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Prior to joining Burgher Gray, Gill was employed by RGP, a global business consulting firm, where she served as a national business development director structuring consulting deals. Gill also worked for more than six years at Thomson Reuters in both legal and business roles, first serving as vice president and principal legal counsel for global accounts with a focus on complex market data and IP licensing deals and then as head of strategy for the finance and risk global sales channel. Prior to Thomson Reuters, she served as assistant general counsel at Horizon Healthcare Services Inc. where she focused on large technology and IP licensing deals.

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For more than 25 years, Mahon has advised clients on a range of issues, including estate planning, estate, gift and income tax planning, generation skipping transfer tax planning, state death taxes, family office services, family governance, liquidity events, business succession, insurance, lifetime gifts, including valuation discounts, grantor trusts, dynasty trusts, family limited partnerships, intra-family loans, grantor retained annuity trusts, private annuities, qualified personal residence trusts, Crummey trusts, trust terminations, trustee succession, trust protectors, pre-nuptial agreements, powers of attorney, and health care proxies. Mahon also regularly advises clients on trust and estate litigation and dispute resolution, including contested guardianships, and on tax and other issues unique to Non-U.S. persons and assets.

Mahon is a frequent writer on trusts and estates matters. His articles have appeared in Trusts & Estates magazine, Estate Planning magazine, New Jersey Lawyer, Unique Homes, and other publications. His leading 2011 article on the impact of income taxes on estate planning pursuant to recent tax changes—“The ‘TEA’ Factor: How Much Appreciation Must Occur for a Gift to Provide Estate Tax Savings Greater Than Income Tax Costs?”—was published by Trusts and Estates magazine in August 2011. Mahon has been named best lawyer in trusts and estates law by Best Lawyers in America for 2018. Mahon was also named a New York-area 2012–17 super lawyer by Super Lawyers magazine, and he has lectured frequently on estate planning for leading organizations including New York City Bar Association, New York State Bar, New Jersey Institute for Continuing Legal Education, New Jersey Society of Certified Public Accountants, and Princeton Bar Association. He received his J.D from New York University School of Law.

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Getting to YES

Negotiating an agreement without giving in

Roger Fisher and William Ury
With Bruce Patton, Editor

Second edition by Fisher, Ury and Patton
RANDOM HOUSE BUSINESS BOOKS
GETTING TO YES
The authors of this book have been working together since 1977.
Roger Fisher teaches negotiation at Harvard Law School, where he is Williston Professor of Law and Director of the Harvard Negotiation Project. Raised in Illinois, he served in World War II with the U.S. Army Air Force, in Paris with the Marshall Plan, and in Washington, D.C., with the Department of Justice. He has also practiced law in Washington and served as a consultant to the Department of Defense. He was the originator and executive editor of the award-winning series The Advocates. He consults widely with governments, corporations, and individuals through Conflict Management, Inc., and the Conflict Management Group.
William Ury, consultant, writer, and lecturer on negotiation and mediation, is Director of the Negotiation Network at Harvard University and Associate Director of the Harvard Negotiation Project. He has served as a consultant and third party in disputes ranging from the Palestinian-Israeli conflict to U.S.-Soviet arms control to intracorporate conflicts to labor-management conflict at a Kentucky coal mine. Currently, he is working on ethnic conflict in the Soviet Union and on teacher-contract negotiations in a large urban setting. Educated in Switzerland, he has degrees from Yale in Linguistics and Harvard in anthropology.
Bruce Patton, Deputy Director of the Harvard Negotiation Project, is the Thaddeus R. Beal Lecturer on Law at Harvard Law School, where he teaches negotiation. A lawyer, he teaches negotiation to diplomats and corporate executives around the world and works as a negotiation consultant and mediator in international, corporate, labor-management, and family settings. Associated with the Conflict Management organizations, which he co-founded in 1984, he has both graduate and undergraduate degrees from Harvard.

Books by Roger Fisher
International Conflict and Behavioral Science: The Craigville Papers (editor and co-author, 1964)
International Conflict for Beginners (1969)
Dear Israelis, Dear Arabs: A Working Approach to Peace (1972)

Books by William Ury
Beyond the Hotline: How Crisis Control Can Prevent Nuclear War (1985)
Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict (with Jeanne M. Brett and Stephen B. Goldberg, 1988)
Getting Past No: Negotiating with Difficult People (1991)
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Acknowledgments

This book began as a question: What is the best way for people to deal with their differences? For example, what is the best advice one could give a husband and wife getting divorced who want to know how to reach a fair and mutually satisfactory agreement without ending up in a bitter fight? Perhaps more difficult, what advice would you give one of them who wanted to do the same thing? Every day, families, neighbors, couples, employees, bosses, businesses, consumers, salesmen, lawyers, and nations face this same dilemma of how to get to yes without going to war. Drawing on our respective backgrounds in international law and anthropology and an extensive collaboration over the years with practitioners, colleagues, and students, we have evolved a practical method for negotiating agreement amicably without giving in.

We have tried out ideas on lawyers, businessmen, government officials, judges, prison wardens, diplomats, insurance representatives, military officers, coal miners, and oil executives. We gratefully acknowledge those who responded with criticism and with suggestions distilled from their experience. We benefited immensely.

In truth, so many people have contributed so extensively to our learning over the years that it is no longer possible to say precisely to whom we are indebted for which ideas in what form. Those who contributed the most understand that footnotes were omitted not because we think every idea original, but rather to keep the text readable when we owe so much to so many.

We could not fail to mention, however, our debt to Howard Raiffa. His kind but forthright criticism has repeatedly improved the approach, and his notions on seeking joint gains by exploiting differences and using imaginative procedures for settling difficult issues have inspired sections on these subjects. Louis Sohn, deviser and negotiator extraordinaire, was always encouraging, always creative, always looking forward. Among our many debts to him, we owe our introduction to the idea of using a single negotiating text, which we call the One-Text Procedure. And we would like to thank Michael Doyle and David Straus for their creative ideas on running brainstorming sessions.

Good anecdotes and examples are hard to find. We are greatly indebted to Jim Sebenius for his accounts of the Law of the Sea Conference (as well as for his thoughtful criticism of the method), to Tom Griffith for an account of his negotiation with an insurance adjuster, and to Mary Parker Follett for the story of two men quarreling in a library.

We want especially to thank all those who read this book in various drafts and gave us the benefit of their criticism, including our students in the January Negotiation Workshops of 1980 and 1981 at Harvard Law School, and Frank Sander, John Cooper, and William Lincoln who taught those workshops with us. In particular, we want to thank those members of Harvard's Negotiation Seminar whom we have not already mentioned; they listened to us patiently these last two years and offered many helpful suggestions: John Dunlop, James Healy, David Kuechle, Thomas Schelling, and Lawrence Susskind. To all of our friends and associates we owe more than we can say, but the final responsibility for the content of this book lies with the authors; if the result is not yet perfect, it is not for lack of our colleagues efforts.

Without family and friends, writing would be intolerable. For constructive criticism and moral support we thank Caroline Fisher, David Lax, Frances Turnbull, and Janice Ury.

Without Francis Fisher this book would never have been written. He had the felicity of introducing the two of us some four years ago.

Finer secretarial help we could not have had. Thanks to Deborah Reimel for her unfailing competence, moral support, and firm but gracious reminders, and to Denise Trybula, who never wavered in her diligence and cheerfulness. And special thanks to the people at Word Processing, led by Cynthia Smith, who met the test of an endless series of drafts and near impossible deadlines.

Then there are our editors. By reorganizing and cutting this book in half, Marty Linsky made it far more readable. To spare our readers, he had the good sense not to spare our feelings.
Thanks also to Peter Kinder, June Kinoshita, and Bob Ross. June struggled to make the language less sexist. Where we have not succeeded, we apologize to those who may be offended. We also want to thank Andrea Williams, our adviser: Julian Bach, our agent; and Dick McAdoo and his associates at Houghton Mifflin, who made the production of this book both possible and pleasurable.

Finally, we want to thank Bruce Patton, our friend and colleague, editor and mediator. No one has contributed more to this book. From the very beginning he helped brainstorm and organize the syllogism of the book. He has reorganized almost every chapter and edited every word. If books were movies, this would be known as a Patton Production.

Roger Fisher
William Ury

Preface to
the Second Edition

In the last ten years negotiation as a field for academic and professional concern has grown dramatically. New theoretical works have been published, case studies have been produced, and empirical research undertaken. Ten years ago almost no professional school offered courses on negotiation; now they are all but universal. Universities are beginning to appoint faculty who specialize in negotiation. Consulting firms now do the same in the corporate world.

Against this changing intellectual landscape, the ideas in Getting to Yes have stood up well. They have gained considerable attention and acceptance from a broad audience, and are frequently cited as starting points for other work. Happily, they remain persuasive to the authors as well. Most questions and comments have focused on places where the book has proven ambiguous, or where readers have wanted more specific advice. We have tried to address the most important of these topics in this revision.

Rather than tampering with the text (and asking readers who know it to search for changes), we have chosen to add new material in a separate section at the end of this second edition. The main text remains in full and unchanged from the original, except for updating the figures in examples to keep pace with inflation and rephrasing in a few places to clarify meaning and eliminate sexist language. We hope that our answers to "Ten Questions People Ask About Getting to YES" prove helpful and meet some of the interests readers have expressed.

We address questions about (1) the meaning and limits of "principled" negotiation (it represents practical, not moral advice); (2) dealing with someone who seems to be irrational or who has a different value system, outlook, or negotiating style; (3) practical questions, such as where to meet, who should make the first offer, and how to move from inventing options to making commitments; and (4) the role of power in negotiation.

More extensive treatment of some topics will have to await other books. Readers interested in more detail about handling "people issues" in negotiation in ways that tend to establish an effective working relationship might enjoy Getting Together: Building Relationships as We Negotiate by Roger Fisher and Scott Brown, also available from Business Books. If dealing with difficult people and situations is more your concern, look for Getting Past No: Negotiating with Difficult People by William Ury, published by Business Books. No doubt other books will follow. There is certainly much more to say about power, multilateral negotiations, cross-cultural transactions, personal styles, and many other topics.

Once again we thank Marty Linsky, this time for taking a careful eye and a sharp pencil to our new material. Our special thanks to Doug Stone for his discerning critique, editing, and occasional rewriting of successive drafts of that material. He has an uncanny knack for catching us in an unclear thought or paragraph.

For more than a dozen years, Bruce Patton has worked with us in formulating and explaining all of the ideas in this book. This past year he has pulled the laboring oar in
Like it or not, you are a negotiator. Negotiation is a fact of life. You discuss a raise with your boss. You try to agree with a stranger on a price for his house. Two lawyers try to settle a lawsuit arising from a car accident. A group of oil companies plan a joint venture exploring for offshore oil. A city official meets with union leaders to avert a transit strike. The United States Secretary of State sits down with his Soviet counterpart to seek an agreement limiting nuclear arms. All these are negotiations.

Everyone negotiates something every day. Like Moliere's Monsieur Jourdain, who was delighted to learn that he had been speaking prose all his life, people negotiate even when they don't think of themselves as doing so. A person negotiates with his spouse about where to go for dinner and with his child about when the lights go out. Negotiation is a basic means of getting what you want from others. It is back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.

More and more occasions require negotiation; conflict is a growth industry. Everyone wants to participate in decisions that affect them; fewer and fewer people will accept decisions dictated by someone else. People differ, and they use negotiation to handle their differences. Whether in business, government, or the family, people reach most decisions through negotiation. Even when they go to court, they almost always negotiate a settlement before trial.

Although negotiation takes place every day, it is not easy to do well. Standard strategies for negotiation often leave people dissatisfied, worn out, or alienated — and frequently all three.

People find themselves in a dilemma. They see two ways to negotiate: soft or hard. The soft negotiator wants to avoid personal conflict and so makes concessions readily in order to reach agreement. He wants an amicable resolution; yet he often ends up exploited and feeling bitter. The hard negotiator sees any situation as a contest of wills in which the side that takes the more extreme positions and holds out longer fares better. He wants to win; yet he often ends up producing an equally hard response which exhausts him and his resources and harms his relationship with the other side. Other standard negotiating strategies fall between hard and soft, but each involves an attempted trade-off between getting what you want and getting along with people.

There is a third way to negotiate, a way neither hard nor soft, but rather both hard and soft. The method of principled negotiation developed at the Harvard Negotiation Project is to decide issues on their merits rather than through a haggling process focused on what each side says it will and won't do. It suggests that you look for mutual gains wherever possible, and that where your interests conflict, you should insist that the result be based on some fair standards independent of the will of either side. The method of principled negotiation is hard on the merits, soft on the people. It employs no tricks and no posturing. Principled negotiation shows you how to obtain what you are entitled to and still be decent. It enables you to be fair while protecting you against those who would take advantage of your fairness.

This book is about the method of principled negotiation. The first chapter describes problems that arise in using the standard strategies of positional bargaining. The next four chapters lay out the four principles of the method. The last three chapters answer the questions most commonly asked about the method: What if the other side is more powerful? What if they will not play along? And what if they use dirty tricks?

Principled negotiation can be used by United States diplomats in arms control talks with the Soviet Union, by Wall Street lawyers representing Fortune 500 companies in antitrust cases, and by couples in deciding everything from where to go for vacation to how to divide their
property if they get divorced. Anyone can use this method.

Every negotiation is different, but the basic elements do not change. Principled negotiation can be used whether there is one issue or several; two parties or many; whether there is a prescribed ritual, as in collective bargaining, or an impromptu free-for-all, as in talking with hijackers. The method applies whether the other side is more experienced or less, a hard bargainer or a friendly one. Principled negotiation is an all-purpose strategy. Unlike almost all other strategies, if the other side learns this one, it does not become more difficult to use; it becomes easier. If they read this book, all the better.

I
The Problem

1. Don't Bargain Over Positions

Whether a negotiation concerns a contract, a family quarrel, or a peace settlement among nations, people routinely engage in positional bargaining. Each side takes a position, argues for it, and makes concessions to reach a compromise. The classic example of this negotiating minuet is the haggling that takes place between a customer and the proprietor of a secondhand store:

<table>
<thead>
<tr>
<th>CUSTOMER</th>
<th>SHOPKEEPER</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much do you want for this brass dish?</td>
<td>That is a beautiful antique, isn't it? I guess I could let it go for $75.</td>
</tr>
<tr>
<td>Oh come on, it's dented. I'll give you $15.</td>
<td>Really! I might consider a serious offer, but $15 certainly isn't serious.</td>
</tr>
<tr>
<td>Well, I could go to $20, but I would never pay anything like $75. Quote me a realistic price.</td>
<td>You drive a hard bargain, young lady. $60 cash, right now.</td>
</tr>
<tr>
<td>$25.</td>
<td>It cost me a great deal more than that. Make me a serious offer.</td>
</tr>
<tr>
<td>$37.50. That's the highest I will go.</td>
<td>Have you noticed the engraving on that dish? Next year pieces like that will be worth twice what you pay today.</td>
</tr>
</tbody>
</table>

And so it goes, on and on. Perhaps they will reach agreement; perhaps not.

Any method of negotiation may be fairly judged by three criteria: It should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties. (A wise agreement can be defined as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.)

The most common form of negotiation, illustrated by the above example, depends upon successively taking — and then giving up — a sequence of positions.

Taking positions, as the customer and storekeeper do, serves some useful purposes in a negotiation. It tells the other side what you want; it provides an anchor in an uncertain and pressured situation; and it can eventually produce the terms of an acceptable agreement. But those purposes can be served in other ways. And positional bargaining fails to meet the basic criteria of producing a wise agreement, efficiently and amicably.

Arguing over positions produces unwise agreements

When negotiators bargain over positions, they tend to lock themselves into those positions. The more you clarify your position and defend it against attack, the more committed you become to it. The more you try to convince the other side of the impossibility of changing your opening
position, the more difficult it becomes to do so. Your ego becomes identified* with your position. You now have a new interest in "saving face" — in reconciling future action with past positions — making it less and less likely that any agreement will wisely reconcile the parties' original interests.

The danger that positional bargaining will impede a negotiation was well illustrated by the breakdown of the talks under President Kennedy for a comprehensive ban on nuclear testing. A critical question arose: How many on-site inspections per year should the Soviet Union and the United States be permitted to make within the other's territory to investigate suspicious seismic events? The Soviet Union finally agreed to three inspections. The United States insisted on no less than ten. And there the talks broke down — over positions — despite the fact that no one understood whether an "inspection" would involve one person looking around for one day, or a hundred people prying indiscriminately for a month. The parties had made little attempt to design an inspection procedure that would reconcile the United States's interest in verification with the desire of both countries for minimal intrusion.

As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties. Agreement becomes less likely. Any agreement reached may reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties. The result is frequently an agreement less satisfactory to each side than it could have been.

**Arguing over positions is inefficient**

The standard method of negotiation may produce either agreement, as with the price of a brass dish, or breakdown, as with the number of on-site inspections. In either event, the process takes a lot of time.

Bargaining over positions creates incentives that stall settlement. In positional bargaining you try to improve the chance that any settlement reached is favorable to you by starting with an extreme position, by stubbornly holding to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiation going. The same is true for the other side. Each of those factors tends to interfere with reaching a settlement promptly. The more extreme the opening positions and the smaller the concessions, the more time and effort it will take to discover whether or not agreement is possible.

The standard minuet also requires a large number of individual decisions as each negotiator decides what to offer, what to reject, and how much of a concession to make. Decision-making is difficult and time-consuming at best. Where each decision not only involves yielding to the other side but will likely produce pressure to yield further, a negotiator has little incentive to move quickly. Dragging one's feet, threatening to walk out, stonewalling, and other such tactics become commonplace. They all increase the time and costs of reaching agreement as well as the risk that no agreement will be reached at all.

**Arguing over positions endangers an ongoing relationship**

Positional bargaining becomes a contest of will. Each negotiator asserts what he will and won't do. The task of jointly devising an acceptable solution tends to become a battle. Each side tries through sheer will power to force the other to change its position. "I'm not going to give in. If you want to go to the movies with me, it's *The Maltese Falcon* or nothing." Anger and resentment often result as one side sees itself bending to the rigid will of the other while its own legitimate concerns go unaddressed. Positional bargaining thus strains and sometimes shatters the relationship between the parties. Commercial enterprises that have been doing business together for years may part company. Neighbors may stop speaking to each other. Bitter feelings generated by one such encounter may last a lifetime.

**When there are many parties, positional bargaining is even worse**

Although it is convenient to discuss negotiation in terms of two persons, you and "the other
side," in fact, almost every negotiation involves more than two persons. Several different parties may sit at the table, or each side may have constituents, higher-ups, boards of directors, or committees with whom they must deal. The more people involved in a negotiation, the more serious the drawbacks to positional bargaining.

If some 150 countries are negotiating, as in various United Nations conferences, positional bargaining is next to impossible. It may take all to say yes, but only one to say no. Reciprocal concessions are difficult: to whom do you make a concession? Yet even thousands of bilateral deals would still fall short of a multilateral agreement. In such situations, positional bargaining leads to the formation of coalitions among parties whose shared interests are often more symbolic than substantive. At the United Nations, such coalitions produce negotiations between "the" North and "the" South, or between "the" East and "the" West. Because there are many members in a group, it becomes more difficult to develop a common position. What is worse, once they have painfully developed and agreed upon a position, it becomes much harder to change it. Altering a position proves equally difficult when additional participants are higher authorities who, while absent from the table, must nevertheless give their approval.

Being nice is no answer

Many people recognize the high costs of hard positional bargaining, particularly on the parties and their relationship. They hope to avoid them by following a more gentle style of negotiation. Instead of seeing the other side as adversaries, they prefer to see them as friends. Rather than emphasizing a goal of victory, they emphasize the necessity of reaching agreement. In a soft negotiating game the standard moves are to make offers and concessions, to trust the other side, to be friendly, and to yield as necessary to avoid confrontation.

The following table illustrates two styles of positional bargaining, soft and hard. Most people see their choice of negotiating strategies as between these two styles. Looking at the table as presenting a choice, should you be a soft or a hard positional bargainer? Or should you perhaps follow a strategy somewhere in between?

The soft negotiating game emphasizes the importance of building and maintaining a relationship. Within families and among friends much negotiation takes place in this way. The process tends to be efficient, at least to the extent of producing results quickly. As each party competes with the other in being more generous and more forthcoming, an agreement becomes highly likely. But it may not be a wise one. The results may not be as tragic as in the O. Henry story about an impoverished couple in which the loving wife sells her hair in order to buy a handsome chain for her husband's watch, and the unknowing husband sells his watch in order to buy beautiful combs for his wife's hair. However, any negotiation primarily concerned with the relationship runs the risk of producing a sloppy agreement.

**PROBLEM**

Positional Bargaining: Which Game Should You Play?

<table>
<thead>
<tr>
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<tr>
<td>Participants are friends.</td>
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<tr>
<td>The goal is agreement.</td>
<td>The goal is victory.</td>
</tr>
<tr>
<td>Make concessions to cultivate the relationship.</td>
<td>Demand concessions as a condition of the relationship.</td>
</tr>
<tr>
<td>Be soft on the people and the problem.</td>
<td>Be hard on the problem and the people.</td>
</tr>
<tr>
<td>Trust others.</td>
<td>Distrust others.</td>
</tr>
<tr>
<td>Change your position easily.</td>
<td>Dig in to your position.</td>
</tr>
<tr>
<td>Make threats.</td>
<td>Make offers.</td>
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</table>
More seriously, pursuing a soft and friendly form of positional bargaining makes you vulnerable to someone who plays a hard game of positional bargaining. In positional bargaining, a hard game dominates a soft one. If the hard bargainer insists on concessions and makes threats while the soft bargainer yields in order to avoid confrontation and insists on agreement, the negotiating game is biased in favor of the hard player. The process will produce an agreement, although it may not be a wise one. It will certainly be more favorable to the hard positional bargainer than to the soft one. If your response to sustained, hard positional bargaining is soft positional bargaining, you will probably lose your shirt.

**There is an alternative**

If you do not like the choice between hard and soft positional bargaining, you can change the game.

The game of negotiation takes place at two levels. At one level, negotiation addresses the substance; at another, it focuses—usually implicitly—on the procedure for dealing with the substance. The first negotiation may concern your salary, the terms of a lease, or a price to be paid. The second negotiation concerns how you will negotiate the substantive question: by soft positional bargaining, by hard positional bargaining, or by some other method. This second negotiation is a game about a game—a "meta-game." Each move you make within a negotiation is not only a move that deals with rent, salary, or other substantive questions; it also helps structure the rules of the game you are playing. Your move may serve to keep the negotiations within an ongoing mode, or it may constitute a game-changing move.

This second negotiation by and large escapes notice because it seems to occur without conscious decision. Only when dealing with someone from another country, particularly someone with a markedly different cultural background, are you likely to see the necessity of establishing some accepted process for the substantive negotiations. But whether consciously or not, you are negotiating procedural rules with every move you make, even if those moves appear exclusively concerned with substance.

The answer to the question of whether to use soft positional bargaining or hard is "neither." Change the game. At the Harvard Negotiation Project we have been developing an alternative to positional bargaining: a method of negotiation explicitly designed to produce wise outcomes efficiently and amicably. This method, called *principled negotiation* or *negotiation on the merits*, can be boiled down to four basic points.

These four points define a straightforward method of negotiation that can be used under almost any circumstance. Each point deals with a basic element of negotiation, and suggests what you should do about it.

**People:** Separate the people from the problem.
**Interests:** Focus on interests, not positions.
**Options:** Generate a variety of possibilities before deciding what to do.
Criteria: Insist that the result be based on some objective standard.

The first point responds to the fact that human beings are not computers. We are creatures of strong emotions who often have radically different perceptions and have difficulty communicating clearly. Emotions typically become entangled with the objective merits of the problem. Taking positions just makes this worse because people's egos become identified with their positions. Hence, before working on the substantive problem, the "people problem" should be disentangled from it and dealt with separately. Figuratively if not literally, the participants should come to see themselves as working side by side, attacking the problem, not each other. Hence the first proposition: *Separate the people from the problem.*

The second point is designed to overcome the drawback of focusing on people's stated positions when the object of a negotiation is to satisfy their underlying interests. A negotiating position often obscures what you really want. Compromising between positions is not likely to produce an agreement which will effectively take care of the human needs that led people to adopt those positions. The second basic element of the method is: *Focus on interests, not positions.*

The third point responds to the difficulty of designing optimal solutions while under pressure. Trying to decide in the presence of an adversary narrows your vision. Having a lot at stake inhibits creativity. So does searching for the one right solution. You can offset these constraints by setting aside a designated time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests. Hence the third basic point: Before trying to reach agreement, *invent options for mutual gain.*

Where interests are directly opposed, a negotiator may be able to obtain a favorable result simply by being stubborn. That method tends to reward intransigence and produce arbitrary results. However, you can counter such a negotiator by insisting that his single say-so is not enough and that the agreement must reflect some fair standard independent of the naked will of either side. This does not mean insisting that the terms be based on the standard you select, but only that some fair standard such as market value, expert opinion, custom, or law determine the outcome. By discussing such criteria rather than what the parties are willing or unwilling to do, neither party need give in to the other; both can defer to a fair solution. Hence the fourth basic point: *Insist on using objective criteria.*

The method of principled negotiation is contrasted with hard and soft positional bargaining in the table below, which shows the four basic points of the method in boldface type.

The four propositions of principled negotiation are relevant from the time you begin to think about negotiating until the time either an agreement is reached or you decide to break off the effort. That period can be divided into three stages: analysis, planning, and discussion.

During the *analysis* stage you are simply trying to diagnose the situation — to gather information, organize it, and think about it. You will want to consider the people problems of partisan perceptions, hostile emotions, and unclear communication, as well as to identify your interests and those of

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<td>The goal is a wise outcome reached efficiently and amicably.</td>
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<td>Demand concessions as a condition of the relationship.</td>
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<td>Trust others.</td>
<td>Distrust others.</td>
<td>Proceed independent of trust.</td>
</tr>
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<td>Change your position easily.</td>
<td>Dig in to your position.</td>
<td><strong>Focus on interests, not positions.</strong></td>
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<tr>
<td>Make offers.</td>
<td>Make threats.</td>
<td>Explore interests.</td>
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<tr>
<td>Disclose your bottom line.</td>
<td>Mislead as to your bottom line.</td>
<td>Avoid having a bottom line.</td>
</tr>
<tr>
<td>Accept one-sided losses to reach agreement.</td>
<td>Demand one-sided gains as the price of agreement.</td>
<td><strong>Invent options for mutual gain.</strong></td>
</tr>
<tr>
<td>Search for the single answer: the one they will accept.</td>
<td>Search for the single answer: the one you will accept.</td>
<td>Develop multiple options to choose from; decide later.</td>
</tr>
<tr>
<td>Insist on agreement.</td>
<td>Insist on your position.</td>
<td><strong>Insist on using objective criteria.</strong></td>
</tr>
<tr>
<td>Try to avoid a contest of will.</td>
<td>Try to win a contest of will.</td>
<td>Try to reach a result based on standards independent of will.</td>
</tr>
<tr>
<td>Yield to pressure.</td>
<td>Apply pressure.</td>
<td>Reason and be open to reasons; yield to principle, not pressure.</td>
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the other side. You will want to note options already on the table and identify any criteria already suggested as a basis for agreement.

During the planning stage you deal with the same four elements a second time, both generating ideas and deciding what to do. How do you propose to handle the people problems? Of your interests, which are most important? And what are some realistic objectives? You will want to generate additional options and additional criteria for deciding among them.

Again during the discussion stage, when the parties communicate back and forth, looking toward agreement, the same four elements are the best subjects to discuss. Differences in perception, feelings of frustration and anger, and difficulties in communication can be acknowledged and addressed. Each side should come to understand the interests of the other. Both can then jointly generate options that are mutually advantageous and seek agreement on objective standards for resolving opposed interests.

To sum up, in contrast to positional bargaining, the principled negotiation method of focusing on basic interests, mutually satisfying options, and fair standards typically results in a wise agreement. The method permits you to reach a gradual consensus on a joint decision efficiently without all the transactional costs of digging in to positions only to have to dig yourself out of them. And separating the people from the problem allows you to deal directly and empathetically with the other negotiator as a human being, thus making possible an amicable agreement.

Each of the next four chapters expands on one of these four basic points. If at any point you become skeptical, you may want to skip ahead briefly and browse in the final three chapters, which respond to questions commonly raised about the method.
II
The Method

2. Separate the PEOPLE from the Problem
3. Focus on INTERESTS, Not Positions
4. Invent OPTIONS for Mutual Gain
5. Insist on Using Objective CRITERIA

2. Separate the PEOPLE from the Problem

Everyone knows how hard it is to deal with a problem without people misunderstanding each other, getting angry or upset, and taking things personally.

A union leader says to his men, "All right, who called the walkout?"
Jones steps forward. "I did. It was that bum foreman Campbell again. That was the fifth time in two weeks he sent me out of our group as a replacement. He's got it in for me, and I'm tired of it. Why should I get all the dirty work?"

Later the union leader confronts Campbell. "Why do you keep picking on Jones? He says you've put him on replacement detail five times in two weeks. What's going on?"

Campbell replies, "I pick Jones because he's the best. I know I can trust him to keep things from fouling up in a group without its point man. I send him on replacement only when it's a key man missing, otherwise I send Smith or someone else. It's just that with the flu going around there've been a lot of point men out. I never knew Jones objected. I thought he liked the responsibility."

In another real-life situation, an insurance company lawyer says to the state insurance commissioner:
"I appreciate your time, Commissioner Thompson. What I'd like to talk to you about is some of the problems we've been having with the presumption clause of the strict-liability regulations. Basically, we think the way the clause was written causes it to have an unfair impact on those insurers whose existing policies contain rate adjustment limitations, and we would like to consider ways it might be revised——"

The Commissioner, interrupting:
"Mr. Monteiro, your company had ample opportunity to voice any objection it had during the hearings my department held on those regulations before they were issued. I ran those hearings, Mr. Monteiro. I listened to every word of testimony, and I wrote the final version of the strict-liability provisions personally. Are you saying I made a mistake?"

"No, but——"
"Are you saying I'm unfair?"
"Certainly not, sir, but I think this provision has had consequences none of us foresaw, and——"

"Listen, Monteiro, I promised the public when I campaigned for this position that I would put an end to killer hair dryers and $10,000 bombs disguised as cars. And these regulations have done that.

"Your company made a $50 million profit on its strict-liability policies last year. What kind of fool do you think you can play me for, coming in here talking about 'unfair' regulations and 'unforeseen consequences'? I don't want to hear another word of that. Good day, Mr. Monteiro."

Now what? Does the insurance company lawyer press the Commissioner on this point, making him angry and probably not getting anywhere? His company does a lot of business in this state. A good relationship with the Commissioner is important. Should he let the matter rest,
then, even though he is convinced that this regulation really is unfair, that its long-term effects are likely to be against the public interest, and that not even the experts foresaw this problem at the time of the original hearings?

What is going on in these cases?

**Negotiators are people first**

A basic fact about negotiation, easy to forget in corporate and international transactions, is that you are dealing not with abstract representatives of the "other side," but with human beings. They have emotions, deeply held values, and different backgrounds and viewpoints; and they are unpredictable. So are you.

This human aspect of negotiation can be either helpful or disastrous. The process of working out an agreement may produce a psychological commitment to a mutually satisfactory outcome. A working relationship where trust, understanding, respect, and friendship are built up over time can make each new negotiation smoother and more efficient. And people's desire to feel good about themselves, and their concern for what others will think of them, can often make them more sensitive to another negotiator's interests.

On the other hand, people get angry, depressed, fearful, hostile, frustrated, and offended. They have egos that are easily threatened. They see the world from their own personal vantage point, and they frequently confuse their perceptions with reality. Routinely, they fail to interpret what you say in the way you intend and do not mean what you understand them to say. Misunderstanding can reinforce prejudice and lead to reactions that produce counterreactions in a vicious circle; rational exploration of possible solutions becomes impossible and a negotiation fails. The purpose of the game becomes scoring points, confirming negative impressions, and apportioning blame at the expense of the substantive interests of both parties.

Failing to deal with others sensitively as human beings prone to human reactions can be disastrous for a negotiation. Whatever else you are doing at any point during a negotiation, from preparation to follow-up, it is worth asking yourself, "Am I paying enough attention to the people problem?"

**Every negotiator has two kinds of interests: in the substance and in the relationship**

Every negotiator wants to reach an agreement that satisfies his substantive interests. That is why one negotiates. Beyond that, a negotiator also has an interest in his relationship with the other side. An antiques dealer wants both to make a profit on the sale and to turn the customer into a regular one. At a minimum, a negotiator wants to maintain a working relationship good enough to produce an acceptable agreement if one is possible given each side's interests. Usually, more is at stake. Most negotiations take place in the context of an ongoing relationship where it is important to carry on each negotiation in a way that will help rather than hinder future relations and future negotiations. In fact, with many long-term clients, business partners, family members, fellow professionals, government officials, or foreign nations, the ongoing relationship is far more important than the outcome of any particular negotiation.

**The relationship tends to become entangled with the problem.** A major consequence of the "people problem" in negotiation is that the parties' relationship tends to become entangled with their discussions of substance. On both the giving and receiving end, we are likely to treat people and problem as one. Within the family, a statement such as "The kitchen is a mess" or "Our bank account is low" may be intended simply to identify a problem, but it is likely to be heard as a personal attack. Anger over a situation may lead you to express anger toward some human being associated with it in your mind. Egos tend to become involved in substantive positions.

Another reason that substantive issues become entangled with psychological ones is that people draw from comments on substance unfounded inferences which they then treat as facts about that person's intentions and attitudes toward them.
Unless we are careful, this process is almost automatic; we are seldom aware that other explanations may be equally valid. Thus in the union example, Jones figured that Campbell, the foreman, had it in for him, while Campbell thought he was complimenting Jones and doing him a favor by giving him responsible assignments.

**Positional bargaining puts relationship and substance in conflict.** Framing a negotiation as a contest of will over positions aggravates the entangling process. I see your position as a statement of how you would like the negotiation to end; from my point of view it demonstrates how little you care about our relationship. If I take a firm position that you consider unreasonable, you assume that I also think of it as an extreme position; it is easy to conclude that I do not value our relationship — or you — very highly.

Positional bargaining deals with a negotiator's interests both in substance and in a good relationship by trading one off against the other. If what counts in the long run for your company is its relationship with the insurance commissioner, then you will probably let this matter drop. Or, if you care more about a favorable solution than being respected or liked by the other side, you can try to trade relationship for substance. "If you won't go along with me on this point, then so much for you. This will be the last time we meet." Yet giving in on a substantive point may buy no friendship; it may do nothing more than convince the other side that you can be taken for a ride.

**Separate the relationship from the substance; deal directly with the people problem**
Dealing with a substantive problem and maintaining a good working relationship need not be conflicting goals if the parties are committed and psychologically prepared to treat each separately on its own legitimate merits. Base the relationship on accurate perceptions, clear communication, appropriate emotions, and a forward-looking, purposive outlook. Deal with people problems directly; don't try to solve them with substantive concessions.

To deal with psychological problems, use psychological techniques. Where perceptions are inaccurate, you can look for ways to educate. If emotions run high, you can find ways for each person involved to let off steam. Where misunderstanding exists, you can work to improve communication.

To find your way through the jungle of people problems, it is useful to think in terms of three basic categories: perception, emotion, and communication. The various people problems all fall into one of these three baskets.

In negotiating it is easy to forget that you must deal not only with their people problems, but also with your own. Your anger and frustration may obstruct an agreement beneficial to you. Your perceptions are likely to be one-sided, and you may not be listening or communicating adequately. The techniques which follow apply equally well to your people problems as to those of the other side.

**Perception**
Understanding the other side's thinking is not simply a useful activity that will help you solve your problem. Their thinking *is* the problem. Whether you are making a deal or settling a dispute, differences are defined by the difference between your thinking and theirs. When two people quarrel, they usually quarrel over an object — both may claim a watch — or over an event — each may contend that the other was at fault in causing an automobile accident. The same goes for nations. Morocco and Algeria quarrel over a section of the Western Sahara; India and Pakistan quarrel over each other's development of nuclear bombs. In such circumstances people tend to assume that what they need to know more about is the object or the event. They study the watch or they measure the skid marks at the scene of the accident. They study the Western Sahara or the detailed history of nuclear weapons development in India and Pakistan.

Ultimately, however, conflict lies not in objective reality, but in people's heads. Truth is simply one more argument — perhaps a good one, perhaps not — for dealing with the dif-
ference. The difference itself exists because it exists in their thinking. Fears, even if ill-founded, are real fears and need to be dealt with. Hopes, even if unrealistic, may cause a war. Facts, even if established, may do nothing to solve the problem. Both parties may agree that one lost the watch and the other found it, but still disagree over who should get it. It may finally be established that the auto accident was caused by the blowout of a tire which had been driven 31,402 miles, but the parties may dispute who should pay for the damage. The detailed history and geography of the Western Sahara, no matter how carefully studied and documented, is not the stuff with which one puts to rest that kind of territorial dispute. No study of who developed what nuclear devices when will put to rest the conflict between India and Pakistan.

As useful as looking for objective reality can be, it is ultimately the reality as each side sees it that constitutes the problem in a negotiation and opens the way to a solution. **Put yourself in their shoes.** How you see the world depends on where you sit. People tend to see what they want to see. Out of a mass of detailed information, they tend to pick out and focus on those facts that confirm their prior perceptions and to disregard or misinterpret those that call their perceptions into question. Each side in a negotiation may see only the merits of its case, and only the faults of the other side's.

The ability to see the situation as the other side sees it, as difficult as it may be, is one of the most important skills a negotiator can possess. It is not enough to know that they see things differently. If you want to influence them, you also need to understand empathetically the power of their point of view and to feel the emotional force with which they believe in it. It is not enough to study them like beetles under a microscope; you need to know what it feels like to be a beetle. To accomplish this task you should be prepared to withhold judgment for a while as you "try on" their views. They may well believe that their views are "right" as strongly as you believe yours are. You may see on the table a glass half full of cool water. Your spouse may see a dirty, half-empty glass about to cause a ring on the mahogany finish.

Consider the contrasting perceptions of a tenant and a landlady negotiating the renewal of a lease:

**TENANTS PERCEPTIONS**

The rent is already too high.

With other costs going up, I can't afford to pay more for housing.

The apartment needs painting.

I know people who pay less for a comparable apartment.

Young people like me can't afford to pay high rents.

The rent ought to be low because the neighborhood is rundown.

I am a desirable tenant with no dogs or cats.

I always pay the rent whenever she asks for it.

She is cold and distant; she never asks me how things are.

**LANDLADY'S PERCEPTIONS**

The rent has not been increased for a long time.

With other costs going up, I need more rental income.

He has given that apartment heavy wear and tear.

I know people who pay more for a comparable apartment.

Young people like him tend to make noise and to be hard on an apartment.

We landlords should raise rents in order to improve the quality of the neighborhood.

His hi-fi drives me crazy.

He never pays the rent until I ask for it.

I am a considerate person who never intrudes on a tenant's privacy.
Understanding their point of view is not the same as agreeing with it. It is true that a better understanding of their thinking may lead you to revise your own views about the merits of a situation. But that is not a cost of understanding their point of view, it is a benefit. It allows you to reduce the area of conflict, and it also helps you advance your newly enlightened self-interest.

Don't deduce their intentions from your fears. People tend to assume that whatever they fear, the other side intends to do. Consider this story from the New York Times: "They met in a bar, where he offered her a ride home. He took her down unfamiliar streets. He said it was a shortcut. He got her home so fast she caught the 10 o'clock news." Why is the ending so surprising? We made an assumption based on our fears.

It is all too easy to fall into the habit of putting the worst interpretation on what the other side says or does. A suspicious interpretation often follows naturally from one's existing perceptions. Moreover, it seems the "safe" thing to do, and it shows spectators how bad the other side really is. But the cost of interpreting whatever they say or do in its most dismal light is that fresh ideas in the direction of agreement are spurned, and subtle changes of position are ignored or rejected.

Don't blame them for your problem. It is tempting to hold the other side responsible for your problem. "Your company is totally unreliable. Every time you service our rotary generator here at the factory, you do a lousy job and it breaks down again." Blaming is an easy mode to fall into, particularly when you feel that the other side is indeed responsible.

But even if blaming is justified, it is usually counterproductive. Under attack, the other side will become defensive and will resist what you have to say. They will cease to listen, or they will strike back with an attack of their own. Assessing blame firmly entangles the people with the problem.

When you talk about the problem, separate the symptoms from the person with whom you are talking. "Our rotary generator that you service has broken down again. That is three times in the last month. The first time it was out of order for an entire week. This factory needs a functioning generator. I want your advice on how we can minimize our risk of generator breakdown. Should we change service companies, sue the manufacturer, or what?"

Discuss each other's perceptions. One way to deal with differing perceptions is to make them explicit and discuss them with the other side. As long as you do this in a frank, honest manner without either side blaming the other for the problem as each sees it, such a discussion may provide the understanding they need to take what you say seriously, and vice versa.

