

Memorandum 88-43

Subject: Study L-1036/1055 - Personal Representative and Attorney Fees
in Probate

Attached is a revised staff draft of the statutory provisions relating to compensation of the personal representative and the estate attorney. We have not attached the comments and suggestions we received on the previous draft. Instead, we will provide you with copies of the comments and suggestions we receive on the revised staff draft prior to the July meeting of the Commission.

We plan to prepare a tentative recommendation on this subject to distribute to interested persons and organizations for review and comment. Perhaps this can be approved for distribution at the July meeting. We will provide you with a staff draft of the preliminary part of the tentative recommendation in a supplement to this memorandum.

Respectfully submitted,

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Executive Secretary

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PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE AND ESTATE ATTORNEY

CHAPTER 1. COMPENSATION OF PERSONAL REPRESENTATIVE

§ 10800. Compensation for ordinary services

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

(1) Three percent on the first one hundred thousand dollars (\$100,000)

(2) *ten on* next nine hundred thousand dollars (\$900,000)

(3) *white* nine million dollars (\$9,000,000).

(4) it on the next fifteen million dollars (\$15,000,000)

(5) For all *over* 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 inventory, plus gains over appraisal value on sales, plus receipts, less losses on sales, without reference to encumbrances or other obligations on estate property. This subdivision applies whether or not a sale of property has taken place during the probate of the estate.

Comment. Subdivision (a) of Section 10800 supersedes the first sentence of former Section 901. The four percent rate on the first \$15,000 in former Section 901 is not continued; the highest rate under Section 10800 is the three percent rate on the first \$100,000. Subdivision (b) restates the last two sentences of former Section 901 without substantive change.

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 [AB 2841] (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 10804.

As to the right of an attorney to receive dual compensation for services as personal representative and as estate attorney, see Section 10834.

§ 10801. Additional compensation for extraordinary services

10801. Subject to the provisions of this chapter, in addition to the compensation provided by Section 10800, the court may allow additional compensation for extraordinary services by the personal representative in the 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 [AB 2841] (reduction of compensation for delay in closing estate administration).

The listing in former Section 902 of examples of what constitutes extraordinary services is not continued. The former list was incomplete. Omission of the list is not intended to change the law, but rather to recognize that case law is well developed in this area. As to what services are extraordinary, see the Comment to Section 10831. See also Section 10852 (factors to be considered by court in allowing compensation for extraordinary services).

§ 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) If the personal representative files with the court a written instrument renouncing the compensation provided for in the will, the personal representative shall be compensated as provided in this chapter.

Comment. Section 10802 restates the last portion of former Section 900 and a portion of the first sentence of former Section 901 without substantive change.

§ 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 chapter 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 *Feinfield, Fees and Commissions*, in 2 California Decedent Estate Practice § 20.5 (Cal. Cont. Ed. Bar 1987).

§ 10804. Use of experts, technical advisors, and other assistants

10804. (a) The personal representative may employ tax counsel, tax auditors, accountants, or other tax experts 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, and may pay for such services out of funds of the estate.

(b) The personal representative may employ any expert, technical advisor, or other qualified person when necessary for the providing of extraordinary services to the estate, and may pay for the services of that person out of funds of the estate.

(c) The personal representative may employ any qualified person, including a member of the State Bar of California, to assist the personal representative in the performance of ordinary services and pay for the services of that person out of the personal representative's own funds.

(d) If not previously authorized or approved by the court, the amounts paid out of funds of the estate pursuant to subdivisions (a) and (b) are subject to court review at the time of the final account. The employment and payment of a person under subdivision (c) need not be authorized or approved by the court.

(e) The employment of a person under this section does not relieve the personal representative from any liability arising out of the performance of, or the failure to perform, the duties of a personal representative.

Comment. Subdivision (a) of Section 10804 restates without substantive change the second sentence of former Section 902. The tax expert employed pursuant to Section 10804 is paid out of funds of the estate; the compensation to which the personal representative is entitled under Section 10800 is not reduced because the tax expert is

employed to assist the personal representative to perform duties in connection with taxes. This is because the services in connection with the taxes are extraordinary services. See the Comment to Section 10831.

