

RULE 4:95. Miscellaneous Actions

4:95-1. Order to Compel Production of Purported Will

A summary action pursuant to R. 4:83 for the discovery or production of any paper purporting to be the will of any decedent, which has not been offered for probate, may be instituted by any person in interest by filing a complaint alleging a belief that any person has the paper in his or her possession or has knowledge of its existence or whereabouts. Upon the return of the order to show cause, the court may order such person to appear before it and make discovery as to his or her possession or knowledge of the same, by the examination of such person and other witnesses, and may order any such person possessing any such paper to lodge the same with the court for probate. If the will is produced on or prior to the return date of the order to show cause and no objection is received, the Surrogate may enter an order that it be lodged for probate and thereafter proceed with probate of the will unless a caveat thereto has been filed or doubt arises from the face of the will. If the will is not produced prior to or on the return date, the court may enter such order and take such further proceedings as deemed appropriate.

Note: Source-R.R. 4:114-2. Amended July 26, 1984 to be effective September 10, 1984; former R. 4:96-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended June 28, 1996 to be effective September 1, 1996.

4:95-2. Summary Action by Fiduciary for Instructions

A summary action pursuant to R. 4:83 may be brought by executors, administrators, guardians or trustees for instructions as to the exercise of any of their statutory powers as well as for advice and directions in making distributions from the estate.

Note: Source-R.R. 4:114-3. Caption and text amended July 22, 1983 to be effective September 12, 1983; caption and text of former R. 4:96-3 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:95-3. Approval of Compromise

The complaint of the fiduciary in an action for the approval of a compromise of a claim shall state the nature of the claim and the circumstances justifying the compromise, and shall have annexed to it a copy of the writing setting forth the terms and conditions of the compromise. If, pending the action, the fiduciary applies to the court for approval either of a modification of the compromise, or of another compromise, agreed upon in writing, the court shall, if satisfied that it is in the interests of all persons interested, approve it, provided due notice of the application has been given to such persons.

Note: Source-R.R. 4:114-4; former R. 4:96-4 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

4:95-4. Certificate as to Further Security; Death Act, etc.

When a payment is to be made to an administrator for damages due under N.J.S.A. 2A:31-1 to 6, inclusive (death by wrongful act) or for damages sustained by the decedent prior to death, the administrator shall, prior to receiving payment, furnish to the person liable a certificate of the Surrogate setting forth the amount of the payment and certifying that the administrator has furnished adequate security in accordance with the statute.

Note: Source-R.R. 4:114-5; former R. 4:96-5 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.