



**SUFFOLK ACADEMY OF LAW**  
*The Educational Arm of the Suffolk County Bar Association*  
**560 Wheeler Road, Hauppauge, NY 11788**  
**(631) 234-5588**



## **ZOOM PROGRAM**

### **SUMMER TRUSTS & ESTATES SERIES #3** **Estate Administration**

#### **FACULTY**

**Scott P. McBride, Esq.**  
**Brette A. Haefeli, Esq.**

**Program Coordinator: Ashley M. Valla, Esq. & Marianne S. Rantala, Esq.**

**June 17, 2020**  
**Suffolk County Bar Association, New York**

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**Brette A. Haefeli** is a court attorney referee at the Surrogate's Court of Suffolk County, and the former Principal Law Clerk to Hon. John M. Czygier, Jr. Prior to joining the Surrogate's Court, Ms. Haefeli worked in a small law firm focusing on the areas of trust and estate planning, as well as real property and land use. Ms. Haefeli earned her Juris Doctor/Master of Business Administration from Tulane University's Law School and A.B. Freeman School of Business. Ms. Haefeli is a Director of the Suffolk County Women's Bar Association and a vice chair of the Litigation Committee of the Trusts and Estates Section of the New York State Bar Association. She is admitted to practice in New York and Florida.



## **Scott P. McBride, Suffolk County Surrogate's Court**

Scott has been a Court Attorney Referee in the Surrogate's Court since 2000. He graduated cum laude with a Bachelor of Science in Business Administration from University of New York at Albany and received his Juris Doctor from the State University of New York at Buffalo. Prior to his joining the Suffolk County Surrogate's Court, Scott was of Counsel to Lamb & Barnosky LLP (formerly known as Cahn Wishod & Lamb, LLP).

**EDUCATION:** State University of New York at Buffalo  
Faculty of Law and Jurisprudence  
Juris Doctor, May 1985

**PROBATE**

**AND**

**ADMINISTRATION**

**101**

Scott P. McBride  
Brette A. Haefeli  
Court Attorney Referees  
Suffolk County  
Surrogate's Court

# ADMINISTRATION 101

When a decedent dies without a valid will, we refer to that individual as having died "INTESTATE." The assets of this decedent pass pursuant to Article 4 of the Estates, Powers and Trusts Law, which is commonly referred to as the EPTL.

Generally, an administration proceeding is commenced when a decedent dies without a valid will and one or more of the following apply:

1. The estate has a gross value in excess of \$50,000,
2. The estate includes an interest in real property (of **any** value),
3. A cause of action exists for wrongful death,
4. There is an issue of paternity.

In the absence of these criteria, a voluntary administration made be commenced pursuant to Article 13 of the SCPA.

Administration proceedings are governed by Article 10 of the Surrogate's Court Procedure Act, which is commonly known as the SCPA.

Pursuant to SCPA § 1002, a petition for letters of administration may be filed any of the following:

1. A person interested in the estate of an intestate,
2. A person who is not a distributee provided consents are obtained by all distributees
3. The public administrator or chief fiscal officer of the county (in Suffolk County, the Public Administrator)
4. An alleged creditor of the estate, or
5. A person interested in an action in which the decedent would have been a party.

Remember that, in these proceedings, the focus is upon decedent's distributees. A "distributee" or "heir" is a person who is entitled to take or share in the property of a decedent under the statute governing descent and distribution or one who by law succeeds to an interest in an estate through intestacy (SCPA § 103; Black's Law Dictionary [6th Ed.]).

**Practice Tip:** using the appropriate label and understanding the statutory priority of the interested parties is helpful to the clerk reviewing your papers. Mislabeling a person as a distributee

may result in delay in processing your papers, unnecessary expense, the need to amend your papers and confusion when corresponding with the court.

**Practice Tip:** labeling someone as a "grandchild" or "niece" is **not** sufficient. Include "daughter of xxxxx, decedent's sister, who died on yyyy."

Petitions need to be completed in their entirety, including all appropriate schedules.

**Practice Tip:** A section or portion of the petition left blank is considered incomplete by the clerk, not inapplicable and may result in the petition requiring, corrections, generally by the filing of an "Application and Order to Amend" a petition.

The share one receives through intestate succession is dictated by statute (EPTL § 4-1.1).

For example, if a decedent is survived by a spouse and two children, the spouse would be entitled to the first \$50,000, plus  $\frac{1}{2}$  of the remainder and the children would share the remaining  $\frac{1}{2}$  of the estate. If the decedent's estate had a value of \$100,000 estate, the spouse would be entitled to \$75,000 and each child would receive \$12,500.

Generally, in administration proceedings, process, known as citation, is issued to every eligible person who has a prior or equal right to serve as administrator to that of the petitioner (SCPA § 1003) as well as any other person adversely affected by the requested relief (for example, to disqualify a parent for abandonment or to make a paternity determination).

**Practice Tip:** When a citation is necessary, please only submit one listing the names of all interested persons who have not signed a waiver consenting to the relief. All of the relief requested by the petitioner must be set forth verbatim and should mirror the wherefore clause of the petition. The clerk will insert the calendar date and return it to you. Timely service and filing proof thereof are essential.

For example, decedent dies intestate survived by three adult issue, two sons, and a daughter. Daughter commences a proceeding to be appointed administrator of her father's estate. In this instance, citation would need to be served upon petitioner's two siblings, unless they consent to her appointment.

Depending upon the status of the petitioner and the relief requested, other necessary parties may include:

1. Where there is a will on file, the persons named in the purported will and the persons to whom process would be required in a probate proceeding are necessary parties.
2. Commissioner of Taxation and Finance, if the decedent was a non-domiciliary.
3. An alleged decedent, if he is an absentee.
4. The Attorney General, if the decedent is not survived by any distributees or if it is not known whether or not the decedent is survived by distributees.
5. Those who may adversely affected by the relief requested.

In some instances, notice of the application for letters of administration may be required to be served upon those individuals who are distributees but were not required to be served with citation (SCPA § 1005).

An example would be where a person dies survived by a spouse and two adult children. Since a spouse has a right to serve as administrator prior to her children, the statute would not require service of citation upon the children, but notice of the application that their mother has sought to be appointed administrator of their father's estate.

If a decedent dies intestate, the person who marshals assets, pays debts, and makes distribution of the estate to the decedent's heirs/distributees is known as an "administrator," whose duties and responsibilities mirror those of an executor.

Unlike with a will in which decedent can choose the person who will manage his/her estate, the law imposes a certain priority upon intestate decedents. The order of priority for granting letters of administration is set forth in SCPA § 1001[1]. You should be aware of this priority because this will serve as a guide as to those who need to be served with process (jurisdictional) and for those who need only be notified that a proceeding for letters of administration was commenced (non-jurisdictional).

Letters of Administration must issue to the distributees who are eligible and qualify in the following order:

1. Surviving spouse.
2. Children.
3. Grandchildren.
4. Parents.

5. Siblings.
- 6 Any other distributee with preference among them given to the person entitled to the largest share of the estate
  - (i) letters may be granted to one or more persons who are equally eligible;
  - (ii) if the only distributees eligible to serve are issue of grandparents, other than aunts or uncles on only one side of the family (first cousins or first cousins once removed), letters shall issue to the public administrator or chief financial officer instead of the distributees

Despite having a priority, letters will only issue to a person who is eligible and qualifies (SCPA §§ 707, 708).

**Practice Tip:** Although a topic to tread lightly upon, please make sure your client has not been convicted of a felony and is creditworthy. A felon is ineligible to receive letters (SCPA § 707). A poor credit history may effectively become a bar to serving as often a bond is required of the proposed fiduciary where there are creditors and/or non-consenting distributees.

Notice of the application for letters of administration may be required to be served upon those individuals who are distributees but were not required to be served with citation (SCPA § 1005). You should know and understand the difference, as they are not interchangeable.

An example would be where a person dies survived by a spouse and two adult children. Since a spouse has a right to serve as administrator prior to her children, the statute would not require service of citation upon the children, but notice of the application that their mother has sought to be appointed administrator of their father's estate. However, if an adult child was petitioning, the surviving spouse would be served with process and not merely notice because of her statutory priority.

Where an administrator was appointed but dies, is removed, or otherwise cannot completely and fully wind up the affairs of the estate, a successor can be appointed by the court. This person is referred to as an administrator, d.b.n. (de bonis non) (SCPA § 1007).

