

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80116-LL-97 (3/3)

Short Title: Commissions for Personal Representatives. (Public)

Sponsors: Representative Haire.

Referred to:

A BILL TO BE ENTITLED

AN ACT RELATING TO COMMISSIONS ALLOWED TO PERSONAL REPRESENTATIVES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-23-3 reads as rewritten:

"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty of misconduct or default.

(a) Personal representatives, collectors or public administrators shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law, which commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. Provided, however, when the gross value of an estate is two thousand dollars (\$2,000) or less, the clerk of superior court is authorized and empowered to fix the commission to be received by the personal representative, collector or public administrator in an amount as ~~he~~, the clerk of superior court, in ~~his~~ the clerk's discretion, deems just and adequate.

(b) In determining the amount of such commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be construed:

- 1 (1) To prevent the clerk of the superior court from allowing reasonable
2 sums for necessary charges and disbursements incurred in the
3 management of the estate; or
4 (2) To allow commissions on distribution of the shares of heirs or on
5 distribution of shares of devisees; or
6 (3) To abridge the right of any party interested in the administration of a
7 decedent's estate to appeal an order of the clerk of superior court to a
8 judge of superior court.

9 (d1) In determining the maximum commissions allowable pursuant to subsection
10 (a) of this section, the clerk of superior court is not required to reduce that amount by
11 the amounts paid for other professional services such as attorney's fees, accountant's
12 fees, and tax advisory fees, regardless of the aggregate amounts paid for professional
13 services, and even if the amounts paid for those professional services exceed the limit
14 fixed in subsection (a) of this section.

15 (e) No personal representative, collector or public administrator, who has been
16 guilty of such default or misconduct in the due execution of his the office of the
17 personal representative, collector or public administrator resulting in the revocation of
18 his the appointment of the personal representative, collector, or public administrator
19 under the provisions of G.S. 28A-9-1, shall be entitled to any commission under the
20 provisions of this section.

21 (f) For the purpose of computing commissions whenever any portion of the
22 dividends, interest, rents or other amounts payable to a personal representative, collector
23 or public administrator is required by any law of the United States or other
24 governmental unit to be withheld for income tax purposes by the person, corporation,
25 organization or governmental unit paying the same, the amount so withheld shall be
26 deemed to have been received and expended.

27 (g) The provisions of this section do not apply when the testator's will or a
28 contract specifies a stipulated amount or method or standard for determining the
29 compensation for the services rendered by the personal representative, including:

- 30 (1) A provision in the will or contract that the compensation of the
31 personal representative is to be determined by applying its regularly
32 adopted schedule of compensation in effect at the time of performance
33 of those services.
34 (2) A provision in the will or contract that the personal representative is to
35 receive "reasonable compensation" for those services or similar
36 language to that effect.

37 References to the term "contract" in this subsection mean a contract entered into
38 between the testator and the personal representative or entered into between the personal
39 representative and the beneficiary or beneficiaries whose shares would be charged with
40 the payment of compensation of the personal representative.

41 (h) Notwithstanding the provisions of subdivision (g)(2) of this section:

- 42 (1) When the will or contract provides that the personal representative is
43 to receive "reasonable compensation" or similar language to that
44 effect, the personal representative shall receive commissions as

1 determined under this section unless the personal representative and
2 the beneficiaries whose shares would be charged with the payment of
3 the personal representative's compensation consent in writing to the
4 specific amount that constitutes reasonable compensation.

5 (2) When the will or contract provides that compensation of the personal
6 representative shall be the amount "as provided by law," the
7 "maximum amount provided by law," or other similar language, that
8 language shall be construed as the intention that the personal
9 representative shall receive commissions as determined under this
10 section."

11 **SECTION 2.** This act becomes effective January 1, 2006, and applies to
12 commissions paid on or after that date.