

Estate Planning Council of Long Island

CLE: Surrogate's Court Update

April 23, 2026

Bristol – Bethpage

Presenters:

Hon. Cassandra A. Johnson, Surrogate of Queens County

Hon. Vincent J. Messina, Jr., Surrogate of Suffolk County

Hon. David P. Sullivan, Surrogate of Nassau County

- I. Introduction: Meet Our Three Surrogates (5 minutes).**
- II. Overview of the Various Departments in the Surrogate's Court (5 minutes).**
 - a. Probate
 - b. Administration
 - c. Small Estates
 - d. Accounting
 - e. Guardianship
 - f. Adoption
 - g. Miscellaneous
- III. Expectations About Decorum of Attorneys Appearing in Court and Via Videoconference (7 minutes)**
 - a. Court's view on sanctioning attorneys
 - b. Appropriate dress code
 - c. Participation of parties in Court conferences
 - d. Professional courtesies among members of the Bar
- IV. Artificial Intelligence – What Are the Do's and Don'ts for Practitioners? For the Court Staff? (10 minutes)**
- V. Court's Policy Regarding Revocable Trusts (3 minutes)**
- VI. Common Issues of Practitioners: the Court's View: (15 minutes)**
 - a. When is it appropriate to contact a chief clerk?
 - b. Are there any rules specific to each Surrogate's Court that practitioners should know about?
 - c. How long does it typically take for probate citations to issue after filing is complete?
 - d. How does each Court handle emergency applications?
 - e. If there was one issue that needs to be addressed in the T & E practice, what would it be?

- f. What advice would each Surrogate give to an individual serving as sole trustee?
What about to a corporate trustee serving as sole trustee?
- g. Should an eviction proceeding concerning an estate or trust property be brought in the Surrogate's Court or the Supreme Court?
- h. What are some common mistakes the Court sees in judicial accountings?

VII. Questions (5 minutes).

NEW YORK STATE UNIFIED COURT SYSTEM

INTERIM POLICY ON THE USE OF ARTIFICIAL INTELLIGENCE

I. Purpose

This interim policy on the use of artificial intelligence (AI) is designed to promote the responsible and ethical use of AI technology in the New York State Unified Court System (UCS). This document outlines important guardrails to ensure fairness, accountability, and security in the use of AI, particularly generative AI, by our workforce. Mandatory requirements and restrictions governing the use of AI are set forth below, in Section V. This interim policy is intended to evolve with technological advancements, operational necessities, and future iterations of relevant legislation, regulation, and public policy.

II. Scope

This interim policy is applicable to all judges and nonjudicial employees of the UCS. It applies to all functions performed on a UCS-owned device, and to all UCS-related work performed on any device.

III. Understanding AI

A. How Generative AI Works

The term “AI” means “a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments” (15 USC § 9401[3]). The term “generative AI” refers to an AI program or system that is capable of generating human-like text or other content in response to user prompts by learning from material in large reference datasets.

Generative AI tools have the potential to enhance productivity by assisting with tasks such as producing first drafts of documents, editing text, summarizing data, drafting correspondence, and developing software. Such tools may take the form of a chatbot, a computer program which simulates an online human conversation.

Most generative AI programs utilize a large language model (LLM), an algorithm that is trained on an enormous quantity of data, derived from various sources such as the internet, books, and articles, and learns to produce written communications by continually predicting the word that is most likely

to come next. Generative AI programs do not operate like traditional search engines. Although they draw upon information contained in large datasets, they are designed to generate content, not to locate information or provide authoritative answers to factual inquiries.

Rather than conducting traditional research or verifying facts, the AI program produces a document or other output, in the format and style requested in the user's prompts, by predicting patterns based on its source information. As a result, any factual assertions or citations to legal authority included in the output may be inaccurate or unreliable. In fact, generative AI programs occasionally fill in gaps in their source material by simply fabricating facts or citations. In AI terminology, such an insertion of fictitious information is referred to as a hallucination.

B. Potential Uses of AI

Generative AI tools can be used to help draft documents such as policy memos, letters, speeches, or job descriptions. AI can be useful in generating ideas, getting a document started, and suggesting suitable wording. Generative AI can also be utilized in communicating with the public. AI platforms can help users write clearly and in plain, accessible language. A user can upload content, such as text for a proposed webpage or a draft of a policy statement, and direct the AI program to modify the language to make it simpler, more concise, and easier to understand. The AI program can be prompted to write for a specific audience or at a designated reading level. Like all content produced by generative AI, the output should be carefully reviewed, and the user should ensure that the language is inclusive, respectful, and accurate.

Generative AI can also be used to summarize lengthy documents or large datasets in preparation for administrative reports or analytical legal writing. Since one of AI's most impressive features is its ability to scan and process vast amounts of data in just a few minutes, or even seconds, summarizing information may be among its most valuable uses. An AI tool can quickly generate an overview of material such as a large document, a group of documents, or a set of statistical data, providing the user with a basic understanding, or at least the highlights, of the material, where the user's own review of the material would have consumed an enormous amount of time. The AI tool can be prompted to produce the summary in a variety of formats, such as a single paragraph, a brief memo with a specified word count, an outline containing a specified degree of detail, or a bullet-point list. The AI tool could also be prompted to condense the contents of a document for clarity or brevity. However, if such a condensed version is to be submitted to and relied upon by other UCS personnel, or released to the public, the contents of the AI-generated product must be checked against the original material to ensure accuracy. Moreover, the use of an AI tool to summarize legal documents is subject to the guidance and limitations relating to confidentiality, set forth below.

C. Problems Associated with AI

Despite its potential benefits, generative AI can produce inaccurate, wholly fabricated, or biased outputs, and can jeopardize the security of data entered into the program.

1. Inaccurate or Fabricated Information

As noted above, the output produced by generative AI tools will sometimes contain hallucinations. Accordingly, the content generated by an AI program should not be used without careful editing. It is

the responsibility of every user to thoroughly review such content and to independently confirm that it contains no fabricated or fictitious material.

In view of their limitations, generative AI tools should not be relied upon to provide accurate information or to draft communications about sensitive topics. Moreover, general-purpose AI programs (whether operating on a public model or on a private model) are not suitable for legal writing and legal research, as they may produce incorrect or fabricated citations and analysis. Even when using the AI-enhanced features that have been incorporated into established legal research platforms, any content generated by AI should be independently verified for accuracy.

2. Bias and Other Inappropriate Output

The vast datasets on which generative AI systems are trained include material that reflects cultural, economic, and social biases and expressions of prejudice against protected classes of people. As a result, the content generated may promote stereotypes, reinforce prejudices, exhibit unfair biases, or contain otherwise undesirable, offensive, or harmful material. Accordingly, it is the responsibility of every user to thoroughly review any AI-generated content, to ensure that it does not reflect any unfair bias, stereotypes, or prejudice or contain any other inappropriate material, and to make any necessary revisions.

3. Vulnerability of Confidential Information

Many publicly available generative AI platforms (ChatGPT, for example) operate on an open training model, which means, among other things, that the input received from user prompts is collected and used as further training material for their LLMs. Since the LLM can reproduce that material for anyone using an AI program connected to it, that input is potentially accessible by the public at large. Accordingly, once a UCS user inputs information into such a platform as part of a prompt or in an uploaded document, that information is no longer under UCS control, and may become publicly available.

In contrast to AI platforms that operate on these public models, which can be accessed by anyone and may store data for use in future training, some AI platforms operate on a private model. Platforms using private models are hosted or managed by an organization, and their use is typically restricted to members of that organization or individuals who have been granted access. They may be tailored to the organization's specific needs, and they include additional security, compliance, and privacy measures.

Furthermore, users should be careful to avoid uploading copyrighted content into a generative AI program.

IV. Guiding Principles

AI is a type of tool designed to assist the user in performing certain tasks. It must not be treated as a substitute for human judgment, discretion, or decision-making. All UCS users remain accountable for their final work product.

It is critical to ensure that material that reflects harmful bias, stereotypes, or prejudice does not appear in any UCS work product.

The rules governing the security and confidentiality of court records apply fully to the use of AI technology. It should be assumed that all information entered into a public model generative AI platform, such as ChatGPT, will immediately become public. AI technology must be used in a manner that prevents the public disclosure of information of a confidential, private, or sensitive nature.

- Examples of such information include, but are not limited to, docket numbers, party names, addresses, and dates of birth.
- Documents that have been filed or submitted for filing in any court are also considered confidential, even if they are classified as public at the time of filing, since it is possible that the record of the case will be sealed in the future, or that the documents have not been adequately redacted to conceal sensitive information. Although, in these scenarios, the confidential information has already been revealed to the public, entering the information into the public model AI program makes the exposure of the information permanent.
- Intellectual property of the UCS is another type of information that should not be publicly disclosed. An example of such disclosure is internally written source code being entered into a public model AI system by software developers working either within or outside of the UCS.

AI technology must be used in a manner that is consistent with the ethical obligations of judges and nonjudicial employees. The Rules Governing Judicial Conduct (22 NYCRR Part 100), the Rules Governing Conduct of Nonjudicial Court Employees (22 NYCRR Part 50), and the Rules of Professional Conduct remain fully applicable when AI tools are being used.

- For example, judges bear the ultimate responsibility for the content of their opinions, orders, and other written materials, and may not delegate their judicial decision-making responsibilities to any other person or entity. See 22 NYCRR 100.2(A) (a judge must “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”); 22 NYCRR 100.3(B)(7) (a judge must “dispose of all judicial matters promptly, efficiently and fairly”). Thus, while AI tools can be used to assist with a judge’s work, judges and court staff must ensure that such tools are never actually engaged in the decision-making tasks a judge is ethically obligated to perform.
- Nonjudicial employees must avoid using AI in any way that violates their own ethical responsibilities, such as the duty not to manifest bias or prejudice on the basis of any protected status, and the duty not to disclose any confidential information received in the course of their official duties. See 22 NYCRR 50.1(II)(C), (D).
- Any questions about potential ethical concerns arising from particular uses of AI technology by judicial officers should be directed to the Advisory Committee on Judicial Ethics.

V. Requirements and Restrictions

1. UCS users may use only those generative AI products that have been approved by the UCS Division of Technology and Court Research (DoTCR), which are identified in the attached Appendix.
2. All judges and nonjudicial UCS employees with computer access shall be required to complete an initial training course, as well as continuing training, in the use of AI technology. No generative AI product may be used on any UCS-owned device or for any UCS-related work until the user has completed the initial training course.
3. No user may input into any generative AI program that does not operate on a private model — by writing a prompt, uploading a document or file, or otherwise — any information that is confidential, private, or privileged, or includes personally identifiable information or protected health information, or is otherwise inappropriate for public release. A private model is a model that is under UCS control and does not share data with any public LLM.
4. No user may upload into any generative AI program that does not operate on a private model any document that has been filed or submitted for filing in any court, even if the document is classified as public.
5. Any user who uses a generative AI program to produce a document or any other content must thoroughly review the content produced by the program and make necessary revisions to ensure that it is accurate and appropriate, and does not reflect any unfair bias, stereotypes, or prejudice.
6. No user may install on a UCS-owned device any software that is required for the use of a generative AI program, or use a UCS-owned device to access any such program that requires payment, a subscription, or agreement to terms of use, unless access to that program has been provided to the user by the UCS.
7. AI tools may not be used on a UCS-owned device for personal purposes unrelated to UCS work.
8. The approval of a generative AI product by the DoTCR signifies that the product is safe to use from a technological standpoint, but does not necessarily mean that, for a particular task, the use of that product is suitable or appropriate. Such approval by the DoTCR does not preclude any judge or UCS supervisor from prohibiting the use of such a product for a particular task by a person under their supervision.

