

Action in the Superior Court
Chancery Division, Probate Part
General Rules for Probate Matters in Which the
Surrogate May Not Act

Court Rule 4:83.	
Filing: Superior Court, Chancery Division Probate Part	All papers filed with the Surrogate's Court
Verified Complaint	Fee: \$175.00
Order to Show Cause	Original and one copy

Method of Proceeding:

Unless otherwise specified, all action in the Superior Court, Chancery Division, Probate Part, shall be brought in a summary manner by the filing of a complaint and issuance of an order to show cause pursuant to R.4:67. The Surrogate, as Deputy Clerk, may fix the return date of the order to show cause and execute the same unless the procedure in a particular case raises doubt or difficulty. Service shall be made and the action shall proceed thereafter in accordance with that rule.

4:67-3 Service of Order to Show Cause

If the order to show cause issues ex parte (one party) pursuant to R. 4:67-1 (a) no summons shall issue unless the court otherwise orders. Process shall be a copy of the order to show cause, certified by the plaintiff's attorney to be a true copy. The order to show cause, together with a copy of the complaint and affidavits similarly certified, shall be served within this State at least ten days before the return day and in the manner prescribed by R.4:4-3 and R.4:4-4 for the service of a summons, unless the court orders shorter or longer service or some other manner of service. Service may be made outside this State, or by mail, publication, or otherwise, all as the court by order directs, provided the nature of the action is such that the court may thereby acquire jurisdiction.

4:83-2 Filing of Papers:

In all matters relating to estates of decedents, trusts, guardianships and custodianships, other than those set forth in R.4:80 and R.4:81, all papers shall be filed with the Surrogate of the county of venue as the deputy clerk of the Superior Court, Chancery Division, Probate Part, pursuant to R. 1:5-6.

Service for filing to the Surrogate's Court shall include the original and one copy certified by the Attorney and the Plaintiff, and a self addressed stamped envelope.

4:83-3. Title of Action:

In all actions for the probate of a will, for letters of administration or guardianship of a minor or mentally incapacitated person and other actions brought pursuant to these rules, every paper shall be entitled:

“In the Matter of the Estate of _____, Deceased” or “In the Matter of a _____, a Minor” or “In the Matter of _____, an alleged Incapacitated Person or the like.

Rule 138-7

All personal identifiers must be redacted and a statement to that effect should be part of the certification

Eg: I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 138-7(b).

4:83-4. Venue

- (a) Where the Surrogate's Court May Not Act. In an action brought because the Surrogate's Court is barred from acting by R. 4:82, venue shall be laid in that county.
- (b) Guardianship and Conservatorship Actions
- (c) Actions By or Against a Fiduciary.
- (d) To Appoint Inter Vivos or Substituted Trustee.
- (e) Other Actions. In all probate actions, venue shall be laid in accordance with R.4:3-2(a)

4:83-5. Verification

Unless otherwise provided by these rules, all complaints shall be verified by the plaintiff upon oath that the allegations thereof are true to the best of the plaintiff's knowledge and belief. Every account shall be verified by the accountant upon oath that the account and the statements required to be annexed thereto are just and true to the best of the accountant's knowledge and belief.

Essential Job Functions

- **Verified Complaint** shall be verified by the plaintiff upon oath that the allegations are true to the best of their knowledge and belief. - gets filed in
- **Order to Show Cause** - Service shall be made and the action shall proceed thereafter in accordance with rule R.4:67. Sets hearing date
- **Proof of Service** - copies of green cards or explanation
- 10 days notice, in state - 30 days notice out of state - 60 days notice out of country.
- **Proposed Judgment**

- Answer if filed: automatically goes to contested trial list
 - After 60 days if no settlement is reached
 - It can go to case management conference
 - Pre Trial or
 - Early Settlement Panel

Complaints in cases in which the Surrogate's Court May Not Act:

4:84-1 In General

In any case in which, under R.4:82, the Surrogate's Court may not act, any person in interest may file a complaint and apply for an order directed to all other parties to show cause why the relief sought should not be granted. Service shall be as provided by R. 4:67-3.

Probate in Superior Court - these may include but are not limited to, writing on a Will, Holographic Wills, Copies of a Will, Writings intended to be a Will.

Contested Administration - When doubt or difficulty arise, when heirs at law cannot agree.

Appointment of Substituted Trustees - when no alternate or successor trustee is acknowledged in the Will.

Appointment of Administrator Pendente Lite or Other Limited Administrator such as an Administrator Ad Litem: When the interest of a minor child is in question or conflict, when the current administrator has an interest in the action adverse to that of the estate; a person appointed to administer only a specific part of an intestate decedent's estate: a person appointed to serve as an administrator of an estate solely because of an emergency or unusual situation, such as a will contest.