

§ 7-601. Compensation of personal representative and special administrator.

(a) *Right to compensation.*- A personal representative or special administrator is entitled to reasonable compensation for services. If a will provides a stated compensation for the personal representative, additional compensation shall be allowed if the provision is insufficient in the judgment of the court. The personal representative or special administrator may renounce at any time all or a part of the right to compensation.

(b) *Computation of compensation.*- Unless the will provides a larger measure of compensation, upon petition filed in reasonable detail by the personal representative or special administrator the court may allow the commissions it considers appropriate. The commissions may not exceed those computed in accordance with the table in this subsection.

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| If the property subject to | The commission may |
| administration is: | not exceed: |
| Not over \$20,000 | 9% |
| Over \$20,000 | \$1,800 plus 3.6% of the excess over \$20,000 |

(c) *Appeal.*- Within 30 days a personal representative, special administrator, or unsuccessful expectant may appeal the allowance to the circuit court, which shall determine the adequacy of the commissions and increase, but not in excess of the above schedule, or decrease them.

(d) *Commission on sale of real property.*- If the personal representative retains the services of a licensed real estate broker to aid in the sale of real property, the commissions paid to the real estate broker are an expense of administration and may not be deducted from the commissions allowed by the court to the personal representative in accordance with subsection (a) of this section.

[An. Code 1957, art. 93, § 7-601; 1974, ch. 11, § 2; ch. 579; 1975, ch. 428; 1978, ch. 247; 1989, ch. 656, § 2; 1991, ch. 216.]

Maryland Law Review.For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

Travel expenses. - Travel expenses incurred in course of ordinary business of administering estate should not be allowed as costs of administration in addition to the personal representative's commissions. 59 Op. Att'y Gen. 613 (1974).

Responsibility of fiduciaries, attorneys in particular. - Fiduciaries in general, and attorneys in particular, must remember that the entrustment to them of the money and property of others involves a responsibility of the highest order; therefore, they must carefully administer and account for those funds and appropriating any part of those funds to their own use and benefit without clear authority to do so cannot be tolerated. Att'y Griev. Comm'n v. Owrutsky, 322 Md. 334, 587 A.2d 511 (1991).

Approval under this section or § 7-602 required. - An attorney has no right to estate funds, either as a commission or as an attorney's fee, unless and until an approval pursuant to this section or § 7-602 of this article. Att'y Griev. Comm'n v. Owrutsky, 322 Md. 334, 587 A.2d 511 (1991).

Commissions. - Commissions are compensation allowed to executor or administrator for services performed in settlement of estate, not merely for statement of account. Crothers v. Crothers, 123 Md. 603, 91 A. 691 (1914).

Commissions are designed to compensate administrator for ordinary work of administering. - The allowance of commissions is designed to compensate an administrator for all of the ordinary work of administering. Talbert v. Reeves, 211 Md. 275, 127 A.2d 533 (1956); Lehman v. Kairys, 217 Md. 359, 142 A.2d 546 (1958).

Right to commissions. - The right to commissions does not arise from contract, but is founded on statute. Gaines v. Reutch, 64 Md. 517, 2 A. 913 (1886); St. Mary's Female Orphan Asylum v. Hankey, 137 Md. 569, 113 A. 100 (1921).

Commissions not earned until account passed. - Commissions are not earned until administration account is passed. Kealhofer v. Emmert, 79 Md. 248, 29 A. 68 (1894).

Only orphans' court has jurisdiction with respect to commissions. - With respect to commissions, no other court than the orphans' court has jurisdiction. Tsaraclis v. Characklis, 176 Md. 28, 3 A.2d 725 (1939); Cearfoss v. Snyder, 182 Md. 565, 35 A.2d 235 (1943).

Mandatory duty on court to fix commissions. - It is mandatory upon the orphans' court to fix the amount of the commissions an administrator should receive. Beachley v. Bollinger's Estate, 119 Md. 151, 86 A. 135 (1912).

Amount is within court's discretion. - The measure of commissions of administrator, within statutory limits, rests regularly in the discretion of the orphans' court. Newton v. Johnson, 173 Md. 166, 195 A. 312 (1937); Tsaraclis v. Characklis, 176 Md. 28, 3 A.2d 725 (1939).

