

## **RULE 4:85. Review By Superior Court Of Actions By Surrogate's Court: General Provisions**

### **4:85-1. Complaint; Time for Filing**

If a will has been probated by the Surrogate's Court or letters testamentary or of administration, guardianship or trusteeship have been issued, any person aggrieved by that action may, upon the 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, provided, however, the complaint is filed within four months after probate or of the grant of letters of appointment, as the case may be, or if the aggrieved person resided outside this State at the time of the grant of probate or grant of letters, within six months thereafter. If relief, however, is sought based upon R. 4:50-1(d), (e) or (f) or R. 4:50-3 (fraud upon the court) the complaint shall be filed within a reasonable time under the circumstances. The complaint and order to show cause shall be served as provided by R. 4:67-3. Other persons in interest may, on their own motion, apply to intervene in the action.

Note: Source-R.R. 4:99-6(a) (b), 5:3-4(a) (b), 5:3-5(a). Former R. 4:80-7 deleted and new R. 4:85-1 adopted June 29, 1990 to be effective September 4, 1990.

### **4:85-2. Enlargement of Time**

The time periods prescribed by R. 4:85-1 may be extended for a period not exceeding 30 days by order of the court upon a showing of good cause and the absence of prejudice.

Note: Source-R.R. 1:27B(d). Former R. 4:80-7(d) deleted and new R. 4:85-2 adopted June 29, 1990 to be effective September 4, 1990.

### **4:85-3. After-Discovered Will**

- **(a) Order to Show Cause.** Where administration has been granted and subsequently a will is offered for probate or where probate of a will has been granted and subsequently a later will is offered for probate, the person offering such will may, upon the filing of a complaint, move without notice for an order requiring all interested persons to show cause why probate of such will should not be granted. The complaint shall be filed in the county where the original administration or probate was granted. If, on the return date or thereafter, new probate is granted, the court shall require the administrator or prior executor to make final settlement of his or her account and thereafter shall make such order respecting commissions as is appropriate.
- **(b) Probate by Surrogate.** If, on the return date of the order to show cause, there is no objection to the offering of the after-discovered will for probate, the Surrogate may enter an order that it be lodged for probate and thereafter proceed with probate unless a caveat has been filed or doubt arises from the face of the will.

Note: Source-R.R. 4:99-5; caption and text of former R. 4:80-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; first paragraph designated as (a) and paragraph (b) added June 28, 1996 to be effective September 1, 1996.