As a general rule, unless limited by decree or order, the powers of an administrator are set forth in EPTL § 11-1.1.



Pursuant to SCPA § 801, an administrator is required to post a bond in an amount sufficient to protect the rights of all non-consenting distributees and creditors.

Generally, the amount of the bond will be based upon the following:

- (i) the value of all personal property coming into the hands of the administrator
- (ii) the estimated gross rents for 18 months and
- (iii) probable recovery in a recovery in any cause of action

A further bond may be required upon the sale of real property prior to the administrator receiving the net proceeds thereof (SCPA § 805[3]).

In an appropriate case, where there will be a delay in the grant of letters of administration, temporary letters of administration may be granted upon such notice as the court may direct (SCPA §§ 901, 902).

**Practice Tip:** As temporary letters are discretionary, you must submit an affidavit in support of the petition setting forth in detail the nature of the delay in receiving full letters. As a bond will generally be required and other limitations imposed, you should consider whether the cost of temporary letters will offset any potential benefit. Unless real property is in foreclosure or a cause of action will be barred, it may be your client's best interest to forego seeking temporary letters.

In matter involving an absentee, the absentee is a necessary party and publication is required to obtain jurisdiction over her. If seeking a determination that the absentee is deceased, unless she was exposed to specific peril, the unexplained absence must be for a continuous period of three years (EPTL § 2-1.6) and requires a diligent search.

**Practice Tip:** Petitioner bears the burden of proof in such cases. Even where the statutory period of absence is met, the presumption of death from an absence for the statutory period will not be established unless petitioner demonstrates satisfactorily that a thorough and exhaustive search for the absentee was made as soon as her absence became known. A guardian ad litem will be appointed in these proceedings to protect the rights of the absentee. Thus, you must be prepared with proof in admissible form sufficient to persuade the trier of fact that there is no

other reasonable explanation for the individual's absence, but death. The requisite proof is determined on a case by case basis.

### **Petitioning for Appointment**

The petition and any accompanying schedule must be filled out in its entirety. Do not leave any spaces blank, as the clerk will assume that you overlooked it rather than intentionally left it that way.

**Practice Tip:** List all a/k/as of the decedent (or you will be back when you find assets in the name of an a/k/a).

If seeking relief other than letters of administration in the "Wherefore clause" of the petition, that relief must be sufficiently supported by factual allegations. For example, in addition to the appointment of an administrator, you seek a determination that a nonmarital child is the daughter of decedent pursuant to EPTL § 4-1.2. This additional relief would need to be supported in the petition, perhaps as a rider to the petition or "Schedule A" setting forth a factual basis for the court to make a determination.

Jurisdiction must be obtained over all necessary parties to the proceeding for letters of administration. This may be accomplished through obtaining a waiver of citation, renunciation and consent to appointment by an individual or serving him with citation and filing proof of service with the court.

If you ask to dispense with process upon an individual whose name or whereabouts is unknown, you must provide the court with an affidavit that a diligent search has been conducted, without success. The affidavit must detail the efforts made in connection with your search. This may include the names of databases searched, the names and/or addresses where correspondence was mailed, individuals whom you communicated with in an effort to locate the individual, etc.

Make sure your client can qualify for appointment pursuant to SCPA § 707. Generally, convicted felons, infants, incompetents and non-domiciliary aliens are ineligible to serve as fiduciaries of an estate. Also, if the posting of a bond will be necessary, please find out in advance whether the proposed administrator will be able to secure one.

If your client is the sole distributee or a first cousin, an affidavit of heirship or family tree will be required from a disinterested party.

## Common Problems

Petition #1 - Section: "Interest of Petitioner"

Check the appropriate box and if a distributee, list relationship. If you check "Other," list the petitioner's standing pursuant to statute, *not* his/her relationship to the decedent.

Petition #3(d) - Specify whether cause of action is or is not for wrongful death.

If the sole cause of action is a personal injury claim resulting from a slip and fall that is unrelated to death, then tell us. The failure to state clearly the nature of the claim may result in limitations on authority and/or a delay in obtaining letters.

Petition sections #6(a-c) - Should *not* be answered with an "X."

For example, if decedent died survived only by parents. The appropriate answer for these boxes would be "No," as all fall within the same class under EPTL § 4-1.1, "2" for parents in 6(d) and an "X" in boxes 6(e)-6(h).

If individuals are not within the class of distributee under your particular circumstances, do not list them in the petition.

Petition #7(a) - Not including the petitioner when such petitioner is also a distributee.

Petition #7(b) - a person under a disability is defined by SCPA § 103[40] for purposes of the petition. If you are listing someone in this section of the petition, then an appropriate schedule should also be attached to the petition.

Petition Wherefore clause -

If you are going to be seeking incidental relief, which, in essence, is everything other than letters, you need to support your request for relief with factual allegations within the body of the petition or by addendum. For example, in addition to the appointment of an administrator, you seek a determination that a nonmarital child is the daughter of decedent pursuant to EPTL §

4-1.2. This additional relief would need to be supported in the petition, perhaps as a rider to the petition or "Schedule A" setting forth a factual basis for the court to make a determination.

Section (b) - If you ask to dispense with process upon an individual whose name or whereabouts is unknown, you must provide the court with an affidavit that a diligent search has been conducted, without success. The affidavit must detail the efforts made in connection with your search. This may include the names of databases searched, the names and/or addresses where correspondence was mailed, individuals whom you communicated with in an effort to locate the individual, etc.

Generally, under section (c):

Administration - full, plenary letters of administration without limitations or restrictions.

Limited Administration - appointed for a limited purpose such as commencing a SCPA § 2103 proceeding to recovery estate property

Administration with Limitations - refers to full letters with some form of restriction imposed upon the fiduciary such as prohibiting the sale of real property.

If all parties have executed waivers of process consenting to the requested relief, there should not be a request to dispense with process upon one of more of the individuals.

Section (f) - the catch all

Here you will list any and all incidental relief not previously requested in another section of the wherefore clause. Relief that would fall into this category includes asking that a will on file with the court be denied probate, establishing the paternity of a nonmarital child and disqualification of a spouse due to abandonment.

Sole distributees or First cousins -

If your client is the sole distributee or a first cousin, an affidavit of heirship or family tree will be required from a disinterested party to 22 NYCRR § 207.16(c). This affidavit should include basis upon which the affiant obtained his/her knowledge, the full name of each distributee (placed in the appropriate class), dates of death of class members.

Creditors -

Attorneys submitting creditor petitions by 'Attorney in fact' of the creditor. The power of attorney must be submitted to the court with the appropriate recording fee before the petition will be processed.

**Cross-Petitions** - This is easy - Suffolk County will **not** (knowingly) accept a cross-petition. If necessary, file your objections.

**Small Estate/Voluntary Administration proceedings**  
**(Article 13)**

The most common mistakes in the Article 13 Affidavit are found in Section 9, which asks about personal property. Often, the information provided is insufficient for the court to issue a certificate for a particular item. For example, an automobile will be listed indicating the year, make and model, but the VIN will be excluded. Or a savings account with a particular bank will be listed, without the account number.

## **Probate 101**

"Probate" is the process of proving the validity of a will to the satisfaction of the court. Probate will not be granted unless that court is satisfied that a will is valid (SCPA 1408). With probate, there is generally an application to have someone appointed fiduciary - executor, trustee, or administrator c.t.a. Probate not required for a Voluntary Administration (Small Estates - Article 13 of the Surrogate's Court Procedures Act ("SCPA"), an estate of \$50,000.00 or less, exclusive of property passing pursuant to Estates, Powers and Trusts Law ("EPTL") § 5-3.1).

Generally, the statutory framework of probate proceedings may be found in Article 14 of SCPA.

EPTL 3-2.1 sets forth the formal requirements for the execution of a will. The will must be in writing, signed at the end by the testator, witnessed by at least 2 witnesses who sign after the testator's signature, in the presence of the testator. In addition, the testator must declare that the instrument is her will, sign or acknowledge her signature in front of the witnesses, and ask the witnesses to be witness to her will.