The attorney for the personal representative also is paid out of funds of the estate and the compensation under Section 10800 is not reduced because of such payment.

Subdivisions (b), (c), and (d) are new. If the personal representative hires another 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 if the person is assisting the personal representative in performing ordinary services. 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). However, if the execution of the particular duty requires extraordinary services, then the personal representative may be allowed additional compensation for the extraordinary services (Section 10801) which could include an allowance to the personal representative to cover the cost of compensating another to assist in performing the extraordinary services or the person assisting in performing the extraordinary services could be paid out of estate funds and the allowance to the personal representative for performing the extraordinary service reduced accordingly. For example, a manager may be needed to run the decedent's business. The reasonable salary of the manager may be paid from estate funds, and the allowance to the personal representative for managing the business reduced to recognize the payment to the business manager from funds of the estate. On the other hand, the business may, for example, be managed by an employee of the personal representative, and the personal representative may request an allowance for the extraordinary management services that covers the entire cost of providing those services.

Subdivision (d) indicates when court authorization or approval is required. Amounts paid out of estate funds under subdivisions (a) and (b) are subject to court review. Payment may not be made to the estate attorney unless authorized by the court. See Sections 10831, 10850, 10851. But court authorization or approval is not required when an attorney or other person is hired under subdivision (c) to assist the personal representative in performing ordinary services.

Subdivision (c) makes clear that the personal representative may make an agreement with the estate attorney to perform duties of the personal representative. This is consistent with existing 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*; Rules of Professional Conduct of the State Bar of California, Rule 5-101. Court authorization or approval is not required when the attorney is paid by the personal representative from the personal representative's own 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*.

Subdivision (e) makes clear that the personal representative may not avoid liability for failure to perform properly the duties of the office by hiring another to assist in the performance of the duty. See, for example, Section 9600 (duty to use ordinary care and diligence in management and control of the estate). See also Section 9612 (effect of court authorization or approval).

Note. The Commission should consider adapting the relevant portion of the Uniform Probate Code for use in Section 10804. Section 3-715 of the UPC provides in part:

Except as restricted or otherwise provided by the will or by an order in a formal proceeding . . . , a personal representative, acting reasonably for the benefit of the interested persons, may properly:

* * * *

(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

§ 10805. Apportionment of compensation

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

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) [AB 2841].

CHAPTER 2. COMPENSATION OF ESTATE ATTORNEY

Article 1. Written Agreement Concerning Legal Services

§ 10820. Written agreement required; exceptions

10820. (a) The attorney who agrees to serve as the attorney for the personal representative shall, at the time the agreement concerning the providing of legal services is entered into, provide a duplicate

copy of the agreement, signed by both the attorney and the personal representative, to the personal representative.

(b) The agreement shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the general nature of the legal services to be provided pursuant to the agreement.

(2) The informational statement provided for in Section 10821.

(3) A provision concerning the compensation of the attorney. This provision shall be one that satisfies the requirements of Section 10822.

(4) A statement of the respective responsibilities of the attorney and the personal representative.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the personal representative, and the attorney shall, upon the agreement being voided, be entitled to collect compensation in an amount determined by court to be reasonable for the services actually provided, but the compensation shall not exceed the compensation provided for in Article 2 (commencing with Section 10830).

(d) This section does not apply in any of the following cases:

(1) Where the total expense to the estate (including the compensation of the attorney) will not exceed one thousand dollars (\$1,000).

(2) Where the personal representative knowingly states in writing, after full disclosure of this article, that a writing concerning compensation of the attorney is not required.

(3) Where the personal representative is a corporation.

(4) Where the personal representative is a public officer or employee acting in the scope of the public office or employment.