APPENDIX

Approved Generative Artificial Intelligence Products for New York State Unified Court System Users

Effective October 2025

Please Note: It is important that you check the following list of approved generative artificial intelligence (AI) products on a regular basis. New AI tools are released daily, and AI components are regularly added to existing products. Moreover, some AI tools that currently appear on this list may become unavailable at a later date. Therefore, the contents of this list will change and grow over time.

Approved Private Enterprise Generative AI Tools

Procured and Managed by the Unified Court System

PRODUCT	DESCRIPTION	HOSTING*	AVAILABILITY
Microsoft Azure AI Services	Azure AI services are a suite of cloud-based AI services and tools offered by Microsoft Azure. These services allow developers and data scientists to build, deploy, and manage AI solutions within the Azure cloud platform. They provide pre-built APIs and models for various AI capabilities, including speech, vision, language, and decision-making.	New York State Unified Court System Azure Government Tenant	Currently available Costs are based upon utilization and subject to DoTCR approval
Microsoft 365 CoPilot Chat	Microsoft 365 Copilot Chat is a fully private, AI-powered chat feature within Microsoft 365 designed to boost user productivity. This free, secure generative AI chat is powered by GPT-4o.	New York State Unified Court System O365 Tenant	Currently available
Microsoft 365 CoPilot	Includes a chat interface that is grounded on users' meetings, emails, chats, and documents hosted in the Azure cloud environment. It integrates into Microsoft 365 applications including Outlook, Teams, Word, Excel, PowerPoint, OneDrive, and more.	New York State Unified Court System O365 Tenant	Currently unavailable Requires paid license per account

GitHub CoPilot for Business or Enterprise	Assists developers with real-time code suggestions, auto-completion, and code explanation within development environments. Trained on a wide range of code, it helps developers write code more efficiently, saving time and reducing errors.	New York State Unified Court System O365 Tenant	Currently available to developers and data scientists Requires paid license per account, subject to DoTCR approval
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Trados Studio	Trados Studio is a computer-assisted translation software tool which provides a comprehensive platform for translation tasks, including editing, reviewing, and project management.	AWS Cloud	OCA Office of Language Access
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**The tools listed above are only to be used within the indicated hosting environments*

Approved Public Generative AI Tools

PRODUCT	DESCRIPTION	HOSTING	AVAILABILITY
OpenAI ChatGPT Free Version**	ChatGPT is a conversational AI chatbot developed by OpenAI. It uses large language models, like GPT-4o, to generate human-like text in response to user prompts. Essentially, it is a program that can hold conversations, answer questions, and perform various tasks like drafting text, summarizing information, and more.	Publicly available	Currently available

***Paid subscriptions are prohibited*

NYCOURTS.GOV

Uniform Rules for N.Y. State Trial Courts

PART 207. Uniform Rules For The Surrogate's Court

- 207.1 [Application of Part; waiver; special rules; definitions](#)
- 207.2 [Terms of court](#)
- 207.3 [Transfer of Proceedings](#)
- 207.4 [Papers filed in court; clerk's file number; official forms](#)
- 207.4-a [Electronic Filing in Surrogate's Court; Consensual Program](#)
- 207.4-aa [Electronic Filing in Surrogate's Court; Mandatory Program](#)
- 207.5 [Submission of papers to Surrogate](#)
- 207.6 [Transfer of actions from other courts](#)
- 207.7 [Service and filing of papers; motions](#)
- 207.8 [Removal of papers](#)
- 207.9 [Appearances](#)
- 207.10 [Demand for pleadings](#)
- 207.11 [Guardians](#)
- 207.12 [Appointment of guardian *ad litem* on nomination](#)
- 207.13 [Qualification of guardians *ad litem*; filing report](#)
- 207.14 [Infants' funds](#)
- 207.15 [Birth and death certificates](#)
- 207.16 [Petitions for probate and administration; proof of dist . . .](#)
- 207.17 [\[Repealed\]](#)
- 207.18 [Use of virtual representation](#)
- 207.19 [Probate; filing of will; depositions; proof by affidavit](#)
- 207.20 [Inventory of assets](#)
- 207.21 [Notification to foreign consuls](#)
- 207.22 [Witnesses out of county](#)
- 207.23 [Bills of particulars in contested probate proceedings](#)
- 207.24 [Discontinuance of actions](#)
- 207.25 [Kinship matters](#)
- 207.26 [Contested probate; notice of objections filed](#)
- 207.27 [Examinations before trial in contested probate proceedings](#)
- 207.28 [Examination of attesting witnesses; accountants . . .](#)
- 207.29 [Note of issue; pretrial conference](#)
- 207.30 [Statement of issues](#)
- 207.31 [Jury trials; order framing issues](#)
- 207.32 [Identification of trial counsel](#)
- 207.33 [Engagement of counsel](#)
- 207.34 [Exhibits](#)
- 207.35 [Absence of attorney during trial](#)
- 207.36 [Failure to file timely objections](#)
- 207.37 [Submission of orders, judgment and decrees for signature](#)
- 207.38 [Compromises](#)

- 207.39 Costs and allowances
- 207.40 Accountings
- 207.41 Contested accountings
- 207.42 Report of estates not fully distributed
- 207.43 Filing estate tax return
- 207.44 Payment of estate tax
- 207.45 Attorney's fees; fixation of compensation
- 207.46 Small estate proceedings
- 207.47 Recording assignments of interest in estates
- 207.48 Filing and recording of powers of attorney
- 207.49 Applications for appointment of successor custodians under ...
- 207.50 [Repealed]
- 207.51 Appearance of a guardian, committee or conservator; ...
- 207.52 Accounting of an attorney fiduciary
- 207.53 [Repealed]
- 207.54 Adoption rules; application
- 207.55 Papers required in an adoption proceeding
- 207.56 Investigation by disinterested person; adoption
- 207.57 Special applications
- 207.58 Petition for guardianship by adoptive parent
- 207.59 Proceedings involving custody of Native American child
- 207.60 [Renumbered]
- 207.61 Proceedings for certification as a qualified adoptive parent
- 207.62 Calendaring of proceedings for adoption from an auth agency
- 207.63 Annual Report of Public Administrator
- 207.64 Public Access to Certain Filings

207.1 Application of Part; waiver; special rules; definitions.

(a) *Application*. This Part shall be applicable to proceedings in all Surrogate's Courts in New York State.

(b) *Waiver*. For good cause shown, and in the interest of justice, the court in a proceeding may waive compliance with any of the rules in this Part other than section 207.2 unless prohibited from doing so by statute or by rule of the Chief Judge.

(c) *Additional rules*. Local court rules, and all court forms not inconsistent with law or with these rules, shall comply with Part 9 of the Rules of the Chief Judge (22 NYCRR Part 9).

(d) *Application of SCPA, EPTL and CPLR*. The provisions of this Part shall be construed consistently with the Surrogate's Court Procedure Act (SCPA) and the Estates Powers and Trusts Law (EPTL). Matters not covered by these provisions, the SCPA and the EPTL shall be governed by the Civil Practice Law and Rules (CPLR).

(e) *Definitions*.

(1) *Chief Administrator of the Courts* in this Part also includes a designee of the Chief Administrator.

(2) Unless the context requires otherwise, all references to *clerk* shall mean the Chief Clerk of each Surrogate's Court or the designee of the Chief Clerk.

(3) Unless otherwise defined in this Part, or the context otherwise requires, all terms used in this Part shall have the same meaning as they have in the CPLR, EPTL and the SCPA.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Jan. 12, 1998 eff. April 1, 1998. Amended (b), (d), (e)(3).



207.2 Terms of court.

In each Surrogate's Court there shall be held such terms as the Chief Administrator shall designate.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.3 Transfer of Proceedings

The Chief Administrator or a Deputy Chief Administrative Judge or their designee may authorize the transfer of any proceeding and any matter relating to a proceeding from one judge to another in accordance with the needs of the court. Prior to effectuating any transfer under this section, the Deputy Chief Administrative Judge or Administrative Judge shall, whenever necessary and appropriate, consult with the judge already assigned to the matter and the judge receiving the matter.

Historical Note

Added on January 7, 2026, effective January 20, 2026



Section 207.4 Papers filed in court; clerk's file number; official forms.

(a) Unless otherwise specified by the court, attorneys, as well as parties appearing without attorneys, shall prepare and submit all papers, pleadings, orders and decrees to be acted upon by the Surrogate. The party causing the first paper to be filed shall communicate the clerk's file number forthwith to all other parties to the proceeding; service of the citation bearing the file number shall be sufficient. Thereafter such number shall appear on the outside cover and first page to the right of the caption of every paper tendered for filing in the proceeding. The caption also shall contain the title of the proceeding, an indication of the county of venue and a brief description of the nature of the paper. All papers shall comply with the provisions of CPLR 2101 and (other than wills, codicils, exhibits and forms of other governmental agencies) shall be on standard 8 1/2 inch by 11-inch paper. The text of all papers must be legible and, other than prompts and instructions, must be in a

standard typeface of 10 to 12-point characters and have margins that shall be no less than one-half inch. Papers also shall contain the name of the attorney or party submitting them and, whenever possible, the names, addresses and information regarding parties to the proceeding shall be printed in bold typeface.

(b) The forms set forth in Chapter VII of Subtitle D of this Title, designated "Surrogate Court Forms," and including forms for the Surrogate's Court and adoption forms of the Family Court and Surrogate's Court, shall be the official forms of the court and shall be accepted for filing pursuant to SCPA 106. Forms produced on computers or word processors shall be accepted for filing, provided (1) the text used shall be the same as that contained in the official forms and (2) the attorney or party preparing such form shall certify at the end thereof that the form is the same as the official form and that the substantive text has not been altered. Persons submitting such forms may leave out instructions (contained in brackets) and optional words or phrases that have not been selected or are irrelevant. Submitting a form to be an official form, but upon which the text has been intentionally altered to change the substance or meaning thereof, may be regarded as an attempt to mislead the court.

(c) Examples of the official forms shall be available at the clerk's office of any Surrogate's Court.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Jan. 12, 1998 eff. April 1, 1998.



§ 207.4-a Electronic Filing in Surrogate's Court; Consensual Program

(a) Application. On consent, documents may be filed or served electronically in Surrogate's Court proceedings and counties as specified by order of the Chief Administrator of the Courts. This section shall apply only to those proceedings and counties.

(b) Definitions. The following definitions shall be used for the purposes of these rules:

(1) "New York State Courts Electronic Filing System" ("NYSCEF") shall mean the system, located at the Internet site at www.nycourts.gov/efile, established by the Chief Administrator to permit the electronic transmission of documents to courts and parties in authorized cases.

(2) "Consent" shall mean the voluntary agreement by an attorney or party to an estate proceeding to participate in that proceeding through NYSCEF pursuant to these rules.

(3) "Document" shall mean any submission to the court for filing.

(4) "Electronic filing" ("e-filing") shall mean the electronic transmission of documents through NYSCEF to the Surrogate's Court.