### **I. Obtain the Original Will:**

A. From the attorney-draftsman.

1. The attorney-draftsman should release the will to the nominated executor; it is common to request a copy of a death certificate of testator, and a letter (possibly notarized) from nominated executor, if not delivered in person.
  2. The attorney-draftsman should file any purported original will with the court after death at the request of any interested party (in the county in which decedent was domiciled at the time of death). *In re French's Will*, 202 Misc. 735 (1952). However, we will not accept wills of alleged decedents without proof of death - i.e., a death certificate.
  3. An attorney may not assert a retaining lien on a will, even if he or she has not been paid for drawing the instrument (*In re Reiss' Will*, 200 Misc. 697 (1951); *In re Eichenbaum's Will*, 16 Misc2d 655 (1959)).
- B. From decedent's safe deposit box - Proceeding under SCPA § 2003. This is an *ex parte* proceeding, in which the court issues an order directing a person, firm or corporation, generally a bank or other depository, to permit the person named in the petition to examine the papers or safe deposit box and **make an inventory** of same in the presence of an authorized agent of the depository. If "a paper purporting to be a will of the decedent, a deed to the burial plot or policy of insurance be found to deliver the will to the clerk of the court . . ."
- C. From another person - a Proceeding to Compel the Production of Will (SCPA § 1401). Whenever the court has reason to believe that "any person has knowledge of the whereabouts or destruction of a will of a decedent the court may make an order requiring the person or persons named therein" to attend and be examined.

Proceeding to compel production may be commenced by "a person authorized . . . to present a petition for the probate of a will."

The court may impose reasonable attorney's fees of the petitioner in such a proceeding against a respondent

when the court determines the respondent did not have good cause to withhold production of a will or codicil (*Matter of Sharrer*, NYLJ October 4, 1995, at 27, col 2 (Bronx Surr.))

- D. Penal Law §190.30: *Unlawfully concealing a will*  
"A person is guilty of unlawfully concealing a will when, with intent to defraud, he conceals, secretes, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.  
Unlawfully concealing a will is a class E felony."

## **II. Jurisdiction:**

The Surrogate's Court has jurisdiction over the estate of a decedent who was a domiciliary of New York at the time of his death, disappearance, or internment. The proper venue is the county of decedent's domicile. SCPA § 205[1]. The Surrogate shall transfer to the proper county either *sua sponte* or on motion of any party. SCPA § 205[2].

The court has jurisdiction over the estate of any non-domiciliary decedent (a "non-dom") who leaves property in the state, of a cause of action for wrongful death against a domiciliary of the state. SCPA § 206. Petitioner must establish that the decedent left property in Suffolk County; that the distributees are the same under the foreign jurisdiction and New York law; and that the will has not been offered for probate elsewhere. The Surrogate's Court has the discretion to entertain a petition for original probate of the will of a non-domiciliary (see *In re Heller-Baghero's Will*, 26 NY2d 337; *Estate of Renard*, 100 Misc2d 347; SCPA 1605).

## **III. Who May Petition for Probate (SCPA § 1402):**

- A. Any person designated in the will as a legatee, devisee, fiduciary or guardian, or by the guardian or fiduciary of one the above who is under a disability. Generally, brought by the nominated fiduciary.
- B. A creditor, or any person interested, or any person entitled to letters of administration c.t.a.



- C. Any party to an action brought or about to be brought in which the decedent, if living, would be a party.
- D. The Public Administrator of Suffolk County.

**IV. Persons to Be Served (Necessary Parties - SCPA § 1403):**

Process must issue to the following, if not the petitioner:

- A. The distributees of the testator
- B. The nominated executor, or the successor if executor unable to serve.
- C. Any person designated in the will as beneficiary, executor, trustee, or guardian, whose rights or interests are adversely affected by any other instrument offered for probate.
- D. Any person designated as beneficiary, executor, trustee, or guardian in any other will of the same testator filed in the surrogate's court of the county in which the propounded will is filed whose rights or interests are adversely affected by the instrument offered for probate.
- E. Any persons adversely affected by the exercise of a power of appointment in the propounded will.
- F. The testator, if petition alleges that testator is believed to be dead.
- G. The state tax commission of in the case of a non-domiciliary testator.
- H. Where any person to whom process must issue has died, process shall issue to his fiduciary and if not has been appointed, to all persons interested as distributees, nominated fiduciaries, or named as legatees or devisees under any will of the deceased filed in the court.
- I. SCPA § 315 (Virtual Representation) shall apply to probate proceedings.

**V. Obtaining Jurisdiction Over Necessary Parties:**

- A. Service of Process is generally accomplished by the issuance of Citation on interested parties. Citation is unnecessary over any party for whom a "Waiver of Process: Consent to Probate" form (Surrogate's Court Form P-4) has been obtained. Those people who have not consented (including those who lack capacity) are "cited," by the service of Citation upon them (Form P-5). The rules governing the contents of the Citation are provided in SCPA § 306.

Citation is prepared by petitioner (or counsel), with the exception of the return date, which the court completes. Citation is returned to petitioner (counsel) for service by him/her.

- B. Service of Citation is in accordance with SCPA § 307 - personal delivery required within the state, and is acceptable without the state. On non-domiciliaries (i.e., interested parties out of state), service may be made by registered or certified mail, return receipt requested or by "special mail service" (SCPA § 307[2]). Substituted service may be made by court order, for good cause shown, and after a showing that, with due diligence, such service cannot be effected. SCPA and § 307[3].
- C. Service upon an infant requires service upon the infant's father, mother, guardian, any person having the care or control of such infant, or the person with whom he resides, or a person interested in the infant's welfare and education. SCPA § 307[4]. In addition, if the infant is the age of fourteen or over, also upon the infant.
- D. Service upon creditors may be made by mail.
- E. Guardians ad litem - if any necessary party is under a disability, the court will appoint a guardian ad litem, after the return date of Citation. "Person under a disability" includes someone whose identity or whereabouts are unknown, as well as someone who is incarcerated.

Pursuant to SCPA 403(3)(a), a guardian ad litem is **not** required for a person under a disability, and the court may dispense with one, whenever:

(a) in an uncontested probate proceeding such person will receive a share equal to or greater than the share to which he would be entitled if decedent had died intestate,

(b) in an accounting proceeding such person receives a specific bequest or a specific devise or a general legacy of a stated sum of money and the accounting party shows to the satisfaction of the court that such person has received his legacy or devise or will receive same in full under the decree to be made in the proceeding,

(c) in any proceeding the public administrator receives process or notice in behalf of the person under disability,

(d) in a probate proceeding the decedent is survived by a spouse who receives the entire estate under the propounded instrument and the petition alleges that probate assets do not exceed \$50,000. In such case, letters testamentary should limit the executor to the collection of assets which, in the aggregate, do not exceed \$50,000.

#### **VI. Notice of Probate (SCPA § 1409):**

Sent to each person named or referred to in the petition who has not been service with process or who has not appeared or waived service of process and state whether such person is named or referred to in the will as legatee, devisee, trustee, guardian or substitute fiduciary. Also, the Attorney General's office if the will contains a charitable bequest which is either to an unnamed charitable organization or is in an unspecified amount. Surrogate's Form P-6.

#### **VII. Witnesses to Be Examined; Proof Required (SCPA § 1404):**

- A. Except as otherwise provided in this article, two at least, of the attesting witnesses must be produced before the court and examined before a written will is admitted to probate if so many of the witnesses are within the state and competent and able to testify.

- B. In all cases the proofs must be reduced to writing. Any party to the proceeding, before or after filing objections to the probate of the will, may examine any or all of the attesting witnesses, the person who prepared the will, and if the will contains a provision designed to prevent a disposition or distribution from taking effect in case the will, or any part thereof, is contested, the nominated executors in the will and the proponents.
- C. The attesting witnesses, the person who prepared the will, the nominated executors in the will and the proponents may be examined as to all relevant matters which may be the basis of objections to the probate of the propounded instrument. There shall be made available to the party conducting such examination, all rights granted under Article 31 of the civil practice law and rules with respect to document discovery.
- D. Unless the court directs otherwise for good cause shown, the costs of the examinations conducted pursuant to "C," above, shall be paid as follows: two attesting witnesses paid by estate who are competent and able to testify who are produced by the proponent, or if no witness is within the state and competent and able to testify, the witness without the state who is competent and able to testify; and the stenographer and one copy of the transcripts of such examinations for the court and any guardians ad litem.
- E. Unless the court directs otherwise for good cause shown, if more than one person shall have been involved in the preparation of the will, the term "person who prepared the will" shall mean the person so involved to whom the testator's instructions for preparing the will were communicated by the testator.

*1404 Practice tips:*

- In the case of examinations conducted **after** objections are filed, **all costs** of such examinations shall be governed by Article 31 of the CPLR.
- All costs of document discovery are governed by Article 31 of the CPLR.

