

## **RULE 4:91. Insolvent Estates**

### **4:91-1. Proceedings When Estate Is Insolvent**

- **(a) Complaint; Order to Show Cause.** At any time after nine months following the date of decedent's death, the executor or administrator may commence an action in the Chancery Division, Probate Part, by a complaint stating that to the best of the executor or administrator's knowledge and belief, the real and personal estate of the decedent is insufficient to pay debts. The action shall proceed by order to show cause, which shall require the executor or administrator to give notice of the proceedings to the persons specified by R. 4:91-2 and shall set the date by which answers to the complaint or exceptions pursuant to R. 4:91-3 must be filed.
- **(b) Report of Claims; Account.** The executor or administrator shall file with the complaint a list of creditors who have presented claims within nine months following the date of decedent's death, or which the executor or administrator intends to allow without requiring the submission of a formal claim, stating the amount of each claim, whether it has been allowed or rejected, whether it is entitled to a statutory priority, and whether the claim is based on judgment, bond, note, book account, or otherwise. The executor or administrator shall also file with the complaint an account in the form required by R. 4:87-3.
- **(c) Judgment.** The court may, on the presentation of the report of claims and the presentation of the account, adjudge the estate to be insolvent and determine the amount of each claim and its priority for payment.

Note: Source - R.R. 4:110-1, 4:110-2(a)(b). Paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraphs (a) and (b) amended June 29, 1990 to be effective September 4, 1990; caption amended, paragraphs (a) and (b) caption and text amended, and paragraph (c) amended July 27, 20

### **4:91-2. Service on Creditors and Other Interested Persons of Insolvent Estate**

Service of the complaint together with the report of claims and account and order to show cause on creditors who have presented claims within nine months of the decedent's death and other interested persons shall be made in accordance with R. 4:87-4.

Note: Source - R.R. 4:110-3 (first, second and third sentences); amended June 29, 1990 to be effective September 4, 1990; caption and text amended July 27, 2006 to be effective September 1, 2006.

### **4:91-3. Exceptions to Account, Inventory and Claims; Determination**

A creditor or other interested person may take exceptions to the account of the executor or administrator in respect of the personal estate and the inventory of the real estate. The executor or administrator, or any other interested person, may take exceptions to any creditor's claim or part thereof. Such exceptions shall be served on or before the hearing in the action or within such time as the court on application allows. Any account and inventory not excepted to shall be allowed as true, and a claim not excepted to shall be deemed justly due. The court shall hear proofs on the exceptions and shall make such determination and final judgment with respect thereto as is just and lawful.

Note: Source-R.R. 4:110-4; amended June 29, 1990 to be effective September 4, 1990.

### **4:91-4. Excepted Claims; Plenary Action; Recovery**

If a creditor to whose claim exception is made elects to proceed in a plenary civil action in preference to a determination by the court on the exception, he or she shall so proceed

immediately. If an executor or administrator desires to have a claim determined in a plenary action, he or she shall, before filing the report, so notify the creditor who shall thereupon proceed to sue immediately. Such sum as the creditor recovers in such plenary action shall be the amount upon which a ratable portion shall be paid. The court in which the action is brought shall dispose thereof as quickly as possible.

**Note:** Source-R.R. 4:110-5; amended June 29, 1990 to be effective September 4, 1990.

#### **4:91-5. Actions Pending May Proceed to Judgment**

If an action by a creditor or other interested party is pending against the executor or administrator on the date of the filing of the complaint to adjudge the estate insolvent, the action may proceed to final judgment, but no execution shall issue until final judgment is entered in the insolvency proceeding. If the estate is adjudicated insolvent, the judgment creditor shall be entitled to receive the ratable portion determined by such final judgment.

**Note:** Source - R.R. 4:110-6; amended June 29, 1990 to be effective September 4, 1990; amended July 27, 2006 to be effective September 1, 2006.