

## **RULE 4:87. Actions For The Settlement Of Accounts**

### **4:87-1. Procedure**

- **(a)** Actions to settle the accounts of executors, administrators, testamentary trustees, non-testamentary trustees, guardians and assignees for the benefit of creditors shall be brought in the county where such fiduciaries received their appointment. The action shall be commenced by the filing of a complaint in the Superior Court, Chancery Division, and upon issuance of an order to show cause pursuant to R. 4:83. A non-testamentary trustee shall annex to the complaint a copy of the written instrument creating the trust and stating its terms. The order to show cause shall state the amount of commissions and attorney's fee, if any, which are applied for.
- **(b)** An action may be commenced by an interested person to compel a fiduciary referred to in paragraph (a) of this rule to settle his or her account, and, in appropriate circumstances, to file an inventory and appraisal.

Note: Source-R.R. 4:105-1, 4:105-2, 4:105-4(a)(b), 5:3-6(a)(b). Former R. 4:86-1, 4:86-2 and 4:86-3 deleted and new R. 4:87-1 adopted June 29, 1990 to be effective September 4, 1990.

### **4:87-2. Complaint**

The complaint in an action for the settlement of an account

- **(a)** shall contain the names and addresses of all persons interested in the account, including any surety on the bond of the fiduciary, specifying which of them, if any, are minors or mentally incapacitated persons, the names and addresses of their guardians, or if there is no guardian then the names and addresses of the parents or persons standing in loco parentis to the minors;
- **(b)** shall specify the period of time covered by the account and contain a summary of the account. The summary shall state, all as shown by the account: (1) in the case of a first accounting, the amount for which the accountant was chargeable as of the date the trust or obligation devolved upon him or her, or where an inventory is on file, the amount of the inventory; or in the case of a second or later accounting, the balance remaining in the hands of the accountant as shown in the last previous account; (2) the amount for which the accountant became chargeable in addition thereto; (3) the total of the first two items; (4) the amount of the allowances claimed in the account; and (5) the balance in the accountant's hands. Charges and allowances sought on account of corpus and income shall be stated separately both in the summary and in the account;
- **(c)** shall have annexed thereto the account which shall be dated;
- **(d)** shall ask for the allowance of the account, and also for the allowance of commissions and a fee for the accountant's attorney, if accountant intends to apply therefor; and
- **(e)** shall be filed at least 20 days prior to the day on which the account is to be settled.

Note: Source-R.R. 4:106-1. Paragraph (e) adopted June 29, 1973 to be effective September 10, 1973; former R. 4:87-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 12, 2002 to be effective September 3, 2002.

### **4:87-3. Form of Account; Statement of Assets to Be Annexed to Account**

- **(a) Form of Account.** The charges and allowances as to principal and income and the statements required to be annexed to the account may be typed or in the form of computer or machine printouts; and, where appropriate, the accountant may use a single schedule for the presentation of portions of the account, but charges and allowances as to corpus and income shall be stated separately.
- **(b) Statement to Be Annexed to Account.** To all accounts shall be annexed:

- **(1)** a full statement or list of the investments and assets composing the balance of the estate in the accountant's hands, setting forth the inventory value or the value when the accountant acquired them and the value as of the day the account is drawn, and also stating with particularity where the investments and assets are deposited or kept and in what name;
- **(2)** a statement of all changes made in the investments and assets since they were acquired or since the day of the last account, together with the date the changes were made;
- **(3)** a statement as to items apportioned between principal and income, showing the apportionments made;
- **(4)** a statement as to apportionments made with respect to transfer inheritance or estate taxes;
- **(5)** a statement of allocation if counsel fees, commissions and other administration expenses have been paid out of corpus, but the benefits of the deductions from corpus have been allocated in part or in whole to income beneficiaries for tax purposes; and
- **(6)** a statement showing how the commissions requested, with respect to corpus, are computed, and in summary form the assets or property, if any, not appearing in the account on which said commissions are in part based.

