## § 2307. Commissions of fiduciaries other than trustees

**1.** Except as otherwise provided in paragraph (f) of this subdivision on the settlement of the account of any fiduciary other than a trustee, a donee of a power during minority or a donee of a power in trust, the court must allow to him or her the reasonable and necessary expenses actually paid by him or her and if he or she be an attorney of this state and shall have rendered legal services in connection with his or her official duties, such compensation for his or her legal services as appear to the court to be just and reasonable and in addition thereto it must allow to the fiduciary for his or her services as fiduciary, and if there be more than one, apportion among them according to the services rendered by them respectively the following commissions:

(a) For receiving and paying out all sums of money not exceeding $100,000 at the rate of 5 percent.

(b) For receiving and paying out any additional sums not exceeding $200,000 at the rate of 4 percent.

(c) For receiving and paying out any additional sums not exceeding $700,000 at the rate of 3 percent.

(d) For receiving and paying out any additional sums not exceeding $4,000,000 at the rate of 2 1/2 percent.

(e) For receiving and paying out all sums above $5,000,000 at the rate of 2 percent.

(f) If the will makes provisions for specific rates or amounts of commissions for a corporate executor, or, if a corporate executor has agreed to accept specific rates or amounts of commissions, or, if the will provides that a corporate executor shall receive commissions as provided or stipulated in the corporate executor's published schedule of fees in effect at such time or times such commissions become payable, including a stipulated minimum commission and asset base for calculating such commissions, a corporate executor shall be entitled to be compensated in accordance with such provisions, agreement or schedule, as the case may be, even though such provisions, agreement or schedule are not executed in accordance with the provisions required for wills and are not attested as required for the recording of deeds in this state.

Such commission shall be computed separately for receiving and for paying out sums of money, at one-half the statutory rates for receiving and at one-half the statutory rates for paying out sums of money.

2. The value of any property, to be determined in such manner as directed by the court and the increment thereof, received, distributed or delivered, shall be considered as money in computing commissions. But this shall not apply in case of: (a) a specific legacy or devise; or (b) the recovery of awards from the September eleventh victim compensation fund of two thousand one established pursuant to title IV of the federal air transportation safety and system stabilization act, public law 107-42, as amended, which awards shall be valued at zero for purposes of this section. Whenever any portion of the dividends, interest or rent payable to a fiduciary other than a trustee is required by any law of the United States or other governmental unit to be withheld by the person paying it for income tax purposes, the amount so withheld shall be deemed to have been received and paid out.

3. In addition to the compensation hereinbefore provided the court may allow to the guardian of the person a sum of money to be fixed by it and paid by the guardian of the property out of the funds in his hands as compensation for services of the guardian of the person up to the time of the allowance.

4. If a guardian is required to receive income and pay it over and files an annual account as required by 1719 of all his receipts and disbursements, he shall be allowed and may retain the same commission on the amount of income so accounted for as he would be allowed upon principal on a judicial settlement. If the guardian fails to file an annual account as required by 1719 the guardian, notwithstanding his failure to retain in full each year the commissions on income herein prescribed, may be allowed upon the judicial settlement of his account any commissions due and theretofore uncollected by him provided that on such settlement there is then on hand income sufficient for that purpose derived from the estate during the respective years for which further commissions are claimed. If the income on hand for any given year is insufficient to pay the uncollected commissions on the income of that

year the deficiency shall not be supplied from income on hand in respect of any other year.

5. Subject to 2313 regarding multiple commissions of executors or trustees under wills of persons dying, or lifetime trusts established, after August 31, 1993, if the gross value of the principal of the estate accounted for amounts to $300,000 or more each fiduciary is entitled to the full compensation on principal and income allowed herein to a sole fiduciary unless there be more than 3, in which case the compensation to which 3 would be entitled must be apportioned among them according to the services rendered by them respectively unless the fiduciaries shall have agreed in writing among themselves to a different apportionment which, however, shall not provide for more than one full commission for any one of them. If the gross value of the principal of the estate accounted for is:

(a) less than $100,000 and there is more than 1 fiduciary the full compensation for receiving and paying out principal and income allowed herein to a sole fiduciary must be apportioned among them according to the services rendered by them respectively, or

(b) $100,000 or more but less than $300,000 each fiduciary is entitled to the full compensation for receiving and paying out principal and income allowed herein to a sole fiduciary unless there are more than 2 fiduciaries in which case the full compensation for receiving and paying out principal and income allowed herein to 2 fiduciaries must be apportioned among them according to the services rendered by them respectively,

unless the fiduciaries shall have agreed in writing between or among themselves to a different apportionment which, however, shall not provide for more than one full commission for any one of them. Where the will provides a specific compensation to a fiduciary other than a trustee he is not entitled to any allowance for his services unless by an instrument filed with the court within 4 months from the date of his letters he renounces the specific compensation. Where successive or different letters are issued to the same person on the estate of the same decedent, including a case where letters of administration are issued to a person who has previously been appointed a temporary administrator, he is entitled to a total compensation equal to the

compensation allowed for the full administration of the estate by a fiduciary acting in a single capacity only. Such total compensation shall be payable in such proportions and upon such accounting as shall be fixed by the court settling the account of the person holding successive or different letters but no paying out commissions shall be allowed except upon such sums as shall actually have been paid out at the time of the respective decrees for debts, expenses of administration or to beneficiaries.

6. Where a fiduciary is for any reason entitled or required to collect the rents of and manage real property he shall be allowed and may retain for such services 5 per cent of the gross rents collected therefrom in addition to the commissions herein provided, but there shall be only one such additional commission regardless of the number of fiduciaries. In the event there are 2 or more fiduciaries the additional commission herein provided for must be apportioned among them according to the services rendered by them respectively unless they shall have agreed in writing among themselves to a different apportionment.

7. A fiduciary other than a trustee who has been acting prior to July 1, 1956 shall be entitled to have commissions on principal and income theretofore received by him computed, allowed and paid under the methods and at the rates set forth herein, except as follows:

(a) If prior to July 1, 1956 a fiduciary other than a trustee has been allowed or has retained commissions for receiving and paying out any item of principal or income he shall be entitled to no further commissions on the item.

(b) If prior to July 1, 1956 a fiduciary other than a trustee has been allowed or has retained any commissions on any item of principal or income received but not paid out by him he shall be entitled to no further commissions for receiving the item.