Comment. Section 10820 is a new provision drawn from Sections 6147 and 6148 of the Business and Professions Code. Section 6148 is a general provision relating to contracts for legal services. That section is not appropriate for contracts for legal services in connection with a probate estate. This article (commencing with Section 10820) provides provisions that are drafted in light of the special statutory provisions governing compensation of the estate attorney and includes a provision that requires a disclosure that informs the personal representative that the compensation of the estate attorney is subject to negotiation.

Subdivision (a) of Section 10820 is drawn from the first sentence of Business and Professions Code Section 6147 (contingency fee

contracts). Subdivision (b) of Section 10820 is comparable to subdivision (a) of Business and Professions Code Section 6148, except that subdivision (b) of Section 10820 requires that the written agreement contain an informational statement (set out in Section 10821) which includes a disclosure that the attorney and personal representative may agree that the compensation of the attorney will be less than the statutory compensation.

Subdivision (c) is comparable to subdivision (c) of Business and Professions Code Section 6148, except that subdivision (c) of Section 10820 makes clear that the compensation allowed under that subdivision may not exceed the amount of the statutory compensation. If the estate attorney fails to comply with the requirements of Section 10820, the reasonable compensation fixed by the court is fixed in light of the reasonable value of the services actually provided in the particular case, and the attorney must establish the value of the services provided.

The exceptions stated in subdivision (d) are comparable to those stated in subdivision (d) of Business and Professions Code Section 6148 except that Section 10820 contains an additional exception for the case where the personal representative is a public officer or employee acting in the scope of the public office or employment (to make the section not applicable to the public administrator) and omits the exception provided in Section 6148 for the case where services are rendered in an emergency or where a writing is otherwise impractical.

Section 10820 applies only to the written agreement concerning legal services to be provided to the personal representative in a formal probate proceeding. Section 6148 of the Business and Professions Code continues to govern legal services provided in connection with the estate of a decedent where there is no formal probate proceeding or where legal services are provided in connection with property that is not part of the probate estate. See Probate Code Sections 13157 (attorney fee determined by agreement between parties for proceeding to obtain a court order determining succession to real property of small estate), 13660 (attorney fee determined by agreement between parties for petition to obtain a court order determining or confirming property passing to or belonging to surviving spouse). See also Probate Code Sections 13100-13116 (affidavit procedure to collect or transfer personal property of small estate), 13200-13209 (procedure to make real property title records reflect transfer of property to decedent's heirs or beneficiaries where small estate).

Section 10820 applies only to agreements entered into after January 1, 1990. Prior to that time, Business and Professions Code Section 6148 will continue to apply. See Section 10823.

§ 10821. Informational statement

10821. A written agreement required by Section 10820 shall include the substance of the following statement:

IMPORTANT INFORMATION. The California Probate Code governs the compensation of the estate attorney and requires that this agreement

contain the following informational statement. "For ordinary services, the attorney is entitled to compensation to be determined by a statutory fee schedule. For extraordinary services, the attorney is entitled to additional compensation to be fixed by the court in an amount the court determines is just and reasonable. The attorney and client may agree that the attorney will receive less than the statutory compensation. No compensation may be paid to the attorney unless the payment has first been authorized by a court order."

Comment. Section 10821 is a new provision. The section requires that the attorney-client contract include the substance of the statement set out in the section. The statutory statement is designed to give the client a general understanding of the statutory compensation scheme and to disclose to the client that the attorney and client may negotiate for the attorney's compensation to be lower than the statutory compensation. See also Section 10832 (agreement for higher compensation void; no duty to negotiate for lower compensation).

Section 10821 applies only to agreements entered into after January 1, 1990. Prior to that time, Business and Professions Code Section 6148 will continue to apply. See Section 10823.

§ 10822. Provision concerning compensation of attorney

10822. (a) Subject to subdivisions (b) and (c), a written agreement required by Section 10820 shall include the substance of the following provision concerning the compensation of the attorney for the personal representative:

COMPENSATION OF ATTORNEY FOR ORDINARY PROBATE SERVICES. For ordinary services, the attorney shall receive compensation upon the value of the estate, as follows:

(1) Three percent on the first one hundred thousand dollars (\$100,000).

