

RULE 4:93. Declaration Of Death

4:93-1. Complaint

An action under N.J.S.A. 3B:27-6 to declare dead an absentee, whether a resident or nonresident of this State, may be brought by a spouse, any next of kin, creditor, executor, administrator, beneficiary under an insurance policy on the absentee's life, or any other person interested in the estate. The complaint shall specify the facts as to the plaintiff's interest.

Note: Source-R.R. 4:111-1. Amended July 22, 1983 to be effective September 12, 1983; former R. 4:92-1 redesignated June 29, 1990 to be effective September 4, 1990.

4:93-2. Declaration of Death

The action may be brought in a summary manner in accordance with R. 4:83 on an order to show cause returnable not less than 30 days nor more than three months from the date of the order why judgment should not be entered declaring such person to be dead. Notice of the order shall be published once in a newspaper of general circulation in the county where the absentee was last domiciled and shall be served by mail or otherwise as the court directs.

Note: Source-R.R. 4:111-2. Amended July 7, 1971 to be effective September 13, 1971; former R. 4:92-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:93-3. Parties Defendant

The order to show cause shall be directed to all persons in interest, including (a) the persons who would have an interest, as executor or beneficiary under a will of the absentee, or as heir, next of kin or spouse of the absentee or otherwise, in any real or personal property by reason of the death of the absentee, testate or intestate; (b) the carrier and beneficiaries of any insurance known to the plaintiff which is payable on the death of the absentee; (c) those persons entitled, in a fiduciary or beneficial capacity, to any interest known to the plaintiff, which interest expires or is contingent upon the death of the absentee; and (d) such other persons as the court directs.

Note: Source-R.R. 4:111-3; former R. 4:92-3 redesignated June 29, 1990 to be effective September 4, 1990.

4:93-4. Hearing

Whether or not an answer or an answering affidavit is filed, the court shall hear the matter on oral testimony and shall not enter judgment declaring the absentee dead unless it is satisfied that the plaintiff has made reasonable effort to ascertain the facts necessary to maintain the action.

Note: Source-R.R. 4:111-4; former R. 4:92-4 redesignated June 29, 1990 to be effective September 4, 1990.

4:93-5. Letters Issued

After entry of the judgment, an application may be brought for the issuance of letters of administration upon the estate of the absentee as in the case of a deceased person, or for the probate of the will, or for the appointment of a testamentary guardian.

Note: Source-R.R. 4:111-5; former R. 4:92-5 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.