The determination of the amount of commissions of executors and administrators is entirely within the

discretion of the orphans' court, except that the exercise of discretion is limited by this section. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

For discretion of orphans' court in fixing commissions, see also *Brown v. Tydings*, 149 Md. 22, 130 A. 337 (1925); *York v. Maryland Trust Co.*, 150 Md. 354, 133 A. 128 (1926).

Amount of commission must be established by the orphans' court in accordance with (b) based on what it finds appropriate for the services actually rendered to the estate by co-personal representative, not by how much additional tax refund would be generated. *Brodie v. Snider*, 74 Md. App. 194, 536 A.2d 1187 (1988).

Within limits set by this section. - This section limits the amount which the orphans' court can pay executors and administrators. *Cearfoss v. Snyder*, 182 Md. 565, 35 A.2d 235 (1943).

Attorney violated Md. R. Prof. Conduct 1.5 when the amount of attorney's fees she collected for representing a decedent's estate as co-personal representative far exceeded the fee customarily charged for estates of similar size, under § 7-602 of this subtitle and this section. That a portion of the fees collected was for reducing the amount due on a credit card balance was not reasonable in light of the time and labor she must have spent in reducing the balance, which could not have been more than a couple of hours on the phone with a credit card company representative. *Att'y Griev. Comm'n v. Kendrick*, 403 Md. 489, 943 A.2d 1173 (2008).

Which discretion is not affected by will or by failure of executor to claim commissions. - No provision of testator can affect the discretion vested in the orphans' court to fix commissions within limits prescribed by this section, and failure of executor to claim commissions is immaterial. *Nicholls v. Hodges*, 26 U.S. (1 Pet.) 562, 7 L. Ed. 263 (1828); *McKim v. Duncan*, 4 Gill 72 (1846); *In re Baxley's Estate*, 47 Md. 555 (1878); *Handy v. Collins*, 60 Md. 229 (1883); *Dalrymple v. Gamble*, 68 Md. 156, 11 A. 718 (1887); *In re Watts' Estate*, 108 Md. 696, 71 A. 316 (1906); *Ringgold's Case*, 1 Bland 5 (1924); *Wilson v. Wilson*, 3 G. & J. 20 (1930).

For an agreement to serve as administrator without commission, see *Ridgely v. Gittings*, 2 H. & G. 58 (1827); *Mott v. Fowler*, 85 Md. 676, 37 A. 717 (1897).

Discretion is not subject to appeal. - Since allowance of commissions to administrator is within discretion of court, its action is not subject to appeal. *Beachley v. Bollinger's Estate*, 119 Md. 151, 86 A. 135 (1912).

It is not within the province of the Court of Appeals to review commissions of executors as fixed by orphans' court within statutory limits. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949); *Riddleberger v. Goeller*, 263 Md. 44, 282 A.2d 101 (1971).

For appeal, see also *St. Mary's Female Orphan Asylum v. Hankey*, 137 Md. 569, 113 A. 100 (1921); *Brown v. Tydings*, 149 Md. 22, 130 A. 337 (1925).

Appeal will lie where orphans' court transcends its limited power. - While it is not within the province of the Court of Appeals to review the commissions of executors and administrators as fixed by the orphans' court within the limits prescribed by this section, the Court of Appeals may review a decision of the orphans' court which transcends its limited power in this respect. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

Power of orphans' court to reduce commissions originally fixed. - Orphans' court has power to allow commissions within limits prescribed and to review its action on application within reasonable time, and to reduce the commissions originally fixed, since they are not earned until administration account is passed. *Harlan v. Hunter*, 170 Md. 513, 185 A. 327 (1936).

Orphans' Court may, *sua sponte*, review and then reduce its previous award of commissions to a personal representative while an estate is still open. *Peterson v. Orphans' Court for Queen Anne's County*, 160 Md. App. 137, 862 A.2d 1050 (2004).

On what assets commissions are allowed. - The executor is not entitled to commissions on open accounts, bills, etc., except upon the sum collected or upon real value when transferred to parties entitled. *Frank v. Wareheim*, 177 Md. 43, 7 A.2d 186 (1939).