(5) "Electronic service" ("e-service") shall mean the electronic transmission of documents to a party or that party's attorney or representative in accordance with these rules. E-service shall not include service of process to gain jurisdiction. E-service shall be complete upon transmission of documents to NYSCEF.

(6) "E-filer" shall mean an attorney admitted to practice in New York State, or admitted pro hac vice, or an authorized agent thereof, or a pro se party, any of whom is registered as an e-filer with NYSCEF as set forth below.

(7) "Hard copy" shall mean a document in paper form.

(8) "Party" shall mean an individual or entity who has an interest in the proceeding and without whom the case may not proceed.

(9) "Authorized agent" shall mean a person or filing service company designated by an attorney to file and serve documents on the attorney's behalf in an estate proceeding, pursuant to a form promulgated by the Chief Administrator and filed as provided therein.

(10) "Working copy" shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section.

(c) Intent.

(1) E-filing is voluntary and nothing herein shall preclude a party from filing and serving documents in hard copy. Except as provided in subdivision (e)(9), a party who initiates a proceeding by e-filing and any other party who chooses to participate as an e-filer must thereafter file, serve, and accept service of all documents electronically unless notice is given to the court and all other parties that the party no longer wishes to participate electronically.

(2) The court may terminate, modify, or suspend the use of e-filing in a proceeding at any time and may in its discretion excuse an e-filer from compliance with any provision of these rules.

(3) A party or that party's attorney or representative who participates as an e-filer consents to be bound by the provisions of these rules, and participates at the discretion of the Court.

(d) E-filers.

(1) In order to file documents electronically pursuant to these rules, an e-filer shall register with the Office of Court Administration of the New York State Unified Court System by filing with that Office a registration form promulgated by the Chief Administrator. Upon completion of registration, a user ID and password will be issued to the e-filer by NYSCEF. If, during the course of the proceeding, a pro se party who registered as an e-filer retains an attorney, the attorney shall register, if not already registered as an e-filer, and inform the Chief Clerk of his or her appearance on behalf of the pro se party.

(2) Registration as an e-filer shall not constitute consent to participate in any particular estate proceeding; consent to do so must be provided pursuant to subdivision (b)(2).

(3) Upon learning of the compromise of the confidentiality of either the user ID or the password, the e-filer shall immediately notify NYSCEF, which shall arrange for the issuance of a new user ID or password as appropriate.

(e) Electronic Filing of Documents.

(1) An eligible proceeding may be commenced by filing the initial documents electronically, or may become an e-filed proceeding after commencement upon the filing of documents electronically pursuant to these rules. A party commencing a proceeding electronically, or the party first filing electronically, shall serve all other parties with a Notice regarding the use of e-filing and the procedure for participating therein in a form approved by the Chief Administrator, which may be obtained through NYSCEF. Such Notice shall be served, in person or by regular mail, prior to the return date of the citation. Proof of service of such Notice shall be promptly filed with the court.

(2) Whenever documents are e-filed that require payment of a court filing fee, the e-filer shall pay such fee through NYSCEF, or by mail, or in person.

(3) Documents may be transmitted at any time to NYSCEF and will be deemed filed when transmission to NYSCEF is complete and payment of any court filing fee due is received by the court. A document due to be filed by a particular date shall be considered to have been timely filed if filed through NYSCEF no later than midnight of that date.

- (4) Upon completion of transmission of an e-filed document, an electronic confirmation that includes the date and time of receipt shall be issued through NYSCEF to the e-filer.
- (5) Receipt of documents submitted through NYSCEF and issuance of a confirmation shall not be proof of the completeness or technical or legal sufficiency of the documents. If the court identifies any defects as to form, or omissions, in any e-filed documents, the court may direct that the e-filer resubmit them in proper and complete form or amend or supplement them as appropriate.
- (6) If an e-filer submits a petition for probate for which the court does not already have in its possession the original purported last will and testament and any codicils thereto being offered for probate, the e-filer shall file directly with the court the paper original purported last will and testament and any codicils thereto and a hard copy of the death certificate certificate, attorney certified if required by the court, within two business days of the date of e-filing. Except as otherwise directed by the court, process shall not issue nor shall a fiduciary be appointed before the original purported last will and testament, any codicils thereto and the appropriate death certificate are filed with the court.
- (7) If an e-filer submits a petition for administration the e-filer shall file a hard copy of the death certificate, attorney certified if required by the court, directly with the court within two business days of the date of e-filing. Except as otherwise directed by the court, process will not issue nor shall a fiduciary be appointed before the appropriate death certificate is filed with the court.
- (8) Whenever a document is e-filed pursuant to this section, the official record of that document shall be the electronic record maintained by the court.
- (9) Documents that cannot be e-filed because of size, content, format, or any other reasons satisfactory to the court shall be filed in hard copy directly with the court together with, when required, an affidavit of service upon all parties to the proceeding.
- (10) When filing a document in hard copy pursuant to these rules, the filer shall firmly affix thereto a notice of hard copy filing indicating the basis for filing in that form.
- (11) The court may require that working copies of documents be filed with the court. When filing a working copy, the filer shall firmly affix thereto a notice identifying the document as a working copy and indicating that the document has been e-filed.

(f) Signatures.

- (1) Every document which is e-filed shall be signed as required by Part 130 of the Rules of the Chief Administrator in accordance with this section. The document shall provide the signatory's name, address, e-mail address of record and telephone number.
- (2) A document shall be considered to have been signed by, and shall be binding upon, a person identified therein as a signatory, if it is e-filed bearing the actual signature of such person, or, where the person identified as the signatory is the e-filer and the document is being e-filed under the e-filer's user ID and password, an "/s/" is used in the space where the signature would otherwise appear. An attorney or party who e-files a document that bears an actual signature, or causes such a document to be e-filed, represents that he or she possesses the executed hard copy of such document and that he or she shall make it available at the request of the court or any party.

(g) Service of Parties.

- (1) An attorney or party seeking to obtain jurisdiction over a party to a proceeding shall serve that party by any of the methods permitted by the SCPA.
- (2) In all other instances where service of documents is required, e-service may be made upon any party who is an e-filer in the proceeding. Upon e-filing of any such document, NYSCEF shall transmit notification of filing of the document to all e-mail service addresses of record. Such notification shall provide the date and time of filing

and the names of those appearing on the list of e-mail service addresses of record who are receiving notification. The party receiving the notification shall be responsible for accessing NYSCEF to obtain a copy of the document filed. Proof of transmission to the party or the failure thereof shall be recorded by NYSCEF and displayed in the e-filing case record.

(h) Documents Filed by the Court. Decrees, judgments, orders, and decisions in proceedings governed by these rules shall be electronically filed by the court with the appropriate signature affixed and such e-filing shall constitute filing of the decree, judgment, or order. At the time of the filing of the decree, judgment, order, or decision, NYSCEF shall transmit by e-mail to the e-mail service addresses of record a notification that the decree, judgment, order, or decision has been filed and is accessible through NYSCEF. Such notice shall not constitute service of notice of filing by any party.

(i) Technical Failures.

(1) The Chief Clerk shall deem NYSCEF to be subject to a technical failure on a given date if NYSCEF is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. The court shall provide notice of all such technical failures on the NYSCEF site. When e-filing is hindered by a technical failure, a party may file with the court in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to the technical failure as defined herein shall be extended for one day for each day in which such technical failure occurs, unless otherwise ordered by the court.

(2) If the e-filing or e-service does not occur or is prevented because of any of the following, the court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically or extending the date for filing or service of the paper: an error in the transmission of the document to NYSCEF or served party which was unknown to the sending party; the party was erroneously excluded from the service list; or other technical problems experienced by the e-filer, including problems with the filer's equipment or Internet connection.

Historical Note

Added on May 16, 2008

Amended (a) & (e)(1) on May 14, 2009

Amended 1(a) on May 24, 2011

Amended on Jan 09, 2012



Section 207.4-aa Electronic Filing in Surrogate's Court; Mandatory Program.

(a) Application. There is hereby established a pilot program in which all documents filed and served in Surrogate's Court proceedings and counties specified by order of the Chief Administrator of the Courts shall be filed and served electronically. Except to the extent that this section shall otherwise require, the provisions of section 207.4-a of these rules shall govern this program.

(b) Commencement of Proceedings Under this Section.

(1) **Mandatory commencement in general.** Except as otherwise provided in this section, every proceeding specified in subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the clerk of the court through the NYSCEF site.

(2) **Emergency exception.** Notwithstanding paragraph (1) of this subdivision, a proceeding required to be commenced electronically may be commenced by the filing of initiating documents in hard copy provided that such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party, or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter, unless the clerk of court elects to e-file the documents on behalf of the filer. For purposes of this section, such a proceeding shall be deemed to have been commenced electronically.

(3) **Service of process.** Service of process upon a party in a proceeding that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Surrogate's Court Procedure Act, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the proceeding is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) **Filing and Service of Documents After Commencement in Proceedings Under this Section.**

(1) All documents to be filed and served electronically. Except as otherwise provided in this section, filing and service of all documents in a proceeding that has been commenced electronically in accordance with this section shall be by electronic means.

(2) **Emergency exception.** Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy provided that they are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) a deadline for their filing and service fixed by statute, rule, or order of the court will expire on the day the documents are being filed or served or on the following business day; and (ii) the attorney, party, or filing agent therefor is unable to file and serve such documents electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a, and the filer shall file those documents with the NYSCEF site within three business days thereafter, unless the clerk of court elects to e-file the documents on behalf of the filer.

(d) **Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required.** The clerk of the court shall refuse to accept for filing hard copies of documents sought to be filed in proceedings where such documents are required to be filed electronically.

(e) **Exemption From the Requirement of Electronic Filing.** Notwithstanding the foregoing, an attorney or a party who is not represented by an attorney in a proceeding that is required to be commenced electronically may claim exemption from having to file and serve documents electronically in accordance with this section by filing with the clerk of the court in which the proceeding is or will be pending a form, to be prescribed by the Chief Administrator, on which:

(1) if an attorney, he or she certifies, in good faith that he or she:

(i) lacks the required computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney); or

(2) he or she indicates that he or she is not represented by an attorney and wishes to be exempt from having to file and serve documents electronically in accordance with this section.

Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

Where an attorney or party in a proceeding that is subject to this section is exempt from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a of these rules. Notwithstanding the foregoing, all other attorneys and parties in such proceeding shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person or party who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy and shall file electronically proof of such service.

Historical Note:

Added on Jan 09, 2012



Section 207.5 Submission of papers to Surrogate.

All papers for signature or consideration of the Surrogate shall be presented in the first instance to the clerk of the court in the appropriate courtroom or clerk's office, except that where the clerk is unavailable or the Surrogate so directs, papers may be filed with the Surrogate and a copy filed with the clerk at the first available opportunity. Where appropriate, orders to show cause may be submitted directly to the Department of Law or the Surrogate. The papers shall be clearly addressed to the Surrogate for whom they are intended, and prominently show the nature of the papers, the title and clerk's file number of the proceeding in which they are filed, and the name of the attorney or party submitting them.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.6 Transfer of actions from other courts.

