

CHAPTER 150 - COMPENSATION AND ACCOUNTING

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COMMISSIONS

SECTION 150.010 Expenses and compensation of personal representative. The personal representative must be allowed all necessary expenses in the administration and settlement of the estate, and fees for services as provided by law, but if the decedent by will makes some other provision for the compensation of the personal representative, this shall be deemed a full compensation for those services, unless within 60 days after his appointment the personal representative files a renunciation, in writing, of all claim for the compensation provided by the will.

SECTION 150.020 General compensation.

1. If no compensation is provided by the will, or the personal representative renounces all claims thereto, fees must be allowed upon the whole amount of the estate which has been accounted for, less liens and encumbrances, as follows:

- (a) For the first \$15,000, at the rate of 4 percent.
- (b) For the next \$85,000, at the rate of 3 percent.
- (c) For all above \$100,000, at the rate of 2 percent.

2. The same fees must be allowed to the personal representative if there is no will.

3. If there are two or more personal representatives, the compensation must be apportioned among them by the tribal court according to the services actually rendered by each.

SECTION 150.030 Compensation for extraordinary services. Such further allowances may be made as the tribal court deems just and reasonable for any extraordinary services, such as:

1. Management, sales or mortgages of real or personal property.
2. Contested or litigated claims against the estate.
3. The adjustment and payments of extensive or complicated estate taxes.
4. Litigation in regard to the property of the estate.
5. The carrying on of the decedent's business pursuant to an order of the tribal court.
6. Such other litigation or special services as may be necessary for the personal representative to prosecute, defend or perform.

SECTION 150.040 Contracts for higher compensation void. A contract between a personal representative and an heir or devisee for a higher compensation than that allowed by [SECTION 150.020](#) and [150.030](#) is void.

SECTION 150.050 Allowance on compensation.

1. A personal representative, at any time after the issuance of letters and upon such notice to the interested persons as the tribal court requires, may apply to the tribal court for an allowance upon his fees.

2. On the hearing, the tribal court shall enter an order allowing him such portion of the fees, for services rendered up to that time, as the tribal court deems proper, and the portion so allowed may be charged against the estate.

ATTORNEY'S FEES

SECTION 150.060 Attorneys for personal representatives and minor, absent, unborn, incapacitated or nonresident heirs.

1. Attorneys for personal representatives are entitled to reasonable compensation for their services, to be paid out of the decedent's estate. The amount must be fixed by agreement between the personal representative and the attorney, subject to approval by the tribal court, after petition, notice and hearing as provided in subsection 2. If the personal representative and the attorney fail to reach agreement, or if the attorney is also the personal representative, the amount must be determined and allowed by the tribal court. The petition must contain specific and detailed information supporting the entitlement to compensation, including:

- (a) Reference to time and hours;
- (b) The nature and extent of services rendered;

- (c) Claimed ordinary and extraordinary services;
- (d) The complexity of the work required; and
- (e) Other information considered to be relevant to a determination of entitlement.

2. The clerk shall set the petition for hearing, and the petitioner shall give notice of the petition to the personal representative if he is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in [SECTION 155.010](#). If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the fee which the tribal court will be requested to approve or allow.

3. On similar petition, notice and hearing, the tribal court may make an allowance to an attorney for services rendered up to a certain time during the proceedings.

4. An heir or devisee may file objections to a petition filed pursuant to this section, and the objections must be considered at the hearing.

5. Except as otherwise provided in this subsection, an attorney for minor, absent, unborn, incapacitated or nonresident heirs is entitled to compensation primarily out of the estate of the distributee so represented by him in those cases and to such extent as may be determined by the tribal court. If the tribal court finds that all or any part of the services performed by the attorney for the minor, absent, unborn, incapacitated or nonresident heirs was of value to the decedent's entire estate as such and not of value only to those heirs, the tribal court shall order that all or part of the attorney's fee be paid to the attorney out of the money of the decedent's entire estate as a general administrative expense of the estate. The amount of these fees must be determined in the same manner as the other attorney's fees provided for in this section.