It is common in a negotiation to treat as "unimportant" those concerns of the other side perceived as not standing in the way of an agreement. To the contrary, communicating loudly and convincingly things you are willing to say that they would like to hear can be one of the best investments you as a negotiator can make.

Consider the negotiation over the transfer of technology which arose at the Law of the Sea Conference. From 1974 to 1981 some 150 nations gathered together in New York and Geneva to formulate rules to govern uses of the ocean from fishing rights to mining manganese in the deep seabed. At one point, representatives of the developing countries expressed keen interest in an exchange of technology; their countries wanted to be able to acquire from the highly industrialized nations advanced technical knowledge and equipment for deep-seabed mining.

The United States and other developed countries saw no difficulty in satisfying that desire — and therefore saw the issue of technology transfer as unimportant. In one sense it was unimportant to them, but it was a great mistake for them to treat the subject as unimportant. By devoting substantial time to working out the practical arrangements for transferring technology, they might have made their offer far more credible and far more attractive to the developing countries. By dismissing the issue as a matter of lesser importance to be dealt with later, the industrialized states gave up a low-cost opportunity to provide the developing countries with an impressive achievement and a real incentive to reach agreement on other issues.

Look for opportunities to act inconsistently with their perceptions. Perhaps the best way to change their perceptions is to send them a message different from what they expect. The
visit of Egypt's President Sadat to Jerusalem in November 1977 provides an outstanding example of such an action. The Israelis saw Sadat and Egypt as their enemy, the man and country that launched a surprise attack on them four years before. To alter that perception, to help persuade the Israelis that he too desired peace, Sadat flew to the capital of his enemies, a disputed capital which not even the United States, Israel's best friend, had recognized. Instead of acting as an enemy, Sadat acted as a partner. Without this dramatic move, it is hard to imagine the signing of an Egyptian-Israeli peace treaty.

**Give them a stake in the outcome by making sure they participate in the process.** If they are not involved in the process, they are hardly likely to approve the product. It is that simple. If you go to the state insurance commissioner prepared for battle after a long investigation, it is not surprising that he is going to feel threatened and resist your conclusions. If you fail to ask an employee whether he wants an assignment with responsibility, don't be surprised to find out that he resents it. If you want the other side to accept a disagreeable conclusion, it is crucial that you involve them in the process of reaching that conclusion.

This is precisely what people tend not to do. When you have a difficult issue to handle, your instinct is to leave the hard part until last. "Let's be sure we have the whole thing worked out before we approach the Commissioner." The Commissioner, however, is much more likely to agree to a revision of the regulations if he feels that he has had a part in drafting it. This way the revision becomes just one more small step in the long drafting process that produced his original regulation rather than someone's attempt to butcher his completed product.

In South Africa, white moderates were trying at one point to abolish the discriminatory pass laws. How? By meeting in an all-white parliamentary committee to discuss proposals. Yet, however meritorious those proposals might prove, they would be insufficient, not necessarily because of their substance, but because they would be the product of a process in which no blacks were included. The blacks would hear, "We superior whites are going to figure out how to solve your problems." It would be the "white man's burden" all over again, which was the problem to start with.

Even if the terms of an agreement seem favorable, the other side may reject them simply out of a suspicion born of their exclusion from the drafting process. Agreement becomes much easier if both parties feel ownership of the ideas. The whole process of negotiation becomes stronger as each side puts their imprimatur bit by bit on a developing solution. Each criticism of the terms and consequent change, each concession, is a personal mark that the negotiator leaves on a proposal. A proposal evolves that bears enough of the suggestions of both sides for each to feel it is theirs.

To involve the other side, get them involved early. Ask their advice. Giving credit generously for ideas wherever possible will give them a personal stake in defending those ideas to others. It may be hard to resist the temptation to take credit for yourself, but forbearance pays off handsomely. Apart from the substantive merits, the feeling of participation in the process is perhaps the single most important factor in determining whether a negotiator accepts a proposal. In a sense, the process is the product.

**Face-saving: Make your proposals consistent with their values.** In the English language, "face-saving" carries a derogatory flavor. People say, "We are doing that just to let them save face," implying that a little pretense has been created to allow someone to go along without feeling badly. The tone implies ridicule.

This is a grave misunderstanding of the role and importance of face-saving. Face-saving reflects a person's need to reconcile the stand he takes in a negotiation or an agreement with his principles and with his past words and deeds.

The judicial process concerns itself with the same subject. When a judge writes an opinion on a court ruling, he is saving face, not only for himself and for the judicial system, but for the parties. Instead of just telling one party, "You win," and telling the other, "You lose," he explains how his decision is consistent with principle, law, and precedent. He wants to appear not as arbitrary, but as behaving in a proper fashion. A negotiator is no different.
Often in a negotiation people will continue to hold out not because the proposal on the table is inherently unacceptable, but simply because they want to avoid the feeling or the appearance of backing down to the other side. If the substance can be phrased or conceptualized differently so that it seems a fair outcome, they will then accept it. Terms negotiated between a major city and its Hispanic community on municipal jobs were unacceptable to the mayor — until the agreement was withdrawn and (he mayor was allowed to announce the same terms as his own decision, carrying out a campaign promise.

Face-saving involves reconciling an agreement with principle and with the self-image of the negotiators. Its importance should not be underestimated.

**Emotion**

In a negotiation, particularly in a bitter dispute, feelings may be more important than talk. The parties may be more ready for battle than for cooperatively working out a solution to a common problem. People often come to a negotiation realizing that the stakes are high and feeling threatened. Emotions on one side will generate emotions on the other. Fear may breed anger, and anger, fear. Emotions may quickly bring a negotiation to an impasse or an end.

**First recognize and understand emotions, theirs and yours.** Look at yourself during the negotiation. Are you feeling nervous? Is your stomach upset? Are you angry at the other side? Listen to them and get a sense of what their emotions are. You may find it useful to write down what you feel — perhaps fearful, worried, angry — and then how you might like to feel — confident, relaxed. Do the same for them.

In dealing with negotiators who represent their organizations, it is easy to treat them as mere mouthpieces without emotions. It is important to remember that they too, like you, have personal feelings, fears, hopes, and dreams. Their careers may be at stake. There may be issues on which they are particularly sensitive and others on which they are particularly proud. Nor are the problems of emotion limited to the negotiators. Constituents have emotions too. A constituent may have an even more simplistic and adversarial view of the situation.

Ask yourself what is producing the emotions. Why are you angry? Why are they angry? Are they responding to past grievances and looking for revenge? Are emotions spilling over from one issue to another? Are personal problems at home interfering with business? In the Middle East negotiation, Israelis and Palestinians alike feel a threat to their existence as peoples and have developed powerful emotions that now permeate even the most concrete practical issue, like distribution of water in the West Bank, so that it becomes almost impossible to discuss and resolve. Because in the larger picture both peoples feel that their own survival is at stake, they see every other issue in terms of survival.

**Make emotions explicit and acknowledge them as legitimate.** Talk with the people on the other side about their emotions. Talk about your own. It does not hurt to say, "You know, the people on our side feel we have been mistreated and are very upset. We're afraid an agreement will not be kept even if one is reached. Rational or not, that is our concern. Personally, I think we may be wrong in fearing this, but that's a feeling others have. Do the people on your side feel the same way?" Making your feelings or theirs an explicit focus of discussion will not only underscore the seriousness of the problem, it will also make the negotiations less reactive and more "pro-active." Freed from the burden of unexpressed emotions, people will become more likely to work on the problem.

**Allow the other side to let off steam.** Often, one effective way to deal with people's anger, frustration, and other negative emotions is to help them release those feelings. People obtain psychological release through the simple process of recounting their grievances. If you come home wanting to tell your husband about everything that went wrong at the office, you will become even more frustrated if he says, "Don't bother telling me; I'm sure you had a hard day. Let's skip it." The same is true for negotiators. Letting off steam may make it easier to talk rationally later. Moreover, if a negotiator makes an angry speech and thereby shows his constituency that he is not being "soft," they may give him a freer hand in the negotiation. He
can then rely on a reputation for toughness to protect him from criticism later if he eventually enters into an agreement.

Hence, instead of interrupting polemical speeches or walking out on the other party, you may decide to control yourself, sit there, and allow them to pour out their grievances at you. When constituents are listening, such occasions may release their frustration as well as the negotiator's. Perhaps the best strategy to adopt while the other side lets off steam is to listen quietly without responding to their attacks, and occasionally to ask the speaker to continue until he has spoken his last word. In this way, you offer little support to the inflammatory substance, give the speaker every encouragement to speak himself out, and leave little or no residue to fester.

**Don't react to emotional outbursts.** Releasing emotions can prove risky if it leads to an emotional reaction. If not controlled, it can result in a violent quarrel. One unusual and effective technique to contain the impact of emotions was used in the 1950s by the Human Relations Committee, a labor-management group set up in the steel industry to handle emerging conflicts before they became serious problems. The members of the committee adopted the rule that only one person could get angry at a time. This made it legitimate for others not to respond stormily to an angry outburst. It also made letting off emotional steam easier by making an outburst itself more legitimate: "That's OK. It's his turn." The rule has the further advantage of helping people control their emotions. Breaking the rule implies that you have lost self-control, so you lose some face.

**Use symbolic gestures.** Any lover knows that to end a quarrel the simple gesture of bringing a red rose goes a long way. Acts that would produce a constructive emotional impact on one side often involve little or no cost to the other. A note of sympathy, a statement of regret, a visit to a cemetery, delivering a small present for a grandchild, shaking hands or embracing, eating together — all may be priceless opportunities to improve a hostile emotional situation at small cost. On many occasions an apology can defuse emotions effectively, even when you do not acknowledge personal responsibility for the action or admit an intention to harm. An apology may be one of the least costly and most rewarding investments you can make.

**Communication**

Without communication there is no negotiation. Negotiation is a process of communicating back and forth for the purpose of reaching a joint decision. Communication is never an easy thing, even between people who have an enormous background of shared values and experience. Couples who have lived with each other for thirty years still have misunderstandings every day. It is not surprising, then, to find poor communication between people who do not know each other well and who may feel hostile and suspicious of one another. Whatever you say, you should expect that the other side will almost always hear something different.

There are three big problems in communication. First, negotiators may not be talking to each other, or at least not in such a way as to be understood. Frequently each side has given up on the other and is no longer attempting any serious communication with it. Instead they talk merely to impress third parties or their own constituency. Rather than trying to dance with their negotiating partner toward a mutually agreeable outcome, they try to trip him up. Rather than trying to talk their partner into a more constructive step, they try to talk the spectators into taking sides. Effective communication between the parties is all but impossible if each plays to the gallery.

Even if you are talking directly and clearly to them, they may not be hearing you. This constitutes the second problem in communication. Note how often people don't seem to pay enough attention to what you say. Probably equally often, you would be unable to repeat what they had said. In a negotiation, you may be so busy thinking about what you are going to say next, how you are going to respond to that last point or how you are going to frame your next argument, that you forget to listen to what the other side is saying now. Or you may be listening more attentively to your constituency than to the other side. Your constituents, after all, are the
ones to whom you will have to account for the results of the negotiation. They are the ones you are trying to satisfy. It is not surprising that you should want to pay close attention to them. But if you are not hearing what the other side is saying, there is no communication.

The third communication problem is misunderstanding. What one says, the other may misinterpret. Even when negotiations are in the same room, communication from one to the other can seem like sending smoke signals in a high wind. Where the parties speak different languages the chance for misinterpretation is compounded. For example, in Persian, the word "compromise" apparently lacks the positive meaning it has in English of "a midway solution both sides can live with," but has only a negative meaning as in "our integrity was compromised." Similarly, the word "mediator" in Persian suggests "meddler", someone who is barging in uninvited. In early 1980 U.N. Secretary General Waldheim flew to Iran to seek the release of American hostages. His efforts were seriously set back when Iranian national radio and television broadcast in Persian a remark he reportedly made on his arrival in Tehran: "I have come as a mediator to work out a compromise." Within an hour of the broadcast his car was being stoned by angry Iranians.

What can be done about these three problems of communication?

**Listen actively and acknowledge what is being said.** The need for listening is obvious, yet it is difficult to listen well, especially under the stress of an ongoing negotiation. Listening enables you to understand their perceptions, feel their emotions, and hear what they are trying to say. Active listening improves not only what you hear, but also what they say. If you pay attention and interrupt occasionally to say, "Did I understand correctly that you are saying that...?" the other side will realize that they are not just killing time, not just going through a routine. They will also feel the satisfaction of being heard and understood. It has been said that the cheapest concession you can make to the other side is to let them know they have been heard.

Standard techniques of good listening are to pay close attention to what is said, to ask the other party to spell out carefully and clearly exactly what they mean, and to request that ideas be repeated if there is any ambiguity or uncertainty. Make it your task while listening not to phrase a response, but to understand them as they see themselves. Take in their perceptions, their needs, and their constraints.

Many consider it a good tactic not to give the other side's case too much attention, and not to admit any legitimacy in their point of view. A good negotiator does just the reverse. Unless you acknowledge what they are saying and demonstrate that you understand them, they may believe you have not heard them. When you then try to explain a different point of view, they will suppose that you still have not grasped what they mean. They will say to themselves, "I told him my view, but now he's saying something different, so he must not have understood it." Then instead of listening to your point, they will be considering how to make their argument in a new way so that this time maybe you will fathom it. So show that you understand them. "Let me see whether I follow what you are telling me. From your point of view, the situation looks like this...."

As you repeat what you understood them to have said, phrase it *positively* from their point of view, making the strength of their case clear. You might say, "You have a strong case. Let me see if I can explain it. Here's the way it strikes me...." Understanding is not agreeing. One can at the same time understand perfectly and disagree completely with what the other side is saying. But unless you can convince them that you do grasp how they see it, you may be unable to explain your viewpoint to them. Once you have made their case for them, then come back with the problems you find in their proposal. If you can put their case better than they can, and then refute it, you maximize the chance of initiating a constructive dialogue on the merits and minimize the chance of their believing you have misunderstood them.

**Speak to be understood.** Talk to the other side. It is easy to forget sometimes that a negotiation is not a debate. Nor is it a trial. You are not trying to persuade some third party. The person you are trying to persuade is seated at the table with you. If a negotiation is to be compared with a legal proceeding, the situation resembles that of two judges trying to reach
agreement on how to decide a case. Try putting yourself in that role, treating your opposite number as a fellow judge with whom you are attempting to work out a joint opinion. In this context it is clearly unpersuasive to blame the other party for the problem, to engage in name-calling, or to raise your voice. On the contrary, it will help to recognize explicitly that they see the situation differently and to try to go forward as people with a joint problem.

To reduce the dominating and distracting effect that the press, home audiences, and third parties may have, it is useful to establish private and confidential means of communicating with the other side. You can also improve communication by limiting the size of the group meeting. In the negotiations over the city of Trieste in 1954, for example, little progress was made in the talks among Yugoslavia, Britain, and the United States until the three principal negotiators abandoned their large delegations and started meeting alone and informally in a private house. A good case can be made for changing Wood-row Wilson's appealing slogan "Open covenants openly arrived at" to "Open covenants privately arrived at." No matter how many people are involved in a negotiation, important decisions are typically made when no more than two people are in the room.

**Speak about yourself, not about them.** In many negotiations, each side explains and condemns at great length the motivations and intentions of the other side. It is more persuasive, however, to describe a problem in terms of its impact on you than in terms of what they did or why: "I feel let down" instead of "You broke your word." "We feel discriminated against" rather than "You're a racist." If you make a statement about them that they believe is untrue, they will ignore you or get angry; they will not focus on your concern. But a statement about how you feel is difficult to challenge. You convey the same information without provoking a defensive reaction that will prevent them from taking it in.

**Speak for a purpose.** Sometimes the problem is not too little communication, but too much. When anger and misperception are high, some thoughts are best left unsaid. At other times, full disclosure of how flexible you are may make it harder to reach agreement rather than easier. If you let me know that you would be willing to sell a house for $80,000, after I have said that I would be willing to pay as much as $90,000, we may have more trouble striking a deal than if you had just kept quiet. The moral is: before making a significant statement, know what you want to communicate or find out, and know what purpose this information will serve.

**Prevention works best**

The techniques just described for dealing with problems of perception, emotion, and communication usually work well. However, the best time for handling people problems is before they become people problems. This means building a personal and organizational relationship with the other side that can cushion the people on each side against the knocks of negotiation. It also means structuring the negotiating game in ways that separate the substantive problem from the relationship and protect people's egos from getting involved in substantive discussions.

**Build a working relationship.** Knowing the other side personally really does help. It is much easier to attribute diabolical intentions to an unknown abstraction called the "other side" than to someone you know personally. Dealing with a classmate, a colleague, a friend, or even a friend of a friend is quite different from dealing with a stranger. The more quickly you can turn a stranger into someone you know, the easier a negotiation is likely to become. You have less difficulty understanding where they are coming from. You have a foundation of trust to build upon in a difficult negotiation. You have smooth, familiar communication routines. It is easier to defuse tension with a joke or an informal aside.

The time to develop such a relationship is before the negotiation begins. Get to know them and find out about their likes and dislikes. Find ways to meet them informally. Try arriving early to chat before the negotiation is scheduled to start, and linger after it ends. Benjamin Franklin's favorite technique was to ask an adversary if he could borrow a certain book. This would flatter the person and give him the comfortable feeling of knowing that Franklin owed him a favor.
Face the problem, not the people. If negotiators view themselves as adversaries in a personal face-to-face confrontation, it is difficult to separate their relationship from the substantive problem. In that context, anything one negotiator says about the problem seems to be directed personally at the other and is received that way. Each side tends to become defensive and reactive and to ignore the other side's legitimate interests altogether.

A more effective way for the parties to think of themselves is as partners in a hardheaded, side-by-side search for a fair agreement advantageous to each.

Like two shipwrecked sailors in a lifeboat at sea quarreling over limited rations and supplies, negotiators may begin by seeing each other as adversaries. Each may view the other as a hindrance. To survive, however, those two sailors will want to disentangle the objective problems from the people. They will want to identify the needs of each, whether for shade, medicine, water, or food. They will want to go further and treat the meeting of those needs as a shared problem, along with other shared problems like keeping watch, catching rainwater, and getting the lifeboat to shore. Seeing themselves as engaged in side-by-side efforts to solve a mutual problem, the sailors will become better able to reconcile their conflicting interests as well as to advance their shared interests. Similarly with two negotiators. However difficult personal relations may be between us, you and I become better able to reach an amicable reconciliation of our various interests when we accept that task as a shared problem and face it jointly.

To help the other side change from a face-to-face orientation to side-by-side, you might raise the issue with them explicitly. "Look, we're both lawyers [diplomats, businessmen, family, etc.]. Unless we try to satisfy your interests, we are hardly likely to reach an agreement that satisfies mine, and vice versa. Let's look together at the problem of how to satisfy our collective interests." Alternatively, you could start treating the negotiation as a side-by-side process and by your actions make it desirable for them to join in.

It helps to sit literally on the same side of a table and to have in front of you the contract, the map, the blank pad of paper, or whatever else depicts the problem. If you have established a basis for mutual trust, so much the better. But however precarious your relationship may be, try to structure the negotiation as a side-by-side activity in which the two of you — with your differing interests and perceptions, and your emotional involvement — jointly face a common task.

Separating the people from the problem is not something you can do once and forget about; you have to keep working at it. The basic approach is to deal with the people as human beings and with the problem on its merits. How to do the latter is the subject of the next three chapters.

3. Focus on INTERESTS, Not Positions

Consider the story of two men quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three quarters of the way. No solution satisfies them both.

Enter the librarian. She asks one why he wants the window open: "To get some fresh air." She asks the other why he wants it closed: "To avoid the draft." After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.

For a wise solution reconcile interests, not positions

This story is typical of many negotiations. Since the parties' problem appears to be a conflict of positions, and since their goal is to agree on a position, they naturally tend to think and talk about positions—and in the process often reach an impasse.

The librarian could not have invented the solution she did if she had focused only on the two men's stated positions of wanting the window open or closed. Instead she looked to their underlying interests of fresh air and no draft. This difference between positions and interests is crucial.
**Interests define the problem.** The basic problem in a negotiation lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns, and fears. The parties may say:

"I am trying to get him to stop that real estate development next door."
Or "We disagree. He wants $100,000 for the house. I won't pay a penny more than $95,000."

But on a more basic level the problem is:
"He needs the cash; I want peace and quiet."
Or "He needs at least $100,000 to settle with his ex-wife. I told my family that I wouldn't pay more than $95,000 for a house."

Such desires and concerns are *interests*. Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interests are what caused you to so decide.

The Egyptian-Israeli peace treaty blocked out at Camp David in 1978 demonstrates the usefulness of looking behind positions. Israel had occupied the Egyptian Sinai Peninsula since the Six Day War of 1967. When Egypt and Israel sat down together in 1978 to negotiate a peace, their positions were incompatible. Israel insisted on keeping some of the Sinai. Egypt, on the other hand, insisted that every inch of the Sinai be returned to Egyptian sovereignty. Time and again, people drew maps showing possible boundary lines that would divide the Sinai between Egypt and Israel. Compromising in this way was wholly unacceptable to Egypt. To go back to the situation as it was in 1967 was equally unacceptable to Israel. Looking to their interests instead of their positions made it possible to develop a solution. Israel's interest lay in security; they did not want Egyptian tanks poised on their border ready to roll across at any time. Egypt's interest lay in sovereignty; the Sinai had been part of Egypt since the time of the Pharaohs. After centuries of domination by Greeks, Romans, Turks, French, and British, Egypt had only recently regained full sovereignty and was not about to cede territory to another foreign conqueror.

At Camp David, President Sadat of Egypt and Prime Minister Begin of Israel agreed to a plan that would return the Sinai to complete Egyptian sovereignty and, by demilitarizing large areas, would still assure Israeli security. The Egyptian flag would fly everywhere, but Egyptian tanks would be nowhere near Israel.

Reconciling interests rather than positions works for two reasons. First, for every interest there usually exist several possible positions that could satisfy it. All too often people simply adopt the most obvious position, as Israel did, for example, in announcing that they intended to keep part of the Sinai. When you do look behind opposed positions for the motivating interests, you can often find an alternative position which meets not only your interests but theirs as well. In the Sinai, demilitarization was one such alternative.

Reconciling interests rather than compromising between positions also works because behind opposed positions lie many more interests than conflicting ones.

**Behind opposed positions lie shared and compatible interests, as well as conflicting ones.** We tend to assume that because the other side's positions are opposed to ours, their interests must also be opposed. If we have an interest in defending ourselves, then they must want to attack us. If we have an interest in minimizing the rent, then their interest must be to maximize it. In many negotiations, however, a close examination of the underlying interests will reveal the existence of many more interests that are shared or compatible than ones that are opposed.

For example, look at the interests a tenant shares with a prospective landlord:
1. Both want stability. The landlord wants a stable tenant; the tenant wants a permanent address.
2. Both would like to see the apartment well maintained. The tenant is going to live there; the landlord wants to increase the value of the apartment as well as the reputation of the building.
3. Both are interested in a good relationship with each other. The landlord wants a tenant who pays the rent regularly; the tenant wants a responsive landlord who will carry out...
the necessary repairs.

They may have interests that do not conflict but simply differ. For example:

1. The tenant may not want to deal with fresh paint, to which he is allergic. The landlord will not want to pay the costs of repainting all the other apartments.

2. The landlord would like the security of a down payment of the first month's rent, and he may want it by tomorrow. The tenant, knowing that this is a good apartment, may be indifferent on the question of paying tomorrow or later.

When weighed against these shared and divergent interests, the opposed interests in minimizing the rent and maximizing the return seem more manageable. The shared interests will likely result in a long lease, an agreement to share the cost of improving the apartment, and efforts by both parties to accommodate each other in the interest of a good relationship. The divergent interests may perhaps be reconciled by a down payment tomorrow and an agreement by the landlord to paint the apartment provided the tenant buys the paint. The precise amount of the rent is all that remains to be settled, and the market for rental apartments may define that fairly well.

Agreement is often made possible precisely because interests differ. You and a shoe-seller may both like money and shoes. Relatively, his interest in the thirty dollars exceeds his interest in the shoes. For you, the situation is reversed: you like the shoes better than the thirty dollars. Hence the deal. Shared interests and differing but complementary interests can both serve as the building blocks for a wise agreement.

**How do you identify interests?**

The benefit of looking behind positions for interests is clear. How to go about it is less clear. A position is likely to be concrete and explicit; the interests underlying it may well be unexpressed, intangible, and perhaps inconsistent. How do you go about understanding the interests involved in a negotiation, remembering that figuring out their interests will be at least as important as figuring out yours?

**Ask "Why?"** One basic technique is to put yourself in their shoes. Examine each position they take, and ask yourself "Why?" Why, for instance, does your landlord prefer to fix the rent — in a five-year lease — year by year? The answer you may come up with, to be protected against increasing costs, is probably one of his interests. You can also ask the landlord himself why he takes a particular position. If you do, make clear that you are asking not for justification of this position, but for an understanding of the needs, hopes, fears, or desires that it serves.

"What's your basic concern, Mr. Jones, in wanting the lease to run for no more than three years?"

**Ask "Why not?" Think about their choice.** One of the most useful ways to uncover interests is first to identify the basic decision that those on the other side probably see you asking them for, and then to ask yourself why they have not made that decision. What interests of theirs stand in the way? If you are trying to change their minds, the starting point is to figure out where their minds are now.

Consider, for example, the negotiations between the United States and Iran in 1980 over the release of the fifty-two U.S. diplomats and embassy personnel held hostage in Tehran by student militants. While there were a host of serious obstacles to a resolution of this dispute, the problem is illuminated simply by looking at the choice of a typical student leader. The demand of the United States was clear: "Release the hostages." During much of 1980 each student leader's choice must have looked something like that illustrated by the balance sheet below.
Presently Perceived Choice of: An Iranian student leader

Question Faced: "Shall I press for immediate release of the American hostages?"

**IF I SAY YES**

— I sell out the Revolution.
— I will be criticized as pro-American.
— The others will probably not agree with me; if they do and we release the hostages, then:

— Iran looks weak.
— We back down to the U.S.
— We get nothing (no Shah, no money).
— We do not know what the U.S. will do.

**BUT:**
+ There is a chance that economic sanctions might end.
+ Our relations with other nations, especially in Europe, may improve.

**IF I SAY NO**

+ I uphold the Revolution.
+ I will be praised for defending Islam.
+ We will probably all stick together.

+ We get fantastic TV coverage to tell the world about our grievances.
+ Iran looks strong.
+ We stand up to the U.S.
+ We have a chance of getting something (at least our money back).
+ The hostages provide some protection against U.S. intervention.

**BUT:**
— Economic sanctions will no doubt continue.
— Our relations with other nations, especially in Europe, will suffer.
— Inflation and economic problems will continue.
— There is a risk that the U.S. might take military action (but a martyr's death is the most glorious).

**HOWEVER:**
+ The U.S. may make further commitments about our money, nonintervention, ending sanctions, etc.
+ We can always release the hostages later.

If a typical student leader's choice did look even approximately like this, it is understandable why the militant students held the hostages so long: As outrageous and illegal as the original seizure was, once the hostages had been seized it was not irrational for the students to keep holding them from one day to the next, waiting for a more promising tune to release them.

In constructing the other side's presently perceived choice the first question to ask is "Whose decision do I want to affect?" The second question is what decision people on the other side now see you asking them to make. If you have no idea what they think they are being called on to do, they may not either. That alone may explain why they are not deciding as you would like.

Now analyze the consequences, as the other side would probably see them, of agreeing or refusing to make the decision you are asking for. You may find a checklist of consequences such as the following helpful in this task:

*Impact on my interests*
  * Will I lose or gain political support?
  * Will colleagues criticize or praise me?
Impact on the group's interests

• What will be the short-term consequences? The long-term consequences?
• What will be the economic consequences (political, legal, psychological, military, etc.)?
• What will be the effect on outside supporters and public opinion?
• Will the precedent be good or bad?
• Will making this decision prevent doing something better?
• Is the action consistent with our principles? Is it "right"?
• Can I do it later if I want?

In this entire process it would be a mistake to try for great precision. Only rarely will you deal with a decision-maker who writes down and weighs the pros and cons. You are trying to understand a very human choice, not making a mathematical calculation.

Realize that each side has multiple interests. In almost every negotiation each side will have many interests, not just one. As a tenant negotiating a lease, for example, you may want to obtain a favorable rental agreement, to reach it quickly with little effort, and to maintain a good working relationship with your landlord. You will have not only a strong interest in affecting any agreement you reach, but also one in effecting an agreement. You will be simultaneously pursuing both your independent and your shared interests.

A common error in diagnosing a negotiating situation is to assume that each person on the other side has the same interests. This is almost never the case. During the Vietnam war, President Johnson was in the habit of lumping together all the different members of the government of North Vietnam, the Vietcong in the south, and their Soviet and Chinese advisers and calling them collectively "he." "The enemy has to learn that he can't cross the United States with impunity. He is going to have to learn that aggression doesn't pay." It will be difficult to influence any such "him" (or even "them") to agree to anything if you fail to appreciate the differing interests of the various people and factions involved.

Thinking of negotiation as a two-person, two-sided affair can be illuminating, but it should not blind you to the usual presence of other persons, other sides, and other influences. In one baseball salary negotiation the general manager kept insisting that $500,000 was simply too much for a particular player, although other teams were paying at least that much to similarly talented players. In fact the manager felt his position was unjustifiable, but he had strict instructions from the club's owners to hold firm without explaining why, because they were in financial difficulties that they did not want the public to hear about.

Whether it is his employer, his client, his employees, his colleagues, his family, or his wife, every negotiator has a constituency to whose interests he is sensitive. To understand that negotiator's interests means to understand the variety of somewhat differing interests that he needs to take into account.

The most powerful interests are basic human needs. In searching for the basic interests behind a declared position, look particularly for those bedrock concerns which motivate all people. If you can take care of such basic needs, you increase the chance both of reaching agreement and, if an agreement is reached, of the other side's keeping to it. Basic human needs include:

• security
• economic well-being
• a sense of belonging
• recognition
• control over one's life

As fundamental as they are, basic human needs are easy to overlook. In many negotiations, we tend to think that the only interest involved is money. Yet even in a negotiation over a monetary figure, such as the amount of alimony to be specified in a separation agreement, much more can be involved. What does a wife really want in asking for $500 a week in alimony?
Certainly she is interested in her economic well-being, but what else? Possibly she wants the money in order to feel psychologically secure. She may also want it for recognition: to feel that she is treated fairly and as an equal. Perhaps the husband can ill afford to pay $500 a week, and perhaps his wife does not need that much, yet she will likely accept less only if her needs for security and recognition are met in other ways.

What is true for individuals remains equally true for groups and nations. Negotiations are not likely to make much progress as long as one side believes that the fulfillment of their basic human needs is being threatened by the other. In negotiations between the United States and Mexico, the U.S. wanted a low price for Mexican natural gas. Assuming that this was a negotiation over money, the U.S. Secretary of Energy refused to approve a price increase negotiated with the Mexicans by a U.S. oil consortium. Since the Mexicans had no other potential buyer at the time, he assumed that they would then lower their asking price. But the Mexicans had a strong interest not only in getting a good price for their gas but also in being treated with respect and a sense of equality. The U.S. action seemed like one more attempt to bully Mexico; it produced enormous anger. Rather than sell their gas, the Mexican government began to burn it off, and any chance of agreement on a lower price became politically impossible. To take another example, in the negotiations over the future of Northern Ireland, Protestant leaders tend to ignore the Catholics' need for both belonging and recognition, for being accepted and treated as equals. In turn, Catholic leaders often appear to give too little weight to the Protestants' need to feel secure. Treating Protestant fears as "their problem" rather than as a legitimate concern needing attention makes it even more difficult to negotiate a solution.

Make a list. To sort out the various interests of each side, it helps to write them down as they occur to you. This will not only help you remember them; it will also enable you to improve the quality of your assessment as you learn new information and to place interests in their estimated order of importance. Furthermore, it may stimulate ideas for how to meet these interests.

Talking about interests

The purpose of negotiating is to serve your interests. The chance of that happening increases when you communicate them. The other side may not know what your interests are, and you may not know theirs. One or both of you may be focusing on past grievances instead of on future concerns. Or you may not even be listening to each other. How do you discuss interests constructively without getting locked into rigid positions?

If you want the other side to take your interests into account, explain to them what those interests are. A member of a concerned citizens' group complaining about a construction project in the neighborhood should talk explicitly about such issues as ensuring children's safety and getting a good night's sleep. An author who wants to be able to give a great many of his books away should discuss the matter with his publisher.

The publisher has a shared interest in promotion and may be willing to offer the author a low price.

Make your interests come alive. If you go with a raging ulcer to see a doctor, you should not hope for much relief if you describe it as a mild stomachache. It is your job to have the other side understand exactly how important and legitimate your interests are.

One guideline is be specific. Concrete details not only make your description credible, they add impact. For example: "Three times in the last week, a child was almost run over by one of your trucks. About eight-thirty Tuesday morning that huge red gravel truck of yours, going north at almost forty miles an hour, had to swerve and barely missed hitting seven-year-old Loretta Johnson."

As long as you do not seem to imply that the other side's interests are unimportant or illegitimate, you can afford to take a strong stance in setting forth the seriousness of your concerns. Inviting the other side to "correct me if I'm wrong" shows your openness, and if they
do not correct you, it implies that they accept your description of the situation.

Part of the task of impressing the other side with your interests lies in establishing the legitimacy of those interests. You want them to feel not that you are attacking them personally, but rather that the problem you face legitimately demands attention. You need to convince them that they might well feel the same way if they were in your shoes. "Do you have children? How would you feel if trucks were hurtling at forty miles per hour down the street where you live?"

**Acknowledge their interests as part of the problem.** Each of us tends to be so concerned with his or her own interests that we pay too little heed to the interests of others.

People listen better if they feel that you have understood them. They tend to think that those who understand them are intelligent and sympathetic people whose own opinions may be worth listening to. So if you want the other side to appreciate your interests, begin by demonstrating that you appreciate theirs.

"As I understand it, your interests as a construction company are basically to get the job done quickly at minimum cost and to preserve your reputation for safety and responsibility in the city. Have I understood you correctly? Do you have other important interests?"

In addition to demonstrating that you have understood their interests, it helps to acknowledge that their interests are part of the overall problem you are trying to solve. This is especially easy to do if you have shared interests: "It would be terrible for all of us if one of your trucks hit a child."

**Put the problem before your answer.** In talking to someone who represents a construction company, you might say, "We believe you should build a fence around the project within forty-eight hours and begin immediately should restrict the speed of your trucks on Oak Street to fifteen miles an hour. Now let me tell you why...." If you do, you can be quite certain that he will not be listening to the reasons. He has heard your position and is no doubt busy preparing arguments against it. He was probably disturbed by your tone or by the suggestion itself. As a result, your justification will slip by him altogether.

If you want someone to listen and understand your reasoning, give your interests and reasoning first and your conclusions or proposals later. Tell the company first about the dangers they are creating for young children and about your sleepless nights. Then they will be listening carefully, if only to try to figure out where you will end up on this question. And when you tell them, they will understand why.

**Look forward, not back.** It is surprising how often we simply react to what someone else has said or done. Two people will often fall into a pattern of discourse that resembles a negotiation, but really has no such purpose whatsoever. They disagree with each other over some issue, and the talk goes back and forth as though they were seeking agreement. In fact, the argument is being carried on as a ritual, or simply a pastime. Each is engaged in scoring points against the other or in gathering evidence to confirm views about the other that have long been held and are not about to be changed. Neither party is seeking agreement or is even trying to influence the other.

If you ask two people why they are arguing, the answer will typically identify a cause, not a purpose. Caught up in a quarrel, whether between husband and wife, between company and union, or between two businesses, people are more likely to respond to what the other side has said or done than to act in pursuit of their own long-term interests. "They can't treat me like that. If they think they're going to get away with that, they will have to think again. I'll show them."

The question "Why?" has two quite different meanings. One looks backward for a cause and treats our behavior as determined by prior events. The other looks forward for a purpose and treats our behavior as subject to our free will. We need not enter into a philosophical debate between free will and determinism in order to decide how to act. Either we have free will or it is determined that we behave as if we do. In either case, we make choices. We can choose to look back or to look forward.

You will satisfy your interests better if you talk about where you would like to go rather than about where you have come from. Instead of arguing with the other side about the past —
about last quarter's costs (which were too high), last week's action (taken without adequate
authority), or yesterday's performance (which was less than expected) — talk about what you
want to have happen in the future. Instead of asking them to justify what they did yesterday, ask,
"Who should do what tomorrow?"

**Be concrete but flexible.** In a negotiation you want to know where you are going and yet
be open to fresh ideas. To avoid having to make a difficult decision on what to settle for, people
will often go into a negotiation with no other plan than to sit down with the other side and see
what they offer or demand.

How can you move from identifying interests to developing specific options and still
remain flexible with regard to those options? To convert your interests into concrete options, ask
yourself, "If tomorrow the other side agrees to go along with me, what do I now think I would
like them to go along with?" To keep your flexibility, treat each option you formulate as simply
illustrative. Think in terms of more than one option that meets your interests. "Illustrative
specificity" is the key concept.

Much of what positional bargainers hope to achieve with an opening position can be
accomplished equally well with an illustrative suggestion that generously takes care of your
interest. For example, in a baseball contract negotiation, an agent might say that $5,000,000 a
year would be the kind of figure that should satisfy Henderson's interest in receiving the salary
he feels he is worth. Something on the order of a five-year contract should meet his need for job
security."

Having thought about your interests, you should go into a meeting not only with one or
more specific options that would meet your legitimate interests but also with an open mind. An
open mind is not an empty one.

**Be hard on the problem, soft on the people.** You can be just as hard in talking about your
interests as any negotiator can be in talking about his position. In fact, it is usually advisable to
be hard. It may not be wise to commit yourself to your position, but it is wise to commit yourself
to your interests. This is the place in a negotiation to spend your aggressive energies. The other
side, being concerned with their own interests, will tend to have overly optimistic expectations of
the range of possible agreements. Often the wisest solutions, those that produce the maximum
gain for you at the minimum cost to the other side, are produced only by strongly advocating
your interests. Two negotiators, each pushing hard for their interests, will often stimulate each
other's creativity in thinking up mutually advantageous solutions.

The construction company, concerned with inflation, may place a high value on its interest
in keeping costs down and in getting the job done on time. You may have to shake them up.
Some honest emotion may help restore a better balance between profits and children's lives. Do
not let your desire to be conciliatory stop you from doing justice to your problem. "Surely you're
not saying that my son's life is worth less than the price of a fence. You wouldn't say that about
your son. I don't believe you're an insensitive person, Mr. Jenkins. Let's figure out how to solve
this problem."

If they feel personally threatened by an attack on the problem, they may grow defensive
and may cease to listen. This is why it is important to separate the people from the problem.
Attack the problem without blaming the people. Go even further and be personally supportive:
Listen to them with respect, show them courtesy, express your appreciation for their time and
effort, emphasize your concern with meeting their basic needs, and so on. Show them that you
are attacking the problem, not them.

One useful rule of thumb is to give positive support to the human beings on the other side
equal in strength to the vigor with which you emphasize the problem. This combination of
support and attack may seem inconsistent. Psychologically, it is; the inconsistency helps make it
work. A well-known theory of psychology, the theory of cognitive dissonance, holds that people
dislike inconsistency and will act to eliminate it. By attacking a problem, such as speeding trucks
on a neighborhood street, and at the same time giving the company representative positive
support, you create cognitive dissonance for him. To overcome this dissonance, he will be
tempted to dissociate himself from the problem in order to join you in doing something about it.

Fighting hard on the substantive issues increases the pressure for an effective solution; giving support to the human beings on the other side tends to improve your relationship and to increase the likelihood of reaching agreement. It is the combination of support and attack which works; either alone is likely to be insufficient.

Negotiating hard for your interests does not mean being closed to the other side's point of view. Quite the contrary. You can hardly expect the other side to listen to your interests and discuss the options you suggest if you don't take their interests into account and show yourself to be open to their suggestions. Successful negotiation requires being both firm and open.

4. Invent OPTIONS for Mutual Gain

The case of Israel and Egypt negotiating over who should keep how much of the Sinai Peninsula illustrates both a major problem in negotiation and a key opportunity.

The problem is a common one. There seems to be no way to split the pie that leaves both parties satisfied. Often you are negotiating along a single dimension, such as the amount of territory, the price of a car, the length of a lease on an apartment, or the size of a commission on a sale. At other times you face what appears to be an either/or choice that is either markedly favorable to you or to the other side. In a divorce settlement, who gets the house? Who gets custody of the children? You may see the choice as one between winning and losing — and neither side will agree to lose. Even if you do win and get the car for $5,000, the lease for five years, or the house and kids, you have a sinking feeling that they will not let you forget it. Whatever the situation, your choices seem limited.

The Sinai example also makes clear the opportunity. A creative option like a demilitarized Sinai can often make the difference between deadlock and agreement. One lawyer we know attributes his success directly to his ability to invent solutions advantageous to both his client and the other side. He expands the pie before dividing it. Skill at inventing options is one of the most useful assets a negotiator can have.

