

RULE 4:69. Actions In Lieu Of Prerogative Writs

4:69-1. Actions in Superior Court, Law Division

Review, hearing and relief heretofore available by prerogative writs and not available under R. 2:2-3 or R. 8:2 shall be afforded by an action in the Law Division, Civil Part, of the Superior Court. The complaint shall bear the designation "In Lieu of Prerogative Writs".

Note: Source-R.R. 4:88-2 (first sentence), 4:88-3 (second sentence). Amended June 20, 1979 to be effective July 1, 1979; amended July 12, 2002 to be effective September 3, 2002.

4:69-2. Motion for Summary Judgment

If the complaint demands the performance of a ministerial act or duty, the plaintiff may, at any time after the filing of the complaint, by motion supported by affidavit and with briefs, apply for summary judgment.

Note: Source-R.R. 4:88-4.

4:69-3. Motion to Law Division for Stay

Upon or after the filing of the complaint, the plaintiff may, by order to show cause or motion supported by affidavit, and with briefs, apply for ad interim relief by way of stay, restraint or otherwise as the interest of justice requires, which relief may be granted by the court with or without terms. When necessary, temporary relief may be granted without notice in accordance with R. 4:52-1.

Note: Source-R.R. 4:88-5.

4:69-4. Filing and Management for Actions in Lieu of Prerogative Writs

The filing of the complaint shall be accompanied by a certification that all necessary transcripts of local agency proceedings in the cause have been ordered. All actions in lieu of prerogative writs will be assigned to Track IV. Within 30 days after joinder and in order to expedite the disposition of the action the managing judge shall conduct a conference, in person or by telephone, with all parties to determine the factual and legal disputes, to mark exhibits and to establish a briefing schedule. The scope and time to complete discovery, if any, will be determined at the case management conference and memorialized in the case management order. At least five days in advance of the conference, each party shall submit to the managing judge a statement of factual and legal issues and an exhibit list.

Note: Former *Rule* 4:69-4 deleted November 27, 1974 to be effective April 1, 1975. New caption and rule adopted July 3, 2000 to be effective September 5, 2000; amended July 28, 2004 to be effective September 1, 2004.

4:69-5. Exhaustion of Remedies

Except where it is manifest that the interest of justice requires otherwise, actions under R. 4:69 shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.

Note: Source-R.R. 4:88-14.

4:69-6. Limitation on Bringing Certain Actions

- **(a) General Limitation.** No action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed, except as provided by paragraph (b) of this rule.
- **(b) Particular Actions.** No action in lieu of prerogative writs shall be commenced
 - **(1)** to contest or question any election under N.J.S. 18A:24-12 or N.J.S. 18A:24-29, after 15 days from the date of such election; or
 - **(2)** to review an assessment or award made for any municipal improvement after 30 days from the date of the confirmation of such assessment or award; or
 - **(3)** to review a determination of a planning board or board of adjustment, or a resolution by the governing body or board of public works of a municipality approving or disapproving a recommendation made by the planning board or board of adjustment, after 45 days from the publication of a notice once in the official newspaper of the municipality or a newspaper of general circulation in the municipality, provided, however, that if the determination or resolution results in a denial or modification of an application, after 45 days from the publication of the notice or the mailing of the notice to the applicant, whichever is later. The notice shall state the name of the applicant, the location of the property and in brief the nature of the application and the effect of the determination or resolution (e.g., "Variance-Store in residential zone denied"), and shall advise that the determination or resolution has been filed in the office of the board or the municipal clerk and is available for inspection; or
 - **(4)** to review an ordinance, authorizing the construction of a railroad siding or sidings, or an ordinance or resolution for a public improvement in any municipality, after 30 days from the date of the passage or adoption of such ordinance or resolution; or
 - **(5)** any action in relation to joint sewers or disposal plants after 30 days from the date of the taking of the proceeding sought to be reviewed, or after the lapse of 30 days from the entry of the order of the court confirming the assessment; or
 - **(6)** to review any decision of a board of chosen freeholders refusing or granting a permit to erect a building in the bed of any highway after 30 days from the filing of the decision in the office of the board; or
 - **(7)** in any action under N.J.S.A. 54:5-104.29 to 104.71, inclusive, as amended (In Rem Tax Foreclosure Act), unless an answer has been filed within the time limited, nor after the expiration of 2 months from the filing of an answer denying the validity of the tax lien for which the lands were sold and certificate issued, or denying the legality of the proceedings to sell the lands, or denying the legality of the sale; or
 - **(8)** to review a sale of land to enforce an assessment or tax, or a sale where assessments and taxes have been included together, after 18 months from the date of the sale, but this limitation shall not apply to proceedings taken after the sale, by the purchaser or holder of the tax sale certificate, under a statute to procure a deed or perfect title; or
 - **(9)** in the absence of fraud, to contest or set aside the tax sale certificate, notice and affidavit of service recorded as a deed, after 2 years from the date of their record; or
 - **(10)** to review an ordinance for an improvement after the contract therefor shall have been awarded; or
 - **(11)** to review any resolution or ordinance authorizing the issuance of notes or bonds of any municipality or other political subdivision, after 20 days from the date of the first publication thereof following final passage.
- **(c) Enlargement.** The court may enlarge the period of time provided in paragraph (a) or (b) of this rule where it is manifest that the interest of justice so requires.

Note: Source-R.R. 4:88-15(a) (b)(1)(2)(3)(4)(5)(6)(8)(9) (10)(11)(12) (c). Paragraph (b)(1) amended July 7, 1971 to be effective September 13, 1971; paragraph (b)(3) amended November 2, 1987 to be effective January 1, 1988.

4:69-7. Interlocutory Appeals

If a final decision or action of an agency or officer is reviewable by a trial division of the Superior Court pursuant to R. 4:69, an application may be made by an aggrieved party to such Court for leave to appeal an interlocutory order of such agency or officer in the manner prescribed by R. 3:24, insofar as applicable. Notice of the application shall be given by the party appealing to all other parties in interest.

Note: Amended November 27, 1974 to be effective April 1, 1975.