~~All EBTs take place at the court house (22 NYCRR 207.28).~~ (Note: this used to be the rule, however, this rule is no longer in effect, given space limitations in light of the mandatory mediation program. If you would prefer to conduct the 1404 at the courthouse, please contact the court to make arrangements.

- Uniform Rule 207.27 (22 NYCRR 207.27), limits examinations before trial in contested probate proceedings, except upon the showing of special circumstances, 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

**VIII. When the Court May Dispense with Testimony of a Witness (SCPA § 1405; Form P-8):**

- A. When the death, absence from the state, or incompetency of an attesting witness, or the fact that the witness cannot with due diligence be found within the state, or cannot be examined as an attesting witness by reason of his physical or mental condition cannot be examined as an attesting witness may be shown by affidavit of any competent evidence, the court may dispense with such testimony, and the will may be admitted to probate.
- B. Upon demand of any required party, where an attesting witness is absent from the state whose testimony can be obtained with reasonable diligence, the court **shall** require such testimony be taken by commission.
- C. If no witness is able to testify, will my still be admitted to probate upon proof of handwriting of the testator and of at least one of the attesting witnesses "and such other facts as would be sufficient to prove a will." Court Form P-9

**IX. Proof of Will by Affidavit of Attesting Witness Out of Court (SCPA § 1406):**

Affidavits of attesting witnesses after death.

**X. Proof of Lost or Destroyed Wills (SCPA § 1407):**

Only three provisions - should be simple:

- A. Establish that will has not been revoked (*this is the tough one, if testator had possession of will*); and
- B. Execution of will is proved; and
- C. All of the provisions of the will are clearly and distinctly proved by at least two credible witnesses **or by a copy or draft of the will.**

At common law, "[w]hen a will previously executed cannot be found after the death of the testator, there is a strong presumption that it was revoked by destruction by the testator" (*Collyer v. Collyer*, 110 NY 481, at 486, 18 NE 110). Pursuant to SCPA 1407, the proponent has the burden of overcoming the common law presumption by proving that the lost or destroyed will was not revoked by the testator during the testator's lifetime (*Matter of Fox*, 9 NY2d 400, 214 NYS2d 405, 174 NE2d 499). If the original will was present after the decedent's death, and lost subsequently, the presumption that it was revoked does not apply (*Matter of Gray*, *supra*; *Matter of Passuello*, 169 AD2d 1007, 565 NYS2d 281).

SCPA 1407 imposes upon the proponent of a lost or destroyed testamentary document the burden of establishing every provision of the document clearly and distinctly by the testimony of two credible witnesses, or by a copy or draft of the will proved to be true and complete (*Matter of Kalenak*, 182 AD2d 1124, 583 NYS2d 332), that such instrument was duly executed (the existence of an attestation clause or supervision by attorney may be sufficient; see *Matter of Utegg's Estate*, 91 Misc2d 21, 396 NYS2d 992) and that it had not been revoked by the decedent prior to death (SCPA 1407; *Matter of Gray*, 143 AD2d 751, 533 NYS2d 459, *Matter of Gubbins*, NYLJ, March 5, 1998, p. 31, [col. 2]).

**XI. Probate Not Allowed Unless Court is Satisfied (SCPA § 1408):**

Just like it sounds - the court must be satisfied with the genuineness of the will and the validity of its execution.

**XII. Who May File Objections to Probate of an Alleged Will (SCPA § 1410):**

Any one adversely affected by the admission of the propounded instrument to probate may file objections thereto. Exception is that one whose only financial interest would be in the commissions to which he would have been entitled if his appointment as fiduciary were not revoked by a later instrument shall not be entitled to file objections to the probate of such instrument unless authorized by the court for good cause shown.

Objections must be filed within 10 day of the complete on examination pursuant to 1404.

Common objections to probate:

A. Testamentary capacity.

Testamentary capacity requires that the testator be eighteen (18) years of age or older and be of sound mind and memory (EPTL 3-1.1). Within the context of making a will, capacity is the ability to think with sufficient clarity to understand and carry out the business to be transacted; to hold in mind the extent and nature of his property and the natural objects of his bounty and the relation of one to the other (see *In re Heaton's Will*, 224 NY 22).

The burden of proving testamentary capacity and understanding is on the proponent (see *Matter of Kumstar*, 66 NY2d 691, *rearg. denied*, 67 NY2d 647). Testamentary capacity may be established with evidence demonstrating that decedent understood the nature and consequences of executing a will, knew the nature and extent of the property disposed of, and the identity and relation of those considered to be the natural objects of his bounty (see *Matter of Kumstar*, *supra*), but a testator need not have precise knowledge of the size of his estate (see *Matter of Fish*, 134 AD2d 44). Although ordinarily the opinion of a lay witness is not admissible for the purpose of determining soundness of mind, in probate proceedings, the testimony of a subscribing witness may be used for such purpose (see *In re Noguiera's Will*, 32 Misc2d 446).

B. Due Execution

The proponent has the burden of proof on the issue of due execution (see *Matter of Kumstar, supra*). Due execution requires that the testamentary instrument be signed by the testator, that such signature shall be affixed to the will in the presence of the attesting witnesses or that the testator acknowledge to each witness that the signature affixed on the instrument was affixed by him or at his direction, that the testator publish to the attesting witnesses that the testamentary instrument is his will, and that at least two attesting witnesses attest the testator's signature, sign their names and affix their residences at the end of the will (EPTL 3-2.1). Where the execution is supervised by an attorney, the proponent is entitled to a presumption of regularity (see *Matter of Kumstar, supra*; *Matter of Collins*, 60 NY2d 466).

C. Fraud and Undue Influence

Respondent bears the burden of proof on the issues of fraud and undue influence (see *Matter of Burke*, 82 AD2d 260; Warren's Heaton on Surrogate's Court, §42.07). The elements of fraud include a knowing misrepresentation of a material fact, deception and resultant injury (see *Matter of Spangenberg*, 248 AD2d 543; *Matter of Walther*, 6 NY2d 49). To prove fraud in the context of a will contest, respondent must show by clear and convincing evidence that a false statement was made to the testator inducing him to execute a will disposing of his property differently than he would have if he had not heard the fraudulent statement (see *Matter of Coniglio*, 242 AD2d 901).

To establish the undue influence claim, respondent must show (1) the existence and exercise of undue influence; (2) the effective operation of undue influence as to subvert the mind of the testator at the time of the execution of the will; and (3) the execution of a will that, but for undue influence, would not have occurred. Thus, the three elements are motive, opportunity and the actual exercise of the influence (see *Matter of Walther, supra*) resulting in the decedent disposing of his property in a different manner than he otherwise would have (see *Matter of Davis*, 154 AD2d 461; *Matter of Coniglio, supra*).



**XIII. Letters of Administration With Will Annexed (C.T.A.);  
When and to Whom Granted (SCPA § 1418):**

If no person is named as executor in the will or selected by virtue of a power contained therein or if at any time there is no executor or administrator with will annexed qualified to act, upon the application of any person who may petition for the probate of the will under 1402 the court must issue letters of administration with will annexed in the following order of priority: sole beneficiary, residuary beneficiary, a person interested in the estate.

**XIV. Miscellaneous Issues:**

A. Duplicate Wills:

Where the propounded instrument has been executed in duplicate all of the counterparts collectively constitute the will (see *Crossman v. Crossman*, 95 NY 145). Although the proponent may be required to produce both instruments, the Court of Appeals has held that "there is no conceivable reason for proving both instruments or having both admitted to probate" (see *Roche v. Nason*, 185 NY 128, at 135, citing *Crossman v. Crossman*, *supra*).

B. Joint Wills:

Will must be admitted to probate for each decedent independently. The fact that a husband died a few years ago and his will is admitted to probate does not necessarily mean that the instrument will be admitted to probate as the will of the survivor.

C. Putnam Hearing:

Where a will is made in favor of individuals having a confidential relationship with the decedent: attorney draftsman, pastor, physician, etc., to the exclusion of the natural objects of the decedent's bounty, the law requires an explanation of the facts and circumstances surrounding such bequests and in the absence of a satisfactory explanation, the trier of fact is warranted in drawing an inference that the bequests were not freely and willingly made (*In re Putnam*, 257 NY 140; *Matter of Echert*, 93 Misc2d 677, *aff'd* 70 AD2d 801). This inference of undue influence is rebuttable (*In re Patterson*, 206 Misc 268,

132 NYS2d 609). To that end, the court conducted a hearing to inquire regarding the aforesaid bequests.

D. Commissions of Attorney/Fiduciary - SCPA 2307-a:

The acknowledgment must be set forth in a writing executed by the testator in the presence of at least one witness other than the executor-designee. Such writing, which must be separate from the will, but which may be annexed to the will, and which may be executed prior to, concurrently with or subsequently to a will in which an attorney or a then affiliated attorney is an executor-designee and must be filed in the proceeding for the issuance of letters testamentary to the executor-designee. The wording must be exactly as set forth in SCPA 2307-a.