Yet all too often negotiators end up like the proverbial sisters who quarreled over an orange. After they finally agreed to divide the orange in half, the first sister took her half, ate the fruit, and threw away the peel, while the other threw away the fruit and used the peel from her half in baking a cake. All too often negotiators "leave money on the table" — they fail to reach agreement when they might have, or the agreement they do reach could have been better for each side. Too many negotiations end up with half an orange for each side instead of the whole fruit for one and the whole peel for the other. Why?

DIAGNOSIS

As valuable as it is to have many options, people involved in a negotiation rarely sense a need for them. In a dispute, people usually believe that they know the right answer — their view should prevail. In a contract negotiation they are equally likely to believe that their offer is reasonable and should be adopted, perhaps with some adjustment in the price. All available answers appear to lie along a straight line between their position and yours. Often the only creative thinking shown is to suggest splitting the difference.

In most negotiations there are four major obstacles that inhibit the inventing of an abundance of options: (1) premature judgment; (2) searching for the single answer; (3) the assumption of a fixed pie; and (4) thinking that "solving their problem is their problem." In order to overcome these constraints, you need to understand them.

Premature judgment

Inventing options does not come naturally. Not inventing is the normal state of affairs, even when you are outside a stressful negotiation. If you were asked to name the one person in the world most deserving of the Nobel Peace Prize, any answer you might start to propose would
immediately encounter your reservations and doubts. How could you be sure that that person was the *most* deserving? Your mind might well go blank, or you might throw out a few answers that would reflect conventional thinking: "Well, maybe the Pope, or the President."

Nothing is so harmful to inventing as a critical sense waiting to pounce on the drawbacks of any new idea. Judgment hinders imagination.

Under the pressure of a forthcoming negotiation, your critical sense is likely to be sharper. Practical negotiation appears to call for practical thinking, not wild ideas.

Your creativity may be even more stifled by the presence of those on the other side. Suppose you are negotiating with your boss over your salary for the coming year. You have asked for a $4,000 raise; your boss has offered you $1,500, a figure that you have indicated is unsatisfactory. In a tense situation like this you are not likely to start inventing imaginative solutions. You may fear that if you suggest some bright half-baked idea like taking half the increase in a raise and half in additional benefits, you might look foolish. Your boss might say, "Be serious. You know better than that. It would upset company policy. I am surprised that you even suggested it." If on the spur of the moment you invent a possible option of spreading out the raise over time, he may take it as an offer: "I'm prepared to start negotiating on that basis." Since he may take whatever you say as a commitment, you will think twice before saying anything.

You may also fear that by inventing options you will disclose some piece of information that will jeopardize your bargaining position. If you should suggest, for example, that the company help finance the house you are about to buy, your boss may conclude that you intend to stay and that you will in the end accept any raise in salary he is prepared to offer.

**Searching for the single answer**

In most people's minds, inventing simply is not part of the negotiating process. People see their job as narrowing the gap between positions, not broadening the options available. They tend to think, "We're having a hard enough time agreeing as it is. The last thing we need is a bunch of different ideas." Since the end product of negotiation is a single decision, they fear that free-floating discussion will only delay and confuse the process.

If the first impediment to creative thinking is premature criticism, the second is premature closure. By looking from the outset for the single best answer, you are likely to short-circuit a wiser decision-making process in which you select from a large number of possible answers.

**The assumption of a fixed pie**

A third explanation for why there may be so few good options on the table is that each side sees the situation as essentially either/or — either I get what is in dispute or you do. A negotiation often appears to be a "fixed-sum" game; $100 more for you on the price of a car means $100 less for me. Why bother to invent if all the options are obvious and I can satisfy you only at my own expense?

**Thinking that "solving their problem is their problem"**

A final obstacle to inventing realistic options lies in each side's concern with only its own immediate interests. For a negotiator to reach an agreement that meets his own self-interest he needs to develop a solution, which also appeals to the self-interest of the other. Yet emotional involvement on one side of an issue makes it difficult to achieve the detachment necessary to think up wise ways of meeting the interests of both sides: "We've got enough problems of our own; they can look after theirs." There also frequently exists a psychological reluctance to accord any legitimacy to the views of the other side; it seems disloyal to think up ways to satisfy them. Shortsighted self-concern thus leads a negotiator to develop only partisan positions, partisan arguments, and one-sided solutions.

**PRESCRIPTION**

To invent creative options, then, you will need (1) to separate the act of inventing options from the act of judging them; (2) to broaden the options on the table rather than look for a single
answer; (3) to search for mutual gains; and (4) to invent ways of making their decisions easy. Each of these steps is discussed below.

**Separate inventing from deciding**

Since judgment hinders imagination, separate the creative act from the critical one; separate the process of thinking up possible decisions from the process of selecting among them. Invent first, decide later.

As a negotiator, you will of necessity do much inventing by yourself. It is not easy. By definition, inventing new ideas requires you to think about things that are not already in your mind. You should therefore consider the desirability of arranging an inventing or brainstorming session with a few colleagues or friends. Such a session can effectively separate inventing from deciding.

A brainstorming session is designed to produce as many ideas as possible to solve the problem at hand. The key ground rule is to postpone all criticism and evaluation of ideas. The group simply invents ideas without pausing to consider whether they are good or bad, realistic or unrealistic. With those inhibitions removed, one idea should stimulate another, like firecrackers setting off one another.

In a brainstorming session, people need not fear looking foolish since wild ideas are explicitly encouraged. And in the absence of the other side, negotiators need not worry about disclosing confidential information or having an idea taken as a serious commitment.

There is no one right way to run a brainstorming session. Rather, you should tailor it to your needs and resources. In doing so, you may find it useful to consider the following guidelines.

**Before brainstorming:**

1. **Define your purpose.** Think of what you would like to walk out of the meeting with.
2. **Choose a few participants.** The group should normally be large enough to provide a stimulating interchange, yet small enough to encourage both individual participation and free-wheeling inventing — usually between five and eight people.
3. **Change the environment.** Select a time and place distinguishing the session as much as possible from regular discussions. The more different a brainstorming session seems from a normal meeting, the easier it is for participants to suspend judgment.
4. **Design an informal atmosphere.** What does it take for you and others to relax? It may be talking over a drink, or meeting at a vacation lodge in some picturesque spot, or simply taking off your tie and jacket during the meeting and calling each other by your first names.
5. **Choose a facilitator.** Someone at the meeting needs to facilitate — to keep the meeting on track, to make sure everyone gets a chance to speak, to enforce any ground rules, and to stimulate discussion by asking questions.

**Daring brainstorming:**

1. **Seat the participants side by facing the problem.** The physical reinforces the psychological. Physically sitting side by side can reinforce the mental attitude of tackling a common problem together. People facing each other tend to respond personally and engage in dialogue or argument; people sitting side by side in a semicircle of chairs facing a blackboard tend to respond to the problem depicted there.
2. **Clarify the ground rules, including the no-criticism rule.** If the participants do not all know each other, the meeting begins with introductions all around, followed by clarification of the ground rules. Outlaw negative criticism of any kind.

Joint inventing produces new ideas because each of us invents only within the limits set by our working assumptions. If ideas are shot down unless they appeal to all participants, the implicit goal becomes to advance an idea that no one will shoot down. If, on the other hand, wild ideas are encouraged, even those that in fact lie well outside the realm of the possible, the group
may generate from these ideas other options that are possible and that no one would previously have considered.

Other ground rules you may want to adopt are to make the entire session off the record and to refrain from attributing ideas to any participant.

3. Brainstorm. Once the purpose of the meeting is clear, let your imaginations go. Try to come up with a long list of ideas, approaching the question from every conceivable angle.

4. Record the ideas in full view. Recording ideas either on a blackboard or, better, on large sheets of newsprint gives the group a tangible sense of collective achievement; it reinforces the no-criticism rule; it reduces the tendency to repeat; and it helps stimulate other ideas.

**After brainstorming:**

1. **Star the most promising ideas.** After brainstorming, relax the no-criticism rule in order to winnow out the most promising ideas. You are still not at the stage of deciding; you are merely nominating ideas worth developing further. Mark those ideas that members of the group think are best.

2. **Invent improvements for promising ideas.** Take one promising idea and invent ways to make it better and more realistic, as well as ways to carry it out. The task at this stage is to make the idea as attractive as you can. Preface constructive criticism with: "What I like best about that idea is... Might it be better if...?"

3. **Set up a time to evaluate ideas and decide.** Before you break up, draw up a selective and improved list of ideas from the session and set up a time for deciding which of these ideas to advance in your negotiation and how.

**Consider brainstorming with the other side.** Although more difficult than brainstorming with your own side, brainstorming with people from the other side can also prove extremely valuable. It is more difficult because of the increased risk that you will say something that prejudices your interests despite the rules established for a brainstorming session. You may disclose confidential information inadvertently or lead the other side to mistake an option you devise for an offer. Nevertheless, joint brainstorming sessions have the great advantages of producing ideas which take into account the interests of all those involved, of creating a climate of joint problem-solving, and of educating each side about the concerns of the other.

To protect yourself when brainstorming with the other side, distinguish the brainstorming session explicitly from a negotiating session where people state official views and speak on the record. People are so accustomed to meeting for the purpose of reaching agreement that any other purpose needs to be clearly stated.

To reduce the risk of appearing committed to any given idea, you can make a habit of advancing at least two alternatives at the same time. You can also put on the table options with which you obviously disagree. "I could give you the house for nothing, or you could pay me a million dollars in cash for it, or...." Since you are plainly not proposing either of these ideas, the ones which follow are labeled as mere possibilities, not proposals.

To get the flavor of a joint brainstorming session, let us suppose the leaders of a local union are meeting with the management of a coal mine to brainstorm on ways to reduce unauthorized one- or two-day strikes. Ten people — five from each side — are present, sitting around a table facing a blackboard. A neutral facilitator asks the participants for their ideas, and writes them down on the blackboard.

**FACILITATOR:** OK, now let's see what ideas you have for dealing with this problem of unauthorized work stoppages. Let's try to get ten ideas on the blackboard in five minutes. OK, let's start. Tom?

**TOM (UNION):** Foremen ought to be able to settle a union member's grievance on the spot.

**FACILITATOR:** Good, I've got it down. Jim, you've got your hand up.

**JIM (MANAGEMENT):** A union member ought to talk to his foreman about a problem before taking any action that ——

**TOM (UNION):** They do, but the foremen don't listen.

**FACILITATOR:** Tom, please, no criticizing yet. We agreed to postpone that until later, OK? How about you, Jerry? You look like you've got an idea.
JERRY (UNION): When a strike issue comes up, the union members should be allowed to meet in the bathhouse immediately.

ROGER (MANAGEMENT): Management could agree to let the bathhouse be used for union meetings and could assure the employees' privacy by shutting the doors and keeping the foremen out.

CAROL (MANAGEMENT): How about adopting the rule that there will be no strike without giving the union leaders and management a chance to work it out on the spot?

JERRY (UNION): How about speeding up the grievance procedure and having a meeting within twenty-four hours if the foreman and union member don't settle it between themselves?

KAREN (UNION): Yeah, And how about organizing some joint training for the union members and the foremen on how to handle their problems together?

PHIL (UNION): If a person does a good job, let him know it.

JOHN (MANAGEMENT): Establish friendly relations between union people and management people.

FACILITATOR: That sounds promising, John, but could you be more specific?

JOHN (MANAGEMENT): Well, how about organizing a union-management softball team?

TOM (UNION): And a bowling team too.

ROGER (MANAGEMENT): How about an annual picnic get-together for all the families?

And on it goes, as the participants brainstorm lots of ideas. Many of the ideas might never have come up except in such a brainstorming session, and some of them may prove effective in reducing unauthorized strikes. Time spent brainstorming together is surely among the best-spent time in negotiation.

But whether you brainstorm together or not, separating the act of developing options from the act of deciding on them is extremely useful in any negotiation. Discussing options differs radically from taking positions. Whereas one side's position will conflict with another's, options invite other options. The very language you use differs. It consists of questions, not assertions; it is open, not closed: "One option is.... What other options have you thought of?" "What if we agreed to this?" "How about doing it this way?" "How would this work?" "What would be wrong with that?" Invent before you decide.

Broaden your options

Even with the best of intentions, participants in a brainstorming session are likely to operate on the assumption that they are really looking for the one best answer, trying to find a needle in a haystack by picking up every blade of hay.

At this stage in a negotiation, however, you should not be looking for the right path. You are developing room within which to negotiate. Room can be made only by having a substantial number of markedly different ideas — ideas on which you and the other side can build later in the negotiation, and among which you can then jointly choose.

A vintner making a fine wine chooses his grapes from a number of varieties. A baseball team looking for star players will send talent scouts to scour the local leagues and college teams all over the nation. The same principle applies to negotiation. The key to wise decision-making, whether in wine-making, baseball, or negotiation, lies in selecting from a great number and variety of options.

If you were asked who should receive the Nobel Peace Prize this year, you would do well to answer "Well, let's think about it" and generate a list of about a hundred names from diplomacy, business, journalism, religion, law, agriculture, politics, academia, medicine, and other fields, making sure to dream up a lot of wild ideas. You would almost certainly end up with a better decision this way than if you tried to decide right from the start.

A brainstorming session frees people to think creatively. Once freed, they need ways to think about their problems and to generate constructive solutions.

Multiply options by shuttling between the specific and the general: The Circle Chart. The task of inventing options involves four types of thinking. One is thinking about a particular problem — the factual situation you dislike, for example, a smelly, polluted river that runs by your land. The second type of thinking is descriptive analysis — you diagnose an existing situation in general terms. You sort problems into categories and tentatively suggest causes. The
river water may have a high content of various chemicals, or too little oxygen. You may suspect various upstream industrial plants. The third type of thinking, again in general terms, is to consider what ought, perhaps, to be done. Given the diagnoses you have made, you look for prescriptions that theory may suggest, such as reducing chemical effluent, reducing diversions of water, or bringing fresh water from some other river. The fourth and final type of thinking is to come up with some specific and feasible suggestions for action. Who might do what tomorrow to put one of these general approaches into practice? For instance, the state environmental agency might order an upstream industry to limit the quantity of chemical discharge.

The Circle Chart on the next page illustrates these four types of thinking and suggests them as steps to be taken in sequence. If all goes well, the specific action invented in this way will, if adopted, deal with your original problem.

The Circle Chart provides an easy way of using one good idea to generate others. With one useful action idea before you, you (or a group of you who are brainstorming) can go back and try to identify the general approach of which the action idea is merely one application. You can then think up other action ideas that would apply the same general approach to the real world. Similarly, you can go back one step further and ask, "If this theoretical approach appears useful, what is the diagnosis behind it?" Having articulated a diagnosis, you can generate other approaches for dealing with a problem analyzed in that way, and then look for actions putting these new approaches into practice. One good option on the table thus opens the door to asking about the theory that makes this option good and then using that theory to invent more options.

An example may illustrate the process. In dealing with the conflict over Northern Ireland, one idea might be to have Catholic and Protestant teachers prepare a common workbook on the history of Northern Ireland for use in the primary grades of both school systems. The book would present Northern Irish history as seen from different points of view and give the children exercises that involve role-playing and putting themselves in other people's shoes. To generate more ideas, you might start with this action suggestion and then search out the theoretical approach that underlies it. You might find such general propositions as:

"There should be some common educational content in the two school systems."
"Catholics and Protestants should work together on small, manageable projects."
"Understanding should be promoted in young children before it is too late."
"History should be taught in ways that illuminate partisan perceptions."

Working with such theory you may be able to invent additional action suggestions, such as a joint Catholic and Protestant film project that presents the history of Northern Ireland as seen through different eyes. Other action ideas might be teacher exchange programs or some common classes for primary-age children in the two systems.
Look through the eyes of different experts. Another way to generate multiple options is to examine your problem from the perspective of different professions and disciplines. In thinking up possible solutions to a dispute over custody of a child, for example, look at the problem as it might be seen by an educator, a banker, a psychiatrist, a civil rights lawyer, a minister, a nutritionist, a doctor, a feminist, a football coach, or one with some other special point of view. If you are negotiating a business contract, invent options that might occur to a banker, an inventor, a labor leader, a speculator in real estate, a stockbroker, an economist, a tax expert, or a socialist.

You can also combine the use of the Circle Chart with this idea of looking at a problem through the eyes of different experts. Consider in turn how each expert would diagnose the situation, what kinds of approaches each might suggest, and what practical suggestions would follow from those approaches.

Invent agreements of different strengths. You can multiply the number of possible agreements on the table by thinking of "weaker" versions you might want to have on hand in case a sought-for agreement proves beyond reach. If you cannot agree on substance, perhaps you can agree on procedure. If a shoe factory cannot agree with a wholesaler on who should pay for a shipment of damaged shoes, perhaps they can agree to submit the issue to an arbitrator. Similarly, where a permanent agreement is not possible, perhaps a provisional agreement is. At the very least, if you and the other side cannot reach first-order agreement, you can usually reach second-order agreement — that is, agree on where you disagree, so that you both know the issues in dispute, which are not always obvious. The pairs of adjectives below suggest potential agreements of differing "strengths":

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**CIRCLE CHART**
The Four Basic Steps in Inventing Options

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**IN THE REAL WORLD**
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**Change the scope of a proposed agreement.** Consider the possibility of varying not only the strength of the agreement but also its scope. You could, for instance, "fractionate" your problem into smaller and perhaps more manageable units. To a prospective editor for your book, you might suggest: "How about editing the first two chapters for $120, and well see how it goes?" Agreements may be partial, involve fewer parties, cover only selected subject matters, apply only to a certain geographical area, or remain in effect for only a limited period of time.

It is also provocative to ask how the subject matter might be enlarged so as to "sweeten the pot" and make agreement more attractive. The dispute between India and Pakistan over the waters of the Indus River became more amenable to settlement when the World Bank entered the discussions; the parties were challenged to invent new irrigation projects, new storage dams, and other engineering works for the benefit of both nations, all to be funded with the assistance of the Bank.

**Look for mutual gain**

The third major block to creative problem-solving lies in the assumption of a fixed pie: the less for you, the more for me. Rarely if ever is this assumption true. First of all, both sides can always be worse off than they are now. Chess looks like a zero-sum game; if one loses, the other wins — until a dog trots by and knocks over the table, spills the beer, and leaves you both worse off than before.

Even apart from a shared interest in averting joint loss, there almost always exists the possibility of joint gain. This may take the form of developing a mutually advantageous relationship, or of satisfying the interests of each side with a creative solution.

**Identify shared interests.** In theory it is obvious that shared interests help produce agreement. By definition, inventing an idea which meets shared interests is good for you and good for them. In practice, however, the picture seems less clear. In the middle of a negotiation over price, shared interests may not appear obvious or relevant. How then can looking for shared interests help?

Let's take an example. Suppose you are the manager of an oil refinery. Call it Townsend Oil. The mayor of Pageville, the city where the refinery is located, has told you he wants to raise the taxes Townsend Oil pays to Pageville from one million dollars a year to two million. You have told him that you think one million a year is quite sufficient. The negotiation stands there: he wants more, you want to pay what you have been paying. In this negotiation, a typical one in many ways, where do shared interests come into play?

Let's take a closer look at what the mayor wants. He wants money — money undoubtedly to pay for city services, a new civic center, perhaps, and to relieve the ordinary taxpayers. But the city cannot obtain all the money it needs for now and for the future just from Townsend Oil. They will look for money from the petrochemical plant across the street, for example, and, for the future, from new businesses and from the expansion of existing businesses. The mayor, a businessman himself, would also like to encourage industrial expansion and attract new businesses that will provide new jobs and strengthen Pageville's economy.

What are your company's interests? Given the rapid changes in the technology of refining oil, and the antiquated condition of your refinery, you are presently considering a major refur-
ishment and expansion of the plant. You are concerned that the city may later increase its assessment of the value of the expanded refinery, thus making taxes even higher. Consider also that you have been encouraging a plastics plant to locate itself nearby to make convenient use of your product. Naturally, you worry that the plastics plant will have second thoughts once they see the city increasing taxes.

The shared interests between the mayor and you now become more apparent. You both agree on the goals of fostering industrial expansion and encouraging new industries. If you did some inventing to meet these shared goals, you might come up with several ideas: a tax holiday of seven years for new industries, a joint publicity campaign with the Chamber of Commerce to attract new companies, a reduction in taxes for existing industries that choose to expand. Such ideas might save you money while filling the city's coffers. If on the other hand the negotiation soured the relationship between company and town, both would lose. You might cut back on your corporate contributions to city charities and school athletics. The city might become unreasonably tough on enforcing the building code and other ordinances. Your personal relationship with the city's political and business leaders might grow unpleasant. The relationship between the sides, often taken for granted and overlooked, frequently outweighs in importance the outcome of any particular issue.

As a negotiator, you will almost always want to look for solutions that will leave the other side satisfied as well. If the customer feels cheated in a purchase, the store owner has also failed; he may lose a customer and his reputation may suffer. An outcome in which the other side gets absolutely nothing is worse for you than one which leaves them mollified. In almost every case, your satisfaction depends to a degree on making the other side sufficiently content with an agreement to want to live up to it.

Three points about shared interests are worth remembering. First, shared interests lie latent in every negotiation. They may not be immediately obvious. Ask yourself: Do we have a shared interest in preserving our relationship? What opportunities lie ahead for cooperation and mutual benefit? What costs would we bear if negotiations broke off? Are there common principles, like a fair price, that we both can respect?

Second, shared interests are opportunities, not godsend. To be of use, you need to make something out of them. It helps to make a shared interest explicit and to formulate it as a shared goal. In other words, make it concrete and future oriented. As manager of Townsend Oil, for example, you could set a joint goal with the mayor of bringing five new industries into Pageville within three years. The tax holiday for new industries would then represent not a concession by the mayor to you but an action in pursuit of your shared goal.

Third, stressing your shared interests can make the negotiation smoother and more amicable. Passengers in a lifeboat afloat in the middle of the ocean with limited rations will subordinate their differences over food in pursuit of their shared interest in getting to shore.

**Dovetail differing interests.** Consider once again the two sisters quarreling over an orange. Each sister wanted the orange, so they split it, failing to realize that one wanted only the fruit to eat and the other only the peel for baking. In this case as in many others, a satisfactory agreement is made possible because each side wants different things. This is genuinely startling if you think about it. People generally assume that differences between two parties create the problem. Yet differences can also lead to a solution.

Agreement is often based on disagreement. It is as absurd to think, for example, that you should always begin by reaching agreement on the facts as it is for a buyer of stock to try to convince the seller that the stock is likely to go up. If they did agree that the stock would go up, the seller would probably not sell. What makes a deal likely is that the buyer believes the price will go up and the seller believes it will go down. The difference in belief provides the basis for a deal.

Many creative agreements reflect this principle of reaching agreement through differences. Differences in interests and belief make it possible for an item to be high benefit to you, yet low cost to the other side. Consider the nursery rhyme:
Jack Sprat could eat no fat
His wife could eat no lean,
And so betwixt them both
They licked the platter clean.

The kinds of differences that best lend themselves to dovetailing are differences in interests, in beliefs, in the value placed on time, in forecasts, and in aversion to risk. Any difference in interests? The following brief checklist suggests common variations in interest to look for:

**ONE PARTY CARES MORE ABOUT:**
- form
- economic considerations
- internal considerations
- symbolic considerations
- immediate future
- ad hoc results
- hardware
- progress
- precedent
- prestige, reputation
- political points

**THE OTHER PARTY CARES MORE ABOUT:**
- substance
- political considerations
- external considerations
- practical considerations
- more distant future
- the relationship
- ideology
- respect for tradition
- this case
- results
- group welfare

**Different beliefs?** If I believe I'm right, and you believe you're right, we can take advantage of this difference in beliefs. We may both agree to have an impartial arbitrator settle the issue, each confident of victory. If two factions of the union leadership cannot agree on a certain wage proposal, they can agree to submit the issue to a membership vote.

**Different values placed on time?** You may care more about the present while the other side cares more about the future.

In the language of business, you discount future value at different rates. An installment plan works on this principle. The buyer is willing to pay a higher price for the car if he can pay later; the seller is willing to accept payment later if he gets a higher price.

**Different forecasts?** In a salary negotiation between an aging baseball star and a major league baseball team, the player may expect to win a lot of games while the team owner has the opposite expectation. Taking advantage of these different expectations, they can both agree on a base salary of $100,000 plus $50,000 if the player pitches so well that on the average he permits less than three earned runs per game.

**Differences in aversion to risk?** One last kind of difference which you may capitalize on is aversion to risk. Take, for example, the issue of deep-seabed mining in the Law of the Sea negotiations. How much should the mining companies pay the international community for the privilege of mining? The mining companies care more about avoiding big losses than they do about making big gains. For them deep-seabed mining is a major investment. They want to reduce the risk. The international community, on the other hand, is concerned with revenue. If some company is going to make a lot of money out of "the common heritage of mankind," the rest of the world wants a generous share.

In this difference lies the potential for a bargain advantageous to both sides. Risk can be traded for revenue. Exploiting this difference in aversion to risk, the proposed treaty provides for charging the companies low rates until they recover their investment — in other words, while their risk is high — and much higher rates thereafter, when their risk is low.

**Ask for their preferences.** One way to dovetail interests is to invent several options all...
equally acceptable to you and ask the other side which one they prefer. You want to know what is preferable, not necessarily what is acceptable. You can then take that option, work with it some more, and again present two or more variants, asking which one they prefer. In this way, without anyone's making a decision, you can improve a plan until you can find no more joint gains. For example, the agent for the baseball star might ask the team owner: "What meets your interests better, a salary of $175,000 a year for four years, or $200,000 a year for three years? The latter? OK, how about between that and $180,000 a year for three years with a $50,000 bonus in each year if Luis pitches better than a 3.00 ERA?"

If dovetailing had to be summed up in one sentence, it would be: Look for items that are of low cost to you and high benefit to them, and vice versa. Differences in interests, priorities, beliefs, forecasts, and attitudes toward risk all make dovetailing possible. A negotiator's motto could be "Vive la difference!"

**Make their decision easy**

Since success for you in a negotiation depends upon the other side's making a decision you want, you should do what you can to make that decision an easy one. Rather than make things difficult for the other side, you want to confront them with a choice that is as painless as possible. Impressed with the merits of their own case, people usually pay too little attention to ways of advancing their case by taking care of interests on the other side. To overcome the shortsightedness that results from looking too narrowly at one's immediate self-interest, you will want to put yourself in their shoes. Without some option that appeals to them, there is likely to be no agreement at all.

**Whose shoes?** Are you trying to influence a single negotiator, an absent boss, or some committee or other collective decision-making body? You cannot negotiate successfully with an abstraction like "Houston" or "the University of California." Instead of trying to persuade "the insurance company" to make a decision, it is wiser to focus your efforts on getting one claims agent to make a recommendation. However complex the other side's decisional process may seem, you will understand it better if you pick one person — probably the person with whom you are dealing — and see how the problem looks from his or her point of view.

By focusing on one person you are not ignoring complexities. Rather, you are handling them by understanding how they impinge on the person with whom you are negotiating. You may come to appreciate your negotiating role in a new light, and see your job, for example, as strengthening that person's hand or giving her arguments that she will need to persuade others to go along. One British ambassador described his job as "helping my opposite number get new instructions." If you place yourself firmly in the shoes of your opposite number, you will understand his problem and what kind of options might solve it.

**What decision?** In Chapter 2 we discussed how one can understand the other side's interests by analyzing their presently perceived choice. Now you are trying to generate options that will so change their choice that they might then decide in a way satisfactory to you. Your task is to give them not a problem but an answer, to give them not a tough decision but an easy one. It is crucial in that process to focus your attention on the content of the decision itself. That decision is often impeded by uncertainty.

Frequently you want as much as you can get, but you yourself do not know how much that is. You are likely to say, in effect, "Come up with something and I will tell you if it is enough." That may seem reasonable to you, but when you look at it from the other's point of view, you will understand the need to invent a more appealing request. For whatever they do or say, you are likely to consider that merely a floor — and ask for more. Requesting the other side to be "more forthcoming" will probably not produce a decision you want.

Many negotiators are uncertain whether they are asking for words or for performance. Yet the distinction is critical. If it is performance you want, do not add something for "negotiating room." If you want a horse to jump a fence, don't raise the fence. If you want to sell a soft drink from a vending machine for thirty-five cents, don't mark the price at fifty cents to give yourself
room to negotiate.

Most of the time you will want a promise — an agreement. Take pencil and paper in hand and try drafting a few possible agreements. It is never too early in a negotiation to start drafting as an aid to clear thinking. Prepare multiple versions, starting with the simplest possible. What are some terms that the other party could sign, terms that would be attractive to them as well as to you? Can you reduce the number of people whose approval would be required? Can you formulate an agreement that will be easy for them to implement? The other side will take into account difficulties in carrying out an agreement; you should too.

It is usually easier, for example, to refrain from doing something not being done than to stop action already underway. And it is easier to cease doing something than to undertake an entirely new course of action. If workers want music on the job, it will be easier for the company to agree not to interfere for a few weeks with an experimental employee-run program of playing records than for the company to agree to run such a program.

Because most people are strongly influenced by their notions of legitimacy, one effective way to develop solutions easy for the other side to accept is to shape them so that they will appear legitimate. The other side is more likely to accept a solution if it seems the right thing to do — right in terms of being fair, legal, honorable, and so forth.

Few things facilitate a decision as much as precedent. Search for it. Look for a decision or statement that the other side may have made in a similar situation, and try to base a proposed agreement on it. This provides an objective standard for your request and makes it easier for them to go along. Recognizing their probable desire to be consistent, and thinking about what they have done or said, will help you generate options acceptable to you that also take their point of view into account.

Making threats is not enough. In addition to the content of the decision you would like them to make, you will want to consider from their point of view the consequences of following that decision. If you were they, what results would you most fear? What would you hope for?

We often try to influence others by threats and warnings of what will happen if they do not decide as we would like. Offers are usually more effective. Concentrate both on making them aware of the consequences they can expect if they do decide as you wish and on improving those consequences from their point of view. How can you make your offers more credible? What are some specific things that they might like? Would they like to be given credit for having made the final proposal? Would they like to make the announcement? What can you invent that might be attractive to them but low in cost to yourself?

To evaluate an option from the other side's point of view, consider how they might be criticized if they adopted it. Write out a sentence or two illustrating what the other side's most powerful critic might say about the decision you are thinking of asking for. Then write out a couple of sentences with which the other side might reply in defense. Such an exercise will help you appreciate the restraints within which the other side is negotiating. It should help you generate options that will adequately meet their interests so that they can make a decision that meets yours.

A final test of an option is to write it out in the form of a "yesable proposition." Try to draft a proposal to which their responding with the single word "yes" would be sufficient, realistic, and operational. When you can do so, you have reduced the risk that your immediate self-interest has blinded you to the necessity of meeting concerns of the other side.

In a complex situation, creative inventing is an absolute necessity. In any negotiation it may open doors and produce a range of potential agreements satisfactory to each side. Therefore, generate many options before selecting among them. Invent first; decide later. Look for shared interests and differing interests to dovetail. And seek to make their decision easy.

5. Insist on Using Objective CRITERIA
However well you understand the interests of the other side, however ingeniously you invent ways of reconciling interests, however highly you value an ongoing relationship, you will almost always face the harsh reality of interests that conflict. No talk of "win-win" strategies can conceal that fact. You want the rent to be lower; the landlord wants it to be higher. You want the goods delivered tomorrow; the supplier would rather deliver them next week. You definitely prefer the large office with the view; so does your partner. Such differences cannot be swept under the rug.

**Deciding on the basis of will is costly**

Typically, negotiators try to resolve such conflicts by positional bargaining — in other words, by talking about what they are willing and unwilling to accept. One negotiator may demand substantive concessions simply because he insists upon them: "The price is $50 and that's that." Another may make a generous offer, hoping to gain approval or friendship. Whether the situation becomes a contest over who can be the most stubborn or a contest over who can be the most generous, this negotiating process focuses on what each side is willing to agree to. The outcome results from the interaction of two human wills — almost as if the negotiators were living on a desert island, with no history, no customs, and no moral standards.

As discussed in Chapter 1, trying to reconcile differences on the basis of will has serious costs. No negotiation is likely to be efficient or amicable if you pit your will against theirs, and either you have to back down or they do. And whether you are choosing a place to eat, organizing a business, or negotiating custody of a child, you are unlikely to reach a wise agreement as judged by any objective standard if you take no such standard into account.

If trying to settle differences of interest on the basis of will has such high costs, the solution is to negotiate on some basis independent of the will of either side — that is, on the basis of objective criteria.

**The case for using objective criteria**

Suppose you have entered into a fixed-price construction contract for your house that calls for reinforced concrete foundations but fails to specify how deep they should be. The contractor suggests two feet. You think five feet is closer to the usual depth for your type of house.

Now suppose the contractor says: "I went along with you on steel girders for the roof. It's your turn to go along with me on shallower foundations." No owner in his right mind would yield. Rather than horse-trade, you would insist on deciding the issue in terms of objective safety standards. "Look, maybe I'm wrong. Maybe two feet is enough. What I want are foundations strong and deep enough to hold up the building safely. Does the government have standard specifications for these soil conditions? How deep are the foundations of other buildings in this area? What is the earthquake risk here? Where do you suggest we look for standards to resolve this question?"

It is no easier to build a good contract than it is to build strong foundations. If relying on objective standards applies so clearly to a negotiation between the house owner and a contractor, why not to business deals, collective bargaining, legal settlements, and international negotiations? Why not insist that a negotiated price, for example, be based on some standard such as market value, replacement cost, depreciated book value, or competitive prices, instead of whatever the seller demands?

In short, the approach is to commit yourself to reaching a solution based on principle, not pressure. Concentrate on the merits of the problem, not the mettle of the parties. Be open to reason, but closed to threats.

**Principled negotiation produces wise agreements amicably and efficiently.** The more you bring standards of fairness, efficiency, or scientific merit to bear on your particular problem, the more likely you are to produce a final package that is wise and fair. The more you and the other side refer to precedent and community practice, the greater your chance of benefiting from past experience. And an agreement consistent with precedent is less vulnerable to attack. If a
lease contains standard terms or if a sales contract conforms to practice in the industry, there is less risk that either negotiator will feel that he was harshly treated or will later try to repudiate the agreement.

A constant battle for dominance threatens a relationship; principled negotiation protects it. It is far easier to deal with people when both of you are discussing objective standards for settling a problem instead of trying to force each other to back down.

Approaching agreement through discussion of objective criteria also reduces the number of commitments that each side must make and then unmake as they move toward agreement. In positional bargaining, negotiators spend much of the time defending their position and attacking the other side's. People using objective criteria tend to use time more efficiently talking about possible standards and solutions.

Independent standards are even more important to efficiency when more parties are involved. In such cases positional bargaining is difficult at best. It requires coalitions among parties; and the more parties who have agreed on a position, the more difficult it becomes to change that position. Similarly, if each negotiator has a constituency or has to clear a position with a higher authority, the task of adopting positions and then changing them becomes time-consuming and difficult.

An episode during the Law of the Sea Conference illustrates the merits of using objective criteria. At one point, India, representing the Third World bloc, proposed an initial fee for companies mining in the deep seabed of $60 million per site. The United States rejected the proposal, suggesting there be no initial fee. Both sides dug in; the matter became a contest of will.

Then someone discovered that the Massachusetts Institute of Technology (MIT) had developed a model for the economics of deep-seabed mining. This model, gradually accepted by the parties as objective, provided a way of evaluating the impact of any fee proposal on the economics of mining. When the Indian representative asked about the effect of his proposal, he was shown how the tremendous fee he proposed — payable five years before the mine would generate any revenue — would make it virtually impossible for a company to mine. Impressed, he announced that he would reconsider his position. On the other side, the MIT model helped educate the American representatives, whose information on the subject had been mostly limited to that provided by the mining companies. The model indicated that some initial fee was economically feasible. As a result, the U.S. also changed its position.

No one backed down; no one appeared weak — just reasonable. After a lengthy negotiation, the parties reached a tentative agreement that was mutually satisfactory.

The MIT model increased the chance of agreement and decreased costly posturing. It led to a better solution, one that would both attract companies to do mining and generate considerable revenue for the nations of the world. The existence of an objective model able to forecast the consequences of any proposal helped convince the parties that the tentative agreement they reached was fair. This in turn strengthened relationships among the negotiators and made it more likely an agreement would endure.

Developing objective criteria

Carrying on a principled negotiation involves two questions: How do you develop objective criteria, and how do you use them in negotiating?

Whatever method of negotiation you use, you will do better if you prepare in advance. This certainly holds true of principled negotiation. So develop some alternative standards beforehand and think through their application to your case.

Fair standards. You will usually find more than one objective criterion available as a basis for agreement. Suppose, for example, your car is demolished and you file a claim with an insurance company. In your discussion with the adjuster, you might take into account such measures of the car’s value as (1) the original cost of the car less depreciation; (2) what the car could have been sold for; (3) the standard "blue book" value for a car of that year and model; (4)
what it would cost to replace that car with a comparable one; and (5) what a court might
award as the value of the car.

In other cases, depending on the issue, you may wish to propose that an agreement be
based upon:

market value
precedent
scientific judgment
professional standards
efficiency
costs

what a court would decide
moral standards
equal treatment
tradition
reciprocity
etc.

At minimum, objective criteria need to be independent of each side's will. Ideally, to assure
a wise agreement, objective criteria should be not only independent of will but also both
legitimate and practical. In a boundary dispute, for example, you may find it easier to agree on a
physically salient feature such as a river than on a line three yards to the east of the riverbank.

Objective criteria should apply, at least in theory, to both sides. You can thus use the test of
reciprocal application to tell you whether a proposed criterion is fair and independent of either
party's will. If a real estate agency selling you a house offers a standard form contract, you would
be wise to ask if that is the same standard form they use when they buy a house. In the
international arena, the principle of self-determination is notorious for the number of peoples
who insist on it as a fundamental right but deny its applicability to those on the other side.
Consider the Middle East, Northern Ireland, or Cyprus as just three examples.

Fair procedures. To produce an outcome independent of will, you can use either fair
standards for the substantive question or fair procedures for resolving the conflicting interests.
Consider, for example, the age-old way to divide a piece of cake between two children: one cuts
and the other chooses. Neither can complain about an unfair division.

This simple procedure was used in the Law of the Sea negotiations, one of the most
complex negotiations ever undertaken. At one point, the issue of how to allocate mining sites in
the deep seabed deadlocked the negotiation. Under the terms of the draft agreement, half the sites
were to be mined by private companies, the other half by the Enterprise, a mining organization to
be owned by the United Nations. Since the private mining companies from the rich nations had
the technology and the expertise to choose the best sites, the poorer nations feared the less
knowledgeable Enterprise would receive a bad bargain.

The solution devised was to agree that a private company seeking to mine the seabed
would present the Enterprise with two proposed mining sites. The Enterprise would pick one site
for itself and grant the company a license to mine the other. Since the company would not know
which site it would get, it would have an incentive to make both sites as promising as possible.
This simple procedure thus harnessed the company's superior expertise for mutual gain.

A variation on the procedure of "one cuts, the other chooses" is for the parties to negotiate
what they think is a fair arrangement before they go on to decide their respective roles in it. In a
divorce negotiation, for example, before deciding which parent will get custody of the children,
the parents might agree on the visiting rights of the other parent. This gives both an incentive to
agree on visitation rights each will think fair.

As you consider procedural solutions, look at other basic means of settling differences:
taking turns, drawing lots, letting someone else decide, and so on.

Frequently, taking turns presents the best way for heirs to divide a large number of
heirlooms left to them collectively. Afterwards, they can do some trading if they want. Or they
can make the selection tentative so they see how it comes out before committing themselves to
accept it. Drawing lots, flipping a coin, and other forms of chance have an inherent fairness. The
results may be unequal, but each side had an equal opportunity.

Letting someone else play a key role in a joint decision is a well-established procedure
with almost infinite variations. The parties can agree to submit a particular question to an expert
for advice or decision. They can ask a mediator to help them reach a decision. Or they can submit the matter to an arbitrator for an authoritative and binding decision.

Professional baseball, for example, uses "last-best-offer arbitration" to settle player salary disputes. The arbitrator must choose between the last offer made by one side and the last offer made by the other. The theory is that this procedure puts pressure on the parties to make their proposals more reasonable. In baseball, and in states where this form of arbitration is compulsory for certain public employee disputes, it does seem to produce more settlements than in comparable circumstances where there is a commitment to conventional arbitration; those parties who don't settle, however, sometimes give the arbitrator an unpleasant choice between two extreme offers.

Negotiating with objective criteria

Having identified some objective criteria and procedures, how do you go about discussing them with the other side? There are three basic points to remember:

1. Frame each issue as a joint search for objective criteria.
2. Reason and be open to reason as to which standards are most appropriate and how they should be applied.
3. Never yield to pressure, only to principle.

In short, focus on objective criteria firmly but flexibly.

Frame each issue as a joint search for objective criteria.