RENDERING OF EXHIBITS AND ACCOUNTS

SECTION 150.070 Liability of personal representative; accounting required for property sold over inventoried value.

1. A personal representative is accountable for the whole estate that comes into the possession of the personal representative at the value of the appraisal contained in the inventory, except as otherwise provided in this title, and for all the interest, profit and income of the estate.

2. A personal representative is not accountable for any debts due the decedent that remain uncollected without his fault.

3. A personal representative shall not make profit by the increase nor suffer loss by the decrease or destruction of any part of the estate without his fault. The personal representative shall account for the excess when any part of the estate is sold for more than the inventoried value and, if any assets are sold for less than that value, the personal representative is not responsible for the loss if the sale has been made according to law.

SECTION 150.075 Waiver of accounting. Notwithstanding any other provision of this chapter, the tribal court may waive the requirement of any accounting if all interested persons agree in writing to the waiver.

SECTION 150.080 First account: Filing and contents. Within 6 months after the appointment of a personal representative, or sooner if required by the tribal court, upon its own motion or upon the petition of an interested person, a personal representative shall file with the clerk the first, verified account, showing:

- 1. The amount of money received and expended by him.
- 2. The claims filed or presented against the estate, giving the name of each claimant, the nature of his claim, when it became due or will become due, whether it was allowed or rejected by him, or not yet acted upon.
- 3. All other matters necessary to show the condition of the estate.

SECTION 150.100 Penalties for failure to file first account.

1. If the personal representative fails to file the first account within the time specified in [SECTION 150.080](#), the tribal court shall order a citation to issue requiring the personal representative to file the account by a time to be stated in the citation, as fixed by the tribal court, or appear and show cause why the personal representative should not be compelled to file the account.

2. If the personal representative fails to file the account by the time stated, or show cause why not, the tribal court, by attachment or other proper process, may compel the personal representative to file such an account or may

revoke the letters, or both, and like action may be taken in reference to any subsequent account the personal representative may be required to file.

SECTION 150.105 Annual account: Contents. Until all remaining property is delivered pursuant to an order of final distribution, a personal representative shall file with the tribal court, annually, an account showing the income he has received, what expenditures he has made, what property has been disbursed, or sold and at what price, and the nature and value of the property remaining on hand.

SECTION 150.110 Final account: Filing; penalties for failure to file.

1. If all the property of an estate has been sold or there is money available for the payment of all debts due by the estate, and the estate is in a proper condition to be closed, the personal representative shall file a final account and request a settlement of his administration.

2. If the personal representative neglects to file a final account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be filed by the personal representative, and all the provisions relative to the first account, and the notice and settlement thereof, apply to the account for final settlement.

SECTION 150.115 Supplementary account to final account. A supplementary account of any receipts and disbursements by the personal representative since the filing of his final account must be filed before or at the time of making a final distribution, unless the distribution is only of real property. A settlement of the supplementary account, together with an estimate of the expense of closing the estate, must be entered by the tribal court and included in the order. The tribal court may order notice of the settlement of the supplementary account.

SECTION 150.120 Accounting when authority of personal representative ceases. If the authority of a personal representative ceases or is revoked for any reason, the personal representative may be cited by the tribal court to account, at the instance of the person succeeding to the administration of the same estate, in like manner as the personal representative might have been by any interested person during the term of the appointment.

SECTION 150.130 Accounts of deceased or incapacitated personal representative: Accounting by personal representative, guardian or attorney.

1. If a personal representative dies or becomes incapacitated, the accounts may be presented to the tribal court by the personal representative or guardian of the former personal representative. Upon petition of a successor to the deceased or incapacitated personal representative, the tribal court shall compel the personal representative or guardian to file an account of the administration. The tribal court shall settle such an account as in other cases.