An executor will not be allowed commissions on notes or bonds for payment of money unless he collects same; contra as to stocks and bonds payable to bearer, and having a market value. *Handy v. Collins*, 60 Md. 229 (1883).

Where an executor who is chargeable with the investment of all the moneys of an estate, and who, on finding a portion of the moneys already profitably invested in notes, charges himself therewith, is entitled to his commissions on the notes even though he has not collected them since their real value is ascertainable by appraisal. *Hardt v. Birely*, 72 Md. 134, 19 A. 606 (1890).

Practice of orphans' court of approving inventories in which whole estate is returned regardless of liens and claims, and of fixing commission based on inventory, was held not at variance with statutes. *York v. Maryland Trust Co.*, 150 Md. 354, 133 A. 128 (1926).

Out-of-state assets. - See *York v. Maryland Trust Co.*, 150 Md. 354, 133 A. 128 (1926).

One administrator not entitled to entire commission. - One administrator is not entitled to entire commission because he did all the work. *Richardson v. Stansbury*, 4 H. & J. 275 (1815). But see *Brown v. Stewart*, 4 Md. Ch. 368 (1853).

Apportionment of commissions among successive representatives. - Orphans' court may not allow commissions in excess of percentages specified in this section; such commissions should be apportioned among successive personal representatives. *St. Mary's Female Orphan Asylum v. Hankey*, 137 Md. 569, 113 A. 100 (1921).

Testator may leave greater than statutory commission. - This section does not prevent a testator from leaving to his executor more than the statutory commissions, either in the form of a bequest or by means of larger commissions than are allowed by the statute, for a testator has the right to leave his property as he sees fit. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

Testator may not deprive executor of commission. - But a testator cannot by any provision of his will deprive his executor of commissions allowed by this section, for such a privilege would have the

effect of repealing this section. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

Even the testator cannot deprive a personal representative of his or her right to commissions, for such a privilege would have the effect of repealing the statute. *Brodie v. Snider*, 74 Md. App. 194, 536 A.2d 1187 (1988).

Will held not to prohibit allowance of commissions. - A testator by his will and a codicil thereto, which documents were not inconsistent or contradictory and could be read together, did not attempt to prohibit the allowance of commissions to a child who was one of the executors, where he provided merely that if a child received any commissions, his other children must be given an equal amount. *Estate of Carlin v. Fischer*, 212 Md. 526, 129 A.2d 827 (1957).

Effect of bequest in lieu of commission to one of two executors. - Where the will contains a bequest to one of two executors in lieu of commissions, the other executor can only be allowed one half of the maximum stated in this section. *Lee v. Lee*, 6 G. & J. 316 (1834).

Bequest must be expressly made in lieu of compensation. - This section does not apply unless bequest is expressly made in lieu of compensation as executor, and even then discretionary power is left in orphans' court provided the maximum of 10% be not exceeded. *Handy v. Collins*, 60 Md. 229 (1883).

Legacy held to have been given in lieu of commissions. - See *Renshaw v. Williams*, 75 Md. 498, 23 A. 905 (1892).

What commissions are allowed and disallowed. - See *Crothers v. Crothers*, 123 Md. 603, 91 A. 691 (1914).

Broker's commission not deducted from personal representative's commission. - All subsection (d) of this section does is provide that any broker's commission must be treated as an administration expense and not deducted from a commission allowed the personal representative. It does not deny a commission to a personal representative on real property sold with the aid of a real estate broker. *Estate of Simon*, 294 Md. 520, 451 A.2d 907 (1982).

Commission on sale of real property computed on gross proceeds. - Compliance with this section providing for commission to a personal representative on the sale of real property requires allowance of commission computed on the gross proceeds of sale, i.e., the amount payable under the contract of sale before any deductions for the expenses of sale. 61 Op. Att'y Gen. 869 (1976).

Waiver of right to commission. - Two of three personal representatives could not join together to waive the other personal representative's right to a commission. *Brodie v. Snider*, 74 Md. App. 194, 536 A.2d 1187 (1988).

Direct appeal upon contention that orphans' court acted contrary to law. - This section does not provide the exclusive appeal procedure in cases involving disputes concerning commissions; rather, the

right of direct appeal under § 12-501 of the Courts Article exists where it is contended that the orphans' court acted contrary to law. *In re Estate of Kinstendorff*, 37 Md. App. 79, 375 A.2d 55 (1977).