If you are negotiating to buy a house, you might start off by saying: "Look, you want a high price and I want a low one. Let's figure out what a fair price would be. What objective standards might be most relevant?" You and the other side may have conflicting interests, but the two of you now have a shared goal: to determine a fair price. You might begin by suggesting one or more criteria yourself — the cost of the house adjusted for depreciation and inflation, recent sale prices of similar houses in the neighborhood, or an independent appraisal — and then invite the seller's suggestions.

Ask "What's your theory?" If the seller starts by giving you a position, such as "The price is $55,000," ask for the theory behind that price: "How did you arrive at that figure?" Treat the problem as though the seller too is looking for a fair price based on objective criteria.

Agree first on principles. Before even considering possible terms, you may want to agree on the standard or standards to apply.

Each standard the other side proposes becomes a lever you can then use to persuade them. Your case will have more impact if it is presented in terms of their criteria, and they will find it difficult to resist applying their criteria to the problem. "You say Mr. Jones sold the house next door for $60,000. Your theory is that this house should be sold for what comparable houses in the neighborhood are going for, am I right? In that case, let's look at what the house on the corner of Ells-worth and Oxford and the one at Broadway and Dana were sold for." What makes conceding particularly difficult is having to accept someone else's proposal. If they suggested the standard, their deferring to it is not an act of weakness but an act of strength, of carrying out their word.

Reason and be open to reason. What makes the negotiation a joint search is that, however much you may have prepared various objective criteria, you come to the table with an open mind. In most negotiations, people use precedent and other objective standards simply as arguments in support of a position. A policemen's union might, for example, insist upon a raise of a certain amount and then justify their position with arguments about what police in other cities make. This use of standards usually only digs people even deeper into their position.

Going one step further, some people begin by announcing that their position is an issue of principle and refuse even to consider the other side's case. "It's a matter of principle" becomes a battle cry in a holy war over ideology. Practical differences escalate into principled ones, further locking in the negotiators rather than freeing them.
This is emphatically not what is meant by principled negotiation. Insisting that an agreement be based on objective criteria does not mean insisting that it be based solely on the criterion you advance. One standard of legitimacy does not preclude the existence of others. What the other side believes to be fair may not be what you believe to be fair. You should behave like a judge; although you may be predisposed to one side (in this case, your own) you should be willing to respond to reasons for applying another standard or for applying a standard differently. When each party is advancing a different standard, look for an objective basis for deciding between them, such as which standard has been used by the parties in the past or which standard is more widely applied. Just as the substantive issue itself should not be settled on the basis of will, neither should the question of which standard applies.

In a given case there may be two standards (such as market value and depreciated cost) which produce different results, but which both parties agree seem equally legitimate. In that case, splitting the difference or otherwise compromising between the results suggested by the two objective standards is perfectly legitimate. The outcome is still independent of the will of the parties.

If, however, after a thorough discussion of the merits of an issue you still cannot accept their proposed criteria as the most appropriate, you might suggest putting them to a test. Agree on someone you both regard as fair and give him or her a list of the proposed criteria. Ask the person to decide which are the fairest or most appropriate for your situation. Since objective criteria are supposed to be legitimate and because legitimacy implies acceptance by a great many people, this is a fair thing to ask. You are not asking the third party to settle your substantive dispute — just to give you advice on what standard to use in settling it.

The difference between seeking agreement on the appropriate principles for deciding a matter and using principles simply as arguments to support positions is sometimes subtle, but always significant. A principled negotiator is open to reasoned persuasion on the merits; a positional bargainer is not. It is the combination of openness to reason with insistence on a solution based on objective criteria that makes principled negotiation so persuasive and so effective at getting the other side to play.

Never yield to pressure. Consider once again the example of negotiating with the contractor. What if he offers to hire your brother-in-law on the condition that you give in on the depth of the foundations? You would probably answer, "A job for my brother-in-law has nothing to do with whether the house will be safely supported on a foundation of that depth." What if the contractor then threatens to charge you a higher price? You would answer the same way: "We'll settle that question on the merits too. Let's see what other contractors charge for this kind of work," or "Bring me your cost figures and we'll work out a fair profit margin." If the contractor replies, "Come on, you trust me, don't you?" you would respond: "Trust is an entirely separate matter. The issue is how deep the foundations have to be to make the house safe."

Pressure can take many forms: a bribe, a threat, a manipulative appeal to trust, or a simple refusal to budge. In all these cases, the principled response is the same: invite them to state their reasoning, suggest objective criteria you think apply, and refuse to budge except on this basis. Never yield to pressure, only to principle.

Who will prevail? In any given case, it is impossible to say, but in general you will have an edge. For in addition to your willpower, you also have the power of legitimacy and the persuasiveness of remaining open to reason. It will be easier for you to resist making an arbitrary concession than it will be for them to resist advancing some objective standards. A refusal to yield except in response to sound reasons is an easier position to defend — publicly and privately — than is a refusal to yield combined with a refusal to advance sound reasons.

At the least, you will usually prevail on the question of process; you can usually shift the process from positional bargaining to a search for objective criteria. In this sense principled negotiation is a dominant strategy over positional bargaining. One who insists that negotiation be based on the merits can bring others around to playing that game, since that becomes the only way to advance their substantive interests.
On substance, too, you are likely to do well. Particularly for those who might otherwise be browbeaten by a positional bargainer, principled negotiation allows you to hold your own and still be fair. Principle serves as your hardhearted partner who will not let you yield to pressure. It is a form of "right makes might."

If the other side truly will not budge and will not advance a persuasive basis for their position, then there is no further negotiation. You now have a choice like the one you face when you walk into a store which has a fixed, nonnegotiable price on what you want to buy. You can take it or leave it. Before leaving it you should see if you have overlooked some objective standard that makes their offer a fair one. If you find such a standard and if you would rather reach agreement on that basis than have no agreement, do so. The availability of that relevant standard avoids the cost of giving in to an arbitrary position.

If there is no give in their position and you find no principled basis for accepting it, you should assess what you might gain by accepting their unjustified position rather than going to your best alternative. You should weigh that substantive benefit against the benefit to your reputation as a principled negotiator that could come from walking away.

Shifting discussion in a negotiation from the question of what the other side is willing to do to the question of how the matter ought to be decided does not end argument, nor does it guarantee a favorable result. It does, however, provide a strategy you can vigorously pursue without the high costs of positional bargaining.

"It's company policy"

Let's look at a real case where one party used positional bargaining and the other principled negotiation. Tom, one of our colleagues, had his parked car totally destroyed by a dump truck. The car was covered by insurance, but the exact amount Tom could recover remained for him to work out with the insurance adjuster.

<table>
<thead>
<tr>
<th>INSURANCE ADJUSTER</th>
<th>TOM</th>
</tr>
</thead>
<tbody>
<tr>
<td>We have studied your case and we have decided the policy applies. That means you're entitled to a settlement of $3,300.</td>
<td>I see. How did you reach that figure?</td>
</tr>
<tr>
<td>That's how much we decided the car was worth.</td>
<td>I understand, but what standard did you use to determine that amount? Do you know where I can buy a comparable car for that much?</td>
</tr>
<tr>
<td>How much are you asking for?</td>
<td>Whatever I'm entitled to under the policy. I found a secondhand car just about like it for $3,850. Adding the sales and excise tax, it would come to about $4,000.</td>
</tr>
<tr>
<td>4,000! That's too much!</td>
<td>I'm not asking for $4,000 or $3,000 or $5,000, but for fair compensation. Do you agree that it's only fair I get enough to replace the car?</td>
</tr>
<tr>
<td>OK, I'll offer you $3,500. That's the highest I can go. Company policy.</td>
<td>How does the company figure that?</td>
</tr>
</tbody>
</table>
Look, $3,500 is all you'll get. Take it or leave it.

$3,500 may be fair. I don't know. I certainly understand your position if you're bound by company policy. But unless you can state objectively why that amount is what I'm entitled to, I think I'll do better in court. Why don't we study the matter and talk again? Is Wednesday at eleven a good time to talk?

* * *

OK, Mr. Griffith, I've got an ad here in today's paper offering a '89 Taurus for $6,800.

I see. What does it say about the mileage?

49,000. Why?

Because mine only had 25,000 miles. How many dollars does that increase the worth in your book?

Let me see ... $450.

Assuming the $6,800 as one possible base, that brings the figure to $7,250. Does the ad say anything about a radio?

No.

How much extra for that in your book?

$125.

How much for air conditioning?

* * *

A half-hour later Tom walked out with a check for $8,024.

**

Yes, But...

6. What If They Are More Powerful? (Develop Your BATNA — Best Alternative to a Negotiated Agreement)
7. What If They Won't Play? (Use Negotiation Jujitsu)
8. What If They Use Dirty Tricks? (Taming the Hard Bargainer)
To truly improve your ability in the four emotional intelligence skills, you need to better understand each skill and what it looks like in action. The four emotional intelligence skills pair up under two primary competencies: personal competence and social competence. Personal competence is made up of your self-awareness and self-management skills, which focus more on you individually than on your interactions with other people. Personal competence is your ability to stay aware of your emotions and manage your behavior and tendencies. Social competence is made up of your
social awareness and relationship management skills; social competence is your ability to understand other people's moods, behavior and motives in order to improve the quality of your relationships.

**Self-Awareness**

Self-awareness is your ability to accurately perceive your own emotions in the moment and understand your tendencies across situations. Self-awareness includes staying on top of your typical reactions to specific events, challenges, and people. A keen understanding of your tendencies is important; it helps you quickly make sense of your emotions. A
high degree of self-awareness requires a willingness to tolerate the discomfort of focusing on feelings that may be negative.

The only way to genuinely understand your emotions is to spend enough time thinking through them to figure out where they come from and why they are there. Emotions always serve a purpose. Because they are reactions to your life experience, emotions always come from somewhere. Many times emotions seem to arise out of thin air, and it’s important to understand why something gets a reaction out of you. People who do this can cut to the core of a feeling quickly. Situations that create strong emotions will always require more thought, and these prolonged periods of self-reflection often keep you from doing something that you’ll regret.

Self-awareness is not about discovering deep, dark secrets or unconscious motivations, but, rather, it comes from developing a straightforward and honest understanding of what makes you tick. People high in self-awareness are remarkably clear in their understanding of what they do well, what motivates and satisfies them, and which people and situations push their buttons.
The surprising thing about self-awareness is that just thinking about it helps you improve the skill, even though much of your focus initially tends to be on what you do “wrong.” Having self-awareness means you aren’t afraid of your emotional “mistakes.” They tell you what you should be doing differently and provide the steady stream of information you need to understand as your life unfolds.

Self-awareness is a foundational skill; when you have it, self-awareness makes the other emotional intelligence skills much easier to use. As self-awareness increases, people’s satisfaction with life—defined as their ability to reach their goals at work and at home—skyrockets. Self-awareness is so important for job performance that 83 percent of people high in self-awareness are top performers, and just 2 percent of bottom performers are high in self-awareness. Why is this so? When you are self-aware you are far more likely to pursue the right opportunities, put your strengths to work and—perhaps most importantly—keep your emotions from holding you back.

The need for self-awareness has never been greater. Guided by the mistaken notion that psychology deals exclusively with pathology, we assume that the only time to learn about ourselves is in the face of crisis. We tend to
embrace those things with which we’re comfortable, and put the blinders on the moment something makes us uncomfortable. But it’s really the whole picture that serves us. The more we understand the beauty and the blemishes, the better we are able to achieve our full potential.
Let’s say you’re in a staff meeting and the next topic on the agenda is to figure out why some key deadlines are being missed. After some back-and-forth, it’s looking like Ana might be partially to blame—and the room is getting tense. In an honest attempt to lighten the mood, you say something like, “Geez, Ana—looks like maybe taking those longer lunches is finally catching up to you!”

Instead of laughs, there’s dead silence. You don’t understand what you did wrong, and you later tell Ana, “I was only kidding,” but she seems put off. These are the famous last words of someone who had good intentions, but the result, or impact, was not aligned. And it’s too late.

Or think about the results-driven manager who has good intentions about guiding her staff toward achieving higher goals. She’s so focused on success that she becomes entrenched in the work (doing most of it herself or pushing everyone to do it her way)—completely missing how to manage the work through others. Her staff deems her a
hard-driving micromanager who doesn’t share knowledge, and all she intended was for the team to learn from her and be successful. Yet again, intentions were good, but they had the opposite impact. Relationships are now tarnished, and the manager can’t figure out why her staff resents her.

If you find that you spend time smoothing things over to repair a relationship, or you are unsure about what’s going wrong in your relationships, know that these situations are avoidable. With the help of your awareness and management skills, making small adjustments will make all the difference.

To align your words and actions with your intent, you need to use your social awareness and self-management skills to observe the situation and the people in it, think before you speak or act, and make an appropriate and sensitive response. Do a quick analysis. Think of a situation where the impact of what you said or did was not what you intended. On a piece of paper, describe the incident, your intentions, your actions, and the impact—the end result or reaction of others. Next, write what you didn’t realize in the situation—and fill in what you understand now in hindsight, including missed cues, what you learned about yourself, and others. Finally, answer what you could have done
differently to keep your intent and impact aligned. If you’re not sure, ask someone who was involved in the situation.

In Ana’s case, you didn’t realize it was the wrong moment for that joke. It singled her out publicly. Next time, you’ll lighten the mood by poking fun at yourself, not someone else. The results-driven manager didn’t realize what motivated her staff members. She didn’t give them space and time to learn and grow on their own. To better manage your relationships, it’s critical to spot misalignments before you act, so that your actions match your impact with your good intentions.
Airline agents. They are often the bearer of unavoidably bad news in person—weather delays, delays due to mechanical repairs, lost luggage, overbooking. The list goes on and on. Airline agents attempt to repair your broken experience with fix-its or tools—like rebooking and vouchers—to problem solve and address the ultimate goal to get you to your destination.

It’s probably safe to assume that we’ve all had conversations where we could use a fix-it. A simple discussion breaks into a disagreement or gets stuck going around in circles. In these broken conversations, past mistakes may get brought to the surface, regretful comments are made, and blame is present. No matter who said what, or who “started it,” it’s time to refocus and fix it. Someone needs to step back, quickly assess the situation, and begin repairing the conversation with a fix-it.

To do this, you need to let go of blame and focus on the repair. Do you want to be right, or do you want a
resolution? Use your self-awareness skills to see what you are contributing to the situation; self-manage to put your tendencies aside and choose the high road. Your social awareness skills can help you identify what the other person brought to the table or feels. Looking at both sides will help you figure out where the interaction broke down, and which “fix-it” statement is needed to begin the repairs. Fix-it statements feel like a breath of fresh air, are neutral in tone, and find common ground. A “fix-it” statement can be as simple as saying, “This is hard,” or asking how the person is feeling. Most conversations can benefit from a fix-it, and it won’t do any harm if you feel the conversation breaking down.

This strategy will help you maintain open lines of communication when you’re upset, and with conscious effort and practice, you will be able to fix your broken conversations before they become damaged beyond repair.
“Why did I get passed over for the promotion?” your staff member Judith asks with a slightly defensive tone, a wounded posture, and a quivering voice. This is going to be a tough one. The news leaked out early about Roger’s promotion before you could speak with Judith. You value Judith and her work, but you’ll need to explain that she’s not ready for the next level yet. That’s not the hardest part of this conversation—damage control is another story.

From the boardroom to the break room, tough conversations will surface, and it is possible to calmly and effectively handle them. Tough conversations are inevitable; forget running from them because they’re sure to catch up to you. Though EQ skills can’t make these conversations disappear, acquiring some new skills can make these conversations a lot easier to navigate without ruining the relationship.
1. **Start with agreement.** If you know you are likely to end up in a disagreement, start your discussion with the common ground you share. Whether it’s simply agreeing that the discussion will be hard but important or agreeing on a shared goal, create a feeling of agreement. For example: “Judith, I first want you to know that I value you, and I’m sorry that you learned the news from someone other than me. I’d like to use this time to explain the situation, and anything else you’d like to hear from me. I’d also like to hear from you.”

2. **Ask the person to help you understand his or her side.** People want to be heard—if they don’t feel heard, frustration rises. Before frustration enters the picture, beat it to the punch and ask the person to share his or her point of view. Manage your own feelings as needed, but focus on understanding the other person’s view. In Judith’s case, this would sound like, “Judith, along the way I want to make sure you feel comfortable sharing what’s on your mind with me. I’d like to make sure I understand your perspective.” By asking for Judith’s input, you are showing that you care and have an inter-
est in learning more about her. This is an opportunity to deepen and manage your relationship with Judith.

3. **Resist the urge to plan a “comeback” or a rebuttal.**
   Your brain cannot listen well and prepare to speak at the same time. Use your self-management skills to silence your inner voice and direct your attention to the person in front of you. In this case, Judith has been passed up for a promotion that she was really interested in, and found out about it through the grapevine. Let’s face it—if you’d like to maintain the relationship, you need to be quiet, listen to her shock and disappointment, and resist the urge to defend yourself.

4. **Help the other person understand your side, too.**
   Now it is your turn to help the other person understand your perspective. Describe your discomfort, your thoughts, your ideas, and the reasons behind your thought process. Communicate clearly and simply; don’t speak in circles or in code. In Judith’s case, what you say can ultimately be great feedback for her, which she deserves. To explain that Roger had more experience and was more suited for the job at this time is an
appropriate message. Since his promotion was leaked to her in an unsavory way, this is something that requires an apology. This ability to explain your thoughts and directly address others in a compassionate way during a difficult situation is a key aspect of relationship management.

5. **Move the conversation forward.** Once you understand each other’s perspective, even if there’s disagreement, someone has to move things along. In the case of Judith, it’s you. Try to find some common ground again. When you’re talking to Judith, say something like, “Well, I’m so glad you came to me directly and that we had the opportunity to talk about it. I understand your position, and it sounds like you understand mine. I’m still invested in your development and would like to work with you on getting the experience you need. What are your thoughts?”

6. **Keep in touch.** The resolution to a tough conversation needs more attention even after you leave it, so check progress frequently, ask the other person if he or she is satisfied, and keep in touch as you move forward. You are half of what it takes to keep a relationship oiled and
running smoothly. In regard to Judith, meeting with her regularly to talk about her career advancement and promotion potential would continue to show her that you care about her progress.

In the end, when you enter a tough conversation, prepare yourself to take the high road, not be defensive, and remain open by practicing the strategies above. Instead of losing ground with someone in a conversation like this, it can actually become a moment that solidifies your relationship going forward.
SUMMARY

Travis Bradberry and Jean Graves take readers through a journey of discovery and reflection as they navigate the process of exploring and improving emotional intelligence (EQ), a statistically significant factor in achieving personal and professional success. Aptly titled, Emotional Intelligence 2.0, this book goes beyond the work of its predecessor, providing a brief history and outline, while focusing on encouraging the reader to apply strategies in the areas of self-awareness, self-management, social awareness and relationship management. Bradberry and Graves leave a path for readers to develop awareness and strategize improvement with the inclusion of an EQ test and a plan format.

Emotional Intelligence can be defined as the ability to identify, consider and control emotions in oneself and to recognize them in others, brought on by a combination of self-awareness, self-management, social awareness and relationship management.
Meet the Authors: Dr. Travis Bradberry and Dr. Jean Greaves are known for their leading the field of emotional intelligence. They have written many books, including the prequel to Emotional Intelligence 2.0 and founded TalentSmart, a company that provides consultation for many renowned companies and conducts research, including that referred to in this book. Reaching people in over 150 countries, these two experts ask:

*With 90% of top performers high in EQ, and EQ twice as important as IQ in getting where you want to go in life, who can afford to ignore it?*

It’s All About Control:

- **Two thirds of people are controlled by emotions.** This means that the majority of the workforce is not yet skilled in gauging the emotions of themselves or those around them. This skill gap leads to an inability to identify emotions or use them to the worker’s advantage.

- **There are five core feelings** in which all other emotions are rooted: happiness, sadness, anger, fear and shame. Experiencing these is natural, acceptable and unavoidable – but exploration and understanding is paramount to using, controlling and moving past them.

- **Emotional hijacking takes place when feelings override reason,** leading to reactions – often illogical or irrational – stemming purely from emotion. While the emotion itself cannot be disposed of or trained, the thoughts and reaction immediately following can be, provided the person is aware and alert.

- **Triggers are events leading to emotional reactions,** often due to history and experience. These, like hijackings, can be controlled.

The Story Begins…

Using the example of a man fighting for his life against a shark, the authors of *Emotional Intelligence 2.0* demonstrate how emotional responses arise from the reasonable part of the human brain failing to control the emotional part. Faced with the prospect of being eaten alive, the man in the story became paralyzed with fear and could not fight back. However, when chance gave him time, he made a conscious decision to retain control of his mind, thereby retaining control of his body.

...His life was saved.
The technicalities of emotional intelligence are best described through a biological approach.

The journey goes like this:

The five senses (see, hear, taste, touch, smell) send electric signals that must travel through the body to the brain. These signals pass through cells in the body until reaching the base of the spine, the entry point to the brain. They then move through the limbic system – where emotions occur – and ultimately reach the frontal lobe – the home of reason and rationality. Emotional intelligence, then, is awareness of the journey and the ability to direct it, ensuring that feelings do not control reactions before the brain has the chance to fully process the information.
How Do I Improve my EQ?

- **Record your test scores**
  This can be done on the “Emotional Intelligence Action Plan” chart (included, p. 56).

- **Select one skill to improve**
  You will select from the four core skills and may choose the skill recommended by the test or opt to start with one of your own choice.

- **Choose three strategies**
  You will apply these to your chosen skill and may choose the skill recommended by the test or opt to start with one of your own choice.

- **Find a mentor**
  This should be a person skillful in the area you are working to improve and willing to provide observation, feedback and regular check-ins.

- **Remember the three Ps**
  Progress; Practice; Patience: Improvement involves time and commitment and these require patience, practice and knowing that the end goal is progress, not perfection.

- **Monitor improvement**
  When you feel you have achieved the desired results in your first skill, you are encouraged to retake the test and develop a new plan.

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Take the Test!

- **Take the online test using the unique passcode provided by *Emotional Intelligence 2.0***

- **Answer a series of questions to determine EQ**

- **Review EQ scores and recommended strategies, and create an EQ Action Plan**

(see ‘How Do I Improve my EQ’)

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“*The emotional intelligence field is on the steep incline of a new wave of understanding – how people can improve their EQ and make lasting gains that have a profoundly positive impact upon their lives.*”

*(Bradberry & Greaves, 2009, p. 9)*
Self-Awareness Strategies

Quit Treating Your Feelings as Good or Bad
Emotions arise for a reason. Placing judgment on them causes a chain reaction leading to more emotions and thus, complicating the situation. It is best to acknowledge and explore the feeling rather than place judgment.

Observe the Ripple Effect from Your Emotions
The power of emotional reactions should not be underestimated, particularly in regards to their effects on others. Paying close attention to how one’s own reactions affect others and seeking feedback is an effective way of working towards being in control of the effects created.

Lean into your discomfort
“Rather than avoiding a feeling, your goal should be to move toward the emotion, into it, and eventually through it.” (p.68) It is important to commit to experiencing uncomfortable feelings in order to fully understand them and know how to alter them or use them to one’s advantage.

Feel Your Emotions Physically
Understanding the physical effects that accompany specific emotions is key to early detection and awareness. Reflecting in detail on positive and negative experiences in one’s past and observing physical reactions - such as heartbeat and level of perspiration - during reflection will help with understanding.

Know Who and What Pushes Your Buttons
Becoming aware of who and what - such as specific people or environments - cause emotions to surface will allow one to gain control of associated reactions. Exploration of the reasons behind these causes - such as related past experiences - will shed light on this subject as well.

Stop and Ask Yourself Why You Do the Things You Do
All emotions are reactions, so asking ‘why’ and ‘what’ is key to learning more about them.

Visit Your Values
Listing personal values and beliefs helps to identify what one stands for while recording actions that contradicted these provides material for reflection.

Check Yourself.
Because mood, emotion and action are closely tied, making the effort to identify one’s current emotional state is key to controlling actions and public persona.

Spot Your Emotions in Books, Movies, and Music.
Connections happen for a reason and provide helpful learning tools. Monitoring emotional connections with various art mediums allows them to become these tools.

Seek Feedback.
A staple for improvement, gaining the perspective of others is important in gauging one’s self-awareness. When seeking feedback, it is advisable to request clear, direct explanations and specific examples, when possible.

Get to Know Yourself Under Stress.
Every person has different emotional and physical responses to stress. Learning personal warning signs is vital to being aware of stress, which in turn affects emotional control.

What it Means to be Self-Aware
Self-awareness is the ability to understand one’s emotions as they happen. Self-awareness involves learning where one’s emotions come from, the reasons behind them and how they are displayed. Improving self-awareness is essential to mastering the other three components of EQ.

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Self-awareness is the ability to understand one’s emotions as they happen. Self-awareness involves learning where one’s emotions come from, the reasons behind them and how they are displayed. Improving self-awareness is essential to mastering the other three components of EQ.
Self-Management Looks Like:

Self-management is the act of managing one’s emotions, which, in turn, manages reactions and behaviors. After applying self-awareness to ensure emotions are understood, self-management tools allow for self-control which can lead to stronger relations, better communication and providing oneself the opportunity to act rationally and reasonably.

Strategies

Breathe Right
Because the human brain requires 20% of the body’s Oxygen supply, carefully structured breathing – deep, slow consistent – will allow the rational side of the to function properly and control emotions.

Create an Emotion vs. Reason List
It can be challenging to determine which side of the brain is suggesting which route. Creating a physical list helps to clarify this differentiation.

Make Your Goals Public
Strategically selecting people to share goals with and requesting assistance in monitoring personal progress can lead to better results due to an increased level of accountability.

Count to Ten
When the limbic system that controls emotions takes over, rationality is overtaken. Taking the time to step back from an emotionally charged reaction by counting will automatically help your body and brain to re-adjust and allow your rational brain to re-enter the equation.

Sleep On It
Taking time away from and to process a situation helps one to gain clarity and perspective.

Talk To a Skilled Self-Manager
Leading by example can be an effective self-management tool. Identifying people who are skilled in the area and modeling their strategies can help to improve one’s own self-management practices.

Smile and Laugh More
While negative emotions are not to be ignored, sometimes it is necessary to override them. The human brain will respond positively to the physical elements of smiling and laughing, providing a unique way to guide emotions.

Set Aside Some Time in Your Day for Problem Solving
Decisions made abruptly tend to be less successful than those made in the moment. Setting aside time to consider problems is an important tool to assure they are not addressed simply through initial emotional reactions.

Visualize Yourself Succeeding
The brain responds equally to what it sees in the mind and in real life. Therefore, visualizing success in handling situations and in adopting EQ strategies is more likely to lead to it, especially when done at night.

Speak to Someone Who is Not Emotionally Invested in Your Problem
Perspective is valuable and best gained from an outside party, particularly if that party also cares for the seeker.

Learn a Valuable Lesson from Everyone You Encounter
Flexibility of mind and emotion comes from a willingness to learn. Assuming that each person and situation comes with a lesson will assist in making the most out of interactions.

Put a Mental Recharge into Your Schedule
The brain responds when the body is cared for. Exercise helps the flow of natural systems and recharges mind and body, leading to better self-management.

Accept That Change is Just around the Corner
Accepting and expecting change is key to self-management. Taking time to list potential changes may help with becoming comfortable in this area.
Social Awareness Strategies

Greet People by Name
Because name is crucial to identity, using people’s names helps to show they are valued.

Make Timing Everything
Adopting the well-known “right place, right time” concept is helpful when practicing social awareness, as careful placement of questions and responses help to control a situation and emotional reactions.

Watch Body Language
Because body language is revealing, paying attention to it and can be a useful tool in crafting appropriate responses.

Develop a Back-Pocket Question
Having a generic question – especially one that allows for self-expression – leads to the ability to use it in any situation to allow for more control of time or to show the other party their feelings are important.

Don’t Take Notes at Meetings
Taking notes leaves little room for observation of others and may lead one to miss individual reactions, emotional cues and the tone of the room.

Plan Ahead for Social Gatherings
Having an action plan and following through will help to eliminate stress associated with social commitments and, in turn, leave room for openness and observation which will improve quality of socialization.

Clear Away the Clutter
Focusing on others is the goal in social awareness. Stopping oneself from focusing on and interjecting with personal ideas and responses will create space for the other person to share.

Live in the Moment
The present requires action, so while reflection and planning are necessary to improving EQ, remembering to focus on the task at hand is also vital.

Go on a 15-minute Tour
Because observation leads to social awareness, taking fifteen minutes to explore elements of environments – such as movement, atmosphere and mood – will help to better understand the environment and its people.

So, What is Social Awareness?
Social awareness is about removing focus from oneself to pay attention to the external in order to determine their emotions. This includes observing environments and people and requires the ability to actively pay attention to and even accept the tones and emotions of others.
Strategies

Only Get Mad on Purpose
Anger is acceptable when using to make a point rather than as a sudden outlet. Anger should be fully controlled and in a time and place strategically chosen.

Don’t Avoid the Inevitable
Choosing to accept and prepare for undesirable, unavoidable situations will allow for more control of reactions to them.

Relationship Management

Acknowledging the Other Person’s Feelings
Though it may be uncomfortable, it is important to take the time to show an awareness of the other person’s feelings.

Compliment the Person’s Emotions or Situation
Complementing the other person indicates understanding and acceptance of their position.

When You Care, Show It
Small gestures of appreciation remind people they are cared for.

Explain Your Decisions, Don’t Just Make Them
Outline the process, considered alternatives and reasoning behind the outcome when decisions are made.

Make Your Feedback Direct and Constructive
Feedback is important to anyone’s improvement, but ensuring it is helpful, clearly communicated and from a place of reason rather than emotion will increase the possibility of acceptance from the party it is provided to.

Align Your Intention With Your Impact
The concept of good intentions gone awry can be eliminated with careful consideration and planning of implementation.

Offer a “Fix-it” Statement During a Broken Conversation
Sometimes it is better to commit to moving forward and looking for solutions rather than focussing on laying blame.

Tackle a Tough Conversation: Strategic navigation of tough conversations is essential to relationship maintenance. Steps include:

- **Start with agreement** – disagreement is inevitable, but it is best to start off on more positive ground
- **Ask for understanding** – clarifying understanding of the other person’s views help to avoid confusion
- **Refrain from rebuttal** – the brain listens more actively if not already engaged in creating a response
- **Offer understanding** – ensuring that the other party understands one’s points through clear, direct, respectful communication will help avoid confusion on their end
- **Move forward** – in some cases, it may be necessary to respectfully agree to disagree and initiate finding a mutually acceptable outcome
- **Monitor progress** – maintaining contact and revisiting the issue or outcome will encourage positive progress, pay tribute to the other party and ultimately strengthen the relationship

Managing Relationships

Relationship management is the culmination of applying all other EQ components to allow for positive relationship-building and maintenance. Particularly applicable to working through conflict, this component allows one to combine awareness of self and others and emotion management to carefully craft and mold interactions.
(A Few More) Social Awareness Strategies

Watch EQ at the Movies
Paying attention to the emotional responses of others helps to develop social awareness, making movies – packed with character reactions – an excellent learning tool.

Practice the Art of Listening
Focusing on truly hearing the words of the other person will help to pull focus off of one’s own thoughts and strengthen the interaction.

Understand the Rules of the Culture Game
It is important to honor cultural demands, which can be done by learning what people of different cultures need and expect and to meet these when possible.

Test for Accuracy
Obtaining clarification or confirmation of observances is a good step in monitoring social awareness. Asking direct questions is the best way to accomplish this.

Step into Their Shoes
Asking oneself to view a situation through the eyes of other people may lead to a better understanding of where they stand and how they react, and could prevent problems or assist with amicable solutions.

Seek the Whole Picture
Because feedback aids progress, seeking the views of others – friends and foe – in regards to one’s social awareness helps to paint a bigger picture of what is working and what should change.

(A Few More) Relationship Management Strategies

Be Open and Be Curious
It is important to seek out information about others while sharing this about yourself in order to increase the possibility of strong relationships and to decrease the likelihood of misinterpretation.

Avoid giving mixed signals
Body language, words and tone must match to properly convey commitment to one message.

Test for Accuracy
Obtaining clarification or confirmation of observances is a good step in monitoring social awareness. Asking direct questions is the best way to accomplish this.

Be Open and Be Curious
It is important to seek out information about others while sharing this about yourself in order to increase the possibility of strong relationships and to decrease the likelihood of misinterpretation.

Take Feedback Well
Constructive criticism can lead to emotional reactions, but practicing awareness and management of self may curb these, which in turn protects the relationship at stake.

Avoid giving mixed signals
Body language, words and tone must match to properly convey commitment to one message.

Have an “Open Door” Policy
Encouraging open communication helps to build relationships, especially is hierarchical restraints are left out of the equation.

(A Few More) Relationship Management Strategies

Enhance Your Natural Communication Style
Good communication is key to healthy relationships, making communication improvement a worthwhile step. Listing communication strengths and room for growth and sharing associated goals with others is beneficial.

Remember the Little Things That Pack a Punch
Small gestures can have great effects, as can the lack of them. Adopting the practice or incorporating such phrases as ‘thank-you’ and ‘sorry’ is a simple way to show others they are valued.

Build Trust
The ability to rely on and believe in others is integral to strong relationships with them.

Catch the Mood of the Room
Human emotions tend to spread and congeal, so being sensitive to the collective tone leads to a high level of social awareness and can lead to predicting events and reactions.
Enjoy the EQ EBS? Then you might like…

…the rest of the book! Emotional Intelligence 2.0 has several chapters that, while not vital to a lesson in emotional intelligence, will be of interest to any keen student. These are:

- **Foreword:** A brief introduction written by Patrick Lencioni, author of *The Five Dysfunctions of a Team* and other books on leadership, conflict and team dynamics

- **Epilogue:** A compilation of interesting facts and information that come as a result of society’s growing interest in Emotional Intelligence and the work of Travis Bradberry and Jean Greaves’ company. This includes interesting comparisons in EQ statistics, including cultural and gender differences.

- **Notes:** Elaborations on various pieces of information and insight, organized by chapter.

**Review**  
*Emotional Intelligence 2.0* provides readers with the opportunity for successful emotional intelligence (EQ) improvement. By offering a brief explanation of the original concept and following this with thorough explanations of each of the components within EQ, an excellent basis in the subject matter is provided. While readers new to the work of Travis Bradberry and Jean Greaves may find themselves wishing for a fuller introduction to the concept, this critique is rendered invalid given that their previous book exists to provide just that to any avid EQ fans.

The test (included) is easy and provides extensive results to allow readers insight into how they are managing their emotions. Instructions and worksheets allow the improvement planning process to be virtually foolproof. Arguably, the best part of the process is the option to use strategies recommended by the test or choose different ones from the database that is this book. The strategies are well explained in origin and reasoning and provide clear steps to take. With helpful anecdotes along the way to paint a picture of what strong emotional intelligence is – and what is not – this book can only be described only as a clear, simple, entertaining and productive

**Application**  
One of the best features of this book is that its subject matter, EQ, can be applied to anything, anyone and anywhere. The statistics make it clear that emotional intelligence is key to workplace success for many, given that it allows one to build strong relationships, maintain positive team dynamics, manage reactions appropriately and to be aware of when these are not taking place. However, reading through the strategies, one discovers that emotional intelligence is present in every facet of a person’s life. Therefore, EQ improvement can improve a person’s overall performance. Additionally, leaders should look into EQ due to their roles as examples for others. A strong leader should be aware of what is going on around them and equally prepared to cite and work with those strong and weak in the area of EQ.

**References**


Thinking Like Your Client: 
Strategic Planning in Law Firms

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PREFACE

Thinking Like Your Client: Law Firm Strategic Planning is an ALM Legal Intelligence white paper sponsored by LexisNexis. ALM Legal Intelligence gathered data, conducted interviews, and administered the online survey. Cathy Lazere wrote the report and Jennifer Tonti conducted the survey and was the report editor. We would like to thank all those who participated in the survey and agreed to be interviewed for this report.

- October 2012
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FOREWORD

LEXISNEXIS IS ALWAYS PLEASED TO PARTNER WITH ALM MEDIA ON
surveys like this. Every time we engage in the simple process of asking questions—and
paying attention to the answers you provide—we learn more about customers, their
needs, the pressures they are facing and how to serve them better. Those insights are vital
to our business.

So, what did we learn from the latest market engagement? Certainly, you’ll read through the
report and see for yourself, but here’s our quick assessment of the results. The level of commitment
leading law firms are showing to strategic planning is moving in the right direction, but the rate of
substantive progress is still frustratingly slow. There is genuine cause for concern.

LexisNexis has spent the past few years highlighting the difference between the practice of
law and the business of law; and the lackluster economic conditions over that same timespan have
only served to reinforce how important those differences are. Without a doubt, law firms have a
thorough and detailed understanding of the practice part; that’s their forte. It’s the business of law
part where shortfalls occur.

- Revenue is the top priority in most strategic plans. Yet, almost half of the respondents
  are remiss in building, tracking and measuring client loyalty and satisfaction. Are firms
  overlooking the direct link between revenue and satisfied customers?
- Profitability is the second strategic plan priority. But, fewer than half are actively focused
  on a non-billable hour strategy, and more than half can’t yet tell if AFAs are more profitable
  than hourly rates. AFAs and various pricing models have been around for a few years; they
  are not going away. Isn’t it time to honestly reexamine the elements that make your firm
  profitable?
- Talent acquisition/retention holds the third top spot for strategic priorities, although laterals
  dominate the discussions and, apparently, everyone’s plans. How sustainable are growth
  models tied to an on-going “musical chairs” game of lateral talent shifting from firm to firm?
  Is anyone focused on a plan for organic growth?

Admittedly, the legal community is facing big issues … ones that are not easily solved. But the
same big issues seem to surface every year, with every survey. In too many ways, the slow pace of
change is inhibiting growth and limiting progress. Where are the bold initiatives? Which firms
will break away from the pack and say “enough waiting; we’re going to take action and make some
changes of our own”? Fortunately, those firms are starting to surface. You’ll see some of their good
ideas profiled at the end of this survey report. You can use their examples and the insights gained
from this survey to plan your own proactive steps and make a difference at your firm.

Rutger Van der Wall
Vice President & Managing Director – CRM & Analytics
LexisNexis
INTRODUCTION

CORPORATIONS INVEST SIGNIFICANT TIME AND ENERGY ON STRATEGIC plans. They hire armies of analysts and consultants to develop their mid- to long-term strategies, benchmark their company against the competition, and check budgets against actuals to ensure the strategy is working and ROI is achieved. Law firms, on the other hand, devote much less effort to strategic planning as compared with their corporate clients. Historically, they have paid lip service to planning rituals, and tend to be more reactive than proactive in the way they conduct their business.

Lately, however, firms are beginning to apply more rigor and discipline to the task of measuring and managing the performance of the firm, perhaps as a response to the Great Recession. Lawyers and legal professionals are being forced to become more active business managers and to go beyond simply servicing clients. There is a need to not only understand the clients’ legal needs but to also understand their businesses and industries at a deeper level. Firms are drawing upon marketing, business development, market insights that come from business intelligence and metrics, and CRM tools to retain and grow business with existing clients more effectively while also attracting new ones. They’re paying more attention to practice group and individual performances. In short, they are beginning to run the firm like a business—not as a collection of billable legal experts.

**Key Findings**

1. FIRMS ARE BEGINNING TO IMPLEMENT LONG-TERM STRATEGIC PLANNING, BUT INTEGRATED EXECUTION OF THOSE PLANS IS STILL ON THE HORIZON. According to the survey, the top three priorities are: growing a firm’s revenue, improving firm profitability, and talent acquisition/retention. One in eight firms said they have strategic plans in place to address the firm’s priorities, but implementation is not as rigorous as it could be, with many firms lacking the tools and metrics to accurately assess profitability. For many firms, integrating strategy with business development and improving staffing and productivity represent opportunities for improvement and focus in future planning cycles. Case studies in this report will speak to firms who have applied some exactitude in measuring their strategic planning and ROI.

2. METRICS FOR MEASURING FIRM PERFORMANCE HAVE YET TO BE FULLY ALIGNED TO STRATEGY. When listing the top three measurements for gauging firm performance, respondents cited firm revenue (52%); firm profit (44%); and profit per partner (37%). Respondents also reported they used markers for utilization (30%) and turn their attention to operating margins (24%) to measure performance. However, to truly ascertain if firms are on the right course and how well they will do going forward, firms need to look beyond the usual metrics. They should consider more predictive measures of productivity for individual engagements and practice groups as well as understand the impact of their pricing agreements with clients. They should also try to measure the progress of their new business development and cross-selling endeavors against ROI.
3 FIRMS REPORT HITTING KEY MEASUREMENTS, SUCH AS PROFITABILITY, AT THE FIRM LEVEL—BUT NOT AT THE INDIVIDUAL CLIENT AND PARTNER LEVEL. Eighty percent of respondents report that client retention goals are being met. They also report that firm profitability (70%) and revenue growth targets (59%) are being achieved. But when asked about client and partner profitability, the percentage of respondents dropped precipitously to 44 percent and 46 percent, respectively. Key stakeholders in the firm are not making full use of business information and metrics. Survey respondents report that business information is being disseminated through presentations (86%), hard copy or electronic spreadsheets (79%), and portals such as SharePoint (54%). And while all respondents report that managing partners are using the metrics, use of these key business indicators whittles down through the ranks: 85 percent of respondents reported usage by the COO or executive director; 76 percent said that practice group leaders actively use the metrics. Numbers drop further for the CMO (49%) and equity partners (46%). To ensure strategy is executed, all key stakeholders should be involved and informed on the strategy as well as measured against the goals of the strategy to drive business transformation.