(2) Two percent on the next nine hundred thousand dollars (\$900,000).

(3) One percent on the next nine million dollars (\$9,000,000).

(4) One-half of one percent on the next fifteen million dollars (\$15,000,000).

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

(The value of the estate is the total value of the property included in the decedent's probate estate, plus gains over appraisal value on sales, plus receipts, less losses on sales.)

COMPENSATION OF ATTORNEY FOR EXTRAORDINARY PROBATE SERVICES. For extraordinary services, the attorney shall receive additional compensation in the amount the court determines to be just and reasonable.

(b) The provision set out in subdivision (a) may, but need not, include a statement of the hourly rates or other standard rates, fees, or charges for extraordinary services, including rates, fees, or charges for services of a paralegal. If the agreement includes such a statement, the court shall consider but is not bound by the statement in determining the amount to be allowed as compensation for extraordinary services.

(c) If the compensation of the attorney provided for in the agreement is not to be determined as provided in Sections 10830 and 10831, the agreement shall state the hourly rate or other standard rates, fees, or charges for the legal services to be provided pursuant to the agreement or other method of determining the compensation for those services, including rates, fees, or charges for paralegal services.

Comment. Section 10822 is a new provision. The section provides language that may be used in the agreement between the personal representative and estate attorney that satisfies the requirement of Section 10820 that the agreement disclose the compensation of the attorney. Unlike Business and Professions Code Section 6148, the agreement need not set out the "hourly rate or other standard rates, fees, and charges applicable to the case" if the agreement is that the attorney is to receive the statutory compensation. The section permits the agreement to set out merely the statutory compensation schedule and a statement that the court will determine the amount of the compensation for extraordinary services. However, if the attorney's compensation is not determined using the statutory compensation schedule, then the agreement must set out the hourly rate or other standard rates, fees, and charges applicable to the case. In addition, if the attorney and personal representative so desire, they may set out an hourly rate or other standard rate for extraordinary services. This rate is not binding on the court, but the court will consider it in determining the allowance of compensation to the attorney for extraordinary services. See also Sections 10832 (agreement for higher compensation void; no duty to negotiate for lower compensation), 10852

(factors to be considered in determining the amount of compensation for extraordinary services), 10853 (services of paralegal performing extraordinary services). As to compensation for services that are not provided in connection with the probate estate, see the discussion in the Comment to Section 10832.

Section 10822 applies only to agreements entered into after January 1, 1990. Prior to that time, Business and Professions Code Section 6148 will continue to apply. See Section 10823.

§ 10823. Application of article

10823. This article applies only to agreements described in Section 10820 that are entered into after January 1, 1990, and Section 6148 of the Business of Professions Code does not apply to those agreements.

Comment. Section 10823 limits the application of this article to an agreement entered into after January 1, 1990. Prior to that time, the agreement is governed by the provisions of Section 6148 of the Business and Professions Code.

Article 2. Compensation of Estate Attorney

§ 10830. Compensation for ordinary services

10830. (a) Subject to the provisions of this chapter, for ordinary services the attorney for the personal representative shall receive compensation upon the value of the estate accounted for by the personal representative, as follows:

(1) Three percent on the first one hundred thousand dollars (\$100,000).

(2) Two percent on the next nine hundred thousand dollars (\$900,000).

(3) One percent on the next nine million dollars (\$9,000,000).

(4) One-half of one percent on the next fifteen million dollars (\$15,000,000).

(5) 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 inventory, plus gains over appraisal value on sales, plus receipts, less losses on sales, without reference to encumbrances or other obligations on estate property. This subdivision applies whether or not a sale of property has taken place during the probate of the estate.