(a) An application under SCPA 501 for the consent of the court to the transfer to the Surrogate's Court of an action pending in the Supreme Court, or for the transfer by the Surrogate's Court to itself of any action pending in any other court, or for the consolidation of such action with a proceeding pending in the Surrogate's Court, shall show whether there is pending a proceeding in the Surrogate's Court and the nature of the proceeding, and shall be supported by an affidavit which shall state:

- (1) the court in which such action is then pending;
- (2) the parties to the action;
- (3) the nature of the action;
- (4) whether the action is on the trial calendar;
- (5) an estimate of the time when the action will be reached for trial in the court in which the same is pending, with the facts upon which such estimate is based;
- (6) the reasons why a transfer of the action to this court is desirable; and
- (7) whether a jury trial has been demanded or whether the same has been waived.

(b) There must be annexed to the moving papers a copy of the pleadings in the action sought to be transferred. Upon compliance with the foregoing requirements, an order will be issued by the court directing the adverse parties to show cause why the application should not be granted.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.7 Service and filing of papers; motions.

(a) Whenever service of a paper or notice is required, copies thereof shall be served upon all parties who have appeared and upon such other persons as the Surrogate may direct. Except as further provided in section 207.9 of this Part, a party has appeared within the meaning of these rules so as to entitle the party to be served with notices or papers:

- (1) if the party has filed a written notice of appearance with a demand for service of all papers at a specified address; or
- (2) if the party has filed a pleading upon which is endorsed the name and address of the attorney appearing for the party or the name and address of the party appearing *pro se*.

(b) Proof of service of the paper or notice upon all parties shall be filed with the original paper or notice.

(c) In all proceedings the proof of service of process, notices of motion and orders to show cause shall be filed on or before the second day preceding the return date unless the court otherwise permits. In computing such

period of two days, Saturdays, Sundays and legal holidays shall not be taken into account. This provision shall not apply to an order to show cause returnable in such limited time as to make compliance with its provisions impracticable.

(d) All contested motions and proceedings shall be made returnable on any day the court is in session, unless otherwise provided in the local rules of the court or by order of the Surrogate.

(e) Unless the court otherwise permits, the moving party shall serve copies of all affidavits and briefs upon all other parties at the time of service of the notice of motion. The answering party shall serve copies of all affidavits and briefs as required by CPLR 2214. Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law. Unless otherwise directed by the court, answering and reply affidavits and briefs and all papers required to be furnished to the court by CPLR 2214(c) must be filed no later than the time of argument or submission of the motion.

(f) The Surrogate may determine that any or all motions in that court be orally argued and may direct that moving and responding papers be filed with the court prior to the time of argument.

(g)

(1) Unless oral argument has been requested by a party and permitted by the court, or directed by the court, motion papers received by the clerk of the court on or before the return date shall be deemed submitted as of the return date.

(2) Attendance by counsel at the calendar call shall not be required unless:

(i) a party intends to make an application to the court that is not on the consent of all parties;

(ii) attendance of counsel or oral argument is directed by the court; or

(iii) oral argument is requested by a party.

(3) Attendance by counsel for a party not requesting oral argument is not required where the hearing of oral argument is based solely upon the request of another party.

(4) A party requesting oral argument shall set forth such request in its notice of motion or on the first page of the answering papers, as the case may be. A party requesting oral argument on a motion brought on by order to show cause shall do so as soon as possible prior to the time the motion is to be heard.

Historical Note

Sec filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.8 Removal of papers.

No record or document filed in the court shall be removed therefrom by any person except on written consent of the Surrogate or the clerk. Suitable facilities shall be designated by the Surrogate for the examination or transcription of records and documents by parties or attorneys.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.9 Appearances.

(a) A person not named in a citation, but who claims to be interested in the proceeding and wishes to intervene therein, shall file a notice of appearance and a petition or affidavit alleging interest.

(b) Unless otherwise directed by the Surrogate, attorneys appearing on behalf of nondomiciliaries or parties not personally served within the State must furnish acknowledged evidence of authority pursuant to SCPA 401.

(c) When directed by the Surrogate, in addition to filing an appearance as required by SCPA 404, a guardian ad litem shall serve a notice of appearance upon all parties.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.10 Demand for pleadings.

Unless otherwise ordered by the Surrogate, where a party is entitled under SCPA 302(3) to a copy of a pleading on demand, it shall be served within five days of the demand.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.11 Guardians.

(a) Where application is made to appoint a guardian of two or more infants, a separate petition and proposed order must be presented with respect to each infant.

(b) The order appointing a guardian of the property of an infant shall recite the substance of, or contain a reference to, the requirements of SCPA 1719 regarding guardian's annual accounts.

(c) As soon as a ward reaches 18 years of age, the guardian shall forthwith account to the ward and proceed to obtain a discharge upon receipt and release, by a proceeding for judicial settlement of accounts, or by such other method as directed by the court.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Jan. 12, 1998 eff. April 1, 1998. Amended (c).



Section 207.12 Appointment of guardian ad litem on nomination.

(a) In addition to the requirements of SCPA 403, all applications for the appointment of guardians *ad litem* upon the petitions of infants over 14 years of age must contain the following information:

(1) The petition of the infant must state whether the infant has been influenced by the proponent or the accounting party or the attorneys for the fiduciaries, or anyone connected with them or either of them, in the selection of the person the infant nominates as the infant's guardian *ad litem*, and whether the person nominated by the infant has suggested his or her employment either in person or through others.

(2) The affidavit of the attorney nominated as guardian *ad litem* must state whether the proponent in a probate proceeding or the petitioner in any other proceeding or the accounting party or the attorney for any of the foregoing persons, or anyone connected with such attorney, has suggested or accelerated the nomination of the attorney as guardian *ad litem* and, if so, must state the facts.

(b) The papers submitted on an application must satisfy the court that the attorney who is nominated for appointment as guardian *ad litem* will have no divided loyalty in the performance of his or her duties which might result in failure to protect adequately the infant's rights in the estate.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.13 Qualification of guardians *ad litem*; filing report.

(a) Each guardian *ad litem* shall qualify within 10 days of notification of appointment, or may be deemed unable to act. He or she shall review the court's guidelines for guardians *ad litem*, if available, and carefully examine all matters affecting the guardian's client and all processes and papers to ensure that they are regular and have been duly served. No decree shall be made in the proceeding until the guardian shall report these findings. The report shall be made in writing or, with the consent of the Surrogate, orally in open court, except as otherwise provided in SPCA 1754(4), within 10 court days of the guardian's appointment or from the date to which the proceeding was finally adjourned, unless extended by the court.

(b) A guardian *ad litem* in a proceeding in which a decree has been entered directing payment of money or delivery of property to or for the benefit of the guardian's ward must file a supplemental report within 60 days after a decree settling the account, showing whether the decree has been complied with insofar as it affects the ward. In all such cases, the fiduciary shall immediately notify the guardian in writing of the date and details of payment or delivery.

(c) The guardian's allowance may be authorized in the initial decree, but, except as provided in SCPA 2111, no allowance shall be paid until an appropriate report is made.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: July 3, 1990; Jan. 12, 1998 eff. April 1, 1998. Amended (a), (c).



Section 207.14 Infants' funds.

(a) No allowances will be made to a guardian or otherwise for the support or maintenance of an infant, unless an annual account for the preceding year has been filed or good cause is shown in the petition why it has not been filed. The petition must comply with CPLR 1211.

(b) Where an order is granted authorizing the periodic withdrawal of funds belonging to or held in trust for an infant, it shall specify the number and amounts of such withdrawals and the duration of time in which the funds may be used for the purposes stated.

(c) All guardians, persons acting jointly with a guardian, and depositories designated by the court shall produce for examination, whenever so requested by the court, all securities, evidences of deposit or investment or other records, and shall also furnish an accurate record of receipts and deposits of principal and income and of withdrawals and expenditures.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.15 Birth and death certificates.

- (a) A birth certificate shall be filed upon an application for letters of guardianship or an order of adoption.
- (b) A death certificate shall be filed upon an application for letters testamentary, letters of administration or voluntary administration. Alternate evidence of death may be accepted in the discretion of the court.
- (c) Birth and death certificates may be required to be filed in any other proceeding in the discretion of the court.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988.

**Section 207.16 Petitions for probate and administration; proof of distribution; family tree.**

(a) All petitions for probate or administration shall:

(1) contain the information required by SCPA 304;

(2) contain an estimate of the gross estate of the decedent passing by will or intestacy, separately showing the values of personal and real property, gross rents for a period of 18 months and information about any cause of action for personal injury or wrongful death; and

(3) indicate whether any distributee is a non-marital child or the issue of a non-marital person under EPTL 4-1.2(a)(1) or (2).

(b) Whenever, in a petition for probate or administration, a party upon whom the service of process is required is a distributee whose relationship to decedent is derived through another person who is deceased, the petition must either:

(1) show the relationship of the distributee to decedent and the name and relationship of each person through whom such distributee claims to be related to decedent; or

(2) have annexed a family tree table or diagram showing the name, relationship and date of death of each person through whom such distributee claims to be related to the decedent, which table or diagram shall be supported by an affidavit of a person having knowledge of the contents thereof.

(c) If the petitioner alleges that the decedent was survived by no distributee or only one distributee, or where the relationship of distributees to the decedent is grandparents, aunts, uncles, first cousins or first cousins once removed, proof must be submitted to establish:

(1) how each such distributee is related to the decedent; and

(2) that no other persons of the same or a nearer degree of relationship survived the decedent.

Unless otherwise allowed by the court, the proof submitted pursuant to this subdivision must be by an affidavit or testimony of a disinterested person. Unless otherwise allowed by the court, if only one distributee survived the decedent, proof may not be given by the spouse or children of the distributee. The proof shall include as an

exhibit a family tree, table or diagram, except no such table or diagram shall be required if the distributee is the spouse or only child of the decedent.

(d) If the petitioner alleges that any of the distributees of the decedent or others required to be cited are unknown or that the names and addresses of some persons who are or may be distributees are unknown, petitioner must submit an affidavit showing that he or she has used due diligence in endeavoring to ascertain the identity, names and addresses of all such persons. Compliance with this due diligence requirement is not intended to burden the estate with costly or overly time-consuming searches. Absent special circumstances, the affidavit will be deemed to satisfy the requirement of due diligence if it indicates the results obtained from among the following:

- (1) examination of decedent's personal effects, including address books;
- (2) inquiry of decedent's relatives, neighbors, friends, former business associates and employers, the post office and financial institutions;
- (3) correspondence to the last known address of any missing distributees;
- (4) correspondence or telephone calls to, or internet search for, persons of same or similar name in the area where the person being sought lived;
- (5) examination of the records of the Motor Vehicle Bureau and Board of Elections of the state or county of the last-known address of the person whose whereabouts is unknown.

In probate proceedings, the court may accept, in lieu of the above, an affidavit by decedent setting forth the efforts that he or she made to ascertain relatives.

(e) If a person requesting letters to administer an estate as sole executor or administrator is also an attorney admitted in this State, he or she shall file with the petition requesting letters a statement disclosing:

- (1) that the fiduciary is an attorney;
- (2) whether the fiduciary or the law firm with which he or she is affiliated will act as counsel; and
- (3) if applicable, that the fiduciary was the draftsman of a will offered for probate with respect to that estate.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Jan. 12, 1998; April 1, 1998; Oct 5, 2000 eff. Oct. 3, 2000. Amended (d).