When commissions are forfeited. - See *Kealhofer v. Emmert*, 79 Md. 248, 29 A. 68 (1894).

Executor held not entitled to additional compensation. - An executor was not entitled to additional compensation because a portion of estate passed through his hands as administrator pendente lite. *Renshaw v. Williams*, 75 Md. 498, 23 A. 905 (1892).

Applied in *Att'y Griev. Comm'n v. Abb*, 306 Md. 636, 510 A.2d 1087 (1986); *Beyer v. Morgan State Univ.*, 369 Md. 335, 800 A.2d 707 (2002).

Stated in *Chesley v. Goldstein & Baron, Chtd.*, 145 Md. App. 605, 806 A.2d 296 (2002), *aff'd*, 375 Md. 244, 825 A.2d 985 (2003).

Cited in *Att'y Griev. Comm'n v. Mason*, 295 Md. 49, 453 A.2d 143 (1982); *Goldstein & Baron Chtd. v. Chesley*, 375 Md. 244, 825 A.2d 985 (2003); *Att'y Griev. Comm'n v. Thompson*, 376 Md. 500, 830 A.2d 474 (2003); *Williamson v. Nat'l Grange Mut. Ins. Co.*, 166 Md. App. 150, 887 A.2d 665 (2005); *Att'y Griev. Comm'n v. Edib*, 415 Md. 696, 4 A.3d 957 (2010).

§ 7-602. Compensation for services of an attorney.

(a) *In general.*- An attorney is entitled to reasonable compensation for legal services rendered by him to the estate and/or the personal representative.

(b) *Petition.*- Upon the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services. The compensation shall be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney.

(c) *Considered with commissions.*- If the court shall allow a counsel fee to one or more attorneys, it shall take into consideration in making its determination, what would be a fair and reasonable total charge for the cost of administering the estate under this article, and it shall not allow aggregate compensation in excess of that figure.

[An. Code 1957, art. 93, § 7-602; 1974, ch. 11, § 2; ch. 763.]

"Estate" defined. - The word "estate" means, in the testamentary law, such property that passes, upon death, to the personal representative of the decedent. *Gradman v. Brown*, 183 Md. 634, 39 A.2d

808 (1944); Riddleberger v. Goeller, 263 Md. 44, 282 A.2d 101 (1971).

Power of court is basically statutory. - The power of an orphans' court to direct the payment of a counsel fee out of the corpus of an estate is basically statutory. Lusby v. Nethken, 262 Md. 584, 278 A.2d 552 (1971).

Jurisdiction of orphans' court. - The orphans' court has exclusive jurisdiction to review and approve requests for payment of attorney's fees related to a personal injury award or settlement received after the death of the plaintiff. This review should occur even if the estate is small and regardless of when legal services are rendered. 90 Op. Att'y Gen. 145 (Nov. 3, 2005).

The power of an orphans' court to allow counsel fees is derived from statute. Wolfe v. Turner, 267 Md. 646, 299 A.2d 106 (1973).

Responsibility of fiduciaries, attorneys in particular. - Fiduciaries in general, and attorneys in particular, must remember that the entrustment to them of the money and property of others involves a responsibility of the highest order; therefore, they must carefully administer and account for those funds and appropriating any part of those funds to their own use and benefit without clear authority to do so cannot be tolerated. Att'y Griev. Comm'n v. Owrutsky, 322 Md. 334, 587 A.2d 511 (1991).

Approval under this section or § 7-601 required. - An attorney has no right to estate funds, either as a commission or as an attorney's fee, unless and until an approval pursuant to § 7-601 of this article or this section. Att'y Griev. Comm'n v. Owrutsky, 322 Md. 334, 587 A.2d 511 (1991).

Elements to determine reasonable counsel fees. - The principal elements to be considered in determining the reasonableness of counsel fees are the amount involved, the character and extent of the services, the time employed, the importance of the question and the fidelity and diligence of the attorney. American Jewish Joint Distrib. Comm. v. Eisenberg, 194 Md. 193, 70 A.2d 40 (1949).

