

15 GCA ESTATES AND PROBATE
CH. 28 COMPENSATION

**CHAPTER 28
COMPENSATION**

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§ 2801. Allowance of Expenses and Compensation; Compensation Provided by Will; Renunciation.

The personal representative shall be allowed all necessary expenses in the care, management, and settlement of the estate, and, for his services, the compensation provided in Sections 2803 and 2805 of this Title; but when the decedent, by his will, makes other provision for the compensation of the executor named therein, that shall be a full compensation for such executor's services, unless by a written instrument filed in the Superior Court, such executor renounces all claim for compensation provided for in the will.

SOURCE: Probate Code of Guam (1970), § 900.

§ 2803. Commissions of Personal Representatives; Apportionment.

(a) The executor, when no compensation is provided by the will or he renounces all claim thereto as provided in Section 2801 of this Title, or the administrator, or the administrator with the will annexed, shall receive commissions upon the amount of the estate accounted for by him, as follows: For the first five thousand dollars (\$5,000.00) at the rate of eight percent (8%); for the next ten thousand dollars (\$10,000.00) at the rate of five percent (5%); for the next fifteen thousand dollars (\$15,000.00) at the rate of four percent (4%); for the next twenty thousand dollars (\$20,000.00) at the rate of three percent (3%); for the next one hundred thousand dollars (\$100,000.00) at the rate of two percent (2%); for the next three hundred fifty thousand dollars (\$350,000.00) at the rate of one and one-half percent (1½%); and for all above five hundred thousand dollars (\$500,000.00) at the rate of one

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percent (1%); provided, that the allowance of such commission shall be subject to the provisions of Section 2811(a) of this Title. If there are two or more personal representatives, the compensation shall be apportioned among them by the Superior Court according to the services actually rendered by each.

(b) The commission to which the personal representative is entitled pursuant to subsection (a) of this Section shall be based upon 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 property in the estate, if any. This subsection shall apply whether or not a sale of property has taken place during the administration of the estate.

SOURCE: California Probate Code, § 901 (as amended); Guam Law Revision Commission.

COMMENT: Two alterations have been made to § 901 of the Probate Code of Guam (1970). One is the addition of subsection (b), delineating exactly what increments of the estate the commission is to be based on. An identical provision was added to California law in 1965, and the Commission believes that it is a useful provision in Guam as well; the issue of whether encumbrances on estate property should be taken into consideration in determining the value of the estate for fixing the personal representative's commission, for example, is one that should in the Commission's opinion be dealt with by legislation rather than by court decision.

The second alteration to § 901 of the Probate Code of Guam (1970) is the increase in the amounts of the commissions at the lower end of the scale. When taking testimony on this Title, the Commission was told by several practitioners that the low amounts of commissions (which, it should be noted, are the same as the amounts of attorney's fees allowable under prior § 910) often make it impractical for an attorney to serve as counsel for the personal representative in an estate of relatively low value. In recognition of this, the Commission has substantially raised the commissions at the lower end of the scale. Note, however, that in the range above \$50,000, the percentages are the same under § 2803 as they were under prior § 901. The Commission believes that these rates are fair to personal representatives, as well as to estates of relatively small size.

One problem that might be foreseen, however, is that under the Probate Code of Guam (1970), attorney's fees were the same as personal representatives' commissions. Therefore, if the personal representative retains an attorney and both receive statutory commissions, the estate must pay both. The Commission does not find that this is an egregious burden on most estates, and believes that it is relatively fair in the majority of cases, particularly since in many cases the personal representative waives his commission in any event. Where the problem may arise, however, is that situation wherein an attorney is appointed to be the personal representative of an estate, and performs both functions himself. In such case, the estate again ends up paying two sets of commissions -- but here to the same person.

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The Commission is of the opinion that this is unfair to most estates, in light of the fact that the attorney's function is, in most cases, a much more time-consuming and difficult one than that of the personal representative. The Commission has therefore redrafted § 2811, *infra*, so that in the latter situation the attorney cum personal representative will not receive two sets of commissions/fees; he will receive only one and one-half times the single set of fees. The Commission believes that this plan is fair to all parties concerned, including the attorney and the estate.

§ 2805. Additional Allowances for Extraordinary Services of Personal Representatives.