Section 207.17 [Repealed]

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988; repealed, filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.18 Use of virtual representation.

(a) In any accounting proceeding where representation is to be utilized pursuant to subdivision 5 of SCPA 315, an affidavit of the petitioner or petitioner's attorney, and of the representor, must be submitted setting forth the following information:

(1) In the affidavit of the petitioner or petitioner's attorney:

- (i) the name, address and the interest in the estate of the representor;
- (ii) the name, address and the interest in the estate of the representees; and
- (iii) the statutory basis for the use of virtual representation.

(2) In the affidavit of the representor:

- (i) that the representor has fully reviewed the proceedings;
- (ii) the steps taken by the representor to adequately represent the interest of the representees in order to make a considered judgment whether to appear, default, acquiesce or contest the proceedings; and
- (iii) that the representor has no conflict of interest in adequately representing the representees.

(b) If the court in any other proceeding, or in an accounting proceeding in circumstances other than set forth in subdivision (a) of this section, questions adequacy of representation by the representor, it may direct the filing of the affidavits set forth in subdivision (a).

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.19 Probate; filing of will; depositions; proof by affidavit.

(a) With every petition for probate of a will there must be filed the original will and a copy thereof, except in the case of lost or destroyed wills or where the Surrogate dispenses therewith or fixes a later time within which such will must be filed. With such copy there must also be filed an affidavit showing that it is a true copy of the original. If the copy be a reproduction by photographic or similar process, the affidavit shall be by one person; otherwise it shall be by the two persons who have compared the copy with the original. In a proceeding for probate of a will alleged to be lost or destroyed, the Surrogate may make such order in respect of the filing of the text thereof as he or she may deem proper.

(b)

(1) Unless service is by publication, a copy of the will shall be attached to all citations served and the affidavits of service of citation shall recite the service of a copy of the will.

(2) All waivers and consents filed with the court shall recite in the body of the waiver that a copy of the will was received.

(c) The clerk may require at least two days' notice before taking a deposition or testimony of any attesting witness. When any party is to be represented by a guardian *ad litem*, proponents should give notice of the time and place of taking a deposition of an attesting witness to such guardian *ad litem*.

(d) In a probate proceeding where the will purports to exercise a power of appointment, a copy of the instrument creating the power of appointment must be furnished, and the petition for probate shall list those named in said instrument who are adversely affected by the probate of such will. Jurisdiction shall be acquired over such persons in the same manner as over distributees.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Jan. 12, 1998 eff. April 1, 1998. Repealed (c), (d), (g); renum. (e)-(f) to (c)-(d).



Section 207.20 Inventory of assets.

(a) The fiduciary or the attorney of record shall furnish the court with an Inventory of Assets form which identifies the following:

(1) those assets that either were owned by the decedent individually, including those in which the decedent had a partial interest, or were payable or transferrable to the decedent's estate, by indicating the total value thereof by letter only for one of the following categories: A-under \$10,000; B-\$10,000 to under \$20,000; C-\$20,000 to under \$50,000; D-\$50,000 to under \$100,000; E-\$100,000 to under \$250,000; F-\$250,000 to under \$500,000; G-\$500,000 or over; and

(2) those assets held in trust; those assets over which the decedent had the power to designate a beneficiary; jointly owned property; and all other non-probate property of the decedent by checking yes or no.

(b) The Inventory of Assets form shall be filed with the court within nine months of the date letters issued to the fiduciary or as the court otherwise directs.

(c) In the event the Inventory of Assets is not filed, the court may refuse to issue certificates, may revoke the letters and may refuse to issue new ones until such list has been filed and the fees paid as provided in SCPA 2402. Failure to file such list of assets may also constitute grounds for disallowance of commissions or legal fees.

(d) If any additional filing fees are due, they shall be paid to the court at the time of the submission of the inventory.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Sept. 23, 1991; May 4, 1992; April 27, 1993; Jan. 12, 1998 eff. April 1, 1998. Repealed (a), (b), renum. and amd. (c)-(e) to (a)-(d).

Amended on Dec. 23, 2015 effective March 1, 2016



Section 207.21 Notification to foreign consuls.

Where it appears that an intestate who died, or any party interested in the estate of the intestate, is the subject of a foreign power whose consul is entitled by treaty to administration or intervention, notice of the application for the appointment of an administrator shall be given such consul.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.22 Witnesses out of county.

(a) When, in an uncontested probate proceeding, a witness to a will is outside the jurisdiction of the court, and SCPA 1406 is not utilized, the court may order that the witness be examined in the Surrogate's Court of another county or in an appropriate court of another state or county or before a commissioner designated by the court pursuant to SCPA 508, specifying the nature and manner of the examination, and shall send such other court or commissioner a copy of such order together with the original will or court-certified reproduction thereof. If the original will is sent, a court-certified copy thereof shall be retained in the office of the court wherein the proceeding is pending.

(b) When the testimony of the witness is obtained, it shall be annexed to the will or to the copy to which it relates, and together they shall be returned to and filed in the court wherein the proceeding is pending, as provided in SCPA 507.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.23 Bills of particulars in contested probate proceedings.

(a) In any probate proceeding in which objection to probate is made upon the grounds that the execution of the propounded instrument was procured by fraud or undue influence and the proponent demands or moves for a bill of particulars, the proponent shall be entitled as of course to the following information:

(1) the specific act or acts or course of conduct alleged to have constituted and effected such undue influence, the person or persons charged therewith and the time or times and place or places where it is alleged to have taken place;

(2) the particular false statements, suppressions of fact, misrepresentations, or other fraudulent acts alleged to have been practiced upon the decedent, the place or places where these events are claimed to have occurred and the persons who perpetrated them; and

(3) whether such acts were accompanied by an act of physical violence or mistreatment of the decedent or threats, and if so, the nature thereof.

(b) If it is claimed by the contestant that the instrument offered for probate is not the last will of the deceased, the proponent shall be entitled to a bill of particulars as of course, which shall state:

(1) whether it is claimed that there is an alleged testamentary instrument of later date than the instrument offered for probate;

(2) whether it is claimed that the instrument offered for probate was revoked, and if so, the method by which the alleged revocation was accomplished; or

(3) whether it is merely claimed that the instrument offered for probate was not executed in accordance with the prescribed statutory formalities.

(c) In the demand or notice of motion it shall not be necessary for the proponent to set forth at length the foregoing items; he or she may, in lieu thereof, refer to the items specified in this rule. As to any other desired particulars, the proponent shall set them forth at length in the demand or notice of motion.

(d) Nothing contained in the foregoing shall be deemed to limit the court in denying, in a proper case, any one or more of the foregoing particulars, or in a proper case, in granting other, further or different particulars.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.24 Discontinuance of actions.

In any discontinued action or proceeding, the attorney for the plaintiff or petitioner shall file a stipulation or statement of discontinuance with the clerk of the court within 20 days of such discontinuance. If the action or proceeding has been noticed for judicial activity within 20 days of such discontinuance, the stipulation or statement shall be filed before the date scheduled for such activity.

Historical Note

Sec. filed Jan. 9, 1986; repealed, new filed April 27, 1993; amd. filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.25 Kinship matters.

(a) *Accounting proceedings.* In all kinship matters, whether the hearing be held by the court or referred to a referee, proof must be completed by the party who seeks to establish kinship in an accounting proceeding within one year from the date fixed for a hearing by the court or the date of referral, or the party's objections shall be dismissed and the monies deposited pursuant to CPLR 2601 for the benefit of unknown distributees.

(b) *Administration or withdrawal proceedings.* In all kinship matters, whether the hearing be held by the court or referred to a referee, proof must be completed by the party who seeks to establish kinship in an administration proceeding or withdrawal proceeding within six months from the date fixed for a hearing by the court or the date of referral or the petition shall be dismissed, without prejudice.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.26 Contested probate; notice of objections filed.

(a) Objections to probate of a will shall be filed and served with proof of service in conformity with SCPA 1410.

(b) Within thirty days of the filing of objections, the proponent shall present a citation in accordance with section 1411 of the SCPA. If the proponent fails to timely present such citation or, having presented it, fails to have it issued by the court, the objectant or any other person interested may present such citation to be served pursuant thereto.

(c) Since the requirements of SCPA 1411 are jurisdictional, all further pretrial procedures or proceedings shall be stayed until there is compliance with this rule.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.

Amended (b) on Mar 09, 2012



Section 207.27 Examinations before trial in contested probate proceedings.

In any contested probate proceeding in which objections to probate are made and the proponent or the objectant seeks an examination before trial, the items upon which the examination will be held shall be determined by the application of article 31 of CPLR. Except upon the showing of special circumstances, the examination will be confined to a three-year period prior to the date of the propounded instrument and two years thereafter, or to the date of decedent's death, whichever is the shorter period.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.28 Examination of attesting witnesses, accountants and adverse parties or witnesses.

(a) All examinations of attesting witnesses, accountants and adverse parties or witnesses should be conducted on reasonable notice to all attorneys, guardians *ad litem* and parties entitled under SCPA 302(3). Unless the court otherwise directs, all examinations pursuant to SCPA 1404, 2102, 2103, 2104 and 2211 shall be held at the court-house.

(b) Unless the court permits, such examinations shall not be conducted until jurisdiction has been obtained over all necessary parties to the proceeding and, where necessary, guardians *ad litem* have been appointed and qualified.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed July 2, 1992 eff. June 22, 1992. Amended (a).



Section 207.29 Note of issue; pretrial conference.

(a) The court may establish such calendars of cases as it deems necessary or desirable for proper case management and may schedule calls of such calendars at such times and in such manner as it deems appropriate.

(b) The court may direct that a trial or hearing date shall not be fixed until after a party shall file in duplicate a note of issue with a certificate of readiness in a form prescribed by the court together with an affidavit of service

of said note of issue and certificate of readiness upon all parties who have appeared. The note of issue filed shall contain a statement of the estimated trial time each party will require.

(c) A pretrial conference may be directed by the court, either before or after a trial date is fixed, at which the parties shall attend. At such conference, a schedule of dates for the completion of examinations, disclosure matters, bills of particulars and other pretrial matters may be directed. The court may direct parties to submit for inspection documents and exhibits, may require counsel to stipulate as to facts and issues, and may direct severance or consolidation of issues.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988.



Section 207.30 Statement of issues.

(a) At least 10 days prior to the trial of the issues joined in any proceeding, except where an order framing issues has theretofore been made, the petitioner shall file with the court a statement, in writing, of the nature of such issues, the party who holds the affirmative as to each issue, and the objections, if any, which the petitioner concedes to be well taken or which may have been withdrawn.

(b) In accounting proceedings, an additional notation shall be included in the statement as to any modifications of the account to which the parties consent.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.31 Jury trials; order framing issues.

(a) No matter shall be assigned a date for trial by jury until an order framing issues and directing a trial by jury has been made pursuant to SCPA 502.

(b) Whenever a jury trial has been demanded, any party on five days' notice of settlement to the attorneys for all other parties who have appeared may present a proposed order framing the issues and directing such trial by jury. Such order shall state plainly and concisely the controverted questions of fact to be determined by the jury.

(c) In such order, the court may fix a date for trial or on which the matter will be placed on the calendar for assignment of trial date. Such order must be served on all parties who have appeared at least 15 days before

date of trial or date of calendar call and proof of service filed at least 10 days before such date of trial or calendar call.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.32 Identification of trial counsel.