4 UNDERSTANDING A CLIENT’S BUSINESS AND INDUSTRY IS ESSENTIAL TO A FIRM’S DIFFERENTIATION FROM ITS COMPETITORS. When asked about their competitive advantage, firms mentioned value and quality of service followed by knowledge of client’s business/client relationship and client focus/customer service. Given this, it is surprising that just over half (56%) report that their firm has a plan in place to build, track, and measure client loyalty and satisfaction. Furthermore, when asked if the firm leaders understood the business model of their top 20 clients, only 22 percent said they were extremely knowledgeable of all facets of the business. Clearly there is room for improvement.

5 THE BIGGEST CHALLENGES FACING FIRMS IN 2012 WILL CONTINUE IN THE FORESEEABLE FUTURE. Generating new clients, finding competitive advantage in a stagnant market, acquiring laterals and integrating them into the firm, increasing productivity, managing AFAs to make them profitable—respondents said their firms are contending with a multitude of challenges in 2012. And the future looks like more of the same, with the exception that firms are becoming more dedicated to the use of corporate tools supporting activities such as a strategic planning and enhanced project management. Firms are trying to balance organic (business development, cross-selling) with inorganic growth—and it is not yet clear that these strategies can fully succeed with limited management and reporting accountability.
About the Survey

This report, conducted by ALM Legal Intelligence, provides an overview of the law firm business model, how law firm leaders respond to business challenges, and the current state of law firm strategic planning and how that landscape is perceived to be changing. The data were collected via email invitations to a Web-based survey conducted between July 18, 2012, and August 14, 2012.

Invitations were sent to managing partners, executive directors, lead marketers, law firm administrators, and COOs at Am Law 200-size law firms. Quantitative results from 79 respondents were supplemented by interviews with a cross-section of the group. Respondents came from firms of all sizes: 48 percent from firms with 100-250 attorneys, 23 percent from firms with 251-500 attorneys, and 30 percent from firms with more than 500 attorneys.

To complement the statistical measurements and survey responses covered in this study, a couple of narrative examples were added to the mix profiling two successful Am Law 200 firms. Insights gained from their stories can serve as best practice examples showcasing how to turn strategies and plans into tangible actions. In reaching the implementation and executional phases of their plans, both firms are demonstrating considerable success at the practice of law as well as the business of law.
When asked about the firm’s top three business strategy priorities, respondents cited growth in revenue, getting a handle on talent, and increasing profitability. The majority report that they have strategic plans in place to address these priorities, but when pressed, many of our follow-up interviews revealed that implementation is not as rigorous as it could be. Part of the problem is that firms do not consistently define measurements and milestones through which to assess progress. As a result, actual success rates in executing plans vary widely. To further complicate the situation, linking strategy to actionable plans in business development, efficiency, productivity, and staffing is complicated, requiring knowledgeable resources as well as actionable information and tools.

In the past, firms focused too much on aggregate profitability; now under a trying economy they’re realizing that some practices are more profitable or vulnerable than others. Their response is often to simply go after the business that will be more likely to yield profits and put fewer resources (such as new associates or marketing spend) in some of the less–profitable areas.

That approach doesn’t always yield the desired results. There are often divergent levels of growth, productivity, and profitability across practice areas. One respondent mentioned that the biggest challenge facing his firm was “keeping the oars of the major revenue generators in the water rowing in the same direction given a wide variety of profitability among business generators.”

The perception is overwhelmingly that partners drive planning, even when there is ample input from sources such as COOs, marketers, or firm administrators who may have similar levels of understanding about clients’ industries and needs. About 20 percent said consultants and other nonbillable staff are involved in the strategic–planning process. In follow-up interviews, respondents confirmed that the process is still driven by managing partners and other C-levels in the firm. The result: a knowledge gap without enough input from nonattorney sources beyond the leadership group, sources who might better understand clients’ industry and business needs.

Still, at the end of the day the legal world is fluid, and the best laid plans are often scuttled. “Partners can pick up their book of business and leave at any time,” noted one interviewee. In order to mitigate partner flight, some respondents noted that their firm is putting more effort toward employee retention. Training is one piece of this, but firms are also trying to become more amenable to lifestyle and generational differences in their partners and associates. For example, younger attorneys may have a greater focus on work/life balance, since they are more apt to spend time with their (young) families relative to their older colleagues.

Which of the following are the top three (3) priorities for your firm, according to firm leaders?

<table>
<thead>
<tr>
<th>Priority</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Growing the firm’s revenue</td>
<td>66%</td>
</tr>
<tr>
<td>Talent acquisition and retention</td>
<td>59%</td>
</tr>
<tr>
<td>Improving firm profitability</td>
<td>54%</td>
</tr>
<tr>
<td>Client performance management and client satisfaction measurement</td>
<td>32%</td>
</tr>
<tr>
<td>Growth through cross-selling</td>
<td>29%</td>
</tr>
<tr>
<td>Improving billing and collections</td>
<td>15%</td>
</tr>
<tr>
<td>Managing succession plans</td>
<td>13%</td>
</tr>
<tr>
<td>Understanding client industry trends</td>
<td>10%</td>
</tr>
<tr>
<td>Growth through mergers or acquisitions</td>
<td>8%</td>
</tr>
<tr>
<td>Mitigating risk</td>
<td>5%</td>
</tr>
<tr>
<td>Improving realization rates</td>
<td>5%</td>
</tr>
<tr>
<td>Opening domestic offices</td>
<td>3%</td>
</tr>
</tbody>
</table>
GETTING THE RIGHT INPUT FROM STAKEHOLDERS

Firms are faced with the challenge of coming up with not only individual practice group strategies, but an overall firm strategy. As expected, 89 percent of respondents said partners gave significant input to strategic plans. But not all are committed to the strategy after it’s been formulated. “The owners of the strategy need to be engaged,” said W. Russell Welsh, chair and CEO of Polsinelli Shughart. “Sometimes details get lost. Plans are not driven down as deep as they should be,” he added.

Bo Yancey, director of consultants with LexisNexis® Redwood Analytics® agreed. “Successful strategy execution starts by understanding and interpreting business insights and then translating those insights into actionable measures that can be used to manage a firm’s performance. In our work with firms across the country, we see that when the executive leadership mandates goals, educates partners and firm leaders, and then measures success, change in practice becomes reality.”

Successful strategy execution starts by understanding and interpreting business insights and then translating those insights into actionable measures that can be used to manage a firm’s performance. In our work with firms across the country, we see that when the executive leadership mandates goals, educates partners and firm leaders, and then measures success, change in practice becomes reality.”

Bo Yancey, director of consultants with LexisNexis® Redwood Analytics®

To help professionalize strategic planning and drive execution, firms are turning to nonattorneys. Sixty-two percent of respondents cited the involvement of nonbillable firm leaders such as CMOs, and CFOs/COOs.

“When I first got here,” noted one CMO, “there was not a lot of planning. Now we do a lot. We have seven full-time people in marketing. We’re implementing new technology to create efficiencies. It’s now a thoughtful, step-by-step process. We’re no longer shooting from the hip.”

However, there is great variability as to how much attention is being paid to the expertise of nonattorney senior staff. The acceptance of nonattorney input depends on the vision or force of personality of a chair who can influence the managing committee and partners to buy the suggestions of the firm’s financial and marketing experts or their consultant counterparts (21 percent of firms surveyed are turning to outside consultants and other third parties for further help developing the strategic plan).
FINDING THE RIGHT TEAM:
HIRING LATERALS AND GETTING RID OF NONPERFORMERS

WHEN GAUGING THEIR COMPETITION, FIRMS LOOK AT “LIKE” FIRMS:

firms with a similar geographic presence (73%), firms with similar key areas of expertise (58%), and firms of a similar size (55%).

To compete in an increasingly tough legal market, 70 percent are making adjustments to their leverage ratio of nonpartners to partners. They are also turning to lateral acquisitions, with three-quarters expecting to hire more laterals over the next five years. These acquisitions can have an increasingly positive effect on firm profitability; however, when asked to look back over the last five years, only 28 percent of respondents said their lateral strategy was “very effective.” Given that most firms cite lateral acquisition as a key growth strategy and the success rate is only marginally effective, the question begs: What will the ultimate success be? In addition, if just about every firm is using this strategy to increase profitability, these firms will have trouble differentiating themselves when everyone is dipping into the same pool of talent.

An emerging trend is the increased use of tools and data to supplement existing processes for laterals, so that they are better able to hit the ground running. We have yet to see the longer-term implications this has for the apprenticeship model so pervasive across the legal profession. At some point down the road, there may not even be enough laterals to fuel growth.

An influx of new blood is sometimes the answer; however, in recent years the importance of summer associates and first-year hires has fallen behind prerecession levels (only 15 percent of firms foresee hiring more of either group). Given the assessments offered above on the effectiveness of lateral strategies, significant room for improvement remains in terms of executing on these strategies. One way is to use tools and data to understand who are the best clients, so the firm can actively seek new clients that match a similar profile, leveraging existing expertise to win new relationships. Separately, firm leaders can continue to cross-sell lateral expertise to where the white space is in the client base.

What criteria do you evaluate when you compare yourself to competitors?
Please indicate the three (3) most important.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firms with a similar geographic presence</td>
<td>73%</td>
</tr>
<tr>
<td>Firms with similar key areas of expertise</td>
<td>58%</td>
</tr>
<tr>
<td>Firms of similar size (number of attorneys)</td>
<td>55%</td>
</tr>
<tr>
<td>Firms with similar levels of profitability, e.g. profits per partner</td>
<td>26%</td>
</tr>
<tr>
<td>Firms with similar Am Law or NLJ rankings</td>
<td>21%</td>
</tr>
<tr>
<td>Firms that have relationships with my client contacts</td>
<td>17%</td>
</tr>
<tr>
<td>Firms that have relationships with my firm’s target prospects</td>
<td>13%</td>
</tr>
<tr>
<td>Firms that generate similar revenue</td>
<td>13%</td>
</tr>
<tr>
<td>Specialist / boutique</td>
<td>6%</td>
</tr>
<tr>
<td>Firms with similar growth strategies</td>
<td>5%</td>
</tr>
<tr>
<td>Firms with similar strategic partnerships</td>
<td>1%</td>
</tr>
<tr>
<td>GC preference for use of inside vs. outside counsel</td>
<td>1%</td>
</tr>
<tr>
<td>Firms with similar hiring strategies</td>
<td>0%</td>
</tr>
<tr>
<td>Client preference for Legal Process Outsourcers (LPOs) or alternative legal providers</td>
<td>0%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>3%</td>
</tr>
</tbody>
</table>
Not all partners are effective business-generators, however. Nine out of 10 firms report that their firm has “unprofitable” partners, and 70 percent noted that errant partners are at risk of deequitization or being put on a performance plan. In challenging economic times the issue has bubbled up to the surface. Partners who aren’t contributing to the firm’s profitability are under increased scrutiny, as these nonperformers can affect the firm’s overall health. When asked what the biggest challenge facing the firm was in 2012, one respondent mentioned “[getting] the rogue partner out of the firm and adjusting the proper level of attorneys for the level of work.” Another respondent noted: “There are too many partners without sufficient billable work. Our attorneys need to become client development experts rather than expense-cutting experts.” Clearly, when it comes to partners, there is a gap between performance measurement and performance management. This is something that may change over time, as professionals continue to transform themselves into more active business managers.

<table>
<thead>
<tr>
<th></th>
<th>Will Increase</th>
<th>Will Remain the Same</th>
<th>Will Decrease</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lateral associate hires</td>
<td>74%</td>
<td>19%</td>
<td>6%</td>
<td>78</td>
</tr>
<tr>
<td>Lateral partner hires</td>
<td>72%</td>
<td>24%</td>
<td>4%</td>
<td>78</td>
</tr>
<tr>
<td>Contract attorneys</td>
<td>65%</td>
<td>32%</td>
<td>3%</td>
<td>78</td>
</tr>
<tr>
<td>Retention and development of firm leaders</td>
<td>63%</td>
<td>33%</td>
<td>4%</td>
<td>78</td>
</tr>
<tr>
<td>Non-Equity Partners</td>
<td>54%</td>
<td>28%</td>
<td>18%</td>
<td>76</td>
</tr>
<tr>
<td>Equity Partners</td>
<td>45%</td>
<td>31%</td>
<td>24%</td>
<td>78</td>
</tr>
<tr>
<td>Paralegals</td>
<td>37%</td>
<td>51%</td>
<td>12%</td>
<td>78</td>
</tr>
<tr>
<td>Outsourcing to LPOs</td>
<td>27%</td>
<td>57%</td>
<td>16%</td>
<td>70</td>
</tr>
<tr>
<td>Summer associates</td>
<td>15%</td>
<td>64%</td>
<td>21%</td>
<td>78</td>
</tr>
<tr>
<td>First year associate hires</td>
<td>15%</td>
<td>62%</td>
<td>23%</td>
<td>78</td>
</tr>
</tbody>
</table>
PRICING, PRODUCTIVITY, AND PROFITABILITY

Law firms continue to struggle to remain profitable in the wake of the economic downturn. We asked respondents to tell us how they had coped during the last year and to divide their priorities into short- and long-term fixes. The top three short-term tactics were switching to less expensive vendors, reducing or eliminating summer associate programs, and deequitizing partners. But as indicated earlier, the implementation of the last tactic doesn’t always occur. The top three longer-term tactics mentioned were cross-selling, investing in technology, and acquiring practice areas.

The most aggressively pursued growth options for Am Law–size firms are business development (84%), acquiring laterals (76%), and partner investments (71%). Regarding pricing strategies (such as alternative fee arrangements), only 45 percent are actively focused on a nonbillable–hour strategy right now, but firms are closely monitoring pricing. “The COO is tracking AFAs,” said one CMO. “There’s a formula he uses for figuring out the realized hourly rate. We really don’t know for sure if AFAs are working. Every RFP now asks for it. They have a set budget for litigation and want to find a way around just a monthly bill.” To that end, 56 percent echoed that it is “too soon to tell” if AFAs are more profitable than hourly rates.

Still, in the minds of clients at least, AFAs are here to stay. It is unlikely that companies will want to revert to the more casual and costly pricing of earlier days, so it’s incumbent upon firms to continually measure the productivity of their engagements and client satisfaction. Even if the economy improves, firms will need to find ways to deliver more cost predictability so they can be more responsive to their clients’ and the firm’s financial needs.

In which of the following ways, if any, has your firm taken any steps in the past 12 months toward managing profitability through cost-cutting or revenue growth as a response to the current economy? Please tell us if each plan is part of a long term strategy, or a short term trend by dragging each statement to its appropriate box.

<table>
<thead>
<tr>
<th>Long Term Strategy</th>
<th>Short Term Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-selling</td>
<td>65%</td>
</tr>
<tr>
<td>Investing in technology</td>
<td>56%</td>
</tr>
<tr>
<td>Acquiring practice areas</td>
<td>44%</td>
</tr>
<tr>
<td>Switching to less expensive vendors</td>
<td>14%</td>
</tr>
<tr>
<td>De-equitization of partners</td>
<td>13%</td>
</tr>
<tr>
<td>Benefit reductions</td>
<td>5%</td>
</tr>
<tr>
<td>Reducing or eliminating summer associate program</td>
<td>4%</td>
</tr>
<tr>
<td>Cuts in IT spend or internal spend</td>
<td>3%</td>
</tr>
<tr>
<td>Pension cuts</td>
<td>3%</td>
</tr>
<tr>
<td>Cuts on face-to-face business development activities, such as entertaining clients or golf outings</td>
<td>3%</td>
</tr>
<tr>
<td>Layoffs</td>
<td>1%</td>
</tr>
<tr>
<td>Bonus cuts or freezes</td>
<td>1%</td>
</tr>
<tr>
<td>Cuts on business development networking activities, such as attending conferences or holding client seminars</td>
<td>1%</td>
</tr>
<tr>
<td>Salary cuts or freezes</td>
<td>0%</td>
</tr>
</tbody>
</table>

1 Refer to the ALM and LexisNexis CounselLink report “Speaking Different Languages: Alternative Fee Arrangements for Law Firms and Legal Departments” for more details.
MONITORING CLIENT RELATIONS: CRM AND CROSS-SELLING

When it comes to client satisfaction, law firms pay a lot of lip service to the need for engagement, with little follow-up. Just over half (56%) of respondents reported they have a plan to track client loyalty and satisfaction, while 44 percent admitted they didn’t have any kind of systematic program or were unsure if a program existed. For those firms who do have a program in place, there was wide variability about the frequency of monitoring that program: 45 percent said they do this on an annual basis, but an almost equal amount (47%) noted they did it only episodically, on a case-by-case basis or that such measurements were rarely “ongoing.”

Too many firms are lackadaisical not only about systematic client-satisfaction measurements, but also about targeting new clients. Although every firm said they could identify the firm’s top five clients, when asked about how knowledgeable firm leaders are about key business drivers for their top 20 clients, only 22 percent reported that they were “extremely knowledgeable.” Clearly there is room for improvement in the client relationship management arena, for both existing and potential clients, particularly when the majority of firms claim that knowledge of their clients’ businesses is a source of competitive advantage.

“One ought to be able to name future clients,” said a CMO. “Just don’t cast bread upon the water or take a shotgun approach. If you want to be known to counsel of five new corporations, just communicate with those five counsel. The more that a law firm concentrates on naming companies and individuals, the more effective they’ll be,” he added.

Firms are at least aware that once they have a client, they have to work at keeping that client. The top three things that respondents thought their firm should change about client relationships were increasing the amount of work from key clients (vs other firms), improving profitability, and improving client relationship management.

But none of those goals come to fruition without a systematic customer relationship management (CRM) effort on behalf of the firm. “Attorneys have

<table>
<thead>
<tr>
<th>Which aspects of your firm’s relationship with clients would you most like to change in 2012? Please rank all that apply in order of importance, with 1= Most Important.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The amount of work we get from key clients versus with other firms</td>
</tr>
<tr>
<td>Improve profitability</td>
</tr>
<tr>
<td>Improve client relationship management</td>
</tr>
<tr>
<td>Better focus on profitable clients v. high-cost clients</td>
</tr>
<tr>
<td>Institute better / new project management practices</td>
</tr>
<tr>
<td>Provide higher service levels</td>
</tr>
<tr>
<td>Differentiate work from competitors’ work</td>
</tr>
<tr>
<td>Institute client satisfaction surveys / interviews</td>
</tr>
<tr>
<td>Improve trust in the client/firm relationship</td>
</tr>
</tbody>
</table>
come around to being customer-centric, not just providers of legal services. They need to think of value-added services,” said a CMO. His firm relies on post-engagement assessments. If a problem is detected, the chair goes on a client call.

Our survey interviewees mentioned advertising, social media, and in-person customer contact as the most useful techniques in keeping in touch with clients. After a few years of hesitancy in this area, some firms are now encouraging their attorneys or someone in marketing to blog periodically. One example of proactive social media outreach would be a firm regularly sending out alerts on what they think might be relevant legislation to a client’s business. Social media is not the panacea of client relations, however, and attention must be paid to accuracy and relevance. If the alerts are out of date or aimed at the wrong target, they could ultimately undermine a firm’s attempt to appear knowledgeable of a client’s business or industry. However, use of social media in the absence of a client acquisition and retention strategy managed with appropriate tools dilutes the power of social media engagement. Individually managed and ad hoc communications can ultimately dilute the firm’s message and presence in the market, and negatively impact business development efforts.

Some interviewees have concluded that old-fashioned client contact is still most important. Said one CMO: “In the legal field, we need to restore real relationships. We need to look at the business issues behind the legal issues—what’s worrying counsel. We need to be a bedside doctor as opposed to a remote clinician.”
THE FUTURE:
EMPOWERING STRATEGIC PLANNING AND PLANNERS

OUR RESEARCH HAS ESTABLISHED THAT MOST FIRMS ARE ON BOARD
with strategic planning. But to ensure smooth sailing in the future, they’ll need to
determine who will lead versus support these efforts. In a partnership structure, that can
be difficult.

“I report to the COO, but 150 bosses are running the firm,” said one CMO at a national law
firm. “Firms will need to elevate department heads to make decisions. Empowerment comes from
the top, but firms are slow getting there,” he added.

If the chair is fully engaged in strategic planning and empowers the COO, the CMO, partners,
and everyone else to get involved, operations run smoother. “The goal is to dispel my own myopia
and take a longer view,” said Andrew M. Smulian, chair and CEO of Akerman Senterfitt. “The
key element is dealing with all of the constituencies. Clients who ask why they want to use us.
Associates who ask why do they want to work with us. Why should partners want to invest with us?
And what is our societal purpose? We need to integrate all this.”

But having the chair and senior nonattorney staff involved is not enough. Some firms are even
contemplating creating the position of director of strategy with a standing committee to drive
planning over three–to–five year horizons. This position would also be charged with helping to
ensure that the strategy was updated as needs changed. And more and more firms will also consider
“practice group administrators”—nonattorneys, possibly MBAs, similar to financial analysts in
law firms—who could help with strategy implementation through monitoring performance and
profitability measurements in each practice group.

But even if a firm doesn’t change its existing infrastructure to include more planners, it will still
need to plan. “Ultimately, the success of the any firm’s strategic plan hinges on two key factors:
first, on the partners’ knowledge of the business principles, and second, on the partners’ ownership
and accountability in execution of the plan,” said Bo Yancey, director of consultants at LexisNexis.
“When firm leaders are educated on business metrics, firm performance and the financial health of
the firm, we see transformation in overall financial and business performance.”
A report from ALM Legal Intelligence

**CASE STUDY: Stick to the Plan: Dechert LLP**

With 26 offices around the globe and more than 800 lawyers, creating a strategic plan became a critical imperative for Dechert LLP—a necessary step taken to align all the firm’s resources and focus them on the same goals.

Dechert’s senior leadership reached that important conclusion coming out of the economic difficulties faced in 2008 and 2009, according to David Cybulski, Director of Business Intelligence for the firm. “The leadership team realized industry conditions were changing and wanted the firm to have its own strategic vision in response. Maybe it’s no more insightful than people looking inward when difficulties occur, but we knew we needed to understand more about where we were going, how we were going to compete, and how big we could become. We wanted to set our own course instead of being pushed around by change; that was the impetus behind a more disciplined approach.”

The firm turned to an outside consultant for guidance in crafting a five-year strategic plan. Direction came right from the top, with hands-on involvement from the CEO and chairman, and reached down to director-levels throughout the firm. “Everything jumped into high gear after the direction was set,” said Cybulski. “Elements of the strategic plan were distributed as appropriate, and the senior managers began adding tactical plans, executional details and financial metrics that made it all very real and very measurable.”

Cybulski believes that technology and the commitment to share information played a big part in what the firm has been able to accomplish. With goals and metrics firmly established, the systems and applications also were in place so everyone, especially timekeepers, could easily track their productivity and progress. “Monthly reports go out on a regular schedule,” he said, “but individuals can access up-to-date dashboards and information 24-hours-a-day, even if they’re just tracking hours as their contribution.” Of course, practice leaders and managers can get a more comprehensive look at bookings, billings, work in progress, realization totals, and other key metrics tied to business goals.

“There are no ‘silver bullets’ or quick fixes involved in any of this,” stated Cybulski. “It has been and remains an ongoing, evolutionary process that takes time; we’re still trying to find our way and make adjustments on a regular basis.” He acknowledges how difficult it has been to shift attorney interests from the law toward sales-related activities, business issues and delivering the numbers. “Some of them make the transition right away; they get it, and fundamentally know how to leverage client relationships, identify cross-sell opportunities and easily win new business. For others, it takes a little more work and effort. We try and make it as easy as possible for everyone because in the end we all have a role to play in the sales process.”

In many respects, what drives success at Dechert is the unwavering commitment and consistency that continues to come from the senior leadership team. The plan, goals, metrics, and dashboards are socialized and regularly discussed across all levels of the firm; in turn, performance and measurement have become part of the everyday culture.

“We’re almost following a textbook model,” concluded Cybulski. “Information creates knowledge, which gets translated into action, resulting in a bonus. Rewarding good behavior and performance with financial incentives just starts the cycle all over again. I don’t believe anyone wants to deviate from that model. However, the model is one that is constantly being reexamined and refined in this rapidly changing environment. Just because a plan of action has worked in the past does not guarantee that it will work in the future.”
The strategic focus for Stinson Morrison Hecker—*grow the client base and grow the work we do for clients*—is probably identical to hundreds of other law firms across the country, except for a single word appended at the end of their sentence: “profitably.”

Doug Doerfler, Chief Financial Officer at Stinson, explains how that one word sets the operating model for some 300 attorneys spread across the nation in eight offices. “We are relentless in our focus on profitability; I admit it. We don’t make compromises, we don’t do one-offs for special discounts, and we won’t accept work just to keep timekeepers busy. That approach has cost us clients and work; but, it has also kept the firm’s productivity, growth rate, profitability, and profits per partner all heading in the right direction, which is up.”

Surprisingly enough, the catalyst for this approach came a few years ago from the professional services team of a primary software supplier; their encouragement was to focus on the elements of profitability instead of just revenue. With buy-in from the CEO, COO and key partners, the strategic direction was set.

“Today, we’ve got the financial tools and business intelligence technology in place to keep us all on track,” commented Doerfler. “Across the firm, our people know what the benchmarks are and have become very comfortable talking about pricing, rates, net margins, leverage, realization and similar topics. More importantly, they’ve got enough knowledge to understand how those subjects interrelate and why they’re important.”

Shifting the Stinson culture to a more disciplined approach has taken over two years of effort. It began with the practice group chairs and getting their buy-in, and then rolled out across the rest of the firm. However, according to Doerfler, one critical component that makes the model work well has been a “focus on the client.”

Externally, that focus has resulted in a lot of discussions and earnest attempts to understand the pressures clients face in their business and from their own management. “Clients want to negotiate, they want to get a good deal, and they want to be treated fairly,” said Doerfler, “but they don’t want to deny profitability. They understand the business model and how it works, often better than we do.”

That means Stinson attorneys have to be a bit more creative sometimes in meeting profitability benchmarks; it also means saying “no” when the conditions aren’t right. Doerfler believes that clients appreciate the honesty and transparency demonstrated when negotiations and discussions occur; overall, it builds a lot of trust.

Building trust internally also involves a lot of the same techniques, according to Doerfler, including keeping the focus on the customer. “When you’re talking pricing and profitability and whether to take a deal or not, focusing on clients is critical,” he said. “It quickly removes ‘overhead’ and other internal calculations from the discussions, and adds balance to deciding if a deal is good for both the firm and the client. It’s tough to challenge the methodology, process, or the intent.”

The element of trust also has placed Doerfler and his growing department in a central role at the Stinson. Currently, the group is tracking the performance on more than 50 different fee arrangements as part of their ongoing processes. The systems at their disposal contain a few hundred budgetary models that assemble thousands of financial components involved in the pricing and billing of every client project. “Our goal,” offered Doerfler, “is to be the trusted experts for our attorneys and manage all that financial complexity for them. In fact, project management is part of the job description for all our billing specialists.”

When Doerfler’s team does their job well, which has been the case so far, there are no surprises at the firm, there are no surprises for the clients, attorneys can pursue the practice of law, and Stinson can be successful at the business of law … profitably.
APPENDIX: SURVEY RESPONSES

1. Which of the following are the top three (3) priorities for your firm, according to firm leaders?

<table>
<thead>
<tr>
<th>Priority</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Growing the firm’s revenue</td>
<td>66%</td>
</tr>
<tr>
<td>Talent acquisition and retention</td>
<td>59%</td>
</tr>
<tr>
<td>Improving firm profitability</td>
<td>54%</td>
</tr>
<tr>
<td>Client performance management and client satisfaction measurement</td>
<td>32%</td>
</tr>
<tr>
<td>Growth through cross-selling</td>
<td>29%</td>
</tr>
<tr>
<td>Improving billing and collections</td>
<td>15%</td>
</tr>
<tr>
<td>Managing succession plans</td>
<td>13%</td>
</tr>
<tr>
<td>Understanding client industry trends</td>
<td>10%</td>
</tr>
<tr>
<td>Growth through mergers or acquisitions</td>
<td>6%</td>
</tr>
<tr>
<td>Mitigating risk</td>
<td>5%</td>
</tr>
<tr>
<td>Improving realization rates</td>
<td>5%</td>
</tr>
<tr>
<td>Opening domestic offices</td>
<td>3%</td>
</tr>
</tbody>
</table>

2. Does your firm currently have a strategic plan in place to address these firm priorities?

- Yes: 18%
- No: 80%
- Not sure: 3%
### APPENDIX: SURVEY RESPONSES

#### 3. Who is responsible (meaning, members of this group gives significant input) for developing the strategic plan? (Check all that apply.)

<table>
<thead>
<tr>
<th>Group</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partners</td>
<td>88%</td>
</tr>
<tr>
<td>Non-Billable Firm Leaders</td>
<td>62%</td>
</tr>
<tr>
<td>3rd Party Organizations (e.g. Consultants)</td>
<td>21%</td>
</tr>
<tr>
<td>Non-Billable Staff</td>
<td>19%</td>
</tr>
<tr>
<td>Other (please specify)*</td>
<td>11%</td>
</tr>
</tbody>
</table>

*The top 3

<table>
<thead>
<tr>
<th>Board of Directors</th>
<th>Senior Management</th>
<th>Executive Committee</th>
<th>Managing Committee; COO</th>
<th>Board of Directors</th>
</tr>
</thead>
</table>

#### 4. Which resources or tools aid in the development of your strategic plan. Choose any that apply.

<table>
<thead>
<tr>
<th>Resource</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial analysis &amp; reports (internal)</td>
<td>94%</td>
</tr>
<tr>
<td>Business intelligence</td>
<td>76%</td>
</tr>
<tr>
<td>Financial analysis &amp; reports (e.g. benchmarking) from an third-party vendor</td>
<td>56%</td>
</tr>
<tr>
<td>Industry reports</td>
<td>56%</td>
</tr>
<tr>
<td>Management Consultants</td>
<td>48%</td>
</tr>
<tr>
<td>Client relationship management tool</td>
<td>23%</td>
</tr>
<tr>
<td>Financial advisors (external)</td>
<td>5%</td>
</tr>
<tr>
<td>Firm leadership</td>
<td>2%</td>
</tr>
</tbody>
</table>
5. **As part of your firm’s plan, which growth options, if any, is your law firm planning or pursuing in the next two years? (Choose all that apply.)**

<table>
<thead>
<tr>
<th>Growth Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquiring laterals</td>
<td>96%</td>
</tr>
<tr>
<td>Business development</td>
<td>94%</td>
</tr>
<tr>
<td>Pricing strategies, such as alternative fee arrangements</td>
<td>72%</td>
</tr>
<tr>
<td>Lawyer professional development</td>
<td>71%</td>
</tr>
<tr>
<td>Client relationship management</td>
<td>65%</td>
</tr>
<tr>
<td>Introducing new technology</td>
<td>58%</td>
</tr>
<tr>
<td>Project or knowledge management</td>
<td>54%</td>
</tr>
<tr>
<td>Acquiring practice groups</td>
<td>44%</td>
</tr>
<tr>
<td>Acquiring law firm/s</td>
<td>36%</td>
</tr>
<tr>
<td>Top line revenue growth to fund investments</td>
<td>36%</td>
</tr>
<tr>
<td>Making acquisitions</td>
<td>31%</td>
</tr>
<tr>
<td>Opening new U.S. office/s</td>
<td>29%</td>
</tr>
<tr>
<td>Considering merger offers</td>
<td>12%</td>
</tr>
<tr>
<td>Partnering with overseas firms</td>
<td>10%</td>
</tr>
<tr>
<td>Partner Investments (Retention of Earnings)</td>
<td>9%</td>
</tr>
<tr>
<td>Outsourcing functions / commodities</td>
<td>9%</td>
</tr>
<tr>
<td>Regional centralization of operations</td>
<td>8%</td>
</tr>
<tr>
<td>Opening new international office/s</td>
<td>6%</td>
</tr>
<tr>
<td>Extensions of lines of credit</td>
<td>4%</td>
</tr>
<tr>
<td>Outside investments</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
</tr>
</tbody>
</table>
### APPENDIX: SURVEY RESPONSES

#### 6. How aggressively is your firm planning on pursuing these options?

<table>
<thead>
<tr>
<th>Category</th>
<th>4: Aggressively Pursuing</th>
<th>3: Seriously Considering</th>
<th>2: Exploring the Possibility</th>
<th>1: On the Radar, Haven't Looked Deeply</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business development</td>
<td>84%</td>
<td>14%</td>
<td>3%</td>
<td>0%</td>
<td>73</td>
</tr>
<tr>
<td>Acquiring laterals</td>
<td>76%</td>
<td>19%</td>
<td>5%</td>
<td>0%</td>
<td>75</td>
</tr>
<tr>
<td>Partner Investments (Retention of Earnings)</td>
<td>71%</td>
<td>0%</td>
<td>29%</td>
<td>0%</td>
<td>7</td>
</tr>
<tr>
<td>Top line revenue growth to fund investments</td>
<td>68%</td>
<td>32%</td>
<td>0%</td>
<td>0%</td>
<td>28</td>
</tr>
<tr>
<td>Client relationship management</td>
<td>67%</td>
<td>29%</td>
<td>4%</td>
<td>0%</td>
<td>49</td>
</tr>
<tr>
<td>Extensions of lines of credit</td>
<td>67%</td>
<td>33%</td>
<td>0%</td>
<td>0%</td>
<td>3</td>
</tr>
<tr>
<td>Partnering with overseas firms</td>
<td>63%</td>
<td>25%</td>
<td>13%</td>
<td>0%</td>
<td>8</td>
</tr>
<tr>
<td>Project or knowledge management</td>
<td>62%</td>
<td>31%</td>
<td>7%</td>
<td>0%</td>
<td>42</td>
</tr>
<tr>
<td>Lawyer professional development</td>
<td>62%</td>
<td>35%</td>
<td>4%</td>
<td>0%</td>
<td>55</td>
</tr>
<tr>
<td>Opening new international office/s</td>
<td>60%</td>
<td>20%</td>
<td>20%</td>
<td>0%</td>
<td>5</td>
</tr>
<tr>
<td>Introducing new technology</td>
<td>51%</td>
<td>42%</td>
<td>7%</td>
<td>0%</td>
<td>45</td>
</tr>
<tr>
<td>Outside investments</td>
<td>50%</td>
<td>0%</td>
<td>50%</td>
<td>0%</td>
<td>2</td>
</tr>
<tr>
<td>Pricing strategies, such as alternative fee arrangements</td>
<td>45%</td>
<td>54%</td>
<td>2%</td>
<td>0%</td>
<td>56</td>
</tr>
<tr>
<td>Acquiring practice groups</td>
<td>38%</td>
<td>44%</td>
<td>15%</td>
<td>3%</td>
<td>34</td>
</tr>
<tr>
<td>Making acquisitions</td>
<td>38%</td>
<td>46%</td>
<td>17%</td>
<td>0%</td>
<td>24</td>
</tr>
<tr>
<td>Opening new U.S. office/s</td>
<td>35%</td>
<td>35%</td>
<td>26%</td>
<td>4%</td>
<td>23</td>
</tr>
<tr>
<td>Acquiring law firm/s</td>
<td>30%</td>
<td>44%</td>
<td>22%</td>
<td>4%</td>
<td>27</td>
</tr>
<tr>
<td>Outsourcing functions / commodities</td>
<td>29%</td>
<td>71%</td>
<td>0%</td>
<td>0%</td>
<td>7</td>
</tr>
<tr>
<td>Regional centralization of operations</td>
<td>17%</td>
<td>33%</td>
<td>33%</td>
<td>17%</td>
<td>6</td>
</tr>
<tr>
<td>Considering merger offers</td>
<td>0%</td>
<td>44%</td>
<td>44%</td>
<td>11%</td>
<td>9</td>
</tr>
</tbody>
</table>
APPENDIX: SURVEY RESPONSES

7. Which of the following metrics are most important to your firm as you manage firm performance? (Choose three)

- Firm Revenue: 52%
- Firm Profit: 44%
- Profit per Partner: 37%
- Utilization: 30%
- Operating Margin: 24%
- Expenses: 24%
- Revenue per Partner: 23%
- Realization: 20%
- New Business Acquisition: 10%
- Profit by Practice Area: 9%
- Leverage: 6%
- Cross-Selling metrics: 6%
- Revenue by Practice Area: 5%
- Client Retention metrics: 4%
- Other (please specify): 4%

*Individual partner performance measured broadly  Attorney Productivity
APPENDIX: SURVEY RESPONSES

8. Which of the following metrics has the greatest impact on partner compensation decisions in your firm?

<table>
<thead>
<tr>
<th>Metric</th>
<th>Choose All that Apply</th>
<th>Choose Primary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collections</td>
<td>78%</td>
<td>27%</td>
</tr>
<tr>
<td>Firm Profit</td>
<td>57%</td>
<td>18%</td>
</tr>
<tr>
<td>Billings</td>
<td>72%</td>
<td>13%</td>
</tr>
<tr>
<td>Client Business Development</td>
<td>71%</td>
<td>11%</td>
</tr>
<tr>
<td>Revenue per Partner</td>
<td>43%</td>
<td>10%</td>
</tr>
<tr>
<td>Utilization</td>
<td>52%</td>
<td>10%</td>
</tr>
<tr>
<td>Profit per Partner</td>
<td>39%</td>
<td>8%</td>
</tr>
<tr>
<td>Realization</td>
<td>77%</td>
<td>8%</td>
</tr>
<tr>
<td>Firm Revenue</td>
<td>53%</td>
<td>6%</td>
</tr>
<tr>
<td>Profit by Practice Area</td>
<td>29%</td>
<td>5%</td>
</tr>
<tr>
<td>New Business Acquisition</td>
<td>52%</td>
<td>5%</td>
</tr>
<tr>
<td>Leverage of book of business</td>
<td>47%</td>
<td>5%</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>28%</td>
<td>4%</td>
</tr>
<tr>
<td>Revenue by Practice Area</td>
<td>19%</td>
<td>3%</td>
</tr>
<tr>
<td>Cross-Selling metrics</td>
<td>41%</td>
<td>3%</td>
</tr>
<tr>
<td>Client Retention metrics</td>
<td>18%</td>
<td>1%</td>
</tr>
<tr>
<td>Expenses</td>
<td>25%</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

9. Who is/are the key stakeholder(s) using firm metrics? (Please check as many as apply.)

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Partner(s)</td>
<td>100%</td>
</tr>
<tr>
<td>COO, Executive Directors</td>
<td>85%</td>
</tr>
<tr>
<td>Practice Group Leaders</td>
<td>76%</td>
</tr>
<tr>
<td>CMO or Business Development leader</td>
<td>49%</td>
</tr>
<tr>
<td>Equity Partners</td>
<td>46%</td>
</tr>
<tr>
<td>Legal Administrators</td>
<td>14%</td>
</tr>
<tr>
<td>Non-Equity Partners</td>
<td>13%</td>
</tr>
<tr>
<td>CIO</td>
<td>6%</td>
</tr>
<tr>
<td>All Attorneys</td>
<td>4%</td>
</tr>
<tr>
<td>Other (please specify)*</td>
<td>15%</td>
</tr>
</tbody>
</table>

*CFO, Chief Practice Officers, Board and Compensation Committee, Executive Committee
### APPENDIX: SURVEY RESPONSES

10. How does the firm share key business information with firm leaders? (Choose all that apply.)

<table>
<thead>
<tr>
<th>Method</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presentations (Hard copy or electronic)</td>
<td>86%</td>
</tr>
<tr>
<td>Spreadsheets (Hard copy or electronic)</td>
<td>79%</td>
</tr>
<tr>
<td>Internal Firm Portals (e.g., SharePoint)</td>
<td>54%</td>
</tr>
<tr>
<td>Reporting Dashboards – self-developed</td>
<td>45%</td>
</tr>
<tr>
<td>Reporting Dashboards – Vendor developed</td>
<td>21%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>3%</td>
</tr>
</tbody>
</table>

*Monthly Financials
Quarterly Meetings of Firm Leaders

11. Regarding the following measures, has your firm been meeting its internal goals?

<table>
<thead>
<tr>
<th>Measure</th>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client retention</td>
<td>80%</td>
<td>5%</td>
<td>15%</td>
<td>79</td>
</tr>
<tr>
<td>Firm profitability</td>
<td>70%</td>
<td>25%</td>
<td>5%</td>
<td>79</td>
</tr>
<tr>
<td>Firm revenue growth</td>
<td>59%</td>
<td>38%</td>
<td>3%</td>
<td>78</td>
</tr>
<tr>
<td>New client growth</td>
<td>53%</td>
<td>34%</td>
<td>13%</td>
<td>77</td>
</tr>
<tr>
<td>Partner profitability</td>
<td>46%</td>
<td>41%</td>
<td>13%</td>
<td>78</td>
</tr>
<tr>
<td>Client profitability</td>
<td>44%</td>
<td>38%</td>
<td>18%</td>
<td>77</td>
</tr>
</tbody>
</table>
### APPENDIX: SURVEY RESPONSES

**12. What criteria do you evaluate when you compare yourself to competitors?**

**Please indicate the three (3) most important.**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firms with a similar geographic presence</td>
<td>73%</td>
</tr>
<tr>
<td>Firms with similar key areas of expertise</td>
<td>58%</td>
</tr>
<tr>
<td>Firms of similar size (number of attorneys)</td>
<td>55%</td>
</tr>
<tr>
<td>Firms with similar levels of profitability, e.g., profits per partner</td>
<td>26%</td>
</tr>
<tr>
<td>Firms with similar Am Law or NLJ rankings</td>
<td>21%</td>
</tr>
<tr>
<td>Firms that have relationships with my client contacts</td>
<td>17%</td>
</tr>
<tr>
<td>Firms that have relationships with my firm’s target prospects</td>
<td>13%</td>
</tr>
<tr>
<td>Firms that generate similar revenue</td>
<td>13%</td>
</tr>
<tr>
<td>Specialist / boutique</td>
<td>6%</td>
</tr>
<tr>
<td>Firms with similar growth strategies</td>
<td>5%</td>
</tr>
<tr>
<td>Firms with similar strategic partnerships</td>
<td>1%</td>
</tr>
<tr>
<td>GC preference for use of inside vs. outside counsel</td>
<td>1%</td>
</tr>
<tr>
<td>Firms with similar hiring strategies</td>
<td>0%</td>
</tr>
<tr>
<td>Client preference for Legal Process Outsourcers (LPOs) or alternative legal providers</td>
<td>0%</td>
</tr>
<tr>
<td>Other (please specify) *</td>
<td>3%</td>
</tr>
</tbody>
</table>

*Firms with similar revenue per lawyer Firms that may have lower rates.

