

1978 WL 35003 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 27, 1978

**\*1 RE: Opinion Request**

Honorable Bessie Lee Nance  
Judge of Probate  
Abbeville County  
Abbeville, South Carolina 29620

Dear Judge Nance:

You have recently inquired of this office whether the executor or the administrator of an estate who desires extra compensation over and above that allowed by statute may bring his petition in the Court of Common Pleas or Court of Probate. Section 21-15-1450 of the Code establishes the statutory commission due an executor or administrator for the performance of his duties as such.

An executor or administrator who is not satisfied with the fees provided by § 21-15-1450 and 'who shall have had extraordinary trouble in the management of the estate under his care' may bring an action in the Court of Common Pleas pursuant to § 21-15-1460. This action is brought pursuant to a direct petition and is not an appeal from the Probate Court's action. The jurisdiction to hear such a petition or action is vested exclusively in the Court of Common Pleas. Cf. Anderson v. Bowers, 117 F.Supp. 884 (1954). Thus, I would advise that the executor and administrator seeking extra compensation to that allowed by § 21-15-1450 must go to the Court of Common Pleas for his relief.

Please contact this office if we can be of further assistance.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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