions" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative).

Probate Code § 12205 (technical amendment). Sanction for failure timely to close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court

may, on the hearing for final distribution or for an allowance on the ~~commissions~~ compensation of the personal representative or on the fees of the attorney, reduce the ~~commissions or fees~~ compensation by an amount the court deems determines to be appropriate, regardless of whether the ~~commissions or fees~~ compensation otherwise allowable under ~~the provisions of Sections 901 and 910~~ Part 7 (commencing with Section 10800) would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative ~~or attorney~~ and was not in the best interest of the estate or interested persons. In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

Comment. Section 12205 is amended to delete the reference to compensation of the attorney for the personal representative (this matter being covered by Section 9681), to change "commissions" and "fees" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative), and to substitute a reference to that part which superseded former Sections 901 and 910.