Comment. Section 10830 supersedes the portion of the first sentence of former Section 910 which provided in substance that the attorney for the personal representative was allowed for ordinary services the same amounts as were allowed the personal representative for ordinary services under Section 901. The four percent rate on the first \$15,000 in former Section 901 is not continued. The highest rate under Section 10830 is the three percent rate on the first \$100,000. The statutory compensation schedule set out in Section 10830 does not preclude negotiation for a lower compensation. See Section 10832. See also Section 10821 (informational statement disclosing that compensation subject to negotiation). If the attorney fails to satisfy the requirements for a written agreement with the personal representative if such an agreement is required, the attorney is entitled to collect compensation in an amount determined by the court to be reasonable for the services actually provided, but the compensation may not exceed the compensation provided in Article 2 (commencing with Section 10830). See Section 10820(c).

A court order allowing the compensation to the attorney 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 attorney (on account of services rendered up to the time of allowance), see Section 10850. See also Section 12205 [AB 2841] (reduction of compensation for delay in closing estate administration). As to the right of an attorney to receive dual compensation for services as personal representative and as estate attorney, see Section 10834.

Note. Should the fee for the amount of an estate over \$10 million be a reasonable amount fixed by the court? Under existing law, the fee schedule applies except for amounts over \$25 million.

§ 10831. Additional compensation for extraordinary services

10831. Subject to the provisions of this chapter, in addition to the compensation provided by Section 10830, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in the amount the court determines is just and reasonable.

Comment. Section 10831 continues the last portion of the first sentence of former Section 910 without substantive change. 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). As to the factors to be considered by the court in allowing additional compensation for extraordinary services, see Section 10852. See also Section 12205 [AB 2841] (reduction of compensation for delay in closing estate administration).

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, but rather to recognize that the case law is well developed in this area. Under Sections 10831 and 10832, the following services are extraordinary:

(1) Sales or mortgages of real or personal property. 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. *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. Estate of Bray, 230 Cal. App. 2d 136, 144, 40 Cal. Rptr. 750 (1964).

(4) Defense of eminent domain proceeding involving estate property. 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. Estate of Turino, 8 Cal. App. 3d 642, 87 Cal. Rptr. 581 (1970).

(6) Other litigation concerning estate property. *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. 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) Successful defense of a will contest. *In re* Estate of Dunton, 15 Cal. App. 2d 729, 731-33, 60 P.2d 159 (1936).

(9) Litigation to construe or interpret a will. 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. 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. *In re* Estate of O'Connor, 200 Cal. 646, 651, 254 P. 269 (1927).

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

(13) Legal services in connection with authorized sale of bonds in the estate. Estate of Neff, 56 Cal. App. 2d 728, 133 P.2d 413 (1943).

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

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

(16) Unlawful detainer action for the estate. 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).

Extraordinary services for which the attorney may apply to the court for compensation include services by a paralegal performing the extraordinary services under the direction and supervision of the attorney. See Section 10853.

§ 10832. Agreement for higher compensation void; no duty to negotiate for lower compensation

10832. An agreement between the personal representative and the attorney for higher compensation for the attorney than that permitted under this chapter is void. The personal representative and the attorney may agree that the attorney will receive less than the statutory compensation for services, but the personal representative has no duty to negotiate attorney compensation less than the statutory compensation.

Comment. The first sentence of Section 10832 makes an agreement for higher than statutory compensation void. This continues the substance of the principle of former Probate Code Section 903 which may have been made applicable to estate attorneys by the first sentence of former Probate Code Section 910. See Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.5 (Cal. Cont. Ed. Bar 1987) ("principle of Prob C §903 should apply to contracts between an attorney and the decedent, even though §903 is not expressly applicable"). Notwithstanding that the agreement provides for higher compensation, the attorney is entitled only to the amount of compensation provided for in this chapter.

The compensation provided under this article is considered to be reasonable compensation if the requirements of Article 1 (commencing with Section 10820) (written agreement) are satisfied. But Article 1 (commencing with Section 10820) and Section 10832 recognize that the personal representative and the estate attorney can make an agreement for lower compensation than that provided for in this article. This continues prior law. See *Estate of Morrison*, 68 Cal. App. 2d 280, 285, 156 P.2d 473 (1945); Feinfeld, *supra*.

