

RULE 32 – INQUIRIES, ASSESSMENTS AND ACCOUNTS

Direction for inquiries, assessments or accounts

- (1) At any stage of a proceeding the court may direct an inquiry, assessment or accounting to be held by a clerk or special referee.

Certificate as to result

- (2) The court may direct that the result of an inquiry, assessment or accounting held by a clerk or special referee be certified by that person, and the certified result, when filed, shall be binding on the parties to the proceeding.

Report and recommendation

- (3) Where the court does not direct that the result of an inquiry, assessment or accounting be certified, then the result of the inquiry, assessment or accounting shall be stated in the form of a report and recommendation to the court.

Application to vary or confirm recommendation

- (4) On application by a party, the court may vary or confirm the recommendation or remit the matter.

Time and place of hearing

- (5) A clerk or special referee may hold a hearing at a convenient time and place, may adjourn it from time to time, may administer oaths, take evidence, direct production of documents and give general directions for the conduct of the hearing.

Appointment

- (6) A party proceeding with an inquiry, assessment or accounting shall take out an Appointment in Form 28 and shall serve notice of it upon all parties of record or as directed by the court.

Witnesses

- (7) A party to a proceeding in which an inquiry, assessment or accounting is held may subpoena any person, including a party, to give evidence at the hearing and to produce documents.

Certificate or recommendation to be filed and served

- (8) A clerk or special referee shall state the result of an inquiry, assessment or accounting in the form of a certificate or a report and recommendation as directed, with or without reasons, and shall:

- (a) provide a certificate to the party requesting it; or
- (b) file the report and recommendation and provide a copy to all persons who appeared at the hearing.

Party may file certificate

- (9) A party to whom a certificate is provided under paragraph (8)(a) may file that certificate.

Opinion of the court

- (10) Before the clerk or special referee has concluded a hearing he or she may, in a summary or other manner, ask the opinion of the court on any matter arising in the hearing.

Accounts of executor, trustee, etc.

- (11) A person may apply by petition or application for the furnishing of accounts by the executor or administrator of an estate, a trustee, a receiver, a liquidator, guardian or partner.

Special directions

- (12) The court may give special directions as to the manner in which an inquiry, assessment or accounting is to be taken or made, and the directions may include:
 - (a) the manner in which the inquiry, assessment or accounting is to be prosecuted;
 - (b) the evidence to be adduced in support;
 - (c) the parties required to attend all or any part of the proceedings;
 - (d) the time within which each proceeding is to be taken; and
 - (e) a direction that persons whose interest can be classified shall constitute a class and be represented by the same lawyer and, where the persons cannot agree on the lawyer to represent them, the court may appoint the lawyer to represent them,

and the court may fix a time for the further attendance of the parties.

Varying directions

- (13) The court may vary or rescind a direction given under subrule (12).

Form of account

- (14) Where an account is directed to be taken, unless the court otherwise orders, the accounting party shall make out that party's account and verify it by an affidavit to which the account shall be exhibited. The items on each side of the account shall be numbered consecutively, and the accounting party shall file the affidavit and the account and deliver copies to all parties of record.

Particulars of errors in account

- (15) A party who alleges that there are errors or omissions in an account shall file and deliver to all parties of record a notice thereof with brief particulars.

Notice of order

- (16) Where in a proceeding relating to:
- (a) the administration of the estate of a deceased person;
 - (b) the execution of a trust; or
 - (c) the sale of any property;

the court makes an order which directs any inquiry, assessment or accounting to be taken or made, the court may direct the Notice of Order in Form 29 to be served on any person interested in the estate or under the trust or in the property, and any person served with notice of an order in accordance with this rule shall, subject to subrule (18), be bound by the order to the same extent as the person would have been if the person had originally been made a party to the action.

Dispensing with service

- (17) The court may dispense with service on a person in any case where it appears it is impracticable for any reason to serve the person and may also order that that person shall be bound by any order made to the same extent as if the person had been served with notice of the order, and the person shall be bound accordingly except where the order was obtained by fraud or non-disclosure of material facts.

Person may apply to vary or rescind

- (18) A person served with notice, within 28 days after service of the notice on them, without entering an appearance, may apply to the court to vary or rescind the order.

Person may enter appearance

- (19) A person served with notice may, after entering an Appearance in Form 9, take part in the proceeding.