2. In the absence of a personal representative or guardian of the deceased or incapacitated personal representative, the tribal court may compel an attorney to file an account of the administration to the extent that the attorney has information or records available for that purpose. The account of the attorney need not be verified. A fee must be allowed the attorney by the tribal court for this extraordinary service.

SECTION 150.140 Revocation of letters when personal representative absconds and fails to account. If the personal representative absconds, or if, after reasonable diligence, he cannot be found, so that a citation cannot be personally served, and the personal representative neglects to file an account within 20 days after the time fixed for that purpose, the letters must be revoked.

SECTION 150.150 Vouchers for payments: Filing not required; examination and audit; lost or unavailable.

1. A personal representative need not file vouchers with the tribal court to substantiate payments made in the administration of the estate, but shall retain possession of the vouchers and permit their examination by the tribal court or an interested person.

2. The tribal court, on its own motion or on application ex parte for good cause by an interested person, may order production for examination and audit the vouchers that support an account specified in the order.

3. If any vouchers are lost, or for other good reason cannot be produced on settlement of an account, the payment may be proved by the oath of one competent witness. If it is proven that vouchers for any disbursements have been lost or destroyed, that it is impossible to obtain duplicates, and that the expenses were paid in good faith and were legal charges against the estate, the personal representative must be allowed those expenses.

SECTION 150.160 Account and petition for settlement: Hearing and notice.

1. If an account and a petition for settlement thereof is filed, the clerk shall set the petition for hearing and the petitioner shall give notice for the period and in the manner required by [SECTION 155.010](#).

2. If the account is for a final settlement and a petition for the final distribution of the estate is filed with the account, the notice of settlement must so state, and on the settlement of the account, distribution of the estate to those entitled thereto may be made as soon as possible.

SECTION 150.170 Contest of account: Rights of interested person; hearing.

1. An interested person may appear and file written objections to the account and contest it.
2. Upon the hearing, the personal representative may be examined under oath concerning the account and the property and effects of the decedent and the disposition thereof.
3. All matters, including allowed claims not addressed in the settlement of any former account and not reduced to judgment, may be contested for cause shown.

SECTION 150.180 Appointment of attorney to represent minor, unborn, incapacitated or absent heirs and devisees; fees.

1. If a minor is interested in the estate who has no legally appointed guardian, the tribal court may appoint a disinterested attorney to represent him who may contest the account as any other interested person might contest it.
2. The tribal court may also appoint an attorney to represent unborn, incapacitated or absent heirs and devisees.
3. An attorney so appointed must be paid as provided in [SECTION 150.060](#).

SECTION 150.190 Proof of notice necessary before allowance of account. No account may be allowed by the tribal court until it is first proved that the notice required by this chapter has been given, and the order must show that such proof was made to the satisfaction of the tribal court. The order is conclusive evidence of the fact.

SECTION 150.200 Allowance and confirmation of account. If an account comes before the tribal court for allowance and there are no objections filed by any interested person, and the account is made to appear to the tribal court to be correct and according to law, the tribal court shall allow and confirm the account.

SECTION 150.210 Effect of order settling account. An order settling and allowing an account, when it becomes final, is conclusive against all interested persons, but a person under legal disability has the right to move for cause to reopen and examine the account, or to proceed by action against the personal representative or his sureties at any time before final distribution, and in any such action, the order is prima facie evidence of the correctness of the account.

PAYMENT OF DEBTS, EXPENSES AND CHARGES

SECTION 150.225 Payments to be made according to will; sources of payment if provision or property of will insufficient.

1. If a testator makes provision by will, or designates property to be appropriated, for the payment of debts, the expenses of administration or family allowances, they must be paid according to that provision or out of the property thus appropriated, to the extent that the provision or property is sufficient.

2. To the extent the provision or property is insufficient, any portion of the estate not disposed of by the will must be appropriated for that purpose. To the extent that is not sufficient, the property given to residuary devisees, and thereafter all other property devised, is liable for those obligations in proportion to the value or amount of the

respective devises, but specific devises are exempt from that liability if exemption appears to the tribal court necessary to carry out the intent of the testator and there is other sufficient property.