Note: Source-R.R. 4:106-2. Paragraph (a) adopted and paragraphs (b) (c) (d) (e) and (f) redesignated June 29, 1973 to be effective September 10, 1973; paragraph (b) of former R. 4:87-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

#### **4:87-4. Service**

- **(a)** Process shall be the order to show cause. If the names and addresses of all parties interested in the account are known, the order to show cause together with a copy of the complaint, both certified by plaintiff's attorney to be true copies, shall be mailed by registered or certified mail, return receipt requested, as follows: to all such persons who reside in the State at least 20 days prior to the return date; to all such persons who reside outside this State but within a state of the United States or the District of Columbia, at least 30 days prior to the return date; and to all such persons who reside outside the United States at least 60 days prior to the return date. If any person interested is a minor or mentally incapacitated person and except as otherwise provided by R. 4:26-3 (virtual representation), service shall be made on the person or persons upon whom a summons would have to be served pursuant to R. 4:4-4(a)(2) and (3) unless a guardian ad litem is required under R. 4:26-2. A surety on the fiduciary's bond shall be deemed an interested person. Upon the request of any interested party a copy of the account shall be furnished by the fiduciary prior to the date of hearing.
- **(b)** If the names or addresses of any persons interested in the account are unknown, notice of the accounting shall be given to the Attorney General at least 45 days prior to the return date, and plaintiff shall file an affidavit of inquiry as to such names or addresses made in accordance with R. 4:4-5(b). The court may then enter such order for service of process as it deems proper including publication of a notice of the proceedings in accordance with R. 4:4-5(a)(3) at least 30 days before the return date.
- **(c)** Proof of mailing, and of publication where ordered, shall be filed before the account is allowed.

Note: Source-R.R. 4:106-3. Former R. 4:87-3 deleted and new R. 4:87-4 adopted June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) amended July 23, 2010 to be effective September 1, 2010.

#### **4:87-5. Vouchers**

Vouchers in support of allowances claimed in an account shall be made available for inspection by an interested person during business hours at the office in this State of the accountant or of the accountant's attorney. They shall be presented to the court only if requested by the court or by an interested person, or, as to particular allowances, by the Surrogate auditing the account. Vouchers presented to the court or the Surrogate shall be returned to the accountant or the accountant's attorney after the settlement of the account.

**Note:** Source-R.R. 4:106-4 (first paragraph). Amended July 7, 1971 to be effective September 13, 1971; former rule deleted and new rule adopted June 29, 1973 to be effective September 10, 1973; former R. 4:87-4 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

#### **4:87-6. Audit and Report on Accounts**

The Surrogate as deputy clerk of the court shall audit the accounts of all fiduciaries unless otherwise ordered by the court pursuant to R. 4:53-7(b), shall place the same on file at least 20 days prior to its presentation to the court, and shall make a report to the court upon the audit not later than the day on which the account is settled. The report shall specify the derelictions, if any, and other matters that in the Surrogate's opinion should be brought to the court's attention.

**Note:** Source-R.R. 4:106-5; amended July 15, 1982 to be effective September 13, 1982; former R. 4:87-5 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

#### **4:87-7. Report of Guardian Ad Litem**

A guardian ad litem for a minor or mentally incapacitated person shall file a written report with the court at least 7 days prior to the day on which the account is settled. If the guardian applies for the allowance of a fee in excess of \$1,000 the report shall include, or be accompanied by, an affidavit of services. Notice of all applications for allowances shall be given as provided by R. 4:26-2(c).

**Note:** Source-R.R. 4:106-5A; former R. 4:87-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

#### **Rule 4:87-8. Exceptions**

In all actions for the settlement of accounts, other than plenary actions, any interested person may, at least 5 days before the return of the order to show cause or within such time as the court allows, serve the accountant written exceptions, signed by that person or his or her attorney, to any item in or omission from the account, including any exceptions to the commissions or attorney's fees requested. The exceptions shall state particularly the item or omission excepted to, the modification sought in the account and the reasons for the modification. An exception may be stricken because of its insufficiency in law.

**Note:** Source-R.R. 4:106-6. Amended July 22, 1983 to be effective September 12, 1983; former R. 4:87-7 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

#### **4:87-9. Dispensing With Accounting by Agreement**

If all parties interested in any separable part of an account, such as income, are of full age and competent, and so agree in writing, there need be no accounting as to the same.

**Note:** Source-R.R. 4:106-4 (second paragraph); former R. 4:86-4 redesignated June 29, 1990 to be effective September 4, 1990.