(a) Where the attorney of record for any party arranges for another attorney to conduct the trial, the trial counsel must be identified in writing to the court and all parties within 10 days after the filing of the notice of trial. The notice must be signed by both the attorney of record and the trial counsel.

(b) After trial counsel is designated as provided above, no substitution shall be permitted unless the substitute counsel is available to try the case on the day scheduled for trial. Written notice of such substitution shall be given promptly to the court and all parties.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.33 Engagement of counsel.

No adjournment shall be granted on the ground of engagement of counsel except in accordance with Part 125 of the Rules of the Chief Administrator (22 NYCRR Part 125).

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.34 Exhibits.

(a) A party intending to offer an exhibit that can be readily duplicated or reproduced shall prepare extra copies for use at the trial. A party offering in evidence any paper in his or her possession shall submit a copy to opposing counsel for inspection.

(b) If a filed document is to form part of the evidence to be submitted at trial, such document or a certified copy shall be obtained or ordered from the clerk's office or other repository sufficiently in advance of trial to permit its production without delaying the trial.

(c) Whenever practicable, to avoid unnecessary delay during the trial, counsel shall hand exhibits for marking to the court reporter or other designated person prior to the opening statements or during a recess.

Historical Note

Sec. filed Feb. 16, 1988 eff. April 1, 1988.



Section 207.35 Absence of attorney during trial.

All trial counsel shall remain in attendance at all stages of the trial until the jury retires to deliberate unless excused by the Surrogate. Any counsel not present during the jury deliberation, further requests to charge, or report of the jury verdict shall be deemed to stipulate that the court may proceed in his or her absence and to waive any irregularity in proceedings taken in his or her absence. The court may permit trial counsel to leave, provided that counsel remain in telephone contact with the court.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.36 Failure to file timely objections.

Whenever the time to file objections in a proceeding has expired, objections shall not be accepted for filing unless accompanied by a stipulation of all parties to extend the time or unless ordered by the court.

Historical Note

Sec. filed Feb. 16, 1988 eff. April 1, 1988.



Section 207.37 Submission of orders, judgments and decrees for signature.

(a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.

(b) Failure to submit the order or judgment timely shall be deemed an abandonment of the motion or proceeding unless for good cause shown.

(c)

(1) When settlement of an order or judgment is directed by the court, a copy of the proposed order or judgment with notice of settlement, returnable at the office of the clerk of the part in which the order or judgment was granted, or before the judge if the court has so directed or if the clerk is unavailable, shall be served on all parties either:

(i) by personal service not less than five days before the day of settlement; or

(ii) by mail not less than 10 days before the date of settlement; or

(iii) by overnight delivery not less than six days before the date of settlement.

(2) Proposed counter-orders or judgments shall be made returnable on the same date and at the same place, and shall be served on all parties by personal service, not less than two days, or by mail, not less than seven days, before the date of settlement.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.

Added (c)(1)(iii) Dec 04, 2012



Section 207.38 Compromises.

(a) Upon any application for leave to compromise a claim for wrongful death or personal injuries, or both, the petition and the supporting affidavits shall set forth the time, place and manner in which the decedent sustained the injuries, and a complete statement of all such facts as would justify the granting of the application. If the

cause of action did not arise under the laws of the State of New York, the laws of the jurisdiction under which said cause of action arose must be established to the satisfaction of the court.

(b) The petition also shall show the following:

- (1) the age, residence, occupation and earnings of the decedent at time of death;
- (2) the names, addresses, dates of birth and ages of all the persons entitled to take or share in the proceeds of the settlement or judgment, as provided by EPTL 5-4.4, or by the applicable law of the jurisdiction under which the claim arose, and a statement whether or not there are any children born out of wedlock;
- (3) a complete statement of the nature and extent of the disability, other than infancy, of any person set forth in paragraph (2) of this subdivision;
- (4) the gross amount of the proceeds of settlement, the amount to be paid as attorneys' fees, and the net amount to be received by petitioner as a result of the settlement;
- (5) any obligations incurred for funeral expenses, or for hospital, medical or nursing services, the name and address of each such creditor, the respective amounts of the obligations so incurred, whether such obligations have been paid in full and/or the amount of the unpaid balance due on each of said claims as evidenced by proper bills filed with the clerk;
- (6) whether any hospital notice of lien has been filed under section 189 of the Lien Law, and if so, the particulars relating thereto;
- (7) on the basis of the applicable law, a tabulation showing the proposed distribution, including the names of the persons entitled to share in the proceeds and the percentage or fraction representing their respective shares, including a reference to the mortality table, if any, employed in the proceeding which resulted in the settlement or judgment, and the mortality table employed in the proposed distribution of the proceeds;
- (8) the cost of any annuities in compromises based upon structured settlements in wrongful death actions; and
- (9) an in camera submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interest of an infant distributee entitled to share in the proceeds of the settlement, any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee.

(c) Where the petition also makes application for the compromise of a claim for personal injuries sustained by the decedent, the petition shall set forth the amount allocated to each cause of action, the basis for such allocation, the effect of such allocation on decedent's estate tax liability, and proof of the citation of the New York State Department of Taxation and Finance, or their waiver thereof;

(d) A supporting affidavit by the attorney for petitioner must be filed with each petition for leave to compromise, showing:

- (1) whether the attorney has become concerned in the application or its subject matter at the instance of the party with whom the compromise is proposed or at the instance of any representative of such party;
- (2) whether the attorney's fee is to be paid by the administrator, and whether any payment has been or is to be made to the attorney by any other person or corporation interested in the subject matter of the compromise;
- (3) if the attorney's compensation is to be paid by any other person, the name of such person;
- (4) the services rendered by the attorney in detail;
- (5) the amount to be paid as compensation to the attorney, including an itemization of disbursements on the case, and whether the compensation was fixed by prior agreement or based on reasonable value, and if by

agreement, the person with whom such agreement was made and the terms thereof; and

(6) an in camera submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interests of an infant distributee entitled to take or share in the proceeds of the settlement and any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee.

(e) In an application for the compromise of a claim solely for personal injuries, the petition shall contain all the facts in relation to such claim and comply with as much of the provisions of this rule as are applicable, and in addition, the petition shall recite the date letters were issued, whether more than seven months have elapsed from such date, the names and post-office addresses of all creditors, or those claiming to be creditors, and the distributees of the decedent, specifying such as are infants or alleged incompetents.

(f) Whenever papers are filed for the compromise of a cause of action in which the original action alleged conscious pain and suffering and wrongful death, and the action is subsequently settled for wrongful death only, the waivers and consents of any adult distributees who will not share in the recovery must recite that they are aware that, by consenting that the entire settlement be considered as a settlement of the cause of action for wrongful death, they are waiving the right to receive any distributive share out of the settlement.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988. Added (f).

Amended (b) & (d) May 6, 2025, effective July 7, 2025



Section 207.39 Costs and allowances.

(a) On the settlement of a decree, any party who shall deem himself entitled to costs may present a bill of costs, provided that at least two days' notice of the taxation thereof has been served on all attorneys appearing in the proceeding. Each bill of costs must show the items of costs to which the party deems himself entitled and must contain an itemized list of any disbursements claims, duly verified both as to amount and necessity. The disbursements for referee's and stenographer's fees may be evidenced by affidavit or by such other proof as may be satisfactory to the court.

(b) An application for an allowance may also be made on two days' notice to all attorneys appearing in the proceeding. Such application shall be accompanied by an affidavit setting forth the number of days necessarily occupied in the hearing or trial; the time occupied on each day in the rendition of the services; and a detailed statement of the nature and extent of the services rendered, including services necessarily rendered or to be rendered in the drawing, entering or executing of the decree.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.40 Accountings.

(a) Whenever a petition for a voluntary accounting is presented, the account to which it relates must be filed therewith, if not previously filed, and a citation to settle such account must thereupon be procured and served on the parties required to be cited.

(b) Unless otherwise directed by the court, upon an accounting by an executor, trustee, or administrator *cum testamento annexo*, a copy of the will or trust instrument must be filed with the petition and account.

(c) Insofar as may be practical, all accounts shall conform with and contain such schedules and information as may be called for in such forms as may from time to time be provided by the Chief Administrator of the Courts or, in the absence thereof, by the court. In the account of a trustee of a common trust fund for a period that begins at the close of the prior intermediate account:

(1) the statements of increases and decreases shall also show gains and losses realized on disposition of assets based upon the fair market values at the beginning of the account of assets held at the beginning of the account and the inventory values of all other assets; and

(2) the statement of assets on hand at the close of the account shall also show that increase or decrease in the fair market value of the assets at the close of the account in relation to the fair market values at the beginning of the account of those assets which were held at the beginning of the account and in relation to the inventory values of the remainder of said assets.

(d) The schedule showing the computation of commissions shall also state in explicit terms whether any personal property listed as an asset of the estate was, at the date of decedent's death, pledged as collateral to any unpaid obligation of the decedent and, if so, shall set forth:

(1) a description of the property so pledged and the value thereof as listed in the account;

(2) the amount due at the date of death on the obligation for which it was pledged;

(3) the equity in such property at the date of death; and

(4) whether the accounting party has included in the claim for commissions any commission upon the value of the property so pledged and, if so, a statement of the capital value upon which such commissions are claimed with respect to such property.

(e) Unless service is by publication or unless otherwise directed by the court, a copy of the summary statement of account shall be attached to all citations served, and the affidavits of service of citation shall recite the service of a copy of the summary statement of account. Counsel for the accounting party or the accounting party, if not represented by counsel, shall furnish a copy of the full account to all persons cited in the accounting proceeding who request the full account. Failure to furnish such a copy may constitute grounds for disallowance of commissions or legal fees.

(f) Unless otherwise directed by the court, all waivers of citation and consents in accounting proceedings filed with the court shall recite in the body of the waiver that a copy of the summary statement of account was received and shall state that the person waiving understands that he or she may request a copy of the full account from the petitioner or petitioner's attorney.

(g) The cost of producing and delivering a full accounting to persons interested in the estate shall be deemed a proper disbursement and allowed as an expense of administration.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Jan. 12, 1998; April 1, 1998 eff. April 1, 1998. Amended (c)(1), (d).



Section 207.41 Contested accountings.

On any accounting by an executor, administrator, temporary administrator, guardian or trustee, any creditor or any other party interested may file objections thereto in writing within such time as shall be allowed by the Surrogate. Such objections must be served upon the accounting party or the accounting party's attorney before the filing thereof in the court. A guardian *ad litem* appointed in an accounting proceeding shall file a report or objections within 20 days after the appointment unless for cause shown the time to file such report or objections is extended by the Surrogate.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Jan. 12, 1998; April 1, 1998 eff. April 1, 1998. Amended sec. title.



Section 207.42 Report of estates not fully distributed.

