

FILINGS

1. SPF 24.0: Representation of Insolvency
2. SPF 24.1: Judgment Entry Setting Hearing and Ordering Notice
3. SPF 24.2: Notice of Hearing on Representation of Insolvency and Schedule of Claims (attached to SPF 24.3 Verification of Service)
4. SPF 24.3: Verification of Service of Notice of Hearing on Representation of Insolvency and Schedule of Claims
5. SPF 24.4: Insolvency Schedule of Claims
6. SPF 24.6: Judgment Entry of Insolvency

JURISDICTION & VENUE

An executor or administrator may report to the court that the estate is insolvent and apply for any order that the executor or administrator considers necessary because of the insolvency. [R.C. 2117.15] The insolvency matter is heard in the decedent's estate.

TIME FRAME

A Representation of Insolvency can be filed during the administration of the estate only after the Inventory and Schedule of Assets has been approved by the court (SPF 6.0). Additionally, the time for filing claims against the estate also must have passed. [R.C. 2117.06 & .061]

NOTICE/SERVICE

1. Notice of the hearing should be served upon the surviving spouse, all persons having an interest in the estate as devisees, legatees, heirs, and distributees, all creditors and claimants whose claims have been rejected. [R.C. 2117.17(A)(1) - (2)] Notice must be perfected at least 10 days before the hearing is held. [R.C. 2117.17(A)]

2. SPF Form 24.2 Notice of Hearing on Representation of Insolvency and Schedule of Claims should be used to send notice. The notices should be attached to the Verification of Service (SPF 24.3) with proof of service (e.g., certified mail return receipt cards).
3. Notice may be waived. [R.C. 2117.17(A)]



There is no SPF for waiving notice of an insolvency hearing.

4. Notice must be served personally or by certified mail. [R.C. 2117.17(B)]

HEARING

1. The Court must determine whether the executor or administrator acted properly in allowing and classifying each claim and make an order confirming or denying those actions. [R.C. 2117.17 (C)]; [SPF 24.6]



The classification of claims is determined by R.C. 2117.25. The classification of a particular claim will determine the priority in which it is to be paid under that statute.

2. The court must consider and rule upon any exceptions filed prior to the hearing by any interested person as to the allowance or classification of any specific claim. [R.C. 2117.17(B)]; [SPF 24.6]
3. The court must determine whether the claims against the estate exceed the amount of assets of the estate in order to determine whether the estate is insolvent. If the estate is determined to be insolvent, the court must order the fiduciary to pay the claims with available assets in the order of classes of claims dictated by R.C. 2117.25.

NOTE

All allowed claims in a particular class as set forth in *R.C. 2117.25* are to be paid in full before allowed claims in a succeeding class can be paid. When there are insufficient assets to pay all claims in a particular class in full, the claims in that class are to be paid on a prorated basis. The following formula can be used to determine the prorated amount to be paid:

$$\frac{\text{Amount Remaining to Pay Class}}{\text{Total Amount Owed that Class}} = \text{Prorata Rate at which Each Debt in the Class Is Paid}$$

4. The court must determine claims below a designated class will not be paid, as there are no funds available to pay the claims.
5. The court must order either the executor or administrator to file a final account or a certificate of termination (if applicable) after the claims are paid. SPF 24.6 includes language that 30 days should be given to file the account; however, more time could be allowed in the court's discretion.

NOTE

Reference Notice of Hearing on Account under *R.C. 2109.33*.