**13. Regarding your current non-partner to partner leverage ratio, do you believe the firm is optimally resourced to provide exceptional client service while also growing firm business?**

- Yes, staffing is fine as it is: 3%
- No, we need to make adjustments: 28%
- Not sure: 70%
- Not sure: 3%
14. Five years from now, how do you think each of these staffing categories will have changed in size (vis-à-vis FTE headcount)?

<table>
<thead>
<tr>
<th></th>
<th>Will Increase</th>
<th>Will Remain the Same</th>
<th>Will Decrease</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lateral associate hires</td>
<td>74%</td>
<td>19%</td>
<td>6%</td>
<td>78</td>
</tr>
<tr>
<td>Lateral partner hires</td>
<td>72%</td>
<td>24%</td>
<td>4%</td>
<td>78</td>
</tr>
<tr>
<td>Contract attorneys</td>
<td>65%</td>
<td>32%</td>
<td>3%</td>
<td>78</td>
</tr>
<tr>
<td>Retention and development of firm leaders</td>
<td>63%</td>
<td>33%</td>
<td>4%</td>
<td>78</td>
</tr>
<tr>
<td>Non-Equity Partners</td>
<td>54%</td>
<td>28%</td>
<td>18%</td>
<td>76</td>
</tr>
<tr>
<td>Equity Partners</td>
<td>45%</td>
<td>31%</td>
<td>24%</td>
<td>78</td>
</tr>
<tr>
<td>Paralegals</td>
<td>37%</td>
<td>51%</td>
<td>12%</td>
<td>78</td>
</tr>
<tr>
<td>Outsourcing to LPOs</td>
<td>27%</td>
<td>57%</td>
<td>16%</td>
<td>70</td>
</tr>
<tr>
<td>Summer associates</td>
<td>15%</td>
<td>64%</td>
<td>21%</td>
<td>78</td>
</tr>
<tr>
<td>First year associate hires</td>
<td>15%</td>
<td>62%</td>
<td>23%</td>
<td>78</td>
</tr>
</tbody>
</table>

15. As you evaluate your lateral strategy in the past five years, how would you rate its effectiveness?

- Very Effective – most Laterals have been retained and contributed to business growth: 28%
- Moderately Effective – Some retention or growth issues as well as some positives: 61%
- Neutral – No positive or negative impact: 4%
- Negative – Retention and/or growth issues with lack of results: 6%
- No opinion: 1%
16. Which of the following areas would you say most closely describe your firm's competitive advantage? Choose the top 3.

<table>
<thead>
<tr>
<th>Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of service</td>
<td>44%</td>
</tr>
<tr>
<td>Quality of service performed</td>
<td>37%</td>
</tr>
<tr>
<td>Client focus / customer service</td>
<td>32%</td>
</tr>
<tr>
<td>Knowledge of client’s business / client relationships</td>
<td>29%</td>
</tr>
<tr>
<td>Subject matter / industry expertise</td>
<td>28%</td>
</tr>
<tr>
<td>Firm culture</td>
<td>25%</td>
</tr>
<tr>
<td>Competitive rates</td>
<td>22%</td>
</tr>
<tr>
<td>Industry expertise/relationships</td>
<td>19%</td>
</tr>
<tr>
<td>Loyal client base</td>
<td>16%</td>
</tr>
<tr>
<td>Strong firm leadership</td>
<td>14%</td>
</tr>
<tr>
<td>Innovation</td>
<td>11%</td>
</tr>
<tr>
<td>Firm practice area coverage</td>
<td>10%</td>
</tr>
<tr>
<td>Firm geography</td>
<td>8%</td>
</tr>
<tr>
<td>Wide spectrum of industries served</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

17. Which roles are responsible for Business Development in your firm (Please check all that apply)

<table>
<thead>
<tr>
<th>Role</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partners</td>
<td>99%</td>
</tr>
<tr>
<td>Marketing</td>
<td>77%</td>
</tr>
<tr>
<td>Business Development</td>
<td>62%</td>
</tr>
<tr>
<td>Associates</td>
<td>47%</td>
</tr>
<tr>
<td>Other (&quot;All staff; everyone&quot;)</td>
<td>4%</td>
</tr>
</tbody>
</table>
APPENDIX: SURVEY RESPONSES

18. Which best defines the structure of marketing and business development roles in your firm?

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marketing and business development are one department</td>
<td>96%</td>
</tr>
<tr>
<td>Marketing and business development are two distinct departments</td>
<td>4%</td>
</tr>
</tbody>
</table>

19. Does your firm have a plan in place to build, track and measure client loyalty and satisfaction?

- Yes: 56%
- No: 41%
- Not sure: 3%

20. If your firm has a client loyalty and satisfaction program, how often do you measure it?

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annually</td>
<td>45%</td>
</tr>
<tr>
<td>Monthly</td>
<td>2%</td>
</tr>
<tr>
<td>After each matter closes</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>47%</td>
</tr>
</tbody>
</table>

21. Do you know who your firm considers its top five (5) clients in terms of revenue?

- Yes: 100%
### APPENDIX: SURVEY RESPONSES

#### 22. Rate how well your firm leaders understand the business model / drivers of the business of your top 20 clients, including their business models, earnings, financial performance, P&L, growth strategy, executive leadership, board members:

<table>
<thead>
<tr>
<th>Knowledge Level</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely knowledgeable on all</td>
<td>22%</td>
</tr>
<tr>
<td>Knowledgeable on some, not all</td>
<td>63%</td>
</tr>
<tr>
<td>Knowledge of a few</td>
<td>14%</td>
</tr>
<tr>
<td>Not Knowledgeable</td>
<td>1%</td>
</tr>
</tbody>
</table>

#### 23. Which aspects of your firm’s relationship with clients would you most like to change in 2012? Please rank all that apply in order of importance, with 1= Most Important.

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>The amount of work we get from key clients versus with other firms</td>
<td>37%</td>
</tr>
<tr>
<td>Improve profitability</td>
<td>32%</td>
</tr>
<tr>
<td>Improve client relationship management</td>
<td>28%</td>
</tr>
<tr>
<td>Better focus on profitable clients v. high-cost clients</td>
<td>25%</td>
</tr>
<tr>
<td>Institute better / new project management practices</td>
<td>24%</td>
</tr>
<tr>
<td>Provide higher service levels</td>
<td>21%</td>
</tr>
<tr>
<td>Differentiate work from competitors’ work</td>
<td>16%</td>
</tr>
<tr>
<td>Institute client satisfaction surveys / interviews</td>
<td>9%</td>
</tr>
<tr>
<td>Improve trust in the client/firm relationship</td>
<td>4%</td>
</tr>
</tbody>
</table>
APPENDIX: SURVEY RESPONSES

24. In which of the following ways, if any, has your firm taken any steps in the past 12 months toward managing profitability through cost-cutting or revenue growth as a response to the current economy? Please tell us if each plan is part of a long term strategy, or a short term trend by dragging each statement to its appropriate box.

<table>
<thead>
<tr>
<th>Cross-selling</th>
<th>Long Term Strategy</th>
<th>Short Term Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>65%</td>
<td>8%</td>
</tr>
<tr>
<td>Investing in technology</td>
<td>56%</td>
<td>8%</td>
</tr>
<tr>
<td>Acquiring practice areas</td>
<td>44%</td>
<td>8%</td>
</tr>
<tr>
<td>Switching to less expensive vendors</td>
<td>14%</td>
<td>18%</td>
</tr>
<tr>
<td>De-equitization of partners</td>
<td>13%</td>
<td>15%</td>
</tr>
<tr>
<td>Benefit reductions</td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td>Reducing or eliminating summer associate program</td>
<td>4%</td>
<td>16%</td>
</tr>
<tr>
<td>Cuts in IT spend or internal spend</td>
<td>3%</td>
<td>6%</td>
</tr>
<tr>
<td>Pension cuts</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Cuts on face-to-face business development activities, such as entertaining clients or golf outings</td>
<td>3%</td>
<td>6%</td>
</tr>
<tr>
<td>Layoffs</td>
<td>1%</td>
<td>11%</td>
</tr>
<tr>
<td>Bonus cuts or freezes</td>
<td>1%</td>
<td>11%</td>
</tr>
<tr>
<td>Cuts on business development networking activities, such as attending conferences or holding client seminars</td>
<td>1%</td>
<td>8%</td>
</tr>
<tr>
<td>Salary cuts or freezes</td>
<td>0%</td>
<td>9%</td>
</tr>
</tbody>
</table>

25. At what levels does your firm measure profitability? (Please Select all that apply)

- By Client: 81%
- By Partner: 65%
- By Matter: 61%
- By Working Timekeeper: 52%
- By Billing Timekeeper: 49%
- By Originating Timekeeper: 42%
- Other (please specify)*: 16%

*by practice group, by firm, by practice area and geographic office
APPENDIX: SURVEY RESPONSES

26. Does the firm have “unprofitable partners”?

- Yes: 91%
- No: 4%
- Not sure: 5%

27. Are these unprofitable partners at risk of de-equitization or removal?

- Yes, they’re on a performance plan: 70%
- No: 18%
- Not sure: 11%

28. Has your law firm studied past expenses on matters in an effort to plan for similar engagements?

- Yes, we’ve studied internally: 86%
- Yes, we’ve used a consultant to help us figure that out: 1%
- No: 12%
- Not sure: 1%
### APPENDIX: SURVEY RESPONSES

#### 29. How often in the life cycle of a matter do you look at profitability? Choose any that apply.

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>0%</td>
</tr>
<tr>
<td>Weekly</td>
<td>5%</td>
</tr>
<tr>
<td>Monthly</td>
<td>42%</td>
</tr>
<tr>
<td>Annually</td>
<td>31%</td>
</tr>
<tr>
<td>At Completion</td>
<td>44%</td>
</tr>
<tr>
<td>Never</td>
<td>12%</td>
</tr>
</tbody>
</table>

#### 30. What does your firm do with profits? Please check all that apply.

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage distributed to equity partnership</td>
<td>96%</td>
</tr>
<tr>
<td>Percentage to non-equity partners</td>
<td>55%</td>
</tr>
<tr>
<td>Percentage reinvested in firm</td>
<td>53%</td>
</tr>
<tr>
<td>Percentage to Associate Bonuses</td>
<td>46%</td>
</tr>
<tr>
<td>Percentage in escrow for future need</td>
<td>15%</td>
</tr>
<tr>
<td>Other</td>
<td>17%</td>
</tr>
</tbody>
</table>

#### 31. How do alternative fee arrangements affect firm profitability? As compared to projects billed at an hourly rate, are your firm’s non-hourly projects more or less profitable?

<table>
<thead>
<tr>
<th>Profitability</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>More profitable</td>
<td>12%</td>
</tr>
<tr>
<td>Less profitable</td>
<td>23%</td>
</tr>
<tr>
<td>Too soon to tell</td>
<td>56%</td>
</tr>
<tr>
<td>Don’t know / Can’t say</td>
<td>9%</td>
</tr>
</tbody>
</table>
APPENDIX: DEMOGRAPHICS

1. Size of firm

<table>
<thead>
<tr>
<th>Size of Firm</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>101 to 250 attorneys</td>
<td>48%</td>
</tr>
<tr>
<td>251-500 attorneys</td>
<td>23%</td>
</tr>
<tr>
<td>501-750 attorneys</td>
<td>13%</td>
</tr>
<tr>
<td>751-1,000 attorneys</td>
<td>8%</td>
</tr>
<tr>
<td>More than 1,000 attorneys</td>
<td>9%</td>
</tr>
</tbody>
</table>

2. How long have you been at your firm?

<table>
<thead>
<tr>
<th>Duration</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than one year</td>
<td>1%</td>
</tr>
<tr>
<td>One to three years</td>
<td>16%</td>
</tr>
<tr>
<td>Four to five years</td>
<td>6%</td>
</tr>
<tr>
<td>Six to ten years</td>
<td>14%</td>
</tr>
<tr>
<td>More than ten years</td>
<td>62%</td>
</tr>
</tbody>
</table>

3. Your firm has ...

- One office: 96%
- Multiple offices: 4%
About ALM Legal Intelligence

ALM Legal Intelligence offers detailed business information for and about the legal industry, focused on the top U.S. and international law firms. The division's online research web service (http://www.almlegalintel.com) provides subscribers with direct, on-demand access to ALM's extensive database of surveys, rankings, and lists related to law firms and the legal industry. The site also includes an online store where non-subscribers can, on an individual basis, purchase and download preformatted individual law firm reports, ALM Legal Intelligence research reports, and selected current-year survey data.
LAW PRACTICE MANAGEMENT OVERVIEW

Brenda L. Gill, Partner
Burgher Gray Jaffe LLP

Fordham Law School
Bridge the Gap Program
January 28, 2018
In 2017, Brenda L. Gill joined Burgher Gray Jaffe LLP as a corporate Partner. Brenda has over 22 years of business and legal experience, having worked in large corporate law firms, as a trusted in-house legal and business advisor, as well as in various capacities as a business executive in her own right. She leverages her unique mix of experience for the benefit of her clients to solve complex business and legal challenges with strategic simplicity. Ms. Gill’s prior legal experience includes representing clients in numerous corporate and commercial transactions, with a focus on information technology, data analytics, IP licensing and large outsourcing deals. She has also provided legal advice and counsel in numerous mergers, acquisitions, divestitures, and leveraged buyouts, involving public and private companies, both from a law firm and an in-house perspective.

Prior to joining Burgher Gray, Ms. Gill was employed by RGP, a global business consulting firm, where she served as a National Business Development Director structuring consulting deals. Ms. Gill also worked for over six years at Thomson Reuters in both legal and business roles, first serving as VP and Principal Legal Counsel for Global Accounts with a focus on complex market data and IP licensing deals and then as Head of Strategy for the Finance & Risk Global Sales Channel. Prior to Thomson Reuters, she served as Assistant General Counsel at Horizon Healthcare Services, Inc. where she focused on large technology and IP licensing deals.

Brenda began her legal career as a corporate and M&A associate, most recently at Sidley Austin in NYC. She was also an adjunct professor at CUNY and St. Joseph’s College. Brenda graduated from Fordham Law School and currently serves on Fordham’s Law School Alumni Association Board and is the Founder and Chair of Fordham’s Alumni Attorneys of Color affinity group. She is also an author and her work has been published online and in print.
PRESENTATION AGENDA

INTRODUCTION
- What is law practice management?
- Law practice management challenges

MARKET & METRICS
- Big Picture
- Market Analysis Drives Metrics

BD & CRM: OBTAINING/RETAINING CLIENTS
- Define your target marketplace/clients
- Create the metrics
- Pipeline Management
- Client Relationship Development and Management

PROCESSES & POLICIES
- Analyze/Optimize Firm Processes
- Create/Review/Update Firm Policies

HUMAN RESOURCE MANAGEMENT
- Law firms have unique challenges
- Top HR items to consider

SUMMARY
- You didn’t go the Law School for this
- But these are critical functions that you should learn
What is Law Practice Management?

“Law practice management is the study and practice of business administration in the legal context, including such topics as workload and staff management; financial management; office management; and marketing, including legal advertising. Many lawyers have commented on the difficulty of balancing the management functions of a law firm with client matters.” (From Wikipedia)

Law Practice Management Challenges:

• Not taught in many law schools (trend is reversing, see Pace Law School’s Law Practice Management class)
• Typically, attorneys are not business people and don’t have the requisite skills
• Many of the skills required to run a business require utilizing non-legal skills:
  • Business Strategy
  • Operational Tools/Frameworks
  • Marketing & Business Development
  • Financial Acumen
  • Understanding of Technology
  • Human Resource Management

This class will focus on law practice management for medium and small/solo law firms. However, large law firm practice will be discussed, where appropriate.
MARKETS & METRICS: Big Picture

Market changes

- Legal Market Disruption
  - 2008 Subprime Meltdown disrupts business worldwide
  - Millennials as Disrupters
  - Technology as Disrupter

- Shifts in corporate law departments
  - Scrutiny of legal department spend
  - Business principles applied to legal department
  - Shift to a buyers’ market

- Impacts on law firms
  - Drop in outside counsel spend
  - Certain law firms forced to reduce costs and deliver increased value
  - Law firm disruption: failures/mergers

lead to reshaping of the legal industry

- Corporate Law Departments
  - Create Legal Operations position:
  - Service delivery: Resourcing, PM, KM, PI
  - Other: Financial management, IT optimization, vendor management, strategic sourcing, etc.

- Alternative Legal Service Providers
  - Big 4 as Legal Service Providers
  - Proliferation of self-help services, like LegalZoom & Rocket Lawyer
  - Other Alternative Legal Services providers, like Axiom & RGP

- Law Firms
  - Back-office restructuring
  - Outsourcing Legal Services
  - Creating an alternative legal services provider company
So it is said that if you know your enemies and know yourself, you can win a hundred battles without a single loss. If you only know yourself, but not your opponent, you may win or may lose. If you know neither yourself nor your enemy, you will always endanger yourself.

*The Art of War by Sun Tzu*

**Analytical Models**

- Porter’s 5 Forces for Externalities - developed by Michael Porter to analyze the competitive environment in which a company works.
  - The threat of entry
  - Supplier power
  - Buyer power
  - Threat of substitutes
  - Competitive rivalry

- McKinsey’s 7Ss for Internalities – outlines seven internal aspects of an organization that need to be aligned if it is to be successful.
  - Strategy
  - Structure
  - Systems
  - Skills
  - Staff
  - Style

- SWOT Analysis to balance Internalities against Externalities
  - Strengths & Weaknesses: Internalities
  - Opportunities & Threats: Externalities
Now that you have defined the marketplace and analyzed your firm, the next step is to

- Define your target marketplace/clients
- Create the metrics
- Pipeline Management
  - Systematizing your pipeline
  - Using off the shelf tool vs one that you create (i.e., spreadsheet)
- Client Relationship Development and Management
  - Using LinkedIn and other social media
  - Develop Marketing strategies that fit your sector

There are tools that you can use for BD (business development) and CRM (client relationship management). Get recommendations and use a mini-RFP process.

**Sales/Business Development Books – Recommended Reading**

Asher, Joey. *Selling & Communications Skills for Lawyers*

Dixon, Matthew. *The Challenger Sale*

Illig, Randy, and Stephen R. Covey. *Let's get Real or let's not play: Transforming the Buyer/Seller Relationship*

Jamail, Nathan. *Sales Professionals Playbook*

Karr, Ron. *Lead sell or get out of the way: The 7 traits of Great Sellers*

Weinberg, Mike. *New Sales Simplified*
PROCESSES & POLICIES

PROCESSES: Analyze the firm’s processes and optimize them by eliminating manual or duplicative processes and using technology to understand:

- Current technologies and how they impact the practice of the law (e.g., client management software, billing practices and alternative billing methods).

- The ethical obligation to keep "abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology“ in accordance with ABA Rule 1.1 Comment 8.

- Electronic communications and social networking in the context of law practice.

POLICIES: Create, review and update, as necessary, all firm policies, which includes:

- General Office Policy (office dress, hours, protocol, etc.)

- HR Policy (summarizing employment law matters)

- Onboarding/ Exiting packages

- Technology/Cybersecurity Policy

- Client Engagement/ Management Policies
“Law firms face their own set of challenges that are unique to them [and, typically,] law firms do not comply with a lot of the other standards that other organizations do in regards to work hours, hierarchy, and more.”
See https://www.lawcrossing.com/employers/article/900047871/Top-10-Unique-Challenges-Faced-by-Law-Firm-HR-Departments/

Top HR Items to consider

• Managing expectations of different types of employees
  • Partners: Typically, partnership agreement lacks the specificity required for management requirements and administrative responsibilities
  • Of Counsels: Varying contractual arrangement make for HR difficulties
  • Associates: Training, Evaluating, Retaining
  • Associates vs. Temporary attorneys: When/How to define roles
  • Paralegals: Varying levels of expertise can lead to varying results
  • Office Manager: “Chief cook and bottle washer” syndrome
  • Billing Manager: requires financial acumen
  • Administrative Assistants: smaller firms can’t afford single threaded admin
• Onboarding, Retention & Exit Strategies
• Establishing a Performance Mindset
• Employee Wellness & Stress Management
You didn't go to law school to be a

- Head of Strategy
- Accountant or Finance Professional
- Human Resources Director,
- Sales Person
- Marketing Director
- Legal Operations Lead

However, don’t underestimate the importance of these skills

- Don’t underestimate the importance of these functional skills as they are necessary to run your firm efficiently and effectively.

- The smooth operation of these core functions allows you to focus on delivering quality legal services to your clients.

Take CLEs/Mini-MBA:

- Learn the skills necessary to run your firm efficiently and effectively.

- Consider taking CLEs or other classes on finance, technology, HR compliance, marketing and business development and/or mini-MBA program.
RESOURCES

Small Business Administration https://www.sba.gov/

American Bar Association, Law Practice Division
https://www.americanbar.org/groups/law_practice.html

New York State Bar Association, Law Practice Management http://www.nysba.org/LPM/

NYSBA LPM Article on cybersecurity and metadata


Managing a Law Practice: What You Need to Learn in Law School by Gary A. Munneke
http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1738&context=plr

Law Practice Management downloadable free e-book

Mastering Law Practice by Thom Goolsby, free podcasts https://soundcloud.com/masteringlaw
QUESTIONS

Thank you for your time and attention.

I am happy to answer any questions you may have now or feel free to contact me at bgill@burghergray.com.
Higher Counsel

To go from gatekeeper to trusted strategic advisor, think and act like a businessperson

Dramatically altered by scandal and the global meltdown, today's globalized business world involves unprecedented regulation, scrutiny, volatility, risk—and opportunity—at every turn. Immutable and changed, too, are corporate dynamics: today's leading companies understand the importance—and value—of having all departments and minds at the table at the same time.

Chief among these stakeholders is the general counsel and in-house legal team, historically separated from the action but now integral factors in the success equation. Each with informed insights into the critical new synergy between business and law, Tamika Tremaglio, principal at Deloitte Financial Advisory Services LLP, and Brenda Gill, head of strategic analysis for global sales and account management for Thomson Reuters Markets, explain how having legal at the table produces indispensably richer conversations, deeper strategic insight, and ultimately, better business outcomes.

A Seat at the Table

**BG:** Business today moves at the speed of sound, and legal must also—the days of static, glacial, legal thinking are over. As a lawyer who transitioned to the business side, I often heard candid comments about what legal was not doing—and could be doing. The overlap between legal and business inspired me to create a strategic analysis unit for our front line sales team.

**TI:** Legal must be involved at the outset of the deal, especially when new geographies are involved. There is little room for error or forgiveness in the new regulatory climate. My primary role in forensic accountancy is focused increasingly on anti-corruption issues under the FCPA and the UK Bribery Act as clients expand their businesses around the globe, especially in Latin America. This is but one area in which regulators have aggressively increased their scrutiny, and a key example of where the general counsel now has frontline responsibility for business decisions and outcomes.

**BG:** Lawyers who successfully establish their place at the table are defined in several ways. First, they do not see themselves simply as lawyers who appear only when called for legal advice, but as strategic advisors whose insight and intellectual prowess can substantially inform and direct business decisions. Once a novelty, lawyers are earning joint JD/MBA degrees and continuously enhance their business knowledge and cross-functional capabilities on the job. And most significantly for getting recognized and accepted as strategic advisors, they are gaining the trust of their internal business clients by actively developing relationships with them.
The Bond of Trust

TT: Establishing a relationship is an important first step for lawyers as they move themselves away from being seen and treated as the gatekeeper. The goal is to be viewed not just as a strategic advisor, but to be embraced as a trusted strategic advisor. Beyond the numbers, beyond the law, trust between and among colleagues is among the most valuable investments a company can make.

BG: Without that relationship, a lawyer likely will not understand business goals, revenue targets, competitive challenges, and other factors facing their internal clients. As such, the business person tends to see the lawyer as interfering with his or her work, especially when it comes to saying no to certain things. On the other hand, when the lawyer proactively makes an effort to learn about business goals and objectives, you have the basis for a relationship of understanding and support.

TT: This is one area where lawyers can change how they are perceived. Knock on the client’s door, talk in the hallway, have lunch. Better still, routinely invite the business team to talk about their needs and challenges. It’s a two-way street, and if framed around the idea of “educate us so we can better help you, the company, and the customer,” then the business team will have a real incentive to participate.

BG: It goes back to lawyers thinking and acting like their business counterparts. Speak the language of, say, capturing revenue loss, or reducing cycle time, or making the sales process more efficient, and you will have their attention—and their trust.

The Four Faces of Today’s General Counsel

Once kept at arm’s length from the C-Suite, today’s general counsel has a hand in every decision affecting the company, with a role defined four ways:

- **Advisor:** As a filter for business initiatives, the GC guides companies to decisions that are ethical, legal—and executable.
- **Steward:** Advising on risk and corporate governance issues, based on a detailed understanding of company organization and operations.
- **Strategist:** Working proactively with finance or business units, the GC vets business development concepts or transactions at the outset to identify potential fatal flaws.
- **Business Partner:** Leveraging the legal experience for competitive advantage and profitability.

TT: The environment of heightened regulatory scrutiny and risk factors in the marketplace obviously exerts pressure on companies and the general counsel’s office. Rather than view this as a burden, however, smart companies are responding by rewriting the rules of who sits at the table and contributes. When you abandon silos and assembly line thinking and engage legal—along with other diverse voices—in collaboration and open dialog, the result can only be improved strategic conclusions and better business results.
Intrapreneurship has existed long before the term was even coined in the 1970's. Still, this career path isn't popular among African American and Latino employees. Yet Brenda L. Gill, Esq. is an advocate for intrapreneurship. A corporate attorney at Fortune 500 company, Thomson Reuters, Gill, who grew up in a working class home in Brooklyn, N.Y., has always "had a belief that my talents and my hard work could take me far." She used that belief to expand her role at the company, which defines itself as the world's leading source of information for financial services businesses and leading decision makers in the financial markets, powered by an international news organization.
Gill’s humble beginnings taught her how to “step out on faith.” She theorizes that while those in the majority are experientially aligned to the corporate culture, people of color aren’t always trained to vocalize innovative ideas or pioneer endeavors. Instead they opt to leave their company and start a small business. But she warns, that the road to successful entrepreneurship is challenging and may not be the best option.

“The more that the market tightens, the more that corporations continue to merge and get bigger...the harder it’s going to be to [become] an entrepreneur and do anything that competes with the large entrenched entities,” warns Gill.

An intrapreneur is an employee who uses creativity and risk taking to turn an idea into a profitable venture while operating within a large corporation. Often an intrapreneur is rewarded with corporate funding and an elevated position, which allows them to implement the development of their idea. According to Gill, an intrapreneur enjoys the “hallmarks of the fun side of entrepreneurial activities” without risks or exposure. In addition, an expanded role in the company leads to expanded responsibilities and generally, a commensurate salary.

Her “aha” moment took place when she recognized that structural changes in the global market like globalization and technology shifts were causing Thomson Reuters’ clients to swiftly and dramatically become less stable. Thomson Reuters wanted to designate immediate responses. She devised a solution that sought to address the root cause of the problem by creating an applied strategist team that focused on responding to external factors quickly. She also aimed to make the global accounts team faster and smarter about their deals in order to flexibly respond to dynamic market changes. As a result, Thomson Reuters established the Global Accounts Strategy team and made her head strategist for this purpose.

The team is part of the Global Accounts Sales Channel. They are responsible for the corporation’s top tier accounts such as Goldman Sachs, Deutsche Bank and Nomura Group, some of the largest global financial institutions. “Our team is responsible for bringing strategic insight and innovation to this team,” says Gill. “We analyze the deals, processes and market trends to gather and share best practices. These shared best practices reduce cycle time and improve the effectiveness of this worldwide team.”

Now Gill advocates that more employees become intrapreneurs. Here’s how:

BUILD YOUR REP
Before becoming an intrapreneur, you must establish credibility as a competent player and illustrate that you can deliver on your word. You must also gain “sponsors” who can advocate on your behalf.

While working as a corporate attorney at Thomson Reuters for two years, Gill built a reputation for getting results and when she presented her idea, she was greeted as an effective employee.

ALIGN WITH THE COMPANY
Your idea must be aligned with the company’s mission, goals and priorities. Unlike entrepreneurship, in intrapreneurship “you are still part of a larger organization with politics, with guidelines, with structure, and with expectations.” You can be creative and innovative, says Gill, just remain connected to the company’s objectives.

THE IDEA
Envision ways to make something work better, easier or quicker—whether it’s a new product or just a smarter technique. “You don’t have to think of a multi-million dollar opportunity,” nor a cure for cancer, says Gill. Your idea just “has to be a logical extension of something that seems like it would have value for the company.”

Make sure the idea is unique to your individual strengths and skills. If not, the corporation can just adopt the idea and give it to someone else to implement.

DEVELOP YOUR VISION
Study your market, the corporation’s market and the company culture. Design a business plan outlining your execution of the idea, the effect it will have on the business, the value proposition of the business, its tie to the mission, how it helps the company and how long the implementation cycle will take. Lastly, delineate a marketing plan to sell your idea to the company.

A SECOND OPINION
Share your idea with trusted mentors, sponsors and friends both outside and inside the office to get honest feedback about your proposal. If the idea isn’t well thought out, you’ll ruin your credibility among colleagues.

ACTION!
Finally, Gill says, “You will be responsible for the implementation of your idea. As there is no blueprint for this new adventure, you will likely encounter many interesting twists and turns; but it’s yours to own. Embrace it, enjoy it, continue to learn and grow, and the experience itself will be its own reward.”

Selena Hill is a New York-based journalist, a contributor to NV and the content driver for nvmagazine.com.
Do the Right Thing
Networking, Mentoring, Business and Leadership Development for the Diverse Attorney

During the New York State Bar Association’s 2011 Annual Meeting, the NYSBA Committee on Diversity sponsored a roundtable discussion titled “Do the Right Thing.” The panelists shared their thoughts on the challenges and best practices with respect to the crucial skills of networking, mentoring and business and leadership development. What follows is a slightly edited transcript of that discussion.

Panelists

Lillian M. Moy, Executive Director, Legal Aid Society of Northeastern New York
I. Javette Hines, Senior Vice President, Supplier Diversity and Sustainability, Citigroup (Citi)
Brenda L. Gill, Vice President, Head of Strategy for Global Accounts, Thomson Reuters Markets
Stacey Schwartz, Diversity Development & Programs Supervisor, Skadden, Arps, Slate, Meagher & Flom, LLP

Betty Lugo, Partner, Pacheco & Lugo, Attorneys at Law
James P. Chou, Past President, Asian American Bar Association of New York; Senior Counsel, Akin Gump Strauss Hauer & Feld LLP
William Edwards, Attorney, Enforcement Division, U.S. Securities & Exchange Commission

Introduction

Moy: These skills – networking, mentoring, business and leadership development – are so interrelated. Can we really have successful business development without good networking skills? Can we learn leadership skills from our mentors? Can we develop our leadership and business without good mentoring?

Hines: Business development is essential to ongoing success. My focus especially will be on mentoring as an essential ingredient to success. To find the right mentor,
understand that networking is not simply meeting people at a function. It is purposefully developing and cultivating a community of relationships that enrich and enhance both your life and career. It is an endeavor that requires that you have goals and objectives for your networking activities and to be intentional in pursuing those goals. It requires you to understand the message and "brand" that you want to communicate to others.

**Networking**

**Chou:** My focus will be on networking, which is important for our careers. Many of us haven’t been taught how to network and have had to learn this later in our careers. In my experience, networking can lead to many business and professional opportunities. You never know where a contact will lead -- your next client, a new mentor, a political appointment, etc.

**Lugo:** I believe that good networking skills are crucial to business development. In 1992 I founded the first Hispanic women-owned law firm in New York at One World Trade Center. In order to develop our business, both my business partner Carmen A. Pacheco and I drew from our business contacts and networked a great deal. We marketed ourselves and acted as our own publicist. As a result we have developed a brand that is well respected within our community and the legal profession. We attended and spoke at numerous conferences and events that specialized in our areas of practice: Banking, Corporate, Commercial and Insurance Litigation. We conducted free seminars for startup businesses in corporate and government offices, churches, libraries and banks. We assisted many small businesses in connecting with the Wall Street community in terms of joint venture, access to capital and business development.

**Moy:** Networking – how do you learn what your parents can’t teach you?

AABANY [Asian American Bar Association of New York] has a wonderful presentation on how to learn more about networking that is applicable to many different contexts.

**Chou:** I started out as a typical associate – staying in my office and working all the time. I didn’t really begin networking until I came to AABANY at the suggestion of my client – the then-law chair of the Manhattan Democratic Party – who I was working with on the landmark case of *Lopez Torres v. New York State Board of Elections*. He suggested that getting involved in a specialty bar was a good way to develop my career and explore opportunities. He was right – my involvement with AABANY opened a new world for me. I met, befriended and actively developed friendships with colleagues, mentors, and business contacts. Through these experiences, I have come to understand that networking is not simply meeting people at a function. It is purposefully developing and cultivating a community of relationships that enrich and enhance both your life and career. It is an endeavor that requires that you have goals and objectives for your networking activities and to be intentional in pursuing those goals. It requires you to understand the message and “brand” that you want to communicate to others.

Good networking takes practice: attending different functions; knowing your “audience.” After getting business cards, follow up by phone or email. Set up a lunch and cultivate the relationship.

**Gill:** Branding is a huge part of this: what is your message? Personal branding is the creation of a living asset. This includes developing an appearance that is uniquely distinguishable. Develop your best elevator pitch. Start by asking three trusted mentors to describe your unique characteristics. Use this information to help craft a message tailored to your audience – sometimes lawyers, sometimes business contacts. Start by showing your knowledge and tailor your conversation.

**Moy:** What do we say to people who say that is so phony and insincere?

**Gill:** It’s human. Talk to people like you do your friend – not necessarily about business. I like the color you’re wearing. Tell a success story. Someone came up to me after I did a PLI panel and said I would like to talk to you for 15 minutes. She made an appointment. She was on time; she had prepared a few questions.

**Schwartz:** The 15-minute telephone call – even if you’re unemployed. Follow up and make it happen. It feels good to be able to help people. It may feel awkward but remember networking to make a move should be framed
women who balance work and personal life the way I want to balance it. She might be someone who has not necessarily achieved balance, but who works on it. I also enjoy being a mentor.

**Lugo:** I was mentored by Justice Irma Vidal Santaella, the first Hispanic woman elected to the Supreme Court, in Bronx County in 1984. I first met her after having received a congratulatory note on my passing the New York State Bar Examination. Judge Santaella wrote a similar letter to all attorneys with a Spanish surname who were on a list in the *New York Law Journal* as having passed the bar and invited them to meet with her. I visited with her in court and she was quite gracious and we became good friends. We started our firm in the World Trade Center at her recommendation as being a safe place for two women to start a firm. She continued to mentor us and invited us to social gatherings at her home where we met members of the judiciary, politicians, dignitaries and community leaders.

We in turn have mentored many young students, associates and businesses. We adopted Public School 274 in Bushwick section of Brooklyn, New York, and awarded scholarships to a group of fifth graders. We also follow their progress and assist them. We hire high school and college interns and mentor them in their interest in the legal field. We also actively mentor law students and young associates. I try to be very hands-on and mentor on the basics such as school, education, work ethic, courtesy, professionalism, respect, how to interact with people, even how to choose a mentor.

**Edwards:** Most important to me is to have substantive similarities. You might also want a co-racial confidante – someone in your ranks or above. It is very important to have someone to talk to when negative or biased comments come from a client or colleague. But on a day-to-

**Edwards:** Social networking – I always counsel young lawyers that Facebook is a no-no because of the structure of Facebook. I like LinkedIn as a better tool for professional networking.

**Hines:** Definitely go with LinkedIn and limit your Facebook usage.

**Gill:** Do not take the card if you are not going to follow up. You can even use an old fashioned method such as email.

**Mentoring**

**Hines:** What is mentoring versus sponsorship?

**Gill:** Mentoring would often be someone who looks like me: I would talk about my next job. I might talk to them about friendship issues. I do distinguish mentoring from sponsorship. My sponsors have tended to be people who do not look like me. My sponsors were responsible for me getting the role I have at Thomson Reuters, which didn’t previously exist. My sponsors knew my reputation and credibility and they would speak up for me when I was not there.

**Edwards:** Many of my mentors do not look like me and I deliberately looked to substantive experts to develop my own substantive expertise.

**Schwartz:** Formal mentorship at Skadden lasts three years or longer and your mentor and you have clearly defined roles. In our experience, a formal, tailored program seems to work better so the mentor and mentee understand the expectations, such as how often you will meet. Informal mentoring has been very helpful to me. I look for mentors who have work/life balance, which I seek to achieve, and I try to create relationships with
day basis there will be projects and assignments within your practice group, and it is absolutely essential to navigate with guidance. Knock on a door – be a pest. In New York City, so many lawyers are liberals and they would love to have an attorney of color seek them out. They will bend over backwards for you. Remember, you do have allies in the firm – seek them out as soon as possible.

Hines: How do you move from networking to mentoring?

Chou: Your relationships will develop and evolve differently. Some will be more experienced and ideally situated to mentor and help you navigate your career. There will be some with whom you can be more candid. Others will develop into peers with whom you bounce ideas regarding substantive work. The mentoring relationship will often develop on its own, and informally, but it does often require you to be proactive in seeking out the mentor’s time.

Lugo: As a mentor, I’m proactive. I have told law students to get out and network. Always have at least one nice suit and go to different functions and meet people. If you’re my mentee and you need clothes, then I will take you shopping for clothes. Mates have to be able to follow through on their end to take full advantage of a mentoring relationship. Mentes have to have the ability and willingness to be on it – to have a professional appearance, to be accessible when the mentor can provide something valuable. The mentor must also take personal and family issues into consideration and be compassionate but proactive at all times.

Gill: To add, there is a continuum to what mentees should come prepared with. Mentes should be respectful of mentors’ time. Prepare an agenda and questions for your mentor to advise on. Mentes can ask me for 15 to 20 minutes of my time but should do some research on my background and experience so that our time together is beneficially utilized.

Schwartz: I have seen how awkward it can be for partners to give candid feedback. Sometimes the partner is not fully satisfied with the work product but is reluctant to give criticism because they are afraid to hurt someone’s development. Unfortunately, this is a place where it could be helpful to ameliorate the situation. Instead the partner will say, thanks, I’ll take it from here and the associate doesn’t know what he means by that. So, a mentee should follow up and ask for feedback that is candid and indicate their full appreciation of such feedback. We’re conscious about that in our mentoring program, such as the importance of candid feedback and we try to help partners and senior associates surface the issues that associates need to work on. They have to get down to the details of the day in terms of what to get done.

Hines: Whether your mentoring relationship is formal or informal, guidance at the beginning is very helpful. Mentes should say to the mentor, feel free to be candid. If it’s not working out, let me know.