The second sentence of Section 10832 includes a new provision that protects the personal representative against any possible liability for failing to negotiate a lower attorney fee. This provision recognizes that the personal representative has no duty to negotiate with the attorney for a lower attorney fee, even where the particular estate is one that will require only minimal legal services.

This article does not limit compensation of the attorney for legal services provided in connection with property that is not part of the probate estate. For example, this article does not limit the fee the attorney may charge for assisting the beneficiary in collecting life insurance benefits or other property that is not part of the probate estate. See also Probate Code Sections 13157 (attorney fee determined by agreement between parties for proceeding to obtain a court order determining succession to real property of small estate), 13660 (attorney fee determined by agreement between parties for

petition to obtain a court order determining or confirming property passing to or belonging to surviving spouse). See also Probate Code Sections 13100-13116 (affidavit procedure to collect or transfer personal property of small estate), 13200-13209 (procedure to make real property title records reflect transfer of property to decedent's heirs or beneficiaries where small estate).

§ 10833. Compensation provided by decedent's will

10833. (a) Subject to subdivision (b), if the decedent's will makes provision for the compensation of the attorney for the personal representative, the compensation provided by the will shall be the full and only compensation for the services of the attorney for the personal representative.

(b) If the attorney files with the court a written instrument renouncing the compensation provided for in the will, the attorney shall be compensated as provided in this chapter.

Comment. Section 10833 continues the substance of the last 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. See also 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).

Note. Should the following be substituted for subdivision (b) of Section 10833:

(b) Subject to Section 10832, the personal representative and the attorney may make an agreement that the attorney will receive greater compensation than that provided for in the will.

The justification for departing from the compensation provided in the will is that higher compensation is necessary in order that legal services may be obtained. The inadequacy of the compensation provided in the will probably is the result of the passage of time since the will was prepared and executed. However, the fact that the compensation in the will is inadequate is no justification for substituting the statutory compensation. It would be an odd result to deprive the personal representative of the opportunity to negotiate concerning the increased compensation when the will specified a compensation lower than the statutory compensation and it is now necessary to deviate from the testator's desires in order to increase that compensation.

§ 10834. Personal representative may not receive dual compensation as estate attorney unless authorized by will

10834. 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 10834 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 Havaside*, 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).

§ 10835. Apportionment of compensation

10835. If there are two or more attorneys for the personal representative, the compensation provided for the attorney shall be apportioned among them by the court according to the services actually rendered by each or as agreed to by them.

Comment. Section 10835 continues the substance of the second sentence of former Section 901 as it was applied to estate attorneys by the first sentence of former Section 910, with the addition of the reference to an agreement between the attorneys concerning apportionment of their compensation. The added language is drawn from Section 8547 (division of compensation between attorneys for special administrator and general personal representative) [AB 2841].

CHAPTER 3. ALLOWANCE OF COMPENSATION BY COURT

§ 10850. Partial allowance of compensation

10850. (a) At any time after four months from the issuance of letters:

(1) The personal representative may file a petition requesting an allowance on the compensation of the personal representative.

(2) The personal representative or the attorney for the personal representative may file a petition requesting an allowance on the

compensation of the attorney for 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 subdivision (c) of 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 or attorney, on account of services rendered up to that time, that the court determines is proper. In the case of an allowance to the personal representative, the order shall authorize the personal representative to charge against the estate the amount allowed. In the case of an allowance to the attorney, the order shall require the personal representative to pay the attorney out of the estate the amount allowed.

Comment. Section 10850 continues the substance of former Sections 904 and 911 with the omission of the requirement of former Section 911 that the "payment shall be made forthwith." There are situations where there are not sufficient funds available to pay the amount allowed forthwith. As to the priority for payment, see Section 11420. See also Section 11424 (liability of personal representative for failure to pay).