F. Ancient Document:

The instrument must comply with the standards for admission of ancient documents as articulated by *Matter of Brittain*, 54 Misc2 965 (see Wigmore on Evidence, VII, 3rd Edition, §§2137-2140; Harris, New York Estates, 5th Edition, 6:14 9). The will must be over thirty years old and appear unsuspicious in nature and it must be produced from a natural place of custody. A typical explanation would be that the purported will was found among decedent's possessions after his death.

G. Filing of Wills for Safekeeping:

SCPA §2507: Permits filing of wills with Surrogate's Court for safekeeping;

SCPA 2402(9)(v) sets fee.

(see *Matter of the Wills of Dobbs et al.*, NYLJ 4/14/2009, 34 (col. 6)).

F. Handwritten Changes

Alterations are valid only when executed in the same manner as a will (EPTL 4-1), i.e. in writing, signed by testator and 2 witnesses.

**XV. Online Forms:**

A. Petition for Probate form in PDF format - may fill in but not save -

[www.courts.state.ny.us/forms/surrogates/omni/probate.pdf](http://www.courts.state.ny.us/forms/surrogates/omni/probate.pdf)

B. Forms for most proceedings are available at:

<http://www.nycourts.gov/forms/surrogates>

Then, in "Topics A-Z" go to forms, which brings you to:

<http://www.nycourts.gov/forms/index.shtml>

Where you can find forms in either PDF format, or OmniForms format. Most forms also available in Word and WordPerfect formats.

\*\*Materials Prepared by Frank M. Volz, III, Esq. and Christine R. Shiebler, Esq. and Modified by Scott P. McBride and Brette A. Haefeli, Esq. (June 2020).



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF

JOHN DOE

a/k/a

JACK DOE

Deceased.

Filing Fee Paid \$ \_\_\_\_\_  
Certificates Paid \$ \_\_\_\_\_  
Trustee Certs. Paid \$ \_\_\_\_\_  
Prelim. Certs. Paid \$ \_\_\_\_\_  
\$ \_\_\_\_\_ Bond, Fee: \$ \_\_\_\_\_  
Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

**PETITION FOR PROBATE AND:**

- ☒ Letters Testamentary  
☒ Letters of Trusteeship  
☐ Letters of Administration c.t.a

File No. \_\_\_\_\_

TO THE SURROGATE'S COURT, COUNTY OF SUFFOLK

It is respectfully alleged:

1. (a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

**Petitioner Information:**

Name <b>Mary Doe</b>	Citizenship <b>United States</b>
-------------------------	-------------------------------------

Domicile Address: Street and Number

**462 First Street**

City, Village or Town <b>Mineola</b>	State <b>New York</b>	ZIP Code <b>11501</b>	Country <b>United States</b>
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Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
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Interest: (Check One)

☒ Executor named in decedent's Will ☐ Other: \_\_\_\_\_

1. (b) The proposed Executor ☐ is ☒ is not an attorney.

[NOTE: A sole Executor-Attorney must comply with 22 NYCRR 207.16(e)]

1. (c) The proposed Executor ☐ is ☒ is not the attorney-draftsperson, a then-affiliated attorney or employee thereof.

[NOTE: An attorney-draftsperson, a then-affiliated attorney or employee thereof, must comply with SCPA 2307-a]

Name	Citizenship
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Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
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Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
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Interest: (Check One)

☐ Executor named in decedent's Will ☐ Other: \_\_\_\_\_

1. (b) The proposed Executor ☐ is ☐ is not an attorney.

[NOTE: A sole Executor-Attorney must comply with 22 NYCRR 207.16(e)]

1. (c) The proposed Executor ☐ is ☐ is not the attorney-draftsperson, a then-affiliated attorney or employee thereof.

[NOTE: An attorney-draftsperson, a then-affiliated attorney or employee thereof, must comply with SCPA 2307-a]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>John Doe, a/k/a Jack Doe</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>123 Main Street</b>			
City, Village or Town <b>Patchogue</b>	State <b>New York</b>	ZIP Code <b>11772</b>	Country <b>United States</b>
County <b>Suffolk</b>	Date of Death <b>August 1, 2014</b>	Place of Death <b>Palm Tree Hospital, Anywhere Warmer Than Here, Florida</b>	

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

**July 31, 2012**

**William Cheatham and Robert Cheatham**

Date of Will

Name of All Witnesses to Will

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

4. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent later in date to any of the instruments mentioned in Paragraph 3 except as follows: ☒ None

5. The decedent was survived by distributees classified as follows:

- a. ☐ NO Spouse (husband/wife).
- b. ☐ NO Child or children and/or issue of predeceased child or children. *[Must include marital, nonmarital, adopted, or adopted-out child under DRL Section 117]*
- c. ☐ NO Mother/Father.
- d. ☐ 4 Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.).
- e. ☐ X Grandparents. *[Include maternal and paternal]*
- f. ☐ X Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins). *[Include maternal and paternal]*
- g. ☐ X First cousins once removed (children of predeceased first cousins). *[Include maternal and paternal]*

6. The names, relationships, domicile and addresses of all distributees (under EPTL 4-1.1 and 4-1.2) of each person designated in the Will herewith presented as primary executor, of all persons adversely affected by the purported exercise by such Will of any power of appointment, of all persons adversely affected by any codicil and of all persons having an interest under any other will of the decedent on file in the Surrogate's Court, are hereinafter set forth in subdivisions (a) and (b).

[If the propounded will purports to revoke or modify an inter vivos trust or any other testamentary substitute, list the names, relationships, domicile and addresses of the trustee and beneficiaries affected by the will in subparagraphs (a) and (b) below. **Submit trust agreement.**]

6. (a) All persons and parties so interested who are of **full age and sound mind** or which are corporations or associations, are as follows:

Name <b>Florence Doe, niw as Flo Doe</b>			
Domicile Address: Street and Number <b>Pre-deceased spouse, DOD 8/11/2005</b>			
City, Village or Town <b>(See copy of death certificate annexed)</b>	State	ZIP Code	Country
Mailing Address: Street and Number (If different from domicile)			

City, Village or Town	State	ZIP Code	Country
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Relationship <b>None</b>
Description of Legacy, Devise or Other Interest

<b>None</b>
Nature of Fiduciary Status (if applicable) <b>Primary Executor</b>

Name <b>Mary Doe</b>			
Domicile Address: Street and Number <b>462 First Street</b>			
City, Village or Town <b>Mineola</b>	State <b>New York</b>	ZIP Code <b>11501</b>	Country <b>United States</b>
Mailing Address: Street and Number (If different from domicile)			

City, Village or Town	State	ZIP Code	Country
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Relationship <b>Niece, who is child of predeceased brother, Frank Doe (DOD 4/4/96)</b>
Description of Legacy, Devise or Other Interest

<b>Distributee</b>
Nature of Fiduciary Status (if applicable) <b>Successor/Substitute/Alternate Executor, Primary Trustee</b>

Name <b>Richard Smith</b>			
Domicile Address: Street and Number <b>85 Elm Street</b>			
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>
Mailing Address: Street and Number (If different from domicile)			

City, Village or Town	State	ZIP Code	Country
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Relationship <b>Nephew, who is child of predeceased sister, Gladys Smith (DOD 5/5/2002)</b>
Description of Legacy, Devise or Other Interest

<b>Distributee, Residuary Beneficiary</b>
Nature of Fiduciary Status (if applicable) <b>None</b>

**6. (a) Interested Persons/Parties of Full Age and Sound Mind or Corporations/Associations (continued)**

Name <b>Carol Miller</b>			
Domicile Address: Street and Number <b>5 Summer Lane</b>			
City, Village or Town <b>Sayville</b>	State <b>New York</b>	ZIP Code <b>11782</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Great Niece, who is child of predeceased nephew Raphael Miller (DOD 2/3/05), who was child of predeceased sister Rose Miller (DOD 7/7/92)</b>			
Description of Legacy, Devise or Other Interest			

