

## **RULE 4:83. Probate Actions In The Superior Court, Chancery Division, Probate Part: General Provisions**

### **4:83-1. Method of Proceeding**

Unless otherwise specified, all actions 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. The order to show cause may be in the form in Appendix XII-I to the extent applicable.

Note: Source-R.R. 4:105-3, 4:117-1. Former R. 4:99-1 deleted and new R. 4:83-1 adopted June 29, 1990 to be effective September 4, 1990; amended June 28, 1996 to be effective September 1, 1996; amended July 9, 2008 to be effective September 1, 2008.

### **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.

Note: Source-R.R. 4:117-2. Former R. 4:99-2 deleted and new R. 4:83-2 adopted June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994.

### **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 Minor" or the like.

Note: Source-R.R. 4:117-4; caption and text of former R. 4:99-3 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

### **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) Guardianships and Conservatorship Actions.** In an action for the appointment of a guardian for an alleged mentally incapacitated person or of a conservator, venue shall be laid in the county in which the alleged mentally incapacitated person or conservatee is domiciled at the commencement of the action, or if at that time the person has no domicile in this State, then in any county in which the person has any property.
- **(c) Actions by or Against a Fiduciary.** In an action brought by or against a fiduciary who received letters of appointment in this State (1) to account for the estate, real or personal for which the fiduciary is chargeable, or (2) for the construction of the will or other instrument by which the fiduciary was appointed, or (3) for directions by the court as to the fiduciary's authority or duties, venue shall be laid in the county in which the fiduciary received the letters of appointment.
- **(d) To Appoint Inter Vivos or Substituted Trustee.** In an action for the appointment of a trustee or substituted trustee of an inter vivos trust, venue shall be laid in the county in which there is any property of the trust estate at the commencement of the action or

in the county in which a trustee is domiciled at the time the action is commenced. All subsequent proceedings affecting the trust including the appointment of an additional or substituted trustee, shall be brought in the original venue.

- **(e) Other Actions.** In all other probate actions, venue shall be laid in accordance with R. 4:3-2(a).

**Note:** Source-R.R. 4:116-1 through 5. Former R. 4:98 deleted and new R. 4:83-4 adopted June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 12, 2002 to be effective September 3, 2002.

#### **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.

**Note:** Source-R.R. 4:115-1; caption and text of former R. 4:97-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.