

EXHIBIT C

Outline 1994 N.Y.S.B.A. Practical Skills Course "Preparation of the Account and Filing the Accounting"

NEW YORK STATE BAR ASSOCIATION

PRACTICAL SKILLS COURSE

Preparation of the Account

and

Filing the Accounting*

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I. What a judicial accounting is

II. When a judicial accounting is necessary

- A. Compulsory
- B. Resignation of Executor or Trustee of testamentary trust (recent trend to allow informal accounting however)
- C. Discharge from fiduciary bond (but see SCPA 2203(4))
- D. When absolute discharge from liability is desired (but see SCPA 315(8) - informal accounting binding on non-parties by virtual representation)
- E. When informal accounting not practical or economical
- F. Where Court direction as to distribution of assets needed (Cy pres, e.g.)
- G. On Court's initiative

III. Alternatives to a Judicial Accounting

- A. Do nothing (but will can't effectively dispense with accounting, even though many try - against public policy)
- B. Informal Accounting filed in Court

IV. Proper Time for an Accounting

- A. Final Accountings
- B. Intermediate Accountings
- C. How to Deal with Contingent Liabilities

V. Papers in an Accounting (other than Schedules of Account)

- A. Petition
 - 1. General information (names and addresses of accounting parties; date of death; dates of probate and letters; dispositive provisions of Will; other relevant facts)
 - 2. 7 months elapsed (estates)

3. Provisions of instrument
4. Necessary parties (SCPA § 2210) (stress on estate accountings)
 - a. Specific legatees (if no receipt and release for legacy)
 - b. Outright residuary legatees; distributees (or their fiduciaries if deceased)
 - c. Trustees (and beneficiaries of trust, unless at least 1 Trustee (i) is not an accounting party, and (ii) has no conflict of interest)
 - d. Virtual representation
 - (i) General
 - (ii) Lateral (SCPA 315(5); Uniform Rule 207.18)
 - e. Creditors whose claims have not been paid
 - f. Attorney General (if charitable or unknown beneficiaries)
 - g. Infants (date of birth; with whom they reside; guardian)
 - h. Successor executor if accounting party no longer acting.
 - i. Addresses
 - j. Surety on bond, if any
5. Prayer for relief
 - a. Settle accounts
 - b. Attorneys fees
 - (i) Both paid and unpaid, if any fees shown as unpaid
 - (ii) Where attorney sole fiduciary
 - (iii) Matter of Weinstock
 - (iv) Multiple attorneys
 - c. Order for service of citation by mail
 - d. Commissions
 - e. Compensation of deceased fiduciary

6. Signature page and affirmation
7. Attach copy of Will as Exhibit
8. Statement of no other proceeding (exception - compulsory Accounting)

B. Citation

1. Citees
2. Relief requested; should be practically verbatim with prayer for relief
3. Return date (no later than four months after issuance; when to fill in; order for mailing)
4. Name, address and telephone number of Attorney
5. "you are not required..." etc.
6. Waiver; waiver and consent; appearance in proceeding
7. Service
 - a. In New York
 - b. Outside New York
 - c. Outside U.S.
 - d. Admission of due and timely service
 - e. Publication
 - f. Proof of Service
 - g. Infants
 - a. over 14 (infant and parent or guardian - SCPA 307(3))
 - b. under 14 (parent or guardian - ibid.)
 - c. individual designated by court - SCPA 311
 - h. Dispensation of Service - under \$500 - SCPA 2210(a) - rare
- c. Affidavit of military service

VI. Schedules of Account

A. Official Forms

1. Estate with no trust
2. Estate with trust
3. Trust

B Signatures required

1. Summary statement (no notarization)
2. Affidavit of Accounting Party (notarized)

C. Cover Schedules

1. Who is accounting
2. Period covered
3. Final or intermediate
4. List (index of all schedules)

D. Summary statement

E. Schedule A (principal received)

1. Inventory value (D.O.D., even if alternate value used)
2. Property subject to encumbrances
3. Income accrued to date of death
4. No real property (unless sold)
5. Generally received as of date of death ("Schedule of Additional Property Received")
6. Not property passing outside of Will
 - a. Joint WROS
 - b. Totten Trust
 - c. Pension and insurance payable directly to beneficiary
 - d. Trust property
7. Exempt property (EPTL § 5-3.1)