(a) Whenever the estate of a decedent has not been fully distributed or a final accounting filed with petition for settlement within two years from the date when the first permanent letters of administration or letters testamentary were issued where the gross taxable estate of such decedent does not require the filing of a Federal estate tax return, and within three years if a Federal estate tax return is required, the executor or administrator shall, at or before the end of the first complete month following the expiration of such time, file with the clerk of the court a statement in substantially the following form:

Report pursuant to 22 NYCRR 207.42

SURROGATE'S COURT

_____ COUNTY

Estate of _____, Deceased

File No. _____

Date of issuance of first permanent letters

Approximate amount of gross estate

Approximate amount that has been distributed to beneficiaries

Approximate amount remaining in fiduciary's hands at present

This estate has not yet been fully distributed for the following reason: (state briefly)

Date of this report _____

Fiduciary

Address: _____

Phone: _____

Attorney for above Fiduciary

Address: _____

Phone: _____

(b) The court shall thereupon take such steps as it deems appropriate to expedite the completion of the administration of the estate and the distribution of all assets.

(c) Failure to file such statement will be considered by the court on any application for commissions or legal fees, and may constitute a ground for disallowance of commissions or fees.

(d) The periods set forth in subdivision (a) of this section are not intended to set a standard time for completion of estate administration, but rather to fix a period after which inquiry may be made by the court.

(e) This section shall not limit the power of the court to direct an accounting at any time on its own initiative or on petition pursuant to SCPA 2205.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.43 Filing estate tax return.

(a) For all persons who die on or after May 26, 1990, for whom an estate tax return is required to be filed pursuant to section 971 of the Tax Law, if a petition for probate or administration was filed with the Surrogate's Court, the person required to file the tax return shall file a copy of the tax return with such Surrogate's Court, pursuant to section 972(c) of the Tax Law, within 10 days of filing the original tax return with the Commissioner of Taxation and Finance; provided, however, this section shall not apply where the decedent died on or after February 1, 2000 and the Surrogate's Court in which the petition for probate or administration was filed has not adopted a rule pursuant to section 972(c) of the Tax Law requiring the filing of a copy of the tax return with such court.

(b) Failure to file a copy of the estate tax return when required pursuant to this section together with any filing fee required pursuant to law shall authorize the court to compel an accounting pursuant to SCPA 2205 and may constitute grounds for revocation of letters, imposition of a surcharge or disallowance of commissions or legal fees.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: March 2, 1994; Aug. 20, 1996; June 5, 2000 eff. Feb. 1, 2000. Amended (a)-(b).



Section 207.44 Payment of estate tax.

(a) No decree of final settlement of an executor's or administrator's account or of the discharge of an executor or administrator shall be signed unless the petition is accompanied or preceded by a copy of the letter from the Estate and Gift Tax Section of the New York Department of Taxation and Finance captioned "New York Estate Tax Discharge from Liability" showing that no final estate tax is due or that the final estate tax plus interest and penalties, if any, have been paid.

(b) Nothing herein shall preclude the discharge of an executor or an administrator who has complied with the requirements of section 1804(3) of the Surrogate's Court Procedure Act where a tax has been fixed but not paid because of insufficient funds in the estate, or the representative seeks a discharge before the estate has been administered, or where no return has been filed, or for other sufficient cause.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; March 2, 1994 eff. Feb. 8, 1994.



Section 207.45 Attorney's fees; fixation of compensation.

(a) In any proceeding in which the relief requested includes determination of compensation of an attorney or the allowance of expenses of counsel, there shall be filed with the petition an affidavit of services which shall state when and by whom the attorney was retained; the terms of the retainer; the amount of compensation requested; whether the client has been consulted as to the fee requested; whether the client consents to the same or, if not, the extent of disagreement or nature of any controversy concerning the same; the period during which services were rendered; the services rendered, in detail; the time spent; and the method or basis by which the requested compensation was determined. The affidavit also shall state whether the fee includes all services rendered and to be rendered up to and including settlement of the decree and distribution, if any, thereunder and whether the attorney waives a formal hearing as to compensation.

(b) Except when the SCPA otherwise provides or when compelling reasons exist for so doing, the court shall not fix attorneys' compensation or make allowances to parties for counsel expenses unless a proceeding is instituted under SCPA 2110 or unless, in an accounting, the petition and citation state that an application will be made for determination of compensation, the allowance of counsel expenses and the amount thereof.

(c) Reports, affidavits and statements relating to fixation of fees and allowances shall be served upon the petitioner and upon all attorneys, guardians *ad litem* and parties appearing in person (other than those who have theretofore filed waivers). Proof of such service shall be filed with the court.

(d) In any proceeding for the determination of kinship in which an attorney appears for any party not a resident of the United States, the attorney shall institute a proceeding pursuant to SCPA 2110 for the fixation of his or her compensation and shall comply with the provisions set forth in subdivisions (a) through (c) of this section.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Jan. 12, 1998; April 1, 1998 eff. April 1, 1998. Amended (b).



Section 207.46 Small estate proceedings.

In all proceedings for the settlement of small estates without court administration (SCPA article 13), if additional certificates of voluntary administration are requested, other than updated or replacement certificates for the same asset or assets as the original certificate, such request shall be accompanied by an affidavit from either the voluntary administrator or the attorney of record setting forth the reasons additional certificates are required.

Historical Note

Sec. filed Feb. 16, 1988; amd. filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.47 Recording assignments of interest in estates.

(a) No assignment of any right, share or interest in an estate of a decedent shall be filed or recorded unless accompanied by an affidavit in a form satisfactory to the court, which shall state whether any power of attorney or separate agreement exists which relates to such assignment or which fixes presently or prospectively the amount payable by or to the assignor.

(b) A copy of such separate agreement shall be annexed to the affidavit, if such separate agreement be in writing, and a statement of the substance thereof shall be incorporated in the affidavit if such separate agreement be oral. No assignment accompanied by a power of attorney shall be recorded unless such power of attorney be recorded.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.48 Filing and recording of powers of attorney.

(a) No power of attorney affecting any interest in a decedent's estate shall be filed or recorded pursuant to EPTL 13-2.3 unless:

(1) the instrument is satisfactory to the court as to form, content and manner of execution; and

(2) the person offering the instrument for filing or recording shall furnish an affidavit of the attorney-in-fact, stating: the circumstances under which the power of attorney was procured; the post office address of the grantor, the amount of his or her interest and relationship, if any, to the decedent; the financial arrangement and exact terms of compensation of the attorney-in-fact or of any other person concerned with the matter; disbursements to be charged to the grantor; a copy of any agreement concerning compensation; and the name of any attorney representing the attorney-in-fact.

(b) An attorney-in-fact in a proceeding for the determination of kinship shall not accept any payment for acting pursuant to a power of attorney unless there has been filed with the court all the terms of the agreed-upon compensation or the same has been fixed by the court in a proceeding pursuant to SCPA 2112.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Jan. 12, 1998 eff. April 1, 1998. Amended (a), renum. (b), (c) to (a)(2), (b).



Section 207.49 Applications for appointment of successor custodians under EPTL 7-4.7.

(a) A petition for the appointment of a successor custodian under EPTL 7-4.7 shall show:

- (1) the relationship between the petitioner and the minor;
- (2) the age of the minor;
- (3) the facts concerning the original gift;
- (4) whether the donor was the original custodian and, if not, whether he or she joins in the application;
- (5) the adult members of the minor's family;
- (6) whether there is a general or testamentary guardian of the minor and, if so, whether he or she joins in the application;
- (7) what was the relationship between the custodian and the petitioner if the donor was the custodian and is now deceased;
- (8) if the donor custodian and petitioner were husband and wife, whether they were living together and whether the infant resided with them;
- (9) with whom the minor is now living; and
- (10) the monies and securities to be delivered to the successor custodian and the value of such securities.

(b) If the donor was a relative of the minor and has died leaving a will, a copy of the will should be submitted.

(c) Additional facts and affidavits shall be submitted as will permit the court to determine from the papers, in the absence of a contest, that the best interests of the minor will be served by the appointment of the petitioner as successor custodian, rather than by the appointment of some other eligible person.

(d) Unless otherwise ordered by the court, and unless such person or persons have joined in the application, notice of the application shall be served upon (1) such persons as are required to be served in a proceeding for the appointment of a guardian, (2) the donor, if he or she is alive, and the guardian, if there is one of the minor.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.50 [Repealed]

Historical Note

Sec. filed Jan. 9, 1986; repealed, filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.51 Appearance of a guardian, committee or conservator; affidavit required of attorney.

If the affidavit required by SCPA 402 shows that the guardian, committee or conservator is entitled to share in the distribution of the estate or fund in which the infant, incompetent or conservatee is interested or that the guardian, committee or conservator is in any way interested in the estate or fund, such affidavit must state fully the nature of his or her interest. Whenever a guardian, committee or conservator appears by an attorney, the latter shall accompany his or her notice of appearance with an affidavit showing the circumstances which led to his or her employment and whether his or her employment was suggested or accelerated either directly or indirectly by the proponent or accounting party or by the attorney for either of them or by any other person whose interest in the proceeding is adverse to that of the infant, incompetent or conservatee, and showing further that the attorney is free of any restraint, whether professional, personal or otherwise, in his or her complete independence of action on behalf of his or her client or ward.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.52 Accounting of an attorney-fiduciary.

(a) Within 12 months from the issuance of letters, or 24 months if the estate must file a Federal estate tax return, if a sole executor or administrator administering an estate is also an attorney admitted in this State, and he or she or the law firm with which the attorney is affiliated is acting as counsel for the estate, the attorney-fiduciary shall file an affidavit setting forth: (1) the total commissions paid or to be paid to him or her; and (2) the total attorney's fees paid or to be paid (by court order, if required) to him or her or to the law firm with which he or she is affiliated, for services rendered to the estate.

(b) The court may extend the time for filing the affidavit upon good cause shown to the court in writing.

(c) The court in its discretion may require additional information or documentation from the attorney-fiduciary, including an affidavit of legal services, a cash flow statement and a full accounting pursuant to SCPA 2205.

(d) In the event the affidavit is not so filed, the court may suspend the letters until the affidavit has been filed. Failure to file the affidavit may constitute grounds for disallowance of commissions or legal fees.

(e) Except as otherwise provided by SCPA 2111(1) and (2), or SCPA 2310 or 2311, an attorney-fiduciary as defined in subdivision (a) of this section (or the law firm with which he or she is affiliated) shall not take

advances for legal services rendered to the estate, or commissions on account of compensation, until 30 days after filing the affidavit required by subdivision (a) of this section.

(f) The provisions of this section also shall apply to each cofiduciary administering an estate who is an attorney admitted in this State if: (1) he or she or the law firm with which the attorney is affiliated is acting as counsel for the estate; and (2) there is no other cofiduciary who is not an attorney.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed March 25, 1987; repealed, new added by renum. 207.60, filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.53 [Repealed]

Historical Note

Sec. filed Feb. 16, 1988; amd. filed May 29, 1990; repealed, filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.54 Adoption rules; application.

(a) Sections 207.54 through 207.58 of this Part shall be applicable to all agency and private-placement adoption proceedings in Surrogate's Court.

(b) In any agency adoption, a petition may be filed to adopt a child who is the subject of a termination of parental rights proceeding and whose custody and guardianship has not yet been committed to an authorized agency, provided that:

(1) the adoption petition is filed in the same court where the termination of parental rights proceeding is pending; and

(2) the adoption petition, supporting documents and the fact of their filing shall not be provided to the judge before whom the petition for termination of parental rights is pending until such time as fact-finding is concluded under that petition.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Sept. 23, 1991 eff. Sept. 30, 1991. Added (b).



Section 207.55 Papers required in an adoption proceeding.

(a) All papers submitted in an adoption proceeding shall comply with section 207.4 of this Part.