**Distributee**

Nature of Fiduciary Status (if applicable) <b>None</b>			
Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			
Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			

6. (b) All persons so interested who are **persons under disability**, are as follows:

<b>Name</b> <b>Kate Smith</b>			
<b>Domicile Address: Street and Number</b> <b>462 First Street</b>			
<b>City, Village or Town</b> <b>Mineola</b>	<b>State</b> <b>New York</b>	<b>ZIP Code</b> <b>11501</b>	<b>Country</b> <b>United States</b>
<b>Residence Address: Street and Number</b>			
<b>City, Village or Town</b>	<b>State</b>	<b>ZIP Code</b>	<b>Country</b>
<b>Relationship</b> <b>Niece, who is child of predecease brother, Frank Smith (DOD 6/23/2005)</b>			
<b>Description of Legacy, Devise or Other Interest</b> <b>Distributee, Residuary Beneficiary</b>			
<b>Nature of Fiduciary Status (if applicable)</b> <b>None</b>			
<b>Infant</b>	<b>Birthdate</b> <b>10/01/04</b>	<b>Person with Whom Resides</b> <b>Richard Smith</b>	<b>Father Living?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Mother Living?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<b>Court-Appointed Guardian?</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Describe Appointment</b>	
	<b>Guardian Name</b>		
	<b>If yes, Guardian of:</b> <input type="checkbox"/> Person <input type="checkbox"/> Property		
<b>Guardian Address</b>			
<b>Facts Regarding Disability</b>			
<b>Incompetent / Incapacitated</b>	<input type="checkbox"/> Committee <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian		
	<b>Name</b>		
	<b>Address</b>		
	<b>Name</b>		
	<b>Address</b>		
	<b>Committed to Institution?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Institution Name</b>			
<b>Institution Address</b>			
<b>Name of Relative/Friend with Interest in Welfare</b>			
<b>Address</b>			
<b>Prisoner</b>	<b>Place of Incarceration</b>	<b>Person with Interest in Welfare</b>	
<b>Unknown</b>	<b>Description (in same language as will be used in the process)</b>		



7. (a) The names and domiciliary addresses of all substitute or successor executors and of all trustees, guardians, legatees, devisees, and other beneficiaries named in the Will and/or trustees and beneficiaries of any inter vivos trust designated in the propounded Will other than those named in Paragraph 6 herewith are as follows:

Name <b>Russell Crow-Doe</b>			
Domicile Address: Street and Number <b>Pred-deceased residuary beneficiary DOD 8/11/95</b>			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest <b>General Beneficiary (Fixed Dollar)</b>			
Nature of Fiduciary Status (if applicable) <b>None</b>			
Name <b>United Way</b>			
Domicile Address: Street and Number <b>850 Route 110</b>			
City, Village or Town <b>Melville</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest <b>Residuary Beneficiary</b>			
Nature of Fiduciary Status (if applicable) <b>None</b>			
Name <b>East End Bank</b>			
Domicile Address: Street and Number <b>1 Montauk Hwy</b>			
City, Village or Town <b>Bridgehampton</b>	State <b>New York</b>	ZIP Code <b>11932</b>	Country <b>United States</b>
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest <b>None</b>			
Nature of Fiduciary Status (if applicable) <b>Primary Trustee</b>			
Name <b>New York Attorney General</b>			
Domicile Address: Street and Number <b>120 Broadway</b>			
City, Village or Town <b>New York</b>	State <b>New York</b>	ZIP Code <b>10271-0332</b>	Country <b>United States</b>
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest <b>Statutory</b>			
Nature of Fiduciary Status (if applicable) <b>None</b>			

7. (b) All such legatees, devisees and other beneficiaries who are persons under disability are as follows:

Name <b>Kimberly Smith</b>			
Domicile Address: Street and Number <b>85 Elm Street</b>			
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>
Residence Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest <b>Specific Beneficiary</b>			
Nature of Fiduciary Status (if applicable) <b>None</b>			
Infant	Birthdate <b>02/28/04</b>	Person with Whom Resides <b>Richard and Felicity Smith (parents)</b>	Father Living? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Court-Appointed Guardian? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Mother Living? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		Describe Appointment <b>Appointed by Suffolk County Surrogate's Court 10/31/2014, File 2014-9998</b>	
	Guardian Name <b>Felicity Smith</b>		
If yes, Guardian of: <input type="checkbox"/> Person <input checked="" type="checkbox"/> Property	Guardian Address <b>85 Elm Street, Huntington, New York 11743</b>		
	Facts Regarding Disability		
Incompetent/Incapacitated	<input type="checkbox"/> Committee <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian	Name	
		Address	
		Name	
	Committed to Institution? <input type="checkbox"/> Yes <input type="checkbox"/> No	Address	
Institution Name			
Name of Relative/Friend with Interest in Welfare	Institution Address		
	Address		
Prisoner	Place of Incarceration	Person with Interest in Welfare	
	Description (in same language as will be used in the process)		
Unknown			

Continued on next page.

**7. (b) Legatees/Devisees/Other Beneficiaries under Disability (continued)**

<b>Name</b> <b>Kyle Smith</b>			
<b>Domicile Address: Street and Number</b> <b>85 Elm Street</b>			
<b>City, Village or Town</b> <b>Huntington</b>	<b>State</b> <b>New York</b>	<b>ZIP Code</b> <b>11743</b>	<b>Country</b> <b>United States</b>
<b>Residence Address: Street and Number</b>			
<b>City, Village or Town</b>	<b>State</b>	<b>ZIP Code</b>	<b>Country</b>
<b>Description of Legacy, Devise or Other Interest</b> <b>Specific Beneficiary</b>			
<b>Nature of Fiduciary Status (if applicable)</b> <b>None</b>			
<b>Infant</b>	<b>Birthdate</b> <b>01/01/00</b>	<b>Person with Whom Resides</b> <b>Richard and Felicity Smith (parents)</b>	<b>Father Living?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
	<b>Court-Appointed Guardian?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Describe Appointment</b> <b>Appointed by Suffolk County Surrogate's Court 10/31/2014, File 2014-9999</b>	<b>Mother Living?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<b>Guardian Name</b> <b>Felicity Smith</b>	
	<b>If yes, Guardian of:</b> <input type="checkbox"/> Person <input checked="" type="checkbox"/> Property	<b>Guardian Address</b> <b>85 Elm Street, Huntington, New York 11743</b>	
<b>Facts Regarding Disability</b>			
<b>Incompetent/Incapacitated</b>	<input type="checkbox"/> Committee <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian	<b>Name</b>	
		<b>Address</b>	
		<b>Name</b>	
		<b>Address</b>	
	<b>Committed to Institution?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Institution Name</b>	
		<b>Institution Address</b>	
<b>Name of Relative/Friend with Interest in Welfare</b>			
<b>Address</b>			
<b>Prisoner</b>	<b>Place of Incarceration</b>	<b>Person with Interest in Welfare</b>	
	<b>Description (in same language as will be used in the process)</b>		
<b>Unknown</b>			

8. (a) No beneficiary under the propounded will, listed in Paragraph 6 or 7 above, had a confidential relationship to the decedent, such as attorney, accountant, doctor, or clergyperson, except: ☒ None

(b) No persons, corporations or associations are interested in this proceeding other than those mentioned above.

9. (a) To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross testamentary estate is:

<b>Greater than</b>	\$ 250,000.00
<b>But less than</b>	\$ 500,000.00
Personal Property	\$ 100,000.00
Improved Real Property in New York State	\$ 250,000.00
Unimproved Real Property in New York State	\$ 0.00
Estimated Gross Rents for a Period of 18 Months	\$ 0.00

(b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows: ☒ None

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration of the decedent's estate has heretofore been filed in any court.

WHEREFORE your petitioner(s) pray(s) (a) that process be issued to all necessary parties to show cause why the Will and the Codicil(s) set forth in Paragraph 3 and presented herewith should not be admitted to probate; (b) that an order be granted directing the service of process, pursuant to the provisions of Article 3 of the SCPA, upon the persons named in Paragraph (6) hereof whose names or whereabouts are unknown and cannot be ascertained, or who may be persons on whom service by personal delivery cannot be made; and (c) that such Will and Codicil(s) be admitted to probate as a Will of real and personal property and that letters issue thereon as follows:

☒ Letters Testamentary to: Mary Doe

☒ Letters of Trusteeship to:

<u>Mary Doe &amp; East End Bank</u>	<u>f/b/o Kate Smith</u>
<u></u>	<u>f/b/o</u>
<u></u>	<u>f/b/o</u>
<u></u>	<u>f/b/o</u>

☐ Letters of Administration c.t.a. to:

and that petitioner(s) have such other relief as may be proper.