- F. Schedule A-2 (income received)
 - 1. Format
 - 2. Stock dividends
 - 3. Periodicity of Receipts
 - 4. Exclude income accrued to date of death
- G. Schedules A-1 and B (increases and decreases on principal); Schedules A-3 and B-1 (increases on income)
 - 1. Different ways of realizing gains and losses
 - 2. Gains and losses based on inventory value
 - 3. No gain or loss transactions
 - 4. Revalue assets on hand for computing commissions
- H. Schedules C and C-2 (expenses paid from principal and income)
 - 1. Types of expenses
 - 2. Charges of expenses against principal and income
 - a. General
 - b. Trusts
 - i. Income charges [EPTL 11-2.1(1)(1)]
 - ii. Principal charges [EPTL 11-2.1(1)(4)]
 - iii. Half income and half principal charges [EPTL 11-2.1(1)(6)]
 - c. Estates
 - i. Principal charges [EPTL § 11-2.1(d)(1)]
 - ii. Exceptions and possible exceptions
 - aa. Taxes on ordinary income
 - bb. Interest on income taxes
 - cc. Some long term regularly recurring expenses
 - dd. Portion of Executors commissions

iii. Interest on estate tax refund

- I. Schedule C-1 (unpaid administration expenses)
 - 1. Principal and income expenses (generally)
 - 2. Commissions
 - 3. Legal Fees
 - 4. Accountants' Fees
 - 5. Effect of showing unpaid expenses - alternatives
- J. Schedule D (Estates) (Statements of all creditors claims)
 - 1. Claims presented, allowed and paid
 - 2. Claims presented, allowed and not paid
 - 3. Claims presented but rejected
 - 4. Contingent and possible claims
 - 5. Personal claims requiring approval of court
 - 6. List all categories even if nothing to report
- K. Schedules E and E-1 (distribution of principal and income)
 - 1. Include estate taxes apportioned against individuals
- L. Schedule F (statement of new investments, exchanges and stock distributions)
 - 1. New "Prudent Investor" rule applies to investments made on or after 1/1/95 (EPTL 11-2.3)
 - 2. Higher standard for professional investor
- M. Schedules G and G-1 (principal and income on hand)
 - 1. General
 - 2. "As of payments"
 - 3. Refunds due
 - 4. Income assets other than cash
- N. Schedule H (statement of interested parties)

1. Necessary parties
 2. Interested parties
 3. Approximate value of interests
 4. Search of records of court
- O. Schedule I (Estates) (estate taxes paid and allocation thereof)
1. Final New York estate tax receipt or order of exemption from tax
 2. Tax clause in Will; EPTL § 2-1.8
 - a. Marital and charitable bequests
 - b. Apportionment within the residuary
 - (i) Residuary dispositions qualifying for marital and charitable deductions
 - (ii) Hybrid: initial tax payable out of charitable share, but not "snowball"
- P. Schedule J (computation of commissions)
1. SCPA §§ 2307 (Executors)
 2. Receiving and paying
 3. Specific bequests
 4. Property pledged as collateral (Uniform Court Rule § 207.40)
 5. Property passing outside Will
 6. Multiple fiduciaries (after 8/31/93, maximum of 2 commissions, unless Will provides otherwise)
 7. Deceased fiduciaries
 8. Payments on account
 9. Allocation between principal and income
- Q. Schedule K (other pertinent facts and cash reconciliation)
1. Cash reconciliation
 2. Non-probate matters affecting estate

3. Income and principal allocation
 - a. Income on pecuniary bequests not in trust - EPTL 11-1.5(d)
 - b. Income on pecuniary distributions in trust - EPTL 11-2.1(c)(1)
 - c. Other bequests - EPTL 11-2.1(d)(2)(B)
 4. Warms adjustment (reimbursement to principal where expenses taken as income tax deductions)
 5. Holloway adjustment (reimbursement to income for "principal-trap" distribution)
 6. Marital deduction computation
 7. Income attributable to underproductive property
 8. Schedule of Proposed Distributions
- R. Accounting Affidavit

VIII. Filing Papers in Court

- A. Filing fees (based on total of Schs A, A-1 and A-2)
- B. Bring eraser, pencil and pen, and extra copies of papers

IX. Judicial proceedings

- A. Return date ("...for decree")
- B. Guardian ad litem ("... subject to guardian's report")
- C. Attorney General
- D. Objections (within 8 days after account is marked for decree or within such further time as Court allows - Uniform Rule 207.41)
- E. Affidavit Amending or Supplementing Account
- F. Supplemental Account (if too much time has passed since closing date of original account - 1 year rule of thumb)
- G. Decree
 1. Papers filed and appearances

- 2. Status of Account
- 3. Decretal provisions
- H. Notice of Settlement
- I. Notice of Entry