SECTION 150.230 Duty to pay certain expenses, allowances, debts and claims upon receipt of sufficient money; discretion to pay certain smaller debts; funeral expenses and expenses of last illness not charged to community share of surviving spouse.

1. The personal representative shall, as soon as sufficient money is available, upon receipt of a sworn statement of the amount due and without any formal action upon creditors' claims, pay the funeral expenses, the expenses of the last illness, the allowance made to the family of the decedents, and wage claims to the extent of \$600 of each employee of the decedent for work done or personal services rendered within 3 months before the death of the employer, but may retain the necessary expenses of administration.

2. The personal representative is not obliged to pay any other debt or any devise until the payment is ordered by the tribal court.

3. The personal representative may, before tribal court approval or order, pay any of the decedent's debts amounting to \$500 or less if:

- (a) Claims for payment thereof have been properly filed in the proceedings;
- (b) The debts are legally due; and
- (c) The estate is solvent.

↳ In settling the account of the estate, the tribal court shall allow any such payment if the conditions of paragraphs (a), (b) and (c) have been met. Otherwise, the personal representative is personally liable to any person sustaining loss or damage as a result of the payment.

4. Funeral expenses and expenses of a last illness are debts payable out of the estate of the decedent and must not be charged to the community share of a surviving spouse, whether or not the surviving spouse is financially able to pay those expenses and whether or not the surviving spouse or any other person is also liable therefor.

SECTION 150.240 Order of tribal court for payment of debts; treatment of classes of creditors; discharge of personal representative upon compliance with order if property of estate exhausted.

1. Upon the settlement of any account of the personal representative after the time to file claims has expired, the tribal court shall order the payment of the debts as the circumstances of the estate permit. If there is not sufficient money to pay all of the debts, the order must specify the sum to be paid to each creditor.

2. No creditor of any one class may receive any payment until all those of a preferred class are fully paid, and if the estate is insufficient to pay all debts of any one class, each creditor of that class must be paid a dividend in proportion to that creditor's claim.

3. If the property of the estate is exhausted by the payment ordered, the account constitutes a final account, and the personal representative is entitled to his discharge upon filing the necessary proof showing that he has complied with the order.

SECTION 150.250 Claims not yet due and contingent or disputed claim.

1. If there is a claim not due, or any contingent or disputed claims against the estate, the amount thereof, or such part of the amount as the holder would be entitled to if the claim were due, established or absolute, must be paid to the clerk and there remain, to be paid over to the holder when the holder becomes entitled thereto or, if the holder fails to establish a claim, to be paid over or distributed as the circumstances of the estate require.

2. If a creditor whose claim has been allowed but is not yet due appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly.

3. The payments provided for in this section are not to be made if the estate is insolvent unless a pro rata distribution is ordered.

SECTION 150.260 Liability of personal representative.

1. If an order is entered by the tribal court for the payment of creditors, the personal representative is personally liable to each creditor for the amount of his claim, or the dividends thereon, and execution may be issued upon the order as upon a judgment in any other action, in favor of each creditor, and the same proceedings may be had under the execution as if it had been issued upon a judgment.

2. The personal representative is also liable on his bond to each creditor.

SECTION 150.270 Claim not included in order of payment. After the accounts of the personal representative have been settled and an order entered for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, nor upon the heirs or devisees to contribute to the payment of the claim, but if the personal representative has failed to give the notice to creditors, as prescribed by law, that creditor may recover on the bond of the personal representative the amount for which the claim would properly have been allowed.

SECTION 150.280 Closing administration.

1. If all the debts and liabilities of an estate have been paid, and the estate is in a condition to be closed, the TRIBAL COURT shall direct the payment of devises and the distribution of the estate among those entitled as provided in chapter [151](#).

2. If the estate is not in a condition to be closed, the tribal court shall direct the payment of devises and the distribution of the estate among those entitled at such time as it thereafter may be in a condition to be closed.