The court for good cause may dispense with the notice otherwise required to be given to a person under Section 10850. See Section 1220(f). Nothing in Section 10850 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 of 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 10852. If extraordinary services are performed by a paralegal, the petition for compensation must include additional information. See Section 10853. For a limitation on the court's authority to award a partial allowance of fees for extraordinary services, see Section 10854. See also Sections 8547 [AB 2841] (compensation of special administrator and attorney for special administrator), 10954(c) [AB 2841] (final report to show compensation), and 12205 [AB 2841] (reduction of compensation for delay in closing estate administration). See also Section 52 (defining "letters").

§ 10851. Final compensation

10851. (a) At the time of the filing of the final account and petition for an order for final distribution:

(1) The personal representative may petition the court for an order fixing and allowing his or her compensation for all services rendered in the estate proceeding.

(2) The personal representative or the attorney who has rendered services to the personal representative may petition the court for an order fixing and allowing the compensation of the attorney 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 subdivision (c) of 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. In the case of an allowance to 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 10850. In the case of the attorney's compensation, the order shall require the personal representative to pay the attorney out of the estate the amount allowed, less any amount previously paid to the attorney out of the estate pursuant to Section 10850.

Comment. Section 10851 is a new provision drawn from Section 10850. 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. See also Section 11424 (liability of personal representative for failure to pay). Section 10851 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 10851. See Section 1220(f). Nothing in Section 10851 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 of 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 10852. See also Sections 8547 [AB 2841] (compensation of special administrator and attorney for special administrator), 10954(c) [AB 2841] (final report to show compensation), and 12205 [AB 2841] (reduction of compensation for delay in closing estate administration). If extraordinary services are performed by a paralegal, the petition for compensation must include additional information. See Section 10853.

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).

§ 10852. Matters to be considered in determining compensation for extraordinary services

10852. In determining what is just and reasonable compensation for extraordinary services, 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 person performing the services.
- (f) The amount of the fee provided by Section 10800 or 10830, and whether it constitutes adequate compensation for ordinary and extraordinary services rendered.
- (g) The hours spent.
- (h) The usual hourly rate of the person who performed the services.
- (i) The total amount requested.
- (j) The size of the estate and the length of administration.

Comment. Section 10852 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). As to what constitutes an extraordinary service, see the Comment to Section 10831. See also Sections 10822(b) (provision in agreement retaining attorney as to hourly rates or other standard rates), 10853 (paralegal performing extraordinary services).

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).

Note. Section 10852 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.

§ 10853. Services of paralegal performing extraordinary services

10853. The attorney for the personal representative may be allowed compensation for extraordinary services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. The petition for allowance of compensation for extraordinary services shall include a statement of the hours spent and services performed by the paralegal. In determining the amount of compensation to be allowed, the court shall take into consideration the extent to which the services were provided by the paralegal and the extent of the direction, supervision, and responsibility of the attorney.

Comment. The first two sentences of Section 10853 restate without substantive change the second and third sentences of former Section 910. The third sentence, which is new, makes clear that the compensation awarded to the attorney for extraordinary services is to take into consideration the extent to which the services were performed by the paralegal and the fact that the attorney is responsible for directing and supervising the paralegal and for the work produced by the paralegal.

§ 10854. Limitation on allowance of compensation for extraordinary services

10854. Notwithstanding Sections 10850 and 10851, the court may allow compensation for extraordinary services before final distribution only when one 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 10854 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 10854 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, Rules 12.11(e); Probate Rules of Third District Superior Courts, Rule 12.12(E).

CONFORMING REVISIONS

Business and Professions Code § 6148 (technical amendment). Attorney fees

(a) In any case not coming within Section 6147 of this code or Section 10820 of the Probate Code in which it is reasonably foreseeable that total expense to a client, (including attorney fees), will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing and shall contain all of the following:

(1) The hourly rate and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills for services rendered by an attorney to a client shall clearly state the basis thereof, including the amount, rate, basis for calculation, or other method of determination of the member's fees; and, upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request. The client is entitled to similar requests at intervals of no less than 30 days following the initial request.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