Chou: I agree that a mentee has to come prepared. We’re all very busy, and the mentees must be prepared and conscious of the time demands on all of us. Mentes will often need to be proactive in scheduling time with mentors.

Hines: When does that stop? What if your efforts to schedule time with your mentor are just not working out?

Chou: Everyone is different. There are some that you have to keep following up on before they schedule something simply because they’re swamped. There are others where you know that after two or three calls without a response, it’s time to move on.

Hines: What about reverse mentoring?

Edwards: I haven’t had that experience but I would like to think that I try to give positive reinforcement to mentors for when they mentor their next person.

Gill: Thomson Reuters has a reverse mentoring program that is quite unique. Reverse mentoring is designed to help all participants gain a better understanding of the people who make up our business, share what we learn and make changes where needed. A reverse mentoring relationship involves an employee that is junior to, or of a different race, gender or sexual orientation than, the mentee, and who provides guidance to and shares experiences and insights with the mentee, who in this case is a more senior person. This creates a unique opportunity for

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those at different levels in the organization to share their experiences with Senior Leadership. The purpose is to have candid dialogue about each person’s unique set of experience – their perspective. Through the dialogue that typically occurs monthly over a period of six months, the mentee/mentor can discuss topics such as bias, diversity and cultural/regional differences. The reverse mentoring program helps the dominant group recognize that biases are natural, but there are negative outcomes that can arise from subconscious biases of the dominant group. It also helps people understand that some people can be the beneficiary of certain privileges based on how they look, while other people can suffer from negative assumptions based on how they look.

**Moy:** I don’t play golf, tennis or squash. How can I build a book of business?

**Edwards:** Some suggestions include co-authoring an article, getting your name out there; asking your partner to bring you to meetings with clients. Build substantive expertise and align yourself with a leader.

**Hines:** Be varied in your expectations. I do own golf clubs but they are rarely used. Substantively, I’m at the top of my game. I’m also a writer and a singer and try to let people get to know me as a person. I believe in doing substantial community outreach and civic activities.

**Lugo:** I golf and I sing karaoke. Everyone likes to get up and sing after a few drinks. I go to many different community activities and local parades. I try to be very involved in events where I can help others, and I attend many community events to meet people, network and generate business.

**Hines:** From the community perspective, I work on State Bar issues, with my sorority, and The Links, Incorporated.

**In the past, I have also been active with the Association of Black Women Attorneys and the New York Metro Chapter of the National Black MBA Association.**

**Moy:** So, does being a Bar leader lead to business?

**Chou:** In my experience, yes. Through my Bar involvement, I have gotten to know many in-house and general counsel. So my Bar service has definitely resulted in opportunities and new clients.

**Lugo:** Yes. You have to be proactive and let others know who you are and your specialty. It also provides you with a local platform for marketing. As former president of the Hispanic National Bar Association Region I, in 1993, and current chair of NYBSA Diversity Committee, I believe that Bar association activities helped me to market myself and my firm and we also began to take on high profile cases relevant to the community.

**Moy:** We asked the Bar presidents in the room for their thoughts about this: Ken Standard, no; Steve Younger, yes – had my best year; Assad Siddiqi, yes; John Higgins, led to many connections but not money.

Now, how about leveraging our own diversity as minority- or women-owned businesses?

**Lugo:** As minority- and women-owned businesses, we must seek out opportunities. To date, minority- and women-owned law firms and attorneys are still underrepresented in doing business with government and corporate America. I applaud Governor Paterson for recently passing a new law – the Business Diversification Act of New York. It requires state agencies to give 20% of their contracts to minority-and women-owned business enterprises – MWBEs. We plan to have a future CLE specifically on this act and how access to contracts for legal services with the state can be addressed. For start-
Hines: How do you advise young associates who are focused on building a practice and developing a leadership tool kit?

Schwartz: Focus on who you are talking to during the networking process. What are the key relationship skills?

Chou: Be proactive. Take on service and leadership roles in the community.

Hines: What about derailment figures to being considered a leader?

Lugo: Have we made any changes? I believe that there are some opportunities for minority and women attorneys but we are still relegated to fighting for a small piece of the pie. Even as the first Hispanic women-owned law firm in New York, it is still difficult to compete for business with the larger firms who have historically received the lucrative work from government and corporate America.

Gill: It starts with owning the room or acting as if we do. Sometimes we have to fake it until we make it and understand the law firm and corporate culture.

Hines: What is the nugget we want to leave the audience with about networking, mentoring and business relationships?

Leadership and Career Development

Hines: Let’s look at leadership and career development – what are the steps you took?

Gill: I’m what’s called an “intrapreneur.” Intrapreneurship is the act of behaving like an entrepreneur, except within a larger organization. It’s an employee initiative to undertake something new, without being asked to do so. According to Wikipedia, “the intrapreneur focuses on innovation and creativity and transforms an idea into a profitable venture, while operating within the organizational environment.” I created a value proposition that would help drive efficiencies within a group by harvesting/sharing the collective wisdom of that group. I developed a business and marketing plan and I strategically moved my career forward. I wanted to stay within the company so I re-tooled my career to get the job that I wanted. When I get a job, I’m already thinking of the next job and we all should be doing that.

Edwards: My focus at Wachtell was on white-collar work. I represented the defense side and the FCC noticed me. Six years later during my interview at the SEC, someone said, hey, I noticed you when you were there on the other side. So you never know what connections you make that will later become valuable. Your future is always in the background of what you’re doing now.
**Hines:** Don’t check out before you check out. When it was taking more time than I wanted to get to the next level, the answer seemed to be start looking, leave. However, my mentor said wait for the right opportunity and whatever you do, don’t check out before you actually “check out.”

**Edwards:** Don’t wait too long before you figure out what you want to be.

**Gill:** It’s your career – manage it like a business. Own your success. Do not be defined by society’s limitations. The difference between being ordinary and extraordinary is that little “extra.”

**Schwartz:** Know your skills and be able to articulate them. I’ve always liked the acronym SOAR – Situations, Observe, Action, and get a Result. Keep that in your back pocket.

**Chou:** Don’t just stay in the office all day and then go home. Go out and network and develop relationships. Get involved with Bar associations in your community because it will lead to work.

**Lugo:** Be positive, kind and responsible. Practice the golden rule. “Do unto others, as you would have others do unto you.” We must always thank and appreciate each other and we must always be professional and courteous.

**Questions and Answers**

**Question:** As golf is used for bonding and assignments – you may be minimizing its role?

**Gill:** Maybe you don’t play golf, but you have to find some other ways to get time with the right people.

**Chou:** There’s always poker and X-box. The point is that there are other common passions and interests that will naturally lead to relationships.

**Lugo:** We should play golf.

**Question:** I never thought of asking anyone to be my mentor. Was that a mistake?

**Gill:** It’s a very individualized decision.

**Lugo:** Do not limit yourself to your own group. Don’t limit yourself to the legal field. Explore all opportunities.

**Gill:** There are lots of places in business or elsewhere.

Like what you’re reading? To regularly receive issues of the NYSBA Journal, [join the New York State Bar Association](https://www.nysba.org) (attorneys only).
The Madonna Principle: Transforming to Thrive in Turbulent Times

By

Brenda L. Gill, Partner, Burgher Gray Jaffe LLP

The one thing that remains constant is change. Whether it’s the subprime meltdown or a seismic shift in our political systems, things are constantly in flux. Yet, people, and most particularly lawyers, tend to resist change. However, and I’m sure you’ve heard this before, “what you resist, persists.” Instead, one needs to consider transforming in order to thrive in turbulent times. We’ll call this process of adaption and transformation, The Madonna Principle.

Many of us have experienced turbulent times that have threatened to negatively impact or derail our career, whether it was a merger, dissatisfaction with career stagnation, changing family dynamics or market disruption. During these inflection points, we typically revert to the limited menu of career options that were presented to us during law school – working at a law firm, in-house, government, or non-profit. Yet, we are told when entering law school that we will learn to “think like a lawyer.” But thinking like a lawyer has less to do with case law and statutes and more to do with strategic thinking and problem solving. Like Anne-Marie Slaughter said in her article Thinking Like a Lawyer, Thinking like a lawyer is thinking like a human being, a human being who is tolerant, sophisticated, pragmatic, critical, and engaged. It means combining passion and principle, reason and judgment.

If we agree with Anne-Marie’s assessment, then we should be open to many career paths as the skills we have gained are easily transferable to many roles. Lawyers are intellectually agile, focused and analytical with an ability to deconstruct the most complex problems. There are some roles for which specific skills are required, like brain surgery. However, there are any number of untraditional roles that are available to us – strategy, HR, business executive, sales, and more.

Let me give you some examples from my own career. Of course, I started down the usual path, working at a large firm and transitioning from the firm to an in-house corporate legal job. After several years of working as in-house corporate lawyer, in the after-math of the subprime meltdown, I was called in for a meeting with the Head of Americas Sales when he asked, “What can we [his lawyers] do to help the sales teams more quickly respond to the seismic business disruptions that were impacting our clients?” I ruminated on the challenges over the weekend and posited that what the sales channel needed was a Head of Strategy for the Global Sales team. The sales channel needed the benefit of a team that could balance the external and internal factors against the sales challenges to provide proactive directional guidance. It would help to have a team that could synthesize: the externalities – market volatility, new regulations, technological shifts, political upheaval and more; with the internalities – corporate reorganization, product and service redesign, aggressive revenue targets and clearly-defined business/legal risk tolerances. The goal was to aggregate internal and external data to arrive at a more comprehensive approach to the challenges the sales teams were facing. It was a role...
that did not exist and I do not have an MBA. Yet, my training and demonstrated business savvy convinced the powers that be to create the role.

After my turn as a Head of Strategy for the Global Sales team and a National Business Development Director for a global consulting firm, one recruiter told me that it would be difficult for me to return to a legal job. Reinventing myself, yet again, I found myself a role as partner and head of the Technology and Intellectual Property practice group of Burgher Gray Jaffe. In my current role, I use my business development skills, my strategic thinking and my legal skills to provide a more comprehensive service to my clients. I am a trusted advisor because they know that I am more interested in solving their problems and taking a 360-view of the challenge, than focusing solely on the legal issues.

As the legal market continues to shift, many lawyers will have the opportunity to retool themselves. If you do a functional analysis of what we do day-to-day, you can see that there is a treasure trove of marketable skills sets that surround our critical legal skills. As a profession, we too can use “The Madonna Principle” to reinvent ourselves in order to thrive in turbulent times.

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i At the 2017 CYOC conference, Cari K. Dawson, Partner at Alston Bird, used this phrase to describe how she was tweaking her brand to add trusted strategic advisor to her outstanding credentials as a class action defense lawyer.

ii https://www.princeton.edu/~slaught/Commentary/On%20Thinking%20Like%20a%20Lawyer.pdf
I. DEFINITION OF ETHICS

Ethics has been defined as the dealing with what is good and bad and with moral duty and obligation. Ethics also deals with professional standards of conduct. Ethics is a major consideration in deciding whether to pay or deny a claim. An adjuster's duty is to gain a solid understanding of the law and the facts of the case, then provide benefits when due or deny them when not due.

II. WHY DO I NEED TO LEARN ABOUT ETHICS?

The Department of Financial Services may adopt reasonable rules necessary to implement provisions of law conferring duties upon the Department. The Department of Financial Services requires that adjusters handling workers' compensation claims obtain an adjuster's license. An adjuster shall subscribe to the Code of Ethics specified in the rules of the Florida Department of Financial Services. Fla. Stat. Sec. 626.878. The Code of Ethics shall be binding on all adjusters. Any person holding a license for 24 consecutive months or longer and who engages in any and all lines of adjusting must take continuing education classes every two years, two hours of which relate to ethics. Fla. Stat. Sec. 626.869(4)(a) and 626.2816. Violation of any provision of the Code of Ethics shall constitute grounds for administration action against the licensee, upon grounds that include, but are not limited to, that the violation demonstrates a lack of fitness to engage in the business of insurance. Fla. Admin. Code Sec. 69B-220.201 Additionally, a breach of any provision constitutes an unfair claims settlement practice. Fla. Admin. Code Sec. 69B-220.201. A willful violation of any rule outlined in the Code of Ethics shall subject the violator to a suspension or revocation of certificate of authority or license. Fla. Stat. Sec. 624.308(2).

III. CODE OF ETHICS

(Fla. Admin. Code Sec. 69B-220.24) The work of adjusting insurance claims engages in public trust. An adjuster must put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior and shall constitute a code of ethics that shall be binding on all adjusters:

(a) An adjuster shall not directly or indirectly refer or steer any claimant needing repairs or other services in connection with a loss to any person with whom the adjuster has an undisclosed financial interest or who will or is reasonably anticipated to provide the adjuster any direct or indirect compensation for the referral or for any resulting business.
(b) An adjuster shall treat all claimants equally; an adjuster shall not provide favored
treatment to any claimant. An adjuster shall adjust all claims strictly in accordance
with the insurance contract.

(c) An adjuster shall not approach investigations, adjustments, and settlements in a
manner prejudicial to the insured.

(d) An adjuster shall make truthful and unbiased reports of the facts after making a
complete investigation.

(e) An adjuster shall handle every adjustment and settlement with honesty and
integrity, and allow a fair adjustment or settlement to all parties without any
renumeration to himself except that to which he is legally entitled.

(f) An adjuster, upon undertaking the handling of a claim, shall act with dispatch and
due diligence in achieving a proper disposition of the claim.

(g) An adjuster shall promptly report to the Department any conduct by any licensed
insurance representative of the state which violates any provision of the Insurance
Code or Department rule order.

(h) An adjuster shall exercise extraordinary care when dealing with elderly clients to
assure that they are not disadvantaged in their claims transactions by failing
memory or impaired cognitive.

(i) An adjuster shall not negotiate or effect settlement directly or indirectly with any
third-party claimant represented by an attorney, if the adjuster has knowledge or
such representation, except with the consent of the attorney. For purposes of this
subsection, the term “third-party claimant” does not include the insured or the
insured’s resident relatives.

(j) An adjuster is permitted to interview any witnesses or prospective witnesses
without the consent of opposing counsel or party. In doing so, however, the adjuster
shall scrupulously avoid any suggestion calculated to induce a witness to suppress
or deviate from the truth, or in any degree affect the witness’s appearance or
testimony during deposition or at the trial. If any witnesses making or giving a
signed or recorded statement so requests, the witness shall be given a copy of the
statement.

(k) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor
advise against the retention of counsel to protect the claimant’s interest.

(l) An adjuster shall not attempt to negotiate with or obtain any statement from a
claimant or witness at a time that the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss. The adjuster shall not conclude a settlement when the settlement would be disadvantageous to or to the detriment of, a claimant who is in the traumatic or distressed state described above.

The carriers still have the right and the obligation to maintain direct contact with a claimant, notwithstanding attorney representation, to insure that the injured workers understand their rights and responsibilities. Maintaining direct contact, however, does not permit negotiating settlements directly with represented claimants without their attorney's permission.

(m) An adjuster shall not knowingly fail to advise a claimant of the claimant's claim rights in accordance with the terms and conditions of the contract and of the applicable laws of this state. An adjuster shall exercise care not to engage in the unlicensed practice of law as prescribed by the Florida Bar.

(n) A company or independent adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release, unless advance written approval by the insurer can be demonstrated to the Department. Except as provided above, a company or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

While this rule is primarily directed at liability adjusters, it applies to Workers' Compensation adjusters as well. A joint stipulation for a washout settlement in Workers' Compensation cases is such a release and must be prepared by an attorney.

(o) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.

(p) No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm. No person shall, as a company or independent adjuster represent him or any insurer or independent adjusting firm against any person or entity that the adjuster previously represented as a public adjuster.

(q) A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy. No insurer, independent adjuster, or company adjuster shall represent or imply to any claimant
that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.

(r) No public adjuster, while so licensed in the Department's records, may represent or act as a company adjuster, independent adjuster, or general lines agent.

(s) A company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim shall provide at least 48 hours notice to the insured or claimant prior to scheduling a meeting with the claimant or an on-site inspection of the insured property. The insured or claimant may deny access to the property if this notice has not bee provided.

IV. VIOLATIONS OF THE CODE OF ETHICS

A. The Department of Financial Services shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, solicitor, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exists. Fla. Stat. Sec. 626.611.

(1) Lack of one or more of the qualifications for the license or appointment as specified in this code.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this code.

(4) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.

(5) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(6) If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contact.
(7) Demonstrated a lack of fitness or trustworthiness to engage in the business of insurance.

(8) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(10) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in the conducting of business under the license or appointment.

(11) Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his/her commission with another.

(12) Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer service representative for the purpose of soliciting or handling "controlled business" as defined in s. 626.730 with respect to general lines agents, s. 626.784, with respect to life agents, and s. 626.830 with respect to health agents.

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(15) Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of any application for workers' compensation coverage under Chapter 440 containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

(16) Sale of an unregistered security that was required to be registered pursuant to chapter 517.
In transactions related to viatical settlement contracts as defined in s. 626.9911:

A) commission of a fraudulent or dishonest act
B) no longer meeting the requirements for initial licensure
C) having received a fee, commission, or other valuable consideration for his/her services with respect to viatical settlements that involved unlicensed viatical settlement providers or persons who offered or attempted to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911 and who were not licensed life agents
D) dealing in bad faith with viators

B. The Department of Financial Services may, at its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, solicitor, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exists under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611. Fla. Stat. Sec. 626.621.

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the Department.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(3) Violation of any lawful order or rule of the Department, commission or office.

(4) Failure or refusal, upon demand, to pay to any insurer he or she represents or has represented, any money coming into his hands or belonging to the insurer.

(5) Violation of the provision against twisting, as defined in s. 626.9541(1)(l).

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself to be a source of injury or loss to the public.
(7) Willful over-insurance of any property or health insurance risk.

(8) Having been found guilty of or having pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of one year or more under the laws of the United States of America or any state thereof or under the laws of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(9) If a life agent, violation of the code of ethics.

(10) Cheating on an examination required for licensure or violating test center or examination procedures published orally, in writing, or electronically at the test time by authorized representatives of the examination program administrator. Communication of test center and examination procedures must be clearly established and documented.

(11) **Failure to inform** the Department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or any state thereof, or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(12) Knowingly aiding, assisting, procuring, advising or abetting any person in the violation of or to violate a provision of the insurance code or any order or rule of the Department.

C. **Intentional Action** Under Florida law “(a) insurance carrier who utilizes the process of administering benefits to intentionally injure a worker is not afforded (workers’ compensation) immunity” if the carrier’s conduct is sufficiently intention, egregious, or injuries. *Aquilera v. Inservices, Inc.* 905 So. 2d 84, 87, 98 (Fla. 2005). The *Aquilera* court severely disapproved of conduct by an insurance carrier where it “recklessly endangered (an employee’s) life” and “engaged in a pattern of action substantially certain to bring about (an employee’s) death.” *Id.* At 96. The court specifically noted a variety of actions by the carrier, including, but not limited to: improperly terminating benefits, blocking receipt of prescribed medications, improperly denying a request for urgent medical care, unilaterally cancelling medical testing, directly contacting the employee who was represented by counsel, encouraging the employee to lie to his attorney, and delaying surgery until the employee had been urinating blood and had blood in his feces for over ten months. *Id.* At 96. Thus, while recognizing that mere delays in payments or simple bad faith are not privately actionable in Florida, the court nevertheless noted that conduct of the sort described here goes far beyond what Florida workers’ compensation immunity provisions were designed to immunize. *Id.* At 92-94.
Recent cases post Aguilera include Grace v. Royal, 949 So. 2d 1074 (Fla. 3d DCA 2007), and Liberty Mutual v. Steadman, 968 So. 2d 592 (Fla. 2d DCA 2007).

D. Penalties and Fines for Crime

The Workers’ Compensation Act contains many prohibited activities throughout Chapter 440 which was consolidated into sections §440.105 and §440.106. For felony offenses listed in §440.105(4), the severity depends on the amounts of premiums or benefits involved. As the amount of benefits or premiums involved increases, the severity increases as follows (see §440.105(4)(f)):

1. If the amount is less than $20,000, the offense constitutes a third degree felony
2. If the amount is $20,000 or more, but less than $100,000, the offense constitutes a second degree felony
3. If the amount involved is $100,000 or more, the offense constitutes a first degree felony.

The maximum penalties are as follows according to §775.085, §775.083 and §775.084:

1. Second degree misdemeanors - $500 fine and 60 days in jail
2. First degree misdemeanors - $1,000 fine and one year in jail
3. Third degree felonies - $5,000.00 fine and five years in jail
4. Second degree felonies - $10,000.00 fine and 15 years in jail
5. First degree felonies - $10,000.00 fine and 30 years in jail

V. CONFIDENTIALITY REQUIREMENTS

A. There are two primary areas where the adjuster has the statutory duty to protect disclosure of information pertaining to claimants.

1. Drug Testing - Florida Stat. Sec. 440.102 and Division Rule 59A-24 sets forth stringent guidelines for releasing the results of drug tests under the drug free workplace program. Unless a detailed signed release is executed by the claimant, no results of the drug test may be disseminated to any other party. Further, the information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant.

   It is very important that all such reports be kept in a secure location where third parties do not have access, and further, that information not be provided to unidentified parties regarding the results of claimant’s drug testing.

2. AIDS - Pursuant to the Florida Omnibus AIDS Acts, except in limited situations, all HIV and AIDS test results are confidential and no person who
has obtained or has knowledge of a test result, pursuant to this Section, may
disclose or be compelled to disclose the identity of any person upon whom
a test was performed or the results of such a test, in a manner which permits
the identification of the subject of the test.

However, results may be disclosed to the patient's attorney or by order of
the Court. Therefore, it is very important to keep confidential all the medical
records of claimants with HIV or AIDS and further, never disclose any
information, even if the claimant does not have the disease, via the
telephone.
Materials

U.S. Bankruptcy Code: see sections 101, 362, 544, 548, 549

https://www.law.cornell.edu/uscode/text/11
https://www.usbankruptcycode.org/

Federal Rules of Bankruptcy Procedure:

https://www.federalrulesofbankruptcyprocedure.org/

Bankruptcy Basics:

http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics


https://www.law.cornell.edu/supremecourt/text/498/279


https://supreme.justia.com/cases/federal/us/564/462/opinion.html

Suggested Blogs:

ABI Blog Exchange: https://www.abi.org/member-resources/blogs

(St John’s Case Blog: https://www.abi.org/member-resources/st-johns-case-blog)

Credit Slips: http://www.creditslips.org/


Bankruptcy Law Network: http://www.bankruptcylawnetwork.com/blog/

Additional Materials:

Collier on Bankruptcy (16th ed. 2010)
Asylum 101

A primer in obtaining Asylum for Immigrants
What is Asylum?

- Applicants who meet the definition of a “refugee” may be granted asylum.
- Refugee: “Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person habitually resided, and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A)(2005).
Elements of a Claim

1. Well founded fear of persecution;
2. Nexus between the persecution and their membership in a protected class; and
3. The persecution was committed by the government or actors the government cannot/will not control

Well Founded Fear - Future Persecution

Future Persecution:

- Pattern and practice of persecution against similarly situated people


- Subjective: the applicant must have a “genuine” fear of being persecuted
- Objective: Persecution need not be likely – a “reasonable possibility” that persecution will occur suffices
Well Founded Fear Presumed: Past Persecution

- Past Persecution: presumption of well founded fear.
- Physical Harm (kidnapping, beatings, arrests, rape, etc.)
- Economic Harm
- Psychological harm
- Relocation within the country impossible
- No change in circumstances

- 8 C.F.R. § 1208.13(b)(1).
The fear of persecution must be on account of one of the five protected grounds:

- Race
- Religion
- Nationality
- Membership in a Particular Social Group
- Political Opinion

“On Account of”
- There must be a clear connection between the persecution and the protected ground
- Mixed motives: OK, if a protected ground is “one central reason”
- Direct/Circumstantial evidence

Protected classes:
- All qualify, but some easier than others
Persecution by the Government or Actors the Government Cannot/Will Not Control

- Government persecutors:
  - Police
  - Lawmakers
  - Army/Military Officials
  - All other state actors

- Actors the government Cannot/Will Not Control:
  - Paramilitary groups
  - Revolutionary groups
  - Gangs
  - Alternative: show the government refused to protect you
Other Eligibility Requirements

 1 year Application Deadline
 Persecutor Bar
 “Material Support” Bar:
   “[C]ommit[ting] an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training [to a terrorist organization].” – 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)
   Terrorist activity: Among others “[T]he use of any explosive firearms or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial property damage."
   In re M-H-Z, 26 I. & N. Dec. 757, 764 (B.I.A. June 9, 2016) - giving food and other support to the FARC after being threatened constitutes material support.
Other Eligibility Requirements (continued)

- Firm Resettlement bar
- Conviction of a “particularly serious crime”
- Safe Third Country Exception
Proving a Claim

- REAL ID Act:
  - Credible testimony of the applicant alone can support a grant of asylum
  - Best Practice: submit as much corroborating evidence as possible

- Typical Issues:
  - Obtaining proof
  - Getting (and keeping) the applicant’s story straight
Application Process

- Asylum Office
- Immigration Court
Asylum Office Procedures

- Less formal
- Approximately 2 hour interview with AO, evidence submitted two weeks in advance
- Decision (usually) within 2 weeks
- Outcomes:
  - Grant of Asylum
  - Referral to Immigration Court
Immigration Court

- Adversarial
- Full Merits Hearing
- Onerous procedural requirements (briefs, evidentiary lists, etc.)
- Backlog
- Outcomes: Grant or denial
Asylum Benefits

- Work Authorization
- Permanent Grant: eligible for a green card after 1 year
- Path to citizenship: Green card after 1 year → Citizenship after 5
- Derivative status: family can also obtain status
Questions
Section 202.1. Application of Part; waiver; additional rules; application of CPLR; definitions

(a) Application. This Part shall be applicable to civil actions and proceedings in the Supreme Court and the County Court.

(b) Waiver. For good cause shown, and in the interests of justice, the court in an action or proceeding may waive compliance with any of the rules in this Part, other than sections 202.2 and 202.3, unless prohibited from doing so by statute or by a rule of the Chief Judge.

(c) Additional rules. Local court rules, 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 CPLR. The provisions of this Part shall be construed consistent with the Civil Practice Law and Rules (CPLR), and matters not covered by these provisions shall be governed by the CPLR.

(e) Definitions.

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

(2) The term clerk shall mean the chief clerk or other appropriate clerk of the trial court unless the context otherwise requires.

(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.

Credits


22 NYCRR 202.1, 22 NY ADC 202.1
Section 202.2. Terms and parts of court

22 NYCRR 202.2

Section 202.2. Terms and parts of court

(a) Terms of court. A term of court is a four-week session of court, and there shall be 13 terms of court in a year, unless otherwise provided in the annual schedule of terms established by the Chief Administrator of the Courts, which also shall specify the dates of such terms.

(b) Parts of court. A part of court is a designated unit of the court in which specified business of the court is to be conducted by a judge or quasi-judicial officer. There shall be such parts of court as may be authorized from time to time by the Chief Administrator of the Courts.

Credits


22 NYCRR 202.2, 22 NY ADC 202.2
Section 202.3. Individual assignment system; structure

(a) General. There shall be established for all civil actions and proceedings heard in the Supreme Court and County Court an individual assignment system which provides for the continuous supervision of each action and proceeding by a single judge. Except as otherwise may be authorized by the Chief Administrator or by these rules, every action and proceeding shall be assigned and heard pursuant to the individual assignment system.

(b) Assignments. Actions and proceedings shall be assigned to the judges of the court upon the filing with the court of a request for judicial intervention pursuant to section 202.6 of this Part. Assignments shall be made by the clerk of the court pursuant to a method of random selection authorized by the Chief Administrator. The judge thereby assigned shall be known as the "assigned judge" with respect to that matter and, except as otherwise provided in subdivision (c) of this section, shall conduct all further proceedings therein.

(c) Exceptions.

(1) Where the requirements of matters already assigned to a judge are such as to limit the ability of that judge to handle additional cases, the Chief Administrator may authorize that new assignments to that judge be suspended until the judge is able to handle additional cases.

(2) The Chief Administrator may authorize the establishment in any court of special categories of actions and proceedings, including but not limited to matrimonial actions, medical malpractice actions, tax assessment review proceedings, condemnation actions and actions requiring protracted consideration, for assignment to judges specially assigned to hear such actions or proceedings. Where more than one judge is specially assigned to hear a particular category of action or proceeding, the assignment of such actions or proceedings to the judges so assigned shall be at random.

(3) The Chief Administrator may authorize the assignment of one or more special reserve trial judges. Such judges may be assigned matters for trial in exceptional circumstances where the needs of the courts require such assignment.

(4) Matters requiring immediate disposition may be assigned to a judge designated to hear such matters when the assigned judge is not available.

(5) The Chief Administrator may authorize the transfer of any action or proceeding and any matter relating to an action or proceeding from one judge to another in accordance with the needs of the court.
(6) The Chief Administrator may authorize the establishment in any court or county or judicial district of a dual track system of assignment. Under such system each action and proceeding shall be supervised continuously by the individually assigned judge until the note of issue and certificate of readiness have been filed and the pretrial conference, if one is ordered, has been held. The action or proceeding then may be assigned to another judge for trial in a manner prescribed by the Chief Administrator.

Credits


22 NYCRR 202.3, 22 NY ADC 202.3
Section 202.4. County Court judge; ex parte applications in Supreme Court actions; applications for settlement of Supreme Court actions

Ex parte applications in actions or proceedings in the Supreme Court, and applications for the settlement of actions or proceedings pending in the Supreme Court, where judicial approval is necessary, may be heard and determined by a judge of the County Court in the county where venue is laid, during periods when no Supreme Court term is in session in the county.

Credits

Section 202.5. Papers filed in court, 22 NY ADC 202.5

Editorial Note: Compliance with subdivision (e) published in the Dec. 3, 2014 Register shall be voluntary from January 1 through February 28, 2015, and mandatory thereafter.

(a) Index number; form; label. The party filing the first paper in an action, upon payment of the proper fee, shall obtain from the county clerk an index number, which shall be affixed to the paper. The party causing the first paper to be filed shall communicate in writing the county clerk's index number forthwith to all other parties to the action. 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 action. Each such cover and first page also shall contain an indication of the county of venue and a brief description of the nature of the paper and, where the case has been assigned to an individual judge, shall contain the name of the assigned judge to the right of the caption. In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins. In addition, every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, except that papers that are fastened on the side may contain writing on both sides. Papers that are stapled or bound securely shall not be rejected for filing simply because they are not bound with a backer of any kind.

(b) Submission of papers to judge. All papers for signature or consideration of the court shall be presented to the clerk of the trial court in the appropriate courtroom or clerk's office, except that where the clerk is unavailable or the judge so directs, papers may be submitted to the judge and a copy filed with the clerk at the first available opportunity. All papers for any judge that are filed in the clerk's office shall be promptly delivered to the judge by the clerk. The papers shall be clearly addressed to the judge for whom they are intended and prominently show the nature of the papers, the title and index number of the action in which they are filed, the judge's name and the name of the attorney or party submitting them.

(c) Papers filed to commence an action or special proceeding. For purposes of CPLR 304, governing the method of commencing actions and special proceedings, the term clerk of the court shall mean the county clerk. Each county clerk, and each chief clerk of the Supreme Court, shall post prominently in the public areas of his or her office notice that filing of papers in order to commence an action or special proceeding must be with the county clerk. Should the county clerk, as provided by CPLR 304, designate a person or persons other than himself or herself to accept delivery of the papers required to be filed in order to commence an action or special proceeding, the posted notice shall so specify.

(d)
(1) In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:

(i) The paper does not have an index number;

(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an “et al” or otherwise does not contain a full caption;

(iii) The paper sought to be filed with the County Clerk is filed in the wrong court;

(iv) The paper is not signed in accordance with section 130-1.1-a of the Rules of the Chief Administrator; or

(v) The paper sought to be filed:

(a) is in an action subject to electronic filing pursuant to Rules of the Chief Administrator,

(b) is not being filed electronically, and either

(c) is not being filed by an unrepresented litigant who is not participating in e-filing, or

(d) does not include the notice required by section 202.5-b(d)(1) of this Part.

The county clerk shall require the payment of any applicable statutory fees, or an order of the court waiving payment of such fees, before accepting a paper for filing.

(2) A County Clerk or chief clerk shall signify a refusal to accept a paper by use of a stamp on the paper indicating the date of the refusal and by providing on the paper the reason for the refusal.

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or 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;
(ii) the date of an individual's birth, except the year thereof;

(iii) the full name of an individual known to be a minor, except the minor's initials;

(iv) 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; and

(v) any of the documents or testimony in a matrimonial action protected by Domestic Relations Law section 235 or evidence sealed by the court in such an action which are attached as exhibits or referenced in the papers filed in any other civil action. For purposes of this rule, a matrimonial action shall mean: an action to annul a marriage or declare the nullity of a void marriage, an action or agreement for a separation, an action for a divorce, or an action or proceeding for custody, visitation, writ of habeus corpus, child support, maintenance or paternity.

(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 section 216.1 of this Title 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 confidential personal information described in subparagraphs (1)(i) to (iv) of this subdivision is material and necessary to the adjudication of the action or 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) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section 105 of the Civil Practice Law and Rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by

(i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

Credits

22 NYCRR 202.5, 22 NY ADC 202.5

End of Document
Section 202.5-a. Filing by facsimile transmission

(a) Application.

(1) There is hereby established a pilot program in which papers may be filed by facsimile transmission with the Supreme Court and, as is provided in section 206.5-a of this Title, with the Court of Claims. In the Supreme Court, the program shall be limited to commercial claims and tax certiorari, conservatorship, and mental hygiene proceedings in Monroe, Westchester, New York and Suffolk Counties.

(2) Facsimile transmission for purposes of these rules shall mean any method of transmission of documents to a facsimile machine at a remote location which can automatically produce a tangible copy of such document.

(b) Procedure.

(1) Papers in any civil actions or proceedings designated pursuant to this section, including those commencing an action or proceeding, may be filed with the appropriate court clerk by facsimile transmission at a facsimile telephone number provided by the court for that purpose. The cover page of each facsimile transmission shall be in a form prescribed by the Chief Administrator and shall state the nature of the paper being filed; the name, address and telephone number of the filing party or party's attorney; the facsimile telephone number that may receive a return facsimile transmission, and the number of total pages, including the cover page, being filed. The papers, including exhibits, shall comply with the requirements of CPLR 2101(a) and section 202.5 of this Part and shall be signed as required by law. Whenever a paper is filed that requires the payment of a filing fee, a separate credit card or debit card authorization sheet shall be included and shall contain the credit or debit card number or other information of the party or attorney permitting such card to be debited by the clerk for payment of the filing fee. The card authorization sheet shall be kept separately by the clerk and shall not be a part of the public record. The clerk shall not be required to accept papers more than 50 pages in length, including exhibits but excluding the cover page and the card authorization sheet.

(2) Papers may be transmitted at any time of the day or night to the appropriate facsimile telephone number and will be deemed filed upon receipt of the facsimile transmission, provided, however, that where payment of a fee is required, the papers will not be deemed filed unless accompanied by a completed credit card or debit card authorization sheet. The clerk shall date-stamp the papers with the date that they were received. Where the papers initiate an action, the clerk also shall mark the papers with the index number. No later than the following business day, the clerk shall transmit a copy of the first page of each paper, containing the date of filing and, where appropriate, the index number, to the filing party or attorney, either by facsimile or first class mail. If any page of
the papers filed with the clerk was missing or illegible, a telephonic, facsimile, or postal notification transmitted by
the clerk to the party or attorney shall so state, and the party or attorney shall forward the new or corrected page
to the clerk for inclusion in the papers.

(c) Technical failures. The appropriate clerk shall deem the UCS fax server to be subject to a technical failure on a given
day if the server is unable to accept filings continuously or intermittently over the course of any period of time greater
than one hour after 12:00 noon of that day. The clerk shall provide notice of all such technical failures by means of the
UCS fax server which persons may telephone in order to learn the current status of the service which appears to be down.
When filing by fax is hindered by a technical failure of the UCS fax server, with the exception of deadlines that by law
cannot be extended, the time for filing of any paper that is delayed due to technical failure shall be extended for one day
for each day in which such technical failure occurs, unless otherwise ordered by the court.

Credits


22 NYCRR 202.5-a, 22 NY ADC 202.5-a
Section 202.5-b. Electronic filing in Supreme Court; consensual program

(a) Application.

(1) On consent, documents may be filed and served by electronic means in Supreme Court in such civil actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section.

(2) Definitions. For purposes of this section:

(i) electronic means shall mean any method of transmission of information between computers or other machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

(ii) NYSCEF shall mean the New York State Courts Electronic Filing System and the NYSCEF site shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile;

(iii) e-filing, electronic filing and electronically filing shall mean the filing and service of documents in a civil action by electronic means through the NYSCEF site;

(iv) an authorized e-filing user shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an action shall include a special proceeding and an e-filed action shall mean an action in which documents are electronically filed and served in accordance with this section;

(vi) hard copy shall mean information set forth in paper form;

(vii) 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;
(viii) party or parties shall mean the party or parties to an action or counsel thereto;

(ix) unrepresented litigant shall mean a party to an action who is not represented by counsel;

(x) expedited processing shall mean the expedited registration of a person as an authorized e-filing user; and

(xi) Resource Center shall mean the NYSCEF Resource Center, the e-filing help center available at (646) 386-3033 or efile@nycourts.gov and through the NYSCEF site.

(b) E-filing in Actions in Supreme Court. Except as otherwise provided in section 202.5-bb of this Part, the following shall apply to all actions in Supreme Court:

(1) Commencing an action by electronic means. A party may commence any action in the Supreme Court in any county (provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph (a)(1) of this section) by electronically filing the initiating documents with the County Clerk through the NYSCEF site. When so authorized, a petition to commence a proceeding for review of a small claims assessment pursuant to Real Property Tax Law section 730 may be e-filed, including as follows: the petition, in the form prescribed by the Chief Administrator in accordance with such section, shall be completed and signed in hard copy as provided in that section and shall be e-filed by transmission to the NYSCEF site, in conformity with procedures established by the site, of a text file containing all of the information set forth in the completed and executed hard copy petition (exclusive of the signature(s)). Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party's failure to consent to participation in electronic filing and service shall not bar any other party to the action from filing documents electronically with the County Clerk and the court or serving documents upon any other party who has consented to participation. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

(ii) Consent to e-filing; how obtained. Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice regarding availability of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing. A party who seeks to use e-filing in a pending action shall serve said notice upon all other parties. Whenever such a
notice is served, proof of service thereof shall be transmitted to the court. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. Except for an unrepresented litigant, a party served with such a notice shall promptly file with the court and serve on all parties of record either a consent or a declination of consent. An authorized e-filing user may file a consent electronically in the manner provided at the NYSCEF site. Consent may also be obtained by stipulation. An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate. Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice.

(c) Authorized E-filing Users, Passwords and Registration.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter “filing agent”) may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business as required by the jurisdiction in which the business is operated (hereinafter “small claims assessment review filing agent”) may also register as an authorized e-filing user, by solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.

(ii) How to register. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form.
(3) Identification and password. Upon registration, an authorized e-filing user shall be issued a confidential User Identification Designation ("User ID") and a password by the Unified Court System ("UCS"). An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) User ID and password; use by authorized person. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) Electronic Filing of Documents.

(i) Electronic filing required; format of e-filed documents; statement of authorization. In any action subject to e-filing, all documents required to be filed with the court by a party that has consented to such e-filing shall be filed and served electronically, except as provided in this section. Documents shall be e-filed in text-searchable portable document format (PDF-A) and shall otherwise comply with the technical requirements set forth at the NYSCEF site. A filing agent (other than one employed by a governmental entity) shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel.

(ii) Emergency exception; other hard copy filings. Documents that are required to be filed and served electronically in accordance with this section or section 202.5bb(c)(1) of this Part may nevertheless be filed and served in hard copy where required by statute or court order, where the document is an application that may by statute be presented without notice, or provided the document is accompanied by the affirmation or affidavit of the filing attorney or party stating that:

(a) a deadline for filing and service fixed by statute, rule or order of the court will expire on the day the document is being filed and served or on the following business day; and

(b) the attorney, party or filing agent therefor is unable to file and serve such document 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 this paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter.

(iii) Form of notice required on hard copy filing. Where an action is subject to e-filing and a party or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that the party or attorney:

(a) is authorized to and does withhold consent to e-filing;
(b) is exempt from having to e-file; or

(c) is authorized or required to file such document in hard copy pursuant to an exception provided in these Rules or other provision of law.

(2) Payment of Fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee:

(i) such credit card information as shall be required at the NYSCEF site to permit a card to be charged by the County Clerk; or

(ii) the form or information required by the County Clerk to permit him or her to debit an account maintained with the County Clerk by an attorney or law firm appearing for a party to the action; or

(iii) such information as shall be required at the NYSCEF site to permit an automated clearing house debit to be made; or

(iv) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk.

