

Superior Court

A Complaint To Set Aside the Surrogate's Judgment

Court Rule 4:85-1.	
Filing: Superior Court, Chancery Division, Probate Part	All papers to be filed with the Surrogate's Court
Verified Complaint Filed within 4 months of appointment; 6 months outside the State	Filing Fee: \$175.00
Order to Show Cause	
Title of Action	In the Matter of the Estate of _____ deceased

Overview

4:85-1. Review by Superior Court of Actions by Surrogate's Court: General Provisions.

A Summarization:

If a Will has been probated by the Surrogate and letters have been issued any person aggrieved by that action may; upon filing of a Complaint setting forth the basis for the relief sought, obtain an Order requiring the personal representative, guardian or trustee to show cause why the probate should not be set aside or modified or the grant of letters of appointment vacated.

However, if relief is based upon R.4:50-1. (d) (time limitation) (e, f) or R.4:50-3 (fraud) the complaint shall be filed within a reasonable time under the circumstances.

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 to interested parties and the action shall proceed thereafter in accordance with court rule 4:67. The Surrogate as Deputy Clerk may fix the return date of the order to show cause. **set hearing date**
- **Proof of Service** -Prior to the hearing the plaintiff shall file proof of service of the notice of order for hearing. **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** (can be mailed in before the hearing)

Explanation:

Time Limits: The four month rule applies to a complaint seeking to set aside letters. It does not apply to a complaint challenging the manner in which the fiduciary has acted.

There may be numerous reasons why a plaintiff would want to set aside the Surrogate's Judgment; the most common would probably be After discovered Wills and Undue Influence. There could be suspicion surrounding the making of the Will, the unlawful practice of law by drafting decedent's Will, children who are not named or third party beneficiary contract claims to name a few.