

## **RULE 4:53. Receivers And Liquidating Trustees**

### **4:53-1. Notice; Dismissal; Appeal**

No order appointing a custodial receiver under the general equity power of the court shall be granted without the consent of or notice to the adverse party, unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable damage will result to the applicant before notice can be served and a hearing had thereon. Such an order granted without notice shall give the adverse party leave to move for the discharge of the receiver on not more than 2 days' notice; and shall direct a corporation or a partnership for whom a custodial receiver has been appointed to show cause why a receiver should not be appointed under the power conferred by statute. No statutory receiver shall be appointed for a corporation without giving it notice and an opportunity to be heard; and an order appointing a statutory receiver for a corporation shall give the stockholders and creditors of the corporation leave, at a specified time and place, to show cause why the receiver should not be continued. An action in which a receiver of a corporation has been appointed, or applied for shall not be dismissed except by order of the court. An order appointing a statutory or liquidating receiver shall be deemed final for the purposes of appeal.

*Note: Source-R.R. 4:68-1; amended July 14, 1992 to be effective September 1, 1992.*

### **4:53-2. Venue**

The venue in actions in the Superior Court for the appointment of a receiver of a corporation or partnership shall be laid in the county where the principal place of business of the corporation or partnership is located.

*Note: Source-R.R. 4:68-2.*

### **4:53-3. Employment of Attorney or Accountant**

A receiver may employ an attorney or accountant only if the court determines that such employment is necessary to the proper conservation and administration of the estate. No order authorizing such employment shall be entered until after a hearing on the fiduciary's sworn application setting forth facts to support the need therefor, except that where necessary to prevent immediate and irreparable damage such employment may be authorized by the court until an application for authorization of such employment can be made pursuant to this rule. Notice of the application together with a copy of affidavit shall be mailed by ordinary mail, not less than 15 days prior to the date for hearing fixed thereon to all creditors or such of them as the court shall direct and, by certified mail, return receipt requested, to the District Director of Internal Revenue for the Internal Revenue District in which the proceedings are commenced, to the United States Attorney for the District of New Jersey, and to the Attorney General for the State of New Jersey. The court shall authorize such employment if satisfied of the necessity of the employment and that the attorney or accountant is not interested in the litigation or in any of the parties thereto in such a way as would disqualify the attorney or accountant from properly serving the receiver as a fiduciary for all the stockholders and unsecured creditors of the estate. On request by an interested party, the court shall require the receiver to be examined under oath on these issues. The employment of more than one attorney may be authorized, but the total fees allowed them shall not be increased because of the number of attorneys employed.

*Note: Source-R.R. 4:68-4(a)(b)(c); amended July 13, 1994 to be effective September 1, 1994.*

### **4:53-4. Allowances to Receivers and Attorneys**

- **(a) Fixing of Allowances.** The court in making allowances to receivers shall consider the extent and value of the actual services rendered and the pains, trouble and risk incurred by them in the discharge of their duties relative to the conduct and settlement of the receivership, having regard also to the avails secured for the trust estate. In making allowances to attorneys, the court shall consider the extent and value of their actual services to the receiver, having regard to the avails secured for the receiver through their efforts. The court may examine the receiver or attorney on oath or otherwise, to ascertain the facts upon which the allowances should be made to depend.
- **(b) Sharing of Compensation.** A receiver, attorney for receiver, appraiser, auctioneer or accountant appointed by the court in connection with dissolution, liquidation or insolvency proceedings, who seeks or received compensation for services rendered therein, shall file with the court an affidavit stating that the applicant shall not in any form or guise share and has not agreed to share any compensation with any person or firm, other than with partners and persons regularly employed by the applicant or by the firm by which the applicant is employed, without express approval of the court. If there is such an agreement or understanding as to such a sharing requiring such approval, the applicant shall set forth in the petition for allowance the name or names of the person or persons to share in the compensation and the general nature of the contributing services rendered.

Note: Source-R.R. 4:68-5(a)(b); paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

#### **4:53-5. Attorney for the Plaintiff**

Unless a receiver applies for, and until the receiver obtains leave to employ, an attorney, the plaintiff's attorney may proceed with the conduct of the cause, but shall not be allowed by the court any compensation for services rendered after the appointment of the receiver unless thereafter appointed the receiver's attorney by the court.