Standards for judging a proper fee include: (1) the time and labor involved, the novelty and difficulty of the question involved, and the skill requisite properly to conduct the cause; (2) the customary charges of the bar for similar services; and (3) the amount involved in the controversy and the benefits resulting to the client from the services. Riddleberger v. Goeller, 263 Md. 44, 282 A.2d 101 (1971).

The principal elements to be considered in determining reasonableness are the amount involved, the character and extent of the services, the time employed, the importance of the question, the benefit to the estate and the customary charges made for similar services. Wolfe v. Turner, 267 Md. 646, 299 A.2d 106 (1973).

Adherence to standards must be controlling factor. - An estate's counsel fee is an area where adherence to standards, and not reliance on mere numbers, must be the controlling factor. Wolfe v. Turner, 267 Md. 646, 299 A.2d 106 (1973).

Discretion of court. - In allowing a fee for legal services rendered to an estate in a given case, sound judgment and discretion must be exercised under all the circumstances, and an appeal to the Court of Appeals will lie from a breach of discretion. Gradman v. Brown, 183 Md. 634, 39 A.2d 808

(1944).

The orphans' court, in allowing counsel fees, must exercise sound judgment and discretion, and from a breach of discretion an appeal will lie to the Court of Appeals. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

The allowance of a counsel fee by an orphans' court requires the exercise of judgment and discretion. *Lusby v. Nethken*, 262 Md. 584, 278 A.2d 552 (1971).

In deciding the proper fee the court must exercise sound judgment and discretion, basing its determination upon the evidence offered for its instruction and guidance and a consideration of the tests held generally applicable in fixing the size of a fee; and from a breach of discretion on its part, an appeal will lie to the Court of Appeals. *Riddleberger v. Goeller*, 263 Md. 44, 282 A.2d 101 (1971).

The allowance requires the exercise of discretion and judgment. *Wolfe v. Turner*, 267 Md. 646, 299 A.2d 106 (1973).

The allowance of a fee to counsel for a personal representative is clearly within the discretion of the orphans' court. *Wright v. Nuttle*, 267 Md. 698, 298 A.2d 389 (1973).

Orphans' court did not abuse its discretion by awarding \$1,423.25 in additional attorney's fees to an estate's attorney where the court considered the cost effectiveness of the additional litigation that was involved in the estate and the court abided by the directive of this section by taking into account the duplication of services rendered by the personal representative and the estate's legal counsel. *Peterson v. Orphans' Court for Queen Anne's County*, 160 Md. App. 137, 862 A.2d 1050 (2004).

Award not ordinarily disturbed in absence of abuse of discretion. - Ordinarily the court will not disturb an award of counsel fee unless it is shown that there has been an abuse of discretion. *Lusby v. Nethken*, 262 Md. 584, 278 A.2d 552 (1971).

An award will not be disturbed in the absence of proof of abuse of discretion, which generally means that the fee allowed is shown to be so unreasonably small or so unreasonably high as to amount to an abuse. *Wolfe v. Turner*, 267 Md. 646, 299 A.2d 106 (1973).

In the absence of an abuse of discretion, an allowance of a fee to counsel for a personal representative will not be disturbed. *Wright v. Nuttle*, 267 Md. 698, 298 A.2d 389 (1973).

Attorney could not be found to have violated Md. R. Prof. Conduct 1.5 by taking a fee for representing an estate where the fee had been approved by the Orphans' Court, the fee was actually smaller than the amount authorized under probate laws, and there had never been any allegation that the court had abused its discretion in awarding the fee. *Att'y Griev. Comm'n v. MacDougall*, 384 Md. 271, 863 A.2d 312 (2004).

Counsel may also charge fee to personal representative. - The allowance of a fee in an estate in no way precludes counsel from charging a fee to the personal representative. *Riddleberger v. Goeller*, 263 Md. 44, 282 A.2d 101 (1971).

Legal services must have been rendered to personal representative. - This section does not warrant payments of fees for legal services unless the services were rendered to the personal representative. *Gradman v. Brown*, 183 Md. 634, 39 A.2d 808 (1944).