☐ Further relief sought (if any):

Dated:

\_\_\_\_\_  
Signature of Petitioner  
**Mary Doe**  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Petitioner  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name of Corporate Petitioner

\_\_\_\_\_  
Signature of Petitioner  
\_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title

COMBINED VERIFICATION, OATH AND DESIGNATION

For use when petitioner is an individual

STATE OF NEW YORK  
COUNTY OF NASSAU } ss.:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ☒ EXECUTOR ☐ ADMINISTRATOR c.t.a. ☒ TRUSTEE as indicated above: I am over eighteen (18) years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I hereby designate the Clerk of the Surrogate's Court of Suffolk County, and his/her successor in office, as a person on whom service of any process, issuing from such Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 462 First Street, Mineola, New York 11501

Signature of Petitioner

Mary Doe

Print Name

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came Mary Doe

to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public  
Commission Expires:  
(Affix Notary Stamp or Seal)

\_\_\_\_\_  
Signature of Attorney

Dewey Cheatham & Howe, LLP

Firm

999 Main Street, Riverhead, New York 11901

Address

Anne E. Howe

Print Name of Attorney

(631) 555-5555

Telephone



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF

JOHN DOE

a/k/a

JACK DOE

Deceased.

File No. \_\_\_\_\_

**WAIVER OF PROCESS;  
CONSENT TO PROBATE**

TO THE SURROGATE'S COURT, COUNTY OF SUFFOLK

The undersigned, being of full age and sound mind, residing at the address written below and interested in this proceeding as set forth in paragraph 6a of the petition, hereby waives the issuance and service of citation in this matter and consents that the court admit to probate the decedent's Last Will and Testament dated July 31, 2012 and codicils, if any, dated \_\_\_\_\_

a copy of each of which testamentary instrument has been received by me, and that

☒ Letters Testamentary issue to: Mary Doe

☒ Letters of Trusteeship issue to:

Mary Doe & East End Bank of the following trusts: f/b/o Kate Smith

\_\_\_\_\_ of the following trusts: \_\_\_\_\_

\_\_\_\_\_ of the following trusts: \_\_\_\_\_

\_\_\_\_\_ of the following trusts: \_\_\_\_\_

☐ Further Relief Sought:

Dated: \_\_\_\_\_

Signature

Richard Smith

Print Name

85 Elm Street

Street Address

Huntington

City, Village, or Town

New York

State

11743

ZIP Code

United States

Country

Nephew, who is child of predeceased sister, Gladys Smith (DOD 5/5/2002)

Relationship

STATE OF NEW YORK }  
COUNTY OF SUFFOLK } ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared,

**Richard Smith**

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

**Anne E. Howe**

\_\_\_\_\_  
Print Name of Attorney

**Dewey Cheatham & Howe, LLP**

\_\_\_\_\_  
Firm

**(631) 555-5555**

\_\_\_\_\_  
Telephone

**999 Main Street, Riverhead, New York 11901**

\_\_\_\_\_  
Address





CITATION File No. \_\_\_\_\_  
SURROGATE'S COURT, Suffolk COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,  
By the Grace of God Free and Independent

TO: **Carol Miller**  
**Kate Smith**

A petition having been duly filed by Mary Doe  
who is/are domiciled at 462 First Street, Mineola, New York 11501

**YOU ARE HEREBY CITED TO SHOW CAUSE** before the Surrogate's Court, Suffolk County,  
at 320 Center Drive, Riverhead, New York, on \_\_\_\_\_,  
at 09:30 o'clock in the fore noon of that day, why a decree should not be made in the estate of  
John Doe, aka Jack Doe lately domiciled at  
123 Main Street, Patchogue, New York 11772, United States  
admitting to probate a Will dated July 31, 2012 (and Codicil(s), if any, dated \_\_\_\_\_),

a copy of which is attached, as the Will of John Doe  
deceased, relating to real and personal property, and directing that:

☒ Letters Testamentary issue to Mary Doe

☒ Letters of Trusteeship issue to

Mary Doe & East End Bank f/b/o f/b/o Kate Smith

\_\_\_\_\_ f/b/o \_\_\_\_\_

\_\_\_\_\_ f/b/o \_\_\_\_\_

\_\_\_\_\_ f/b/o \_\_\_\_\_

☐ Letters of Administration c.t.a. issue to \_\_\_\_\_

☐ Further relief sought (if any): \_\_\_\_\_

Dated, Attested and Sealed,

Seal

HON. **John M. Czygier, Jr.**

Surrogate

**Michael Cipollino**

Chief Clerk

**Anne E. Howe**

Print Name of Attorney

**(631) 555-5555**

Telephone

**Dewey Cheatham & Howe, LLP**

Firm

**999 Main Street, Riverhead, New York 11901**

Address

**NOTE:** This citation is served upon you as required by law. You are not required to appear. If you fail to appear it will be assumed you do not object to the relief requested. You have a right to have an attorney appear for you.



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF **SUFFOLK**

PROBATE PROCEEDING, WILL OF

**JOHN DOE**

a/k/a

**JACK DOE**

Deceased.

**NOTICE OF PROBATE  
(SCPA 1409)**

File No. \_\_\_\_\_

NOTICE IS HEREBY GIVEN THAT:

1. The Will dated **July 31, 2012** and Codicil(s), if any, dated \_\_\_\_\_, of the above named decedent,

domiciled at **123 Main Street, Patchogue, New York 11772**

County of **Suffolk**, New York, has been/will be offered for probate in the  
Surrogate's Court for the County of **Suffolk**.

2. The name(s) and address(es) of the proponent(s) of said will is/are:

**Proponent Information**

Name

**Mary Doe**

Domicile Address: Street and Number

**462 First Street**

City, Village or Town

**Mineola**

State

**New York**

ZIP Code

**11501**

Country

**United States**

Name

Domicile Address: Street and Number

City, Village or Town

State

ZIP Code

Country

Name

Domicile Address: Street and Number

City, Village or Town

State

ZIP Code

Country

Name

Domicile Address: Street and Number

City, Village or Town

State

ZIP Code

Country

Name

Domicile Address: Street and Number

City, Village or Town

State

ZIP Code

Country

3. The name and post office address of each person named or referred to in the petition who has not been served or has not appeared, or waived service of process, with a statement whether such person is named or referred to in the will as legatee, devisee, trustee, guardian or substitute or successor executor, trustee or guardian, and as to any such person who is an infant or an incompetent, the name and post office address of a person upon whom service of process may be made on behalf of such infant or incompetent, is as follows:

**Substitute/Successor Executors and Trustees/Guardians/Legatees/Devisees/Other Beneficiaries**

Name <b>Eric T. Schneiderman, New York Attorney General</b>			
Mailing Address: Street and Number <b>120 Broadway</b>			
City, Village or Town <b>New York</b>	State <b>New York</b>	ZIP Code <b>10271-0332</b>	Country <b>United States</b>
Legacy, Devise or Other Interest <b>Statutory</b>		Fiduciary Status <b>None</b>	
Name <b>United Way</b>			
Mailing Address: Street and Number <b>850 Route 110</b>			
City, Village or Town <b>Melville</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>
Legacy, Devise or Other Interest <b>Residuary Beneficiary</b>		Fiduciary Status <b>None</b>	
Name <b>East End Bank</b>			
Mailing Address: Street and Number <b>1 Montauk Hwy</b>			
City, Village or Town <b>Bridgehampton</b>	State <b>New York</b>	ZIP Code <b>11932</b>	Country <b>United States</b>
Legacy, Devise or Other Interest <b>None</b>		Fiduciary Status <b>Primary Trustee</b>	
Name			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Legacy, Devise or Other Interest		Fiduciary Status	
Name			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Legacy, Devise or Other Interest		Fiduciary Status	
Name			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Legacy, Devise or Other Interest		Fiduciary Status	

**Legatees/Devisees/Other Beneficiaries under Disability**

Name <b>Kimberly Smith</b>			Date of Birth <b>February 28, 2004</b>	Age <b>11</b>
Mailing Address: Street and Number <b>85 Elm Street</b>				
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>	
Status <b>Specific Beneficiary</b>				
(If Infant or Incompetent) Name of Person for Service <b>Richard and Felicity Smith (parents)</b>				
Mailing Address: Street and Number <b>85 Elm Street</b>				
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>	
Name <b>Kyle Smith</b>			Date of Birth <b>January 1, 2000</b>	Age <b>15</b>
Mailing Address: Street and Number <b>85 Elm Street</b>				
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>	
Status <b>Specific Beneficiary</b> <span style="float:right"><i>With duplicate to infant</i></span>				
(If Infant or Incompetent) Name of Person for Service <b>Richard and Felicity Smith (parents)</b>				
Mailing Address: Street and Number <b>85 Elm Street</b>				
City, Village or Town <b>Huntington</b>	State <b>New York</b>	ZIP Code <b>11743</b>	Country <b>United States</b>	
Name			Date of Birth	Age
Mailing Address: Street and Number				
City, Village or Town	State	ZIP Code	Country	
Status				
(If Infant or Incompetent) Name of Person for Service				
Mailing Address: Street and Number				
City, Village or Town	State	ZIP Code	Country	

Dated: \_\_\_\_\_

[NOTE: Complete Affidavit of Mailing. If serving infant 14 years of age or older, list mail to infant as well as parent or guardian.]