(b) In addition to those papers required by the Domestic Relations Law, the following papers, unless otherwise dispensed with by the court, shall be submitted and filed prior to the placement of any adoption proceeding on the calendar:

(1) a certified copy of the birth certificate of the adoptive child;

(2) an affidavit or affidavits by an attorney admitted to practice in the State of New York, or, in the discretion of the court, by a person other than an attorney who is known to the court, identifying each of the parties;

(3) a certified marriage certificate, where the adoptive parents are husband and wife or where an individual adoptive parent is the spouse of the natural parent;

(4) a certified copy of a decree or judgment, where an adoptive parent's marriage has been terminated by decree or judgment;

(5) a certified death certificate, where an adoptive or natural parent's marriage has been terminated by death or where it is alleged that consent or notice is not required because of death;

(6) a proposed order of adoption;

(7) a copy of the attorney's affidavit of financial disclosure filed with the Office of Court Administration pursuant to section 603.23, 691.23, 806.14 or 1022.33 of this Title; and

(8) an affidavit of financial disclosure from the adoptive parent or parents, and from any person whose consent to the adoption is required by law, setting forth the following information:

(i) name, address and telephone number of the affiant;

(ii) status of the affiant in the proceeding and relationship, if any, to the adoptive child;

(iii) docket number of adoption proceeding;

(iv) the date and terms of every agreement, written or otherwise between the affiant and any attorney pertaining to any fees, compensation or other remuneration paid or to be paid by or on behalf of the adoptive parents or the natural parents, directly or indirectly, including but not limited to retainer fees on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(v) the date and amount of any fees, compensation or other remuneration paid, and the total amount of fees, compensation or other remuneration to be paid to such attorney by the affiant, directly or indirectly, on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(vi) the name and address of any other person, agency, association, corporation, institution, society or organization who received or will receive any fees, compensation or other remuneration from the affiant, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or proposed adoption, the amount of each such fee, compensation or other

remuneration; and the reason for or services rendered if any, in connection with each such fee, compensation or other remuneration;

(vii) the name and address of any person, agency, association, corporation, society or organization who has or will pay the affiant any fee, compensation or other remuneration, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother, or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption; the amount of each such fee, compensation or other remuneration; and the reason for or services rendered, if any, in connection with each such fee, compensation or other remuneration; and

(9) in the case of an adoption from an authorized agency in accordance with title 2 of article 7 of the Domestic Relations Law, a copy of the criminal history summary report made by the New York State Office of Children and Family Services to the authorized agency pursuant to section 378-a of the Social Services Law regarding the criminal record or records of the prospective adoptive parent or parents and any adult over the age of 18 currently residing in the home.

(c) Prior to the signing of an order of adoption, the court may in its discretion require the filing of a supplemental affidavit by the adoptive parent or parents, or any person whose consent to the adoption is required, the authorized agency and the attorney for any of the aforementioned, setting forth any additional information pertaining to allegations in the petition or in any affidavit filed in the proceeding.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Sept. 23, 1991; Feb. 5, 2001 eff. Jan. 31, 2001. Added (b)(9).



Section 207.56 Investigation by disinterested person; adoption.

(a) The probation service or an authorized agency or disinterested person is authorized to and, at the request of the court, shall interview such persons and obtain such data as will aid the court in determining the truth and accuracy of an adoption petition under article 7 of the Domestic Relations Law, including the allegations set forth in the schedule annexed to the petition pursuant to section 112(3) of that law and such other facts as are necessary to a determination of the petition.

(b) The adoptive parent or parents and other persons concerned with the proceeding shall be notified of the date, time and place of any interview by a disinterested person or authorized agency designated by the court in accordance with sections 112 and 116 of the Domestic Relations Law.

(c) The written report of the investigation conducted pursuant to subdivision (a) of this section shall be submitted to the court within 30 days from the date on which it was ordered, or earlier as the court may direct, unless, for good cause, the court shall grant an extension for a reasonable period of time not to exceed an additional 30 days.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.57 Special applications.

All applications, including applications to dispense with statutorily required personal appearances, period of residence of a child, or period of waiting after filing of the adoption petition, shall be made in writing and shall be accompanied by affidavits setting forth the reasons for the application and all facts relevant thereto.

Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.



Section 207.58 Petition for guardianship by adoptive parent.

(a) When a petition for temporary guardianship has been filed by an adoptive parent or parents pursuant to section 115-c of the Domestic Relations Law, the clerk of the court in which the petition has been filed shall distribute a written notice to the adoptive parents and lawyers who have appeared, and to the Commissioner of Social Services or the Director of the Probation Service, as appropriate, indicating that:

- (1) a petition for adoption must be filed in the court in which the application for temporary guardianship has been brought within 45 days from the date of the signing of the consent to adoption;
- (2) any order or decree of temporary guardianship will expire no later than nine months following its issuance or upon the entry of a final order of adoption whichever is sooner, unless, upon application to the court, it is extended for good cause;
- (3) any order or decree of temporary guardianship will terminate upon withdrawal or denial of a petition to adopt the child, unless the court orders a continuation of such order or decree.

(b) In addition to and without regard to the date set for the hearing of the petition, the clerk of the court shall calendar the case for the 45th day from the date of the signing of the consent to the adoption. If no petition for adoption has been filed by the 45th day, the court shall schedule a hearing and shall order the appropriate agency to conduct an investigation forthwith, if one had not been ordered previously.

Historical Note

Sec. filed Jan. 9, 1986; renum. 207.59, new filed April 3, 1989 eff. March 20, 1989.



Section 207.59 Proceedings involving custody of Native American child.

In any proceeding in which the custody of a child is to be determined, petition shall be set forth whether the child is a Native American child subject to the Indian Child Welfare Act of 1978 (25 USC 1901-1963), and the court shall proceed further, as appropriate, in accordance with the provisions of that act.

Historical Note

Sec. filed Feb. 16, 1988; renum. 207.60, new added by renum. 207.58, filed April 3, 1989; amd. filed March 26, 1992 eff. March 18, 1992.



Section 207.60 [Renumbered]

Historical Note

Sec. added by renum. 207.59, filed April 3, 1989; renum. 207.52, filed Jan. 12, 1998 eff. April 1, 1998.



Section 207.61 Proceedings for certification as a qualified adoptive parent or parents.

(a) Where the petition in a proceeding for certification as a qualified adoptive parent or parents alleges that petitioner or petitioners will cause a preplacement investigation to be undertaken, the petition shall include the name and address of the disinterested person by whom such investigation will be conducted.

(b) The report of the disinterested person conducting the preplacement investigation shall be filed by such person directly with the court, with a copy of such report delivered simultaneously to the applicant or applicants.

(c) The court shall order a report (1) from the statewide central register of child abuse and maltreatment setting forth whether the child or the petitioner is, or petitioners are, the subject of or another person named in an indicated report, as such terms are defined in section 412 of the Social Services Law, filed with such register; and (2) from the New York State Division of Criminal Justice Services setting forth any existing criminal record of such petitioner or petitioners in accordance with section 115-d(3-a) of the Domestic Relations Law; provided, however, that where the petitioner(s) have been fingerprinted pursuant to Social Services Law 378-a, the

authorized agency in possession of a current criminal history summary report from the New York State Office of Children and Family Services may be requested to provide such report to the court in lieu of a report from the New York State Division of Criminal Justice Services.

Historical Note

Sec. filed May 29, 1990; Feb. 5, 2001 eff. Jan. 31, 2001. Amended (c).



Section 207.62 Calendaring of proceedings for adoption from an authorized agency.

Proceedings for adoption from an authorized agency shall be calendared as follows:

- (a) Within 60 days of the filing of the petition and documents specified in section 112-a of the Domestic Relations Law, the court shall schedule a review of said petition and documents to take place to determine if there is adequate basis for approving the adoption.
- (b) If such basis is found, the court shall schedule the appearance of the adoptive parent(s) and child before the court, for approval of the adoption, within 30 days of the date of the review.
- (c) If, upon the court's review, the court finds that there is not an adequate basis for approval of the adoption, the court shall direct such further hearings, submissions or appearances as may be required, and the proceeding shall be adjourned as required for such purposes.

Historical Note

Sec. filed Sept. 24, 1993 eff. Sept. 22, 1993.



Section 207.63 Annual Report of Public Administrator.

- (a) Each Surrogate shall request from the public administrator a year-end annual report which, with the participation of the counsel to the public administrator, addresses the following areas: office procedures and record keeping; case management of estates; cash management of estate accounts and financial assets; property management; sale of real and personal property; selection and compensation of outside vendors; and statistical summaries of number of estates under administration, gross value of estates under administration, statutory commissions earned by the public administrator or counsel to the public administrator, legal fees earned by each counsel to the public administrator, and expenditures by the public administrator on vendors, lessors and other service providers other than counsel.

(b) Each Surrogate shall transmit to the Chief Administrator of the Courts the annual report of the public administrator and counsel to the public administrator, together with whatever written commentary thereon the Surrogate deems appropriate and necessary in view of his or her oversight role in connection with the operations and performance of the office of the public administrator and counsel to the public administrator.

Historical Note:

Added 207.63 on May 1, 2006



Section 207.64 Omission or Redaction of Confidential Personal Information; Public Access to Certain Filings

(a) Omission or Redaction of Confidential Personal Information.

(1) Except as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means:

- i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof; and
- ii. other than in a proceeding under Article 13 of the SCPA, a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof.

(2) The court sua sponte or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22 NYCRR §216.1 that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the pro se status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full CPI described in Paragraph (1) of this subdivision is material and necessary to the adjudication of the proceeding before the court, he or she may apply to the court for leave to serve and file, together with a paper in which such information has been set forth in abbreviated form, a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) When served with objections or a request for an inquiry or examination under SCPA 2211 or 1404 that specifies a request for particular unredacted documents previously filed in the proceeding with respect to which the objection or request for inquiry or examination relates, the party who originally served and filed the redacted document shall serve (but not file) an unredacted version upon all parties interested in the proceeding or such portion of it to which the objection or request for inquiry or examination relates.

(b) Public Access to Certain Filings

The officers, clerks and employees of the court shall not permit a copy of any of the following documents to be viewed or taken by any other person than a party to the proceeding, or the attorney or counsel to a party to the proceeding, the Public Administrator or counsel thereto, counsel for any Federal, State or local governmental agency, or court personnel, or by order of the court or written permission of the Surrogate or Chief Clerk of the court. The standard for the grant of such permission in a contested matter shall be the same as required under 22 NYCRR 216.1 and applicable law :

- (1) All papers and documents in proceedings instituted pursuant to Articles 17 or 17-A of the SCPA;
- (2) Death certificates;
- (3) Tax returns;
- (4) Firearms Inventory; and
- (5) Documents containing information protected from disclosure under other provisions of Federal or State law such as HIPAA for medical information, job protected services reports, material obtained from a state mental hygiene facility under MHL 33.13, and records involving alcohol or other substance abuse under 42 CFR 2.64. These examples are not intended to be exclusive.

This rule shall not preclude disclosure or copying of any index of filings maintained by the court. Any determination by the court regarding access to any filings may be the subject of an appropriate motion for clarification or reconsideration.

Historical Note:

Added 207.64 on Feb. 19, 2014

Amended on Dec. 23, 2015 effective March 1, 2016