Commissions allowed personal representatives should be taken into account. - The enactment of former Article 93 continued the existing law governing compensation of personal representatives, but introduced a new ingredient as regards counsel fees: the provision contained in (c) that in setting a counsel fee, the commissions allowed personal representatives should be taken into account, so that overall charges for administration shall be neither unfair nor unreasonable. *Wolfe v. Turner*, 267 Md. 646, 299 A.2d 106 (1973).

The orphans' court, incident to the approval of counsel fees, shall take into account both counsel fees and commissions allowed or to be allowed the personal representative in determining what is a fair and reasonable charge for the settlement of an estate, to the end that aggregate compensation shall not exceed this amount. *Wright v. Nuttle*, 267 Md. 698, 298 A.2d 389 (1973).

Until the orphans' court takes into account the compensation of the personal representative, it cannot have any rational standard by which the reasonableness of the amounts of the fees allowed to be allowed can be tested or the necessity or propriety of an allocation between the estate and the residuary legatee can be determined. *Wright v. Nuttle*, 267 Md. 698, 298 A.2d 389 (1973).

Fee for routine work of executors or administrators. - The recent revision of former Article 93 made plain the intent of the General Assembly that estates should not in effect pay twice for the cost of administration by first paying a commission to a personal representative and then paying a fee to an attorney for the routine work of executors or administrators, such as opening bank accounts, procuring appraisals, and corresponding with creditors. *Riddleberger v. Goeller*, 263 Md. 44, 282 A.2d 101 (1971).

If an attorney is to be compensated from the estate for doing routine work, it might well be that the personal representative would be paid for doing nothing. *Wolfe v. Turner*, 267 Md. 646, 299 A.2d 106 (1971).

Claim of former guardian. - Former guardian's request for attorney fees had to be submitted to the personal representative so that the personal representative could consider whether the estate should pay such a claim. That request could not be made pursuant to § 7-603 of this subtitle because that section applied only to personal representatives or persons nominated as personal representatives, but could be made pursuant to (a) of this section, which permitted attorneys reasonable compensation for legal services rendered to the estate. *Battley v. Banks*, 177 Md. App. 638, 937 A.2d 846 (2007).

Fee not authorized for services which executor is required to perform. - Authority to allow fee to counsel for executor does not authorize fee for services which executor is required to perform or for which he receives a commission. *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

Where an executrix named in a will rendered no services to the estate other than those of an executrix, she should not have been allowed an attorney's fee. *Colley v. Britton*, 210 Md. 237, 123 A.2d 296 (1956).

When allowance of counsel fees justified. - See *Mudge v. Mudge*, 155 Md. 1, 141 A. 396 (1928).

Compensation for legal services against estate not authorized. - This section did not authorize

payment of compensation for legal services against estate. *Hayden v. Stevens*, 179 Md. 16, 16 A.2d 922 (1940).

Attorney violated Md. R. Prof. Conduct 1.5 when the amount of attorney's fees she collected for representing a decedent's estate as co-personal representative far exceeded the fee customarily charged for estates of similar size, under § 7-601 of this subtitle and this section. That a portion of the fees collected was for reducing the amount due on a credit card balance was not reasonable in light of the time and labor she must have spent in reducing the balance, which could not have been more than a couple of hours on the phone with a credit card company representative. *Att'y Griev. Comm'n v. Kendrick*, 403 Md. 489, 943 A.2d 1173 (2008).

Unsuccessful claimants in suit involving ownership of estate not entitled to fees. - Counsel fees will not be allowed unsuccessful claimants in connection with litigation involving question of to whom an estate belongs. *McComas v. Wiley*, 135 Md. 584, 109 A. 312 (1920).

Counsel fees not allowed for defending administrator whose letters should be revoked. - Counsel fees for defending position of administratrix, whose letters of administration should have been revoked, are not required to be paid. *Sullivan v. Doyle*, 193 Md. 421, 67 A.2d 246 (1949).

Counsel fees will not be allowed widow, who secured appointment as administratrix without notice to children of her husband who were also eligible for appointment, in opposing petition of children for revocation. Nor will counsel fees be allowed widow in seeking reappointment, although reappointment, after revocation, is granted. *Horton v. Horton*, 158 Md. 626, 149 A. 552 (1930).