**Anne E. Howe**

Print Name of Attorney

**Dewey Cheatham & Howe, LLP**

Firm

**999 Main Street, Riverhead, New York 11901**

Address of Attorney

**(631) 555-5555**

Telephone

AFFIDAVIT OF MAILING NOTICE OF PROBATE

STATE OF NEW YORK  
COUNTY OF SUFFOLK

} ss.:

\_\_\_\_\_, residing at

\_\_\_\_\_, being duly sworn, says that he/she is over the age of 18 years, that on the \_\_\_\_\_, he/she deposited in the post office or in a post office box regularly maintained by the government of the United States in the \_\_\_\_\_ of \_\_\_\_\_, State of **New York**, a copy of the foregoing Notice of Probate contained in a securely closed postpaid wrapper directed to each of the persons named in said notice at the places set opposite their respective names.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Commission Expires:  
(Affix Notary Stamp or Seal)

**Anne E. Howe**

\_\_\_\_\_  
Print Name of Attorney

**(631) 555-5555**

\_\_\_\_\_  
Telephone

**Dewey Cheatham & Howe, LLP**

\_\_\_\_\_  
Firm

**999 Main Street, Riverhead, New York 11901**

\_\_\_\_\_  
Address

COMBINED CORPORATE VERIFICATION, CONSENT AND DESIGNATION

For use when petitioner is a bank or trust company

STATE OF NEW YORK  
COUNTY OF SUFFOLK } ss.:

I, the undersigned, a President of East End Bank,  
Title Name of Bank or Trust Company

a corporation duly qualified to act in a fiduciary capacity without further security, being duly sworn, say:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. CONSENT: I consent to accept the appointment as ☐ EXECUTOR ☐ ADMINISTRATOR c.t.a.  
☒ TRUSTEE under the Last Will and Testament of the decedent described in the foregoing petition and consent to act as such fiduciary.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I designate the Chief Clerk of the Surrogate's Court of Suffolk County, and his/her successor in office, as a person on whom service of any process issuing from such Surrogate's Court may be made, in like manner and whenever one of its proper officers cannot be found and served within the State of New York after due diligence used.

East End Bank

Name of Bank or Trust Company

By

Signature

James Werker

Print Name

President

Title

On \_\_\_\_\_, before me personally came James Werker  
to me known, who duly swore to the foregoing instrument and who did say that he/she resides at 1 Montauk Hwy, Bridgehampton, New York 11932 and that he/she is a President of  
East End Bank the corporation/national baking association described  
in and which executed such instrument, and that he/she signed his/her name thereto by order of the Board of Directors of the corporation.

\_\_\_\_\_  
Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

\_\_\_\_\_  
Signature of Attorney

Dewey Cheatham & Howe, LLP

Firm

999 Main Street, Riverhead, New York 11901

Address

Anne E. Howe

Print Name of Attorney

(631) 555-5555

Telephone



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF

JOHN DOE

a/k/a

JACK DOE

Deceased.

**AFFIDAVIT OF ATTESTING WITNESS**  
(After Death)  
(Pursuant to SCPA 1406)

File No. \_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF SUFFOLK } ss.:

The undersigned witness, being duly sworn, deposes and says:

1. I have been shown:

☐ the original instrument dated \_\_\_\_\_,

☒ a court certified photographic reproduction of the original instrument dated July 31, 2012,  
purporting to be the last Will and Testament/~~Codicil~~ of the above-named decedent.

2. On the date indicated in such instrument ( ☐ under the supervision of an attorney,  
\_\_\_\_\_, Esq./ ☒ None), I saw the decedent subscribe the  
same at the place where decedent's signature appears, and I heard the decedent declare such instrument to  
be his/her last Will and Testament/~~Codicil~~.

3. I thereafter signed my name to such instrument as a witness thereto at the request of the decedent  
and in the presence of the decedent, and I saw the other witness(es)

Robert Cheatham

sign his/her/their name(s) at the end of such instrument as a witness thereto.

4. At the time the decedent subscribed and executed such instrument, the decedent was to the best of  
my knowledge and belief upwards of 18 years of age, and in all respects appeared to be of sound and  
disposing mind, memory and understanding, competent to make a will, and not under any restraint.

5. The decedent could read, write and converse in the English language, and was not suffering from  
defects of sight, hearing or speech, or any other physical or mental impairment, which would affect his/her  
capacity to make a valid will. The purported instrument was the only copy of said Will/~~Codicil~~ executed on that  
occasion, and was not executed in counterparts.

6. I am making this affidavit at the request of Mary Doe.

\_\_\_\_\_  
Witness Signature

**William Cheatham**

\_\_\_\_\_  
Print Name

**22 Surf Court**

\_\_\_\_\_  
Street Address

**Hampton Bays**

\_\_\_\_\_  
City, Village, or Town

**New York**

\_\_\_\_\_  
State

**11946**

\_\_\_\_\_  
ZIP Code

**United States**

\_\_\_\_\_  
Country

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

[**NOTE:** Each witness must be shown either the Original Will or a Court-Certified Reproduction thereof. The Notary Public subscribing to the Affidavit may not be a party or witness to the Will.]





SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF

JOHN DOE

a/k/a

JACK DOE

Deceased.

APPLICATION TO DISPENSE WITH  
TESTIMONY OF ATTESTING WITNESS  
(SCPA 1405)

File No. \_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF SUFFOLK

ss.:

William Cheatham

, being duly sworn, deposes and says:

The testimony of Robert Cheatham, an  
attesting witness to the Will/Codicil of the above-named decedent, dated July 31, 2012,  
offered for probate, cannot be obtained because of

- ☒ death  
☐ absence  
☐ disability  
☐ inability to locate

Explanation:

**Robert Cheatham, deceased, was my brother. He died in August 2012. (See copy of death certificate attached.)**

WHEREFORE it is respectfully requested, pursuant to SCPA 1405, that the testimony of said witness be dispensed with.

Signature

William Cheatham

Print Name

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_

Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF

JOHN DOE

a/k/a

JACK DOE

Deceased.

ORDER DISPENSING WITH  
TESTIMONY OF  
ATTESTING WITNESS

Upon reading and filing the foregoing affidavit which states why the attesting witness therein named is unable to appear in this Court, it is

**ORDERED** that the testimony of Robert Cheatham,  
as an attesting witness to the instrument offered for probate herein, is hereby dispensed with in this probate proceeding.

Dated: \_\_\_\_\_

HON. \_\_\_\_\_  
Surrogate John M. Czygier, Jr.



SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

PROBATE PROCEEDING, WILL OF  
**JOHN DOE**  
a/k/a

**JACK DOE**

Deceased.

**AFFIDAVIT OF COMPARISON**

File No. \_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF SUFFOLK

ss.:

I/We **AI Credit**

(and) \_\_\_\_\_  
being duly sworn, say(s), that I/we have carefully compared the copy of decedent's Will/Codicil propounded herein to which this affidavit is annexed with the original Will dated July 31, 2012, (and the original Codicils dated \_\_\_\_\_), about to be filed for probate, and that the same is in all respects a true and correct copy of said original Will/Codicil and of the whole thereof.

Signature

**AI Credit**

Print Name

Signature

Print Name

Sworn to before me on

\_\_\_\_\_ day of \_\_\_\_\_

Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)