Note: Source-R.R. 4:68-6; amended July 13, 1994 to be effective September 1, 1994.

#### **4:53-6. Partnership Receivers and Liquidating Trustees**

Receivers appointed or directed to wind up the affairs of a partnership or pay its debts, and trustees in liquidation of trust estates, shall give notice of their appointment and notice to creditors to present their claims; and unless otherwise ordered by the court, the notices shall be similar to the notices required to be given by assignees by N.J.S. 2A:19-8 and published and mailed in the same manner. Except as otherwise ordered by the court, the receiver or trustee shall, at the expiration of 3 months from the time of appointment, file a list of the claims presented and proved; and the receiver or trustee, or any creditor or other person interested, may except to the allowance of the whole or any part of any claim presented, of which exception notice shall be given to the claimant, and thereupon such order shall be taken for adjudication upon the claim as the court directs. Unless otherwise directed by the court, this rule does not apply to receivers directed to continue a partnership business.

Note: Source-R.R. 4:68-7; amended July 13, 1994 to be effective September 1, 1994.

#### **4:53-7. Inventory and Account; Audit**

- **(a) Filing of Inventory and Periodic Accounts.** Every receiver and trustee in liquidation appointed by the court shall, within three months after appointment, file with the Clerk of the Superior Court a just and true inventory, under oath, of the whole estate committed to the appointee's care, and of the manner in which the funds under the appointee's care, belonging to the estate, are invested, stating the income of the estate,

and the debts contracted and expenditures made on account thereof. The appointee shall on each April 1 and October 1 thereafter, so long as any part of the estate, or of the income or proceeds thereof, remains to be accounted for, file with the Clerk of the Superior Court an account, under oath, of the amount remaining or invested, and of the manner in which the same is invested. The accountant shall be charged with the balance shown in the last previous account (or with the amount of the inventory in the case of a first accounting) and with all amounts collected in addition thereto; state the expenditures and other credits and the balance remaining and the manner in which the same is invested; and set forth all changes (either by way of addition or diminution or change of form) in the assets with which the accountant is charged which have occurred during the period covered by the account.

- **(b) Audit by Clerk; Countersignatory.** The deputy clerk of the Superior Court shall audit the account of the receiver or trustee unless the court appoints a countersignatory to make the audit. An appointed countersignatory shall also countersign the checks of the receiver or trustee, keep a record of the purpose of each check, obtain a duplicate monthly bank statement of all checking accounts in the receiver's name, and shall be allowed, except in special circumstances a fee for services not exceeding that allowed by law to the clerk or surrogate for auditing fiduciaries' accounts.
- **(c) Duties of Fiduciary's Attorney.** The attorney authorized by court order to represent a receiver or trustee in liquidation and the clerk of the court shall report to the court in writing any failure of the fiduciary to file the inventory or account in accordance with this rule. The account shall be settled in accordance with R. 4:87 on proceedings in the action in which the receiver or trustee was appointed.
- **(d) Order Approving Account.** The order approving the account shall make a finding that the continuance of the receivership or trusteeship is necessary and shall continue it for a fixed period; but when a final account is approved by order, the order shall provide for the discharge of the fiduciary.

Note: Source -- R.R. 4:68-8(a)(b)(c)(d)(e); paragraph (b) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 28, 2004 to be effective September 1, 2004.

#### **4:53-8. Accounting Upon Liquidation of a Financial Institution**

Upon accounting proceedings in connection with the liquidation of a financial institution, service may be made pursuant to R. 4:56-2 (action to approve a plan of reorganization of a bank) upon the class representative in the action.

Note: Source-R.R. 4:68-9.

#### **4:53-9. Destruction of Records**

When an order is entered discharging a permanent or temporary custodial or statutory receiver or trustee, or thereafter, the court may authorize all of the books, records and papers of the corporation or partnership for which such receiver or trustee acted, and all financial papers and records in the hands of the trustee or receiver relating to the administration to be destroyed on or after a date to be fixed in such order. If the need appears, the court may require, as a condition of such destruction, that microfilm copies of said documents be prepared before the documents may be destroyed. No destruction shall be authorized, however, unless it appears that notice of the application has been given to all parties in interest, to the Commissioner of Internal Revenue of the United States and to the Division of Taxation, Department of the Treasury.