Such further allowances, over and above those provided by Section 2803 of this Title, may be made as the Superior Court may deem just and reasonable for any extraordinary services performed by the personal representative; provided, that no such further allowance shall be made when the decedent, by his will, makes other provision for the compensation of the executor named therein, unless such executor renounces all claim thereto as provided in Section 2801 of this Title. As used in this Section, "extraordinary services" may include, but is not limited to, sales or mortgages of real or personal property; contested or litigated claims against the estate; the adjustment and payment of extensive or complicated estate or inheritance taxes; litigation in regard to the property of the estate; the carrying on of the decedent's business pursuant to an order of the Superior Court; and such other litigation or special services as may be necessary for the personal representative to prosecute, defend or perform.

SOURCE: Probate Code of Guam (1970), § 902; Guam Law Revision Commission.

COMMENT: The only substantive change from § 902 of the Probate Code of Guam (1970) is the addition of the language following the semicolon in the first sentence. The Commission has added this language to clarify the point that if the decedent has made provision by will for the compensation of the executor named therein, then the compensation provided for in the will is the sum total of such executor's compensation -- unless, of course, the executor named in the will properly renounces his claim for compensation under the will as provided for in proposed § 2801, *supra*.

§ 2807. Contracts for Higher Compensation Void. All contracts between a personal representative and an heir, devisee or legatee, for a higher compensation than that allowed by Sections 2803 and 2805 of this Title, shall be void.

SOURCE: Probate Code of Guam (1970), § 903.

§ 2809. Allowance on Commissions of Personal Representative.

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Any personal representative, at any time after six (6) months from the issuance of letters of testamentary, letters of administration or letters of administration with the will annexed, and upon such notice to the persons interested in the estate as the Superior Court shall require, may apply to the Superior Court for an allowance upon his commissions; and on the hearing the Superior Court shall make an order allowing him such portion of his commissions, for services rendered up to that time, as the Superior Court shall deem proper, and the portion so allowed may be thereupon charged against the estate.

SOURCE: Probate Code of Guam (1970), § 904.

§ 2811. Attorney's Fees.

(a) The attorney for the personal representative shall be allowed out of the estate, as fees for conducting the ordinary probate proceedings, the same amount as is allowed by Section 2803 of this Title as the commission to the personal representative; provided, that if the personal representative is an attorney, and such attorney or any member, employee or shareholder of his law firm, partnership or professional corporation serves as the attorney for the personal representative, then the commission which shall be allowed to the personal representative, combined with the fees which shall be allowed to the attorney for conducting the ordinary probate proceedings, shall be limited to one and one-half (1½) times the amount allowed by Section 2803 of this Title as the commission to the personal representative.

(b) Attorneys for personal representatives shall be allowed out of the estate, in addition to those fees provided in subsection (a) of this Section, such further amounts as the Superior Court may deem just and reasonable for extraordinary services.

SOURCE: Probate Code of Guam (1970), § 910; Guam Law Revision Commission.

COMMENT: The only substantive alteration made to § 910 of the Probate Code of Guam (1970) is the addition of the language following the semicolon in subsection (a). The purpose of this addition is to prevent the imposition of double commissions/fees for less than double work on the part of a personal representative cum attorney. Also see Comment to § 2803, supra.

§ 2813. Allowance on Attorney's Fees; Notice; Hearing.

Any attorney who has rendered services to a personal representative, at any time after six (6) months from the issuance of letters testamentary, letters of administration or letters of administration with the will

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annexed, and upon such notice to the personal representative and to the persons interested in the estate as the Superior Court shall require, may apply to the Superior Court for an allowance upon his fees; and on the hearing the Superior Court shall make an order requiring the personal representative to pay such attorney out of the estate such compensation, on account of services rendered up to that time, as the Superior Court shall deem proper, and such payment shall be made forthwith.

SOURCE: Probate Code of Guam (1970), § 911.

COMMENT: Aside from minor changes in language, § 2813 is substantially the same as § 911 of the Probate Code of Guam (1970). See *In the Matter of the Estate of Charles O. Kile*, District Court of Guam Civil Appeal No. 77-19A (January 8, 1979), which holds that the notice and hearing provisions of prior § 911 are mandatory on an attorney seeking an advance on his fees.