Counsel fees may be allowed administrator who successfully establishes right to letters. - Counsel fees may be allowed administrator who successfully establishes his right to letters. *Ex parte Young*, 8 Gill 285 (1849).

Fee allowed to counsel for interested party. - While it is clear that in the usual case this section contemplates that a counsel fee will be paid by the estate to counsel for the personal representative, an orphans' court may, in its discretion, allow a fee to counsel for an interested party who acts to protect or enhance the estate and not to advance the interest of his client. *Clark v. Rolfe*, 279 Md. 301, 368 A.2d 463 (1977).

Fees not allowed for services rendered prior to probate. - Where a caveat is filed prior to the admission of a will to probate, the orphans' court has no jurisdiction to allow compensation out of the estate for the services of counsel rendered to parties interested as heirs, distributees, or devisees. *Koenig v. Ward*, 104 Md. 564, 65 A. 345 (1906).

Allowance of fee is subject of appeal. - Allowance of counsel fee is subject of appeal as to reasonableness of amount allowed. *Miller v. Gehr*, 91 Md. 709, 47 A. 1032 (1900); *Maynadier v. Armstrong*, 98 Md. 175, 56 A. 357 (1903).

Appealability of motion to dismiss attorneys' fee petition. - Order of the orphans' court denying a motion to dismiss the attorneys' fee petitions of a personal representative and a special administrator was not immediately appealable as it was not a final, appealable order. Therefore, the caveators' appeal of the

denial of their motion to dismiss the petitions was dismissed. *Banashak v. Wittstadt*, 167 Md. App. 627, 893 A.2d 1236 (2006).

Appealability of motion to transmit issues involving attorneys' fee petitions. - Order of the orphans' court denying a motion to transmit issues to a trial court is ordinarily an order that is immediately appealable but because the issues sought to have been transmitted in a will contest case involved the petitions for attorneys' fees filed by the estate's personal representative and a special administrator, such issues were within the discretionary authority of the trial court and, therefore, were more properly addressed on remand as opposed to being transmitted. *Banashak v. Wittstadt*, 167 Md. App. 627, 893 A.2d 1236 (2006).

Amount allowed executor's attorney as counsel fee reduced by Court of Appeals. - See *American Jewish Joint Distrib. Comm. v. Eisenberg*, 194 Md. 193, 70 A.2d 40 (1949).

Appeal entered from order dismissing motion for hearing ends proceedings regarding fees. - When an appeal was entered from an order dismissing a motion for a hearing as provided by this section the orphans' court could conduct no further proceedings as regards the allowance of the counsel fee, and lacked jurisdiction to hold evidentiary hearing. *Wolfe v. Turner*, 267 Md. 646, 299 A.2d 106 (1973).

Attorney's lien enforceable for attorney's fee already approved. - In an action by a law firm against an estate pursuant to Md. R. Civ. P. 2-652(b) and this section seeking to enforce its attorney's lien against the estate for compensation due regarding its administration of the estate, the estate's motion for summary judgment was denied where the court had jurisdiction to entertain the law firm's claim for attorney's fees already approved by the Orphans' Court pursuant to this section, as the Orphans' Court had jurisdiction over the matter of the law firm's attorney's fees under § 2-102(a) of this article. *Vangrack, Axelson & Williamowsky, P.C. v. Estate of Abbasi*, 261 F. Supp. 2d 352 (D. Md. 2003).

Applied in *Beyer v. Morgan State Univ.*, 369 Md. 335, 800 A.2d 707 (2002).

Quoted in *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 872 A.2d 58 (2005).

Cited in *Davis v. Gerhard*, 35 Md. App. 243, 370 A.2d 1140 (1977); *Att'y Griev. Comm'n v. Abb*, 306 Md. 636, 510 A.2d 1087 (1986); *Chesley v. Goldstein & Baron, Chtd.*, 145 Md. App. 605, 806 A.2d 296 (2002), *aff'd*, 375 Md. 244, 825 A.2d 985 (2003); *Att'y Griev. Comm'n v. Thompson*, 376 Md. 500, 830 A.2d 474 (2003); *Att'y Griev. Comm'n v. Edib*, 415 Md. 696, 4 A.3d 957 (2010).