Comment. The introductory clause of Section 6148 is amended to add the reference to Section 10820 of the Probate Code. Section 10820 requires that a written agreement concerning legal services be provided to the personal representative in a formal probate proceeding. Section 6148 continues to govern legal services provided in connection with the estate of a decedent where there is no formal probate proceeding or where there are legal services provided with respect to the portion of the estate that is not subject to probate. See Probate Code Sections 13157 (attorney fee determined by agreement between parties for proceeding to obtain a court order determining succession to real property of small estate), 13660 (attorney fee determined by agreement between parties for petition to obtain a court order determining or confirming property passing to or belonging to surviving spouse). See also Probate Code Sections 13100-13116 (affidavit procedure to collect or transfer personal property of small estate), 13200-13209 (procedure to make real property title records reflect transfer of property to decedent's heirs or beneficiaries where small estate).

Probate Code § 8547 [added by AB 2841] (technical amendment).

Compensation

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

(b) The ~~commission~~ 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 ~~commission~~ 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 ~~commission~~ 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 ~~commission~~ 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 ~~commission~~ 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.

(c) The total fees compensation paid to the attorneys both of the special administrator and the general personal representative shall not, together, exceed the sums provided in ~~this code~~ Part 7 (commencing with Section 10800) of Division 7 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 compensation shall be divided between the attorneys in such proportions as the court deems determines to be just or as may be agreed to by the attorneys.

(d) Fees Compensation 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 compensation to the attorney for extraordinary services 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 and estate attorney) and to make other nonsubstantive, clarifying revisions.

Probate Code § 10954 [added by AB 2841] (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 to change "fees and commissions" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative and estate attorney).

Probate Code § 12205 [added by AB 2841] (technical amendment). Sanction for failure to timely 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 change "commissions" and "fees" to "compensation," consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative and estate attorney) and to substitute a reference to that part which superseded former Sections 901 and 910.

Other Conforming Revisions

There may be other code sections that refer to Probate Code Section 901 or 910. These other sections will need to be conformed to the renumbering and revision of these sections. There may be other sections that provide for reducing compensation of the personal representative as a sanction. We will need to add references to these other sections wherever we make a reference to Section 12205 in a Comment.

COMMENTS TO REPEALED PROBATE CODE SECTIONS

§ 900 (repealed). Personal representative's expenses and compensation; renunciation of compensation provided by will

Comment. The first portion of former Section 900 is continued in Section []. The last portion of former Section 900 is restated in Section 10802 without substantive change. See also Section 10833 and the Comment to that section.

§ 901 (repealed). Percentage compensation; apportionment

Comment. The first sentence of former Section 901 is superseded by subdivision (a) of Section 10800 and by Section 10802. See also Section 10833 and the Comment to that section. The second sentence is restated in Section 10805 without substantive change. See also Section 10835 and the Comment to that section. The third and fourth sentences are restated in subdivision (b) of Section 10800 without substantive change.

§ 902 (repealed). Extraordinary services; employment of tax specialists

Comment. The first sentence of former Section 902 is restated in Section 10801 without substantive change. 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, but rather to recognize that case law is well developed in this area. See the Comment to Section 10831.

The second sentence of former Section 902 is restated in Section 10804 without substantive change.

§ 903 (repealed). Contract for higher compensation void

Comment. Former Section 903 is restated in Section 10803 without substantive change. See also Section 10832 and the Comment to that section.

§ 904 (repealed). Petition for allowance on compensation; notice

Comment. Former Section 904 is continued in substance in Section 10850. The authority in former Section 904 for the court to require further or additional notice is superseded by Section 1202.

§ 910 (repealed). Attorney's compensation; services by paralegal

Comment. The first sentence of former Section 901 is superseded by Sections 10830 and 10831. See also Sections 10832, 10833, and 10835 and the Comments to those sections. The second and third sentences are

restated in the first two sentences of Section 10853 without substantive change.

§ 911 (repealed). Petition for allowance on compensation; notice

Comment. Former Section 911 is continued in substance in Section 10850.