(3) Filing and receipt of documents; notification.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the NYSCEF site. A document is filed when its electronic transmission or, in the case of a petition that is e-filed by submission of a text file as provided in paragraph (b)(1) of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in subparagraph (2)(i), (ii) or (iii) of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk.

(ii) Notification. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and all other parties participating in e-filing. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.
(4) Official record; maintenance of files; working copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those documents in hard copy form. All documents maintained by the County Clerk as the official electronic record shall also be filed in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.

(5) Decisions, orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in hard copy to the court. Unless the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk.

(6) Exhibits and other documents in hard copy. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrator, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically.

(e) Signatures.

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed);

(v) in a small claims assessment review proceeding, it is a petition recorded by the NYSCEF site upon the filing of a text file as provided in paragraph (b)(1) of this section, provided that prior to filing, the document was signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings in the matter, including article 78 review and any appeals, and must be made available during the proceeding upon request of the respondent or the court); or
(vi) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and
requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130 of this Title. A document shall be considered to have been signed by an attorney or
party in compliance with section 130-1.1-a of this Title if it has been signed by such attorney or party as provided
in paragraph (1) of this subdivision and it bears the signatory's name.

(3) Certification of Signature. A judge, party or attorney may add his or her signature to a stipulation or other filed
document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form
prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article
3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as
required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding
to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in
paragraph (b)(1) of this section, a hard copy of the petition, fully completed and signed as set forth in that paragraph,
shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section 730 of the
Real Property Tax Law, unless otherwise stipulated. 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.

(2) Service of interlocutory documents in an e-filed action.

(i) E-mail address for service. Each party in an action subject to electronic filing that has consented thereto shall
identify on an appropriate form an e-mail address at which service of interlocutory documents on that party
may be made through notification transmitted by the NYSCEF site (hereinafter the “e-mail service address”).
Each filing user shall promptly notify the Resource Center in the event of a change in his or her e-mail service
address.

(ii) How service is made. Where parties to an action have consented to e-filing, a party causes service of
an interlocutory document to be made upon another party participating in e-filing by filing the document
electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit
electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of
the document received, the date received, and the names of those appearing on the list of e-mail service addresses
to whom that notification is being sent. Each party receiving the notification shall be responsible for accessing
the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in paragraph (h)(3)
of this section, the electronic transmission of the notification shall constitute service of the document on the e-
mail service addresses identified therein; however, such service will not be effective if the filing party learns that
the notification did not reach the address of the person to be served. Proof of such service will be recorded on
the NYSCEF site. A party may, however, utilize other service methods permitted by the CPLR provided that,
if one of such other methods is used, proof of that service shall be filed electronically.
(g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding availability of e-filing specified in paragraph (b)(2)(ii) of this section, to which response shall be made as set forth in that paragraph. A proposed intervenor or other non-party who seeks relief from the court in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent. If an added party or intervenor does not consent to e-filing, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.

(h) Entry of Orders and Judgments and Notice of Entry.

(1) Entry; date of entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically, which shall constitute entry of the order or judgment. The date of entry shall be the date on which transmission of the order or judgment is recorded at the NYSCEF site. Notwithstanding the foregoing, if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp.

(2) Notice requesting entry of judgment. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk, in a form specified by the County Clerk, a request for entry of judgment.

(3) Notification; service of notice of entry by parties. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.

(i) Technical Failures. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site 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. Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (d)(1) of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.

(j) Electronic Filing of Discovery Materials. In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation.
In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

(k) Copyright, Confidentiality and Other Proprietary Rights.

(1) Submissions pursuant to e-filing procedures shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to e-filing, any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. Unless otherwise permitted by the court, a motion for such an order shall be filed not less than ten days before the materials to which the motion pertains are due to be produced or filed with the court.

Credits


22 NYCRR 202.5-b, 22 NY ADC 202.5-b
Section 202.5-bb. Electronic filing in Supreme Court; mandatory program

(a) Application.

(1) Except where otherwise required by statute, all documents filed and served in Supreme Court shall be filed and served by electronic means in such classes of actions and such counties as shall be specified by order of the Chief Administrator of the Courts and only to the extent and in the manner prescribed in this section. Except to the extent that this section shall otherwise require, the provisions of section 202.5b of this Part shall govern electronic filing under this section.

(2) Notwithstanding the foregoing, the Chief Administrator shall not eliminate the requirement of consent to participate in electronic filing in the following classes of cases:

(i) matrimonial actions as defined by the civil practice law and rules;

(ii) election law proceedings;

(iii) proceedings brought pursuant to article 70 or 78 of the civil practice law and rules;

(iv) proceedings brought pursuant to the mental hygiene law;

(v) residential foreclosure actions involving a home loan as such term is defined in section 1304 of the real property actions and proceedings law other than actions commenced prior to September 1, 2017 in Erie, Essex, New York, Queens, Rockland, Suffolk and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed; and

(vi) proceedings related to consumer credit transactions as defined in subsection (f) of section 105 of the civil practice law and rules other than proceedings commenced prior to September 1, 2017 in Erie, New York, Onondaga, Rockland and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed.
Section 202.5-bb. Electronic filing in Supreme Court;..., 22 NY ADC 202.5-bb

(b) Commencement of Actions Under this Section.

(1) Mandatory commencement in general. Except as otherwise provided in this section, every action authorized by subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the County Clerk through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, an action otherwise required to be commenced electronically may or shall be commenced by the filing of initiating documents in hard copy where permitted or required by statute or court order, and may be so commenced provided 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 section 202.5b(d)(1) of this Part., and the filer shall file those documents with the NYSCEF site within three business days thereafter. For purposes of this section, such an action shall be deemed to have been commenced electronically.

(3) Service of initiating documents. Personal service of initiating documents upon a party in an action that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Civil Practice Law and Rules, or the Real Property Tax Law, 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 action 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 Actions 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 an action that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Addition of parties after commencement of action. Notwithstanding any other provision of this section, a party to be added in an action that has been commenced electronically in accordance with this section shall be served with initiating documents in hard copy together with the notice specified in paragraph (b)(3) of this section. A proposed intervenor or other non-party who seeks relief from the court in such an action shall make his or her application for such relief by electronic means as provided by the NYSCEF system.
(3) Emergency exception; other hard copy filings. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph, such documents may nonetheless be filed and served in hard copy where permitted by section 202.5b(d)(1) of this Part. 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 section 202.5b(d)(1) of this Part, and the filer shall, as required, file those documents with the NYSCEF site within three business days thereafter.

(d) County Clerk and Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. As provided in section 202.5(d)(1) of this Part, a County Clerk and a Chief Clerk of Supreme Court, as appropriate, shall refuse to accept for filing hard copies of documents sought to be filed in actions where such documents are required to be filed electronically.

(e) Exemptions From the Requirement of Electronic Filing.

(1) Exemption of unrepresented litigants. Notwithstanding the foregoing, an unrepresented litigant or a proposed intervenor or other non-party seeking relief from the court who is unrepresented is exempt from having to file and serve documents electronically in accordance with this section. No such party shall be compelled, directly or indirectly, to participate in e-filing. As to each unrepresented litigant, the clerk shall explain his or her options for e-filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the e-filing program only upon his or her request, which shall be documented in the case file, after he or she has been presented with sufficient information in plain language concerning the program. Where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.

(2) Exemption of represented parties. Notwithstanding the foregoing, an attorney or a representative of a property owner designated as such as provided in Real Property Tax Law section 730 ("small claims assessment filing agent"), shall be exempt from having to file and serve documents electronically in accordance with this section upon filing with the County Clerk and the clerk of the court in which the action is or will be pending a form, prescribed by the Chief Administrator, on which the attorney or small claims assessment filing agent certifies in good faith that he or she:

(i) lacks the 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).

(3) Exemption of counsel upon a showing of good cause. 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.
(4) Procedures applicable to exempt attorneys and small claims assessment filing agents. Where an attorney or small claims assessment filing agent 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 section 202.5-b(d)(1) of this Part. The County Clerk or the court, with the approval of the Chief Administrator, may require an exempt attorney or small claims assessment filing agent to submit an additional, unbound hard copy of documents being presented in hard copy to the court.

(5) Procedures applicable to e-filing attorneys and other persons. In any action in which an attorney or other person is exempt pursuant to this subdivision, all other attorneys, small claims assessment filing agents, unrepresented litigants, proposed intervenors, or others participating in e-filing and seeking relief from the court shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.

Credits


22 NYCRR 202.5-bb, 22 NY ADC 202.5-bb
Section 202.6. Request for judicial intervention

(a) At any time after service of process, a party may file a request for judicial intervention. Except as provided in subdivision (b) of this section, in an action not yet assigned to a judge, the court shall not accept for filing a notice of motion, order to show cause, application for ex parte order, notice of petition, note of issue, notice of medical, dental or podiatric malpractice action, statement of net worth pursuant to section 236 of the Domestic Relations Law or request for a preliminary conference pursuant to section 202.12(a) of this Part, unless such notice or application is accompanied by a request for judicial intervention. Where an application for poor person relief is made, payment of the fee for filing the request for judicial intervention accompanying the application shall be required only upon denial of the application. A request for judicial intervention must be submitted, in duplicate, on a form authorized by the Chief Administrator of the Courts, with proof of service on the other parties to the action (but proof of service is not required where the application is ex parte).

(b) A request for judicial intervention shall be filed, without fee, for any application to a court not filed in an action or proceeding, as well as for a petition for the sale or finance of religious/not-for-profit property, an application for change of name, a habeas corpus proceeding where the movant is institutionalized, an application under CPLR 3102(e) for court assistance in obtaining disclosure in an action pending in another state, a retention proceeding authorized by article 9 of the Mental Hygiene Law, a proceeding authorized by article 10 of the Mental Hygiene Law, an appeal to a county court of a civil case brought in a court of limited jurisdiction, an application to vacate a judgment on account of bankruptcy, a motion for an order authorizing emergency surgery, or within the City of New York, an uncontested action for a judgment for annulment, divorce or separation commenced pursuant to article 9, 10 or 11 of the Domestic Relations Law.

(c) In the counties within the City of New York, when a request for judicial intervention is filed, the clerk shall require submission of a copy of the receipt of purchase of the index number provided by the County Clerk, or a written statement of the County Clerk that an index number was purchased in the action. Unless otherwise authorized by the Chief Administrator, the filing of a request for judicial intervention pursuant to this section shall cause the assignment of the action to a judge pursuant to section 202.3 of this Part. The clerk may require that a self-addressed and stamped envelope accompany the request for judicial intervention.

Credits

22 NYCRR 202.6, 22 NY ADC 202.6
Section 202.7. Calendaring of motions; uniform notice of motion form; affirmation of good faith

(a) There shall be compliance with the procedures prescribed in the CPLR for the bringing of motions. In addition, except as provided in subdivision (d) of this section, no motion shall be filed with the court unless there have been served and filed with the motion papers (1) a notice of motion, and (2) with respect to a motion relating to disclosure or to a bill of particulars, an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion.

(b) The notice of motion shall read substantially as follows:

[COURT OF THE STATE OF NEW YORK]  
COUNTY OF _______________________

______________________________ x

A.B.,  
Notice of Motion  
Plaintiff, Index No.  
-against- ______________________

C.D., Name of Assigned Judge  
Defendant.

______________________________ x

Oral argument is requested [ ]  
(check box if applicable)

Upon the affidavit of __________, sworn to on _____ , 19 _____, and upon (list supporting papers if any), the . . . will move this court (in Room _____) at the _____ Courthouse, _____ New York, on the _____ day of _____ , 19 _____ , at _____ (a.m.) (p.m.) for an order (briefly indicate relief requested).

The above-entitled action is for (briefly state nature of action, e.g., personal injury, medical malpractice, divorce, etc.).

This is a motion for or related to interim maintenance or child support. [ ]  
(check box if applicable)

An affirmation that a good faith effort has been made to resolve the issues raised in this motion is annexed hereto.  
(required only where the motion relates to disclosures or to a bill of particulars)

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion. [ ]  
(check box if applicable)

Dated:  
(print name)

Attorney† (or attorney in charge  
of case if law firm) for moving party.
Address:
Telephone number:
(print name)
TO: _________________________________________

Attorney\(^1\) for (other party)
Address:
Telephone number:
(print name)

Attorney\(^2\) for (other party)
Address:
Telephone number:
\(^1\)If any party is appearing pro se, the name, address and telephone
number of such party shall be stated.

(c) The affirmation of the good faith effort to resolve the issues raised by the motion shall indicate the time, place and
nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral
with counsel for opposing parties was held.

(d) An order to show cause or an application for ex parte relief need not contain the notice of motion set forth in this
section, but shall contain the affirmation of good faith set forth in this section if such affirmation otherwise is required
by this section.

(e) Ex parte motions submitted to a judge outside of the county where the underlying action is venued or will be venued
shall be referred to the appropriate court in the county of venue unless the judge determines that the urgency of the
motion requires immediate determination.

(f) Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary
restraining order, shall contain, in addition to the other information required by this section, an affirmation
demonstrating there will be significant prejudice to the party seeking the restraining order by the giving of notice. In the
absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to
notify the party against whom the temporary restraining order is sought of the time, date and place that the application
will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. This
subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under article 7
of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of
protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the court.

Credits
(f).


22 NYCRR 202.7, 22 NY ADC 202.7
Section 202.8. Motion procedure, 22 NY ADC 202.8

(a) All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date.

(b) Special procedure for unassigned cases. If a case has not been assigned to a judge, the motion shall be made returnable before the court, and a copy of the moving papers, together with a request for judicial intervention, shall be filed with the court, with proof of service upon all other parties, where required by section 202.6 of this Part, within five days of service upon the other parties. The moving party shall give written notice of the index number to all other parties immediately after filing of the papers. Copies of all responding papers shall be submitted to the court, with proof of service and with the index number set forth in the papers, on or before the return date. The case shall be assigned to a judge as soon as practicable after the filing of the request for judicial intervention pursuant to section 202.6 of this Part, but in no event later than the return date. After assignment to the judge, the court shall provide for appropriate notice to the parties of the name of the assigned judge. Motion papers noticed to be heard in a county other than the county where the venue of the action has been placed by the plaintiff shall be assigned to a judge in accordance with procedures established by the Chief Administrator.

(c) 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.

(d) Motion papers received by the clerk of the court on or before the return date shall be deemed submitted as of the return date. The assigned judge, in his or her discretion or at the request of a party, thereafter may determine that any motion be orally argued and may fix a time for oral argument. A party requesting oral argument shall set forth such request in its notice of motion or in its order to show cause or on the first page of the answering papers, as the case may be. Where all parties to a motion request oral argument, oral argument shall be granted unless the court shall determine it to be unnecessary. Where a motion is brought on by order to show cause, the court may set forth in the order that oral argument is required on the return date of the motion.

(e) Stipulations of adjournment of the return date made by the parties shall be in writing and shall be submitted to the assigned judge. Such stipulation shall be effective unless the court otherwise directs. No more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court.
(2) Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing, upon notice to the other party, to the assigned judge on or before the return date. The court will notify the requesting party whether the adjournment has been granted.

(f) Where the motion relates to disclosure or to a bill of particulars, and a preliminary conference has not been held, the court shall notify all parties of a scheduled date to appear for a preliminary conference, which shall be not more than 45 days from the return date of the motion unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months, and for a resolution of any other issues raised by the motion. If all parties sign the form and return it to the court before the return date of the motion, such form shall be "so ordered" by the court, and the motion shall be deemed withdrawn. If such stipulation is not returned by all parties, the conference shall be held on the assigned date. Issues raised by the motion and not resolved at the conference shall be determined by the court.

(g) Unless the circumstances require settlement of an order, a judge shall incorporate into the decision an order effecting the relief specified in the decision.

(h) Reports of pending motions in the Supreme Court.

(1) To assist in preparing the quarterly report of pending civil matters required by section 4.1 of the Rules of the Chief Judge, the Chief Administrator of the Court or his or her designee shall provide to a justice of the Supreme Court, upon request, an automated open motion report of all motions pending before the justice which appear undecided 60 days after final submission. This open motion report may be used by the justice to assist in the preparation of his or her official quarterly report.

(2) Since motions are decided on a daily basis and further submissions may be received on a pending motion, the only report that shall be considered current is the official quarterly report submitted by the particular justice.

Credits


22 NYCRR 202.8, 22 NY ADC 202.8
Section 202.9. Special proceedings

Special proceedings shall be commenced and heard in the same manner as motions that have not yet been assigned to a judge as set forth in section 202.8 of this Part, except that they shall be governed by the time requirements of the CPLR relating to special proceedings.

Credits


22 NYCRR 202.9, 22 NY ADC 202.9
Section 202.9-a. Special proceedings authorized by subsection...

22 NYCRR 202.9-a

Section 202.9-a. Special proceedings authorized by subsection 
(d) of section 9-518 of the Uniform Commercial Code

(a) This section shall govern a special proceeding authorized by subsection (d) of section 9-518 of the Uniform Commercial Code for the redaction or expungement of a falsely-filed or amended financing statement. Except as otherwise provided in such subsection and in this section, such a special proceeding shall be subject to the provisions of article four of the CPLR and of section 202.9 of these rules.

(b) The following shall apply to a special proceeding governed by this section:

(1) Venue. Such a special proceeding shall be commenced in the Supreme Court in:

   (i) Albany County; or

   (ii) the County of the petitioner's residence; or

   (iii) any County within a Judicial District in which any property covered by the financing statement is located.

(2) No fee required. Notwithstanding any provision of Article 80 of the CPLR, no fee shall be collected pursuant to such Article in such a special proceeding.

(3) Petitioner. In order to commence such a special proceeding, the petitioner must be:

   (i) either:

       (a) an employee of the State or of a political subdivision thereof; or

       (b) an attorney who represents or has represented the respondent in a criminal court; and

   (ii) a person identified as a debtor in a financing statement filed pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code; and
(iii) bringing such special proceeding against the respondent to invalidate the false filing or amendment of such financing statement.

(4) Form and content of petition. A petition in such a special proceeding shall substantially conform to the model petition set forth in Appendix A of this section and shall allege that:

(i) the financing statement referred to in subparagraph (3)(i) of this subdivision was falsely filed or amended to retaliate for the performance of the petitioner's official duties in his or her capacity as a public employee (or, if the petitioner is an attorney referred to in clause (3)(i)(b) of this subdivision, to retaliate for the performance of the petitioner's duties in his or her capacity as an attorney for the respondent in a criminal court); and

(ii) such financing statement does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the petitioner and the respondent; and

(iii) the collateral covered in the financing statement is the property of the petitioner; and

(iv) prompt redaction or invalidation of such financing statement is necessary to avert or mitigate prejudice to the petitioner. The petition shall demand the expungement or redaction of such financing statement or, as appropriate, any amendment thereof, in the office in which the financing statement is filed; and may demand any additional relief authorized under section 9-625 of the Uniform Commercial Code.

(5) Use of Referee. The court may order a referee to hear and determine such a special proceeding.

(6) Judgment.

(i) Where the court (or a referee ordered by the court) makes a written finding that the allegations of the petition are established, it shall deliver a judgment, which shall include such finding and shall direct the expungement or redaction of the financing statement found therein to be falsely filed or amended in the public office in which it was filed; and may grant any additional relief sought that is authorized under section 9-625 of the Uniform Commercial Code. Where the court also finds that the respondent has engaged in a repeated pattern of falsely filing financing statements under Subpart one of Part five of Article nine of the Uniform Commercial Code, the court may enjoin the respondent from filing or amending any further financing statement without court leave; and, in such case, where respondent is incarcerated at the time such injunction issues, the court shall cause a copy thereof to be transmitted to the head of the correctional facility in which respondent is incarcerated.

(ii) In form, the judgment in such a special proceeding shall substantially conform to the model judgment set forth in Appendix B of this section.

APPENDIX A
PETITION IN SPECIAL PROCEEDING PURSUANT TO
SECTION 9-518(d) OF THE UNIFORM COMMERCIAL CODE

SUPREME COURT OF THE STATE OF NEW YORK
County of __________________________

PETITION

Index No.
Judge Assigned

Petitioner [name of Petitioner], by his [or her] undersigned [attorney or attorneys] alleges as follows:

NATURE OF THIS PROCEEDING

This is a Special Proceeding brought pursuant to section 9-518(d) of the Uniform Commercial Code to [redact or expunge, as applicable] a falsely-filed [or -amended] financing statement the contents of which are described in section 9-502 of the Uniform Commercial Code.

THE PARTIES

1. The Petitioner in this Special Proceeding, [name of Petitioner], is [an employee of the State of New York or an employee of a political subdivision of the State of New York or an attorney who represents or has represented the Respondent herein in a criminal court]. [Add one of the following sentences, as applicable:]

   (i) The Petitioner is employed by [name the office of his or her New York State employment or, if appropriate, of his or her employment by a named political subdivision of the State] as [state the name/ nature of this employment]; or

   (ii) The Petitioner was admitted to practice in [state the year] in the _____ Judicial Department.]

2. The Petitioner is identified as a debtor in a financing statement filed by or on behalf of the Respondent pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code.

3. The Respondent in this Special Proceeding is [name of Respondent]. [If the Respondent is incarcerated, so state and identify the facility of incarceration]

4. As authorized by section 9-518(d)(1) of the Uniform Commercial Code, the place of trial for this Special Proceeding is _____ County. [if not Albany County, add one of the following sentences, as applicable:]

   (i) The Petitioner resides at [include Petitioner's address] in such County; or

   (ii) The property of the Petitioner covered by the financing statement specified in paragraph two hereof is located in such County.]

FIRST CAUSE OF ACTION
5. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through four above.

6. The Respondent in this Special Proceeding has filed [or amended] a financing statement under section 9-502 of the Uniform Commercial Code that identifies the Petitioner as a debtor and the collateral referred to in such financing statement is the property of the Petitioner.

7. The financing statement referred to in Paragraph six herein was falsely filed [or falsely amended] by or on behalf of the Respondent. On information and belief, this false filing [or false amendment] was to retaliate for the performance of the Petitioner's official duties in his [or her] capacity as a public employee as specified in Paragraph one herein [or, if the Petitioner is an attorney who represents or has represented the Respondent herein in a criminal court, "this false filing statement [or amendment] was to retaliate for the performance of the Petitioner's duties in his [or her] capacity as an attorney for the Respondent in a [specify the case name and the name of the criminal court]], [add any essential facts forming the basis for information and belief]

8. The financing statement referred to in Paragraph six herein and alleged to have been falsely filed or falsely amended does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the Petitioner and the Respondent.

9. The collateral covered in the financing statement referred to in Paragraph six herein is the property of the Petitioner.

10. Prompt redaction or invalidation of the financing statement [or amendment to a financing statement] is necessary to avert or mitigate prejudice to the Petitioner.

SECOND CAUSE OF ACTION [if applicable]

11. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through ten above.

12. On information and belief, the Respondent has engaged in a repeated pattern of falsely filing financing statements [or amendments to financing statements]. [add any essential facts forming the basis for information and belief]

There has been no previous application for the relief demanded in this proceeding in this or any other Court [or, if there has been such an application, so state and specify new facts not previously shown, if any].

DEMAND FOR RELIEF

WHEREFORE, Petitioner demands judgment against the Respondent as follows:

a. On the First Cause of Action, for expungement [or redaction] of the financing statement [or the amendment of the financing statement] in the [state the office in which the financing statement is filed] pursuant to section 9-518(d)(3) [Where redaction of the financing statement or an amendment thereto is
Section 202.9-a. Special proceedings authorized by subsection..., 22 NY ADC 202.9-a

demanded, specify the specify redaction sought] [and, where further relief is sought under section 9-625 of the Uniform Commercial Code, state such further relief.

b. On the Second Cause of Action [if applicable], for an injunction barring the Respondent from filing or amending any further financing statements pursuant to article nine of the Uniform Commercial Code without leave of the Court.

c. Awarding Petitioner costs and disbursements of this proceeding.

d. Granting Petitioner such other and further relief as the Court deems just and proper.

____________________________
Attorney(s) for Petitioner

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
County of ____________
[Caption Box] PETITION
Index No.
Judge Assigned

The above-entitled special proceeding brought pursuant to section 9-518 of the Uniform Commercial Code having come on to be heard before the Honorable Justice _____ at Part _____ of this Court, held at the Courthouse at [include Courthouse address], on [include month, date and year], and the Petitioner having appeared by his [or her] attorney and the Respondent having [include, as applicable, ”appeared by his [or her] attorney”/”failed to appear”], and the Court having, after due deliberation, found that:

_____ the following allegations, as set forth in the Petition, have been established:

____________________________
____________________________

_____ the allegations, as set forth in the Petition, have not been established,
Now, it is hereby
ORDERED, ADJUDGED AND DECREED, that:
__ the Petitioner have judgment against the Respondent and that the
____________________________ [name of the office in which the financing
statement to be expunged or redacted is filed] is directed to:
__ expunge from the public record_____________
__ redact on the public record _____________
[describe the financing statement to be expunged]
__ reduct on the public record _____________
[describe the financing statement to be redacted and the specific
redaction being ordered]
__ the Respondent have judgment against the Petitioner and that this
Special Proceeding be dismissed.
__ the Petitioner have the following relief as authorized by section 9-625
of the Uniform Commercial Code:
the Respondent be enjoined from filing or amending any further financing statement pursuant to Article 9 of the Uniform Commercial Code without leave of this Court.

[describe such further relief as the Court is ordering]

Dated: [month, date, year]
Enter

Justice, Supreme Court, ______ County

Credits
Sec. filed through Court Notices in the May 14, 2014 Register.

22 NYCRR 202.9-a, 22 NY ADC 202.9-a

End of Document
Section 202.10. Appearance at conferences

Any party may request to appear at a conference by telephonic or other electronic means. Where feasible and appropriate, the court is encouraged to grant such requests.

Credits
Sec. filed through Court Notices in the June 19, 2013 Register.

Section 202.11. [Reserved], 22 NY ADC 202.11


22 NYCRR 202.11, 22 NY ADC 202.11
Section 202.12. Preliminary conference

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a preliminary conference in any action upon compliance with the requirements of this subdivision.

(b) The court shall notify all parties of the scheduled conference date, which shall be not more than 45 days from the date the request for judicial intervention is filed unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months of the filing of the request for judicial intervention for a standard case, or within 15 months of such filing for a complex case. If all parties sign the form and return it to the court before the scheduled preliminary conference, such form shall be “so ordered” by the court, and, unless the court orders otherwise, the scheduled preliminary conference shall be cancelled. If such stipulation is not returned signed by all parties, the parties shall appear at the conference. Except where a party appears in the action pro se, an attorney thoroughly familiar with the action and authorized to act on behalf of the party shall appear at such conference. Where a case is reasonably likely to include electronic discovery counsel shall, prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues. Further, counsel for all parties who appear at the preliminary conference must be sufficiently versed in matters relating to their clients’ technological systems to discuss competently all issues relating to electronic discovery; counsel may bring a client representative or outside expert to assist in such e-discovery discussions.

(1) A non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery is:

   (i) Does potentially relevant electronically stored information (“ESI”) exist;

   (ii) Do any of the parties intend to seek or rely upon ESI;

   (iii) Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;

   (iv) Are the cost and burden of preserving and producing ESI proportionate to the amount in controversy; and

(v) What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

(c) The matters to be considered at the preliminary conference shall include:

(1) simplification and limitation of factual and legal issues, where appropriate;

(2) establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed within the timeframes set forth in subdivision (b) of this section, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(3) Where the court deems appropriate, it may establish the method and scope of any electronic discovery. In establishing the method and scope of electronic discovery, the court may consider the following non-exhaustive list, including but not limited to:

   (i) identification of potentially relevant types or categories of ESI and the relevant time frame;

   (ii) disclosure of the applications and manner in which the ESI is maintained;

   (iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible;

   (iv) implementation of a preservation plan for potentially relevant ESI;

   (v) identification of the individual(s) responsible for preservation of ESI;

   (vi) the scope, extent, order, and form of production;

   (vii) identification, redaction, labeling, and logging of privileged or confidential ESI;

   (viii) claw-back or other provisions for privileged or protected ESI;

   (ix) the scope or method for searching and reviewing ESI; and

   (x) the anticipated cost and burden of data recovery and proposed initial allocation of such cost.

(4) addition of other necessary parties;
(5) settlement of the action;

(6) removal to a lower court pursuant to CPLR 325, where appropriate; and

(7) any other matters that the court may deem relevant.

(d) At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of counsel. Alternatively, in the court's discretion, all directions of the court and stipulations of counsel may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

(e) The granting or continuation of a special preference shall be conditional upon full compliance by the party who has requested any such preference with the foregoing order or transcript. When a note of issue and certificate of readiness are filed pursuant to section 202.21 of this Part, in an action to which this section is applicable, the filing party, in addition to complying with all other applicable rules of the court, shall file with the note of issue and certificate of readiness an affirmation or affidavit, with proof of service on all parties who have appeared, showing specific compliance with the preliminary conference order or transcript.

(f) In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so-ordered stipulation provided for in subdivision (b) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

(g) A party may move to advance the date of a preliminary conference upon a showing of special circumstances.

(h) Motions in actions to which this section is applicable made after the preliminary conference has been scheduled, may be denied unless there is shown good cause why such relief is warranted before the preliminary conference is held.

(i) No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with the provisions of this section and any order issued pursuant thereto.

(j) The court, in its discretion, at any time may order such conferences as the court may deem helpful or necessary in any matter before the court.

(k) The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.
(l) The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be filed at any time after commencement of the action, and shall be accompanied by the physician's affidavit required by that provision.

Credits


22 NYCRR 202.12, 22 NY ADC 202.12
Section 202.12a. Residential mortgage foreclosure actions; settlement conference

(a) Applicability. This section shall be applicable to residential mortgage foreclosure actions involving a home loan secured by a mortgage on a one- to four-family dwelling or condominium, in which the defendant is a resident of the property subject to foreclosure.

(b) Request for judicial intervention.

(1) At the time that proof of service of the summons and complaint is filed with the county clerk, plaintiff shall file with the county clerk a specialized request for judicial intervention (RJI), on a form prescribed by the Chief Administrator of the Courts, applicable to residential mortgage foreclosure actions covered by this section. The RJI shall contain the name, address, telephone number and e-mail address, if available, of the defendant in the action, and the name of the mortgage servicer, and shall request that a settlement conference be scheduled. If the mortgage servicer involved in the case and listed on the RJI is changed at any time following the filing of the RJI, plaintiff shall file with the court and serve on all the parties a notice setting forth the name and contact information of the new or substituted mortgage servicer.

(2) Upon the filing of the RJI, the court shall send either a copy of the RJI, or the defendant's name, address and telephone number (if available), to a housing counseling agency or agencies funded by the New York State Office of the Attorney General's Homeowner Protection Program for the judicial district in which the defendant resides, for the purpose of that agency making the homeowner aware of free foreclosure prevention services and options available to the parties.

(3) In such county or counties as the Chief Administrator shall direct, in the event that a plaintiff fails to file proof of service of the summons and complaint in a residential mortgage foreclosure action with the county clerk within one hundred twenty days after the commencement of the action, or fails to file the RJI at the time of the filing of proof of service, the county clerk shall provide the Chief Administrator with the case name, index number, property address, and contact information of parties and counsel in the action. The Chief Administrator may take such further action as she deems fit with respect to such case or cases, including but not limited to:

   (i) placing a case on a delinquency calendar;

   (ii) providing case information to a housing counseling agency or agencies; and
(iii) ordering a status conference.

(c) Settlement conference.

(1) The court shall promptly send to the parties a Notice scheduling a settlement conference to be held within 60 days after the date of the filing of the RJI. The Notice shall be mailed to all parties or their attorneys, which must include mailing to the address of the property subject to the mortgage. The Notice shall be on a form prescribed by the Chief Administrator, and it shall set forth the purpose of the conference, the requirements of CPLR Rule 3408, instructions to the parties on how to prepare for the conference, and what information and documents to bring to the conference as specified in CPLR Rule 3408(e). The Notice shall further provide that the defendant contact the court by telephone, no later than seven days before the conference is scheduled, to advise whether the defendant will be able to attend the scheduled conference. The court shall also provide in such mailing a copy of the current Consumer Bill of Rights published by the New York State Department of Financial Services pursuant to RPAPL section 1303-3-a.

(2) The conference shall be held to conduct settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, including but not limited to loan modifications, “short sales” and “deeds in lieu of foreclosure” or any other mitigation options. The court may also use the conference for whatever other purposes the court deems appropriate. Where appropriate, the court may permit representatives of either party to attend the conference telephonically or by video-conference. Any representative participating in the conference, whether in person, telephonically or by video conference, shall be fully authorized to dispose of the case, as required by CPLR Rule 3408(c).

(3) If the parties appear by counsel, such counsel must be fully authorized to dispose of the case. If the defendant appears at the conference without counsel, the court shall treat the defendant as having made a motion to proceed as a poor person and shall determine whether permission to so appear shall be granted pursuant to the standards set forth in CPLR section 1101. If the court appoints defendant counsel pursuant to CPLR section 1102(a), it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions, and otherwise shall proceed with the conference.

(4) The parties shall engage in settlement discussions in good faith to reach a mutually agreeable resolution, including a loan modification if possible, consistent with CPLR Rule 3408(f). The court shall ensure that each party fulfills its obligation to negotiate in good faith and shall see that conferences not be unduly delayed or subject to willful dilatory tactics so that the rights of both parties may be adjudicated in a timely manner. The court shall ensure that procedures are in place to enforce the duty to negotiate in good faith, as defined in CPLR Rule 3408(f), consistent with the mandates of CPLR Rule 3408(i), (j) and (k).

(5) Documents.
(i) Plaintiff and Defendant shall bring all documents enumerated in CPLR Rule 3408(e) to each conference held pursuant to CPLR Rule 3408, in addition to any other documents required by the judge, referee or judicial hearing officer presiding over the case.

(6) At the first conference held pursuant to CPLR Rule 3408, the court shall determine if the defendant has answered the complaint and shall provide defendants who have not answered information as mandated by CPLR Rule 3408(1). The court shall ensure that procedures are in place to note the vacatur of any defaults upon service and filing of answers pursuant to CPLR Rule 3408(m). The court shall schedule such other conferences as may be necessary to help resolve the action.

(7) All motions, other than motions addressing compliance with CPLR Rule 3408 or this rule, shall be held in abeyance while settlement conferences are being held pursuant to this section. A party may not charge, impose or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference.

(8) Plaintiff must file a notice of discontinuance or stipulation of discontinuance and vacatur of the notice of pendency within 90 days after any settlement agreement or loan modification agreement is fully executed.

(d) Training. The Chief Administrator shall establish requirements for education and training of all judges and nonjudicial personnel assigned to conduct foreclosure conferences pursuant to this section.

(e) Reports. The Chief Administrator shall submit a report no later than the first day of November of each year to the Governor, and to the legislative leaders set forth in section 10-a(2) of chapter 507 of the Laws of 2009, on the adequacy and effectiveness of the settlement conferences, which shall include number of adjournments, defaults, discontinuances, dismissals, conferences held and the number of defendants appearing with and without counsel.

(f) The Chief Administrator of the Courts may continue to require counsel to file affidavits or affirmations confirming the scope of inquiry and the accuracy of papers filed in residential mortgage foreclosure actions addressing both owner-occupied and (notwithstanding section supra) non-owner-occupied residential properties.

Credits


22 NYCRR 202.12a, 22 NY ADC 202.12a
Section 202.13. Removal of actions without consent to courts of limited jurisdiction

Actions may be removed to courts of limited jurisdiction without consent pursuant to the provisions of CPLR 325(d) as follows:

(a) from the Supreme Court in counties within the First, Second, Eleventh and Twelfth Judicial Districts to the Civil Court of the City of New York;

(b) from the Supreme Court in counties within the Ninth Judicial District to county and city courts within such counties;

(c) from the Supreme Court in counties within the Tenth Judicial District to county courts within such counties;

(d) from the Supreme Court in counties within the Third Judicial Department to county and city courts within such counties;

(e) from the Supreme Court in counties within the Fourth Judicial Department to county and city courts within such counties;

(f) from the County Court of Broome County to the City Court of Binghamton;

(g) from the County Court of Albany County to the City Court of Albany;

(h) from the Supreme Court and County Court of Nassau County to the District Court of Nassau County and to the city courts within such county; and

(i) from the Supreme Court and County Court of Suffolk County to the District Court of Suffolk County.

Credits
Section 202.13. Removal of actions without consent to courts..., 22 NY ADC 202.13


22 NYCRR 202.13, 22 NY ADC 202.13

End of Document


The Chief Administrator of the Courts may authorize the creation of a program for the appointment of attorneys as special masters in designated courts to preside over conferences and hear and report on applications to the court. Special masters shall serve without compensation.

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


22 NYCRR 202.14, 22 NY ADC 202.14
Section 202.15. Videotape recording of civil depositions, 22 NY ADC 202.15

(a) *When permitted.* Depositions authorized under the provisions of the Civil Practice Law and Rules or other law may be taken, as permitted by section 3113(b) of the Civil Practice Law and Rules, by means of simultaneous audio and visual electronic recording, provided such recording is made in conformity with this section.

(b) *Other rules applicable.* Except as otherwise provided in this section, or where the nature of videotaped recording makes compliance impossible or unnecessary, all rules generally applicable to examinations before trial shall apply to videotaped recording of depositions.

(c) *Notice of taking deposition.* Every notice or subpoena for the taking of a videotaped deposition shall state that it is to be videotaped and the name and address of the videotape operator and of the operator's employer, if any. The operator may be an employee of the attorney taking the deposition. Where an application for an order to take a videotaped deposition is made, the application and order shall contain the same information.

(d) *Conduct of the examination.*

(1) The deposition shall begin by one of the attorneys or the operator stating on camera:

   (i) the operator's name and address;

   (ii) the name and address of the operator's employer;

   (iii) the date, the time and place of the deposition; and

   (iv) the party on whose behalf the deposition is being taken.

The officer before whom the deposition is taken shall be a person authorized by statute and shall identify himself or herself and swear the witness on camera. If the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced by the operator.
(2) Every videotaped deposition shall be timed by means of a time-date generator which shall permanently record hours, minutes and seconds. Each time the videotape is stopped and resumed, such times shall be orally announced on the tape.

(3) More than one camera may be used, either in sequence or simultaneously.

(4) At the conclusion of the deposition, a statement shall be made on camera that the recording is completed. As soon as practicable thereafter, the videotape shall be shown to the witness for examination, unless such showing and examination are waived by the witness and the parties.

(5) Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included on copies of the videotaped deposition.

e) Copies and transcription. The parties may make audio copies of the deposition and thereafter may purchase additional audio and audio-visual copies. A party may arrange to have a stenographic transcription made of the deposition at his or her own expense.

f) Certification. The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certification that the witness was fully sworn or affirmed by the officer and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived the right to a showing and examination of the videotape deposition, the witness shall also sign the certification in accordance with the provisions of section 3116 of the Civil Practice Law and Rules.

(g) Filing and objections.

(1) If no objections have been made by any of the parties during the course of the deposition, the videotape deposition may be filed by the proponent with the clerk of the trial court and shall be filed upon the request of any party.

(2) If objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be submitted to the court upon the request of any of the parties within 10 days after its recording, or within such other period as the parties may stipulate, or as soon thereafter as the objections may be heard by the court, for the purpose of obtaining rulings on the objections. An audio copy of the sound track may be submitted in lieu of the videotape for this purpose, as the court may prefer. The court may view such portions of the videotape recording as it deems pertinent to the objections made, or may listen to an audiotape recording. The court, in its discretion, may also require submission of a stenographic transcript of the portion of the deposition to which objection is made, and may read such transcript in lieu of reviewing the videotape or audio copy.

(3) The court shall rule on the objections prior to the date set for trial and shall return the recording to the proponent of the videotape with notice to the parties of its rulings and of its instructions as to editing. The
editing shall reflect the rulings of the court and shall remove all references to the objections. The proponent, after causing the videotape to be edited in accordance with the court's instructions, may cause both the original videotape recording and the deleted version of the recording, clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party. Before such filing, the proponent shall permit the other party to view the edited videotape.

(ii) The court may, in respect to objectionable material, instead of ordering its deletion, permit such material to be clearly marked so that the audio recording may be suppressed by the operator during the objectionable portion when the videotape is presented at the trial. In such case the proponent may cause both the original videotape recording and a marked version of that recording, each clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party.

(h) Custody of tape. When the tape is filed with the clerk of the court, the clerk shall give an appropriate receipt for the tape and shall provide secure and adequate facilities for the storage of videotape recordings.

(i) Use at trial. The use of videotape recordings of depositions at the trial shall be governed by the provisions of the Civil Practice Law and Rules and all other relevant statutes, court rules and decisional law relating to depositions and relating to the admissibility of evidence. The proponent of the videotaped deposition shall have the responsibility of providing whatever equipment and personnel may be necessary for presenting such videotape deposition.

(j) Applicability to audio taping of depositions. Except where clearly inapplicable because of the lack of a video portion, these rules are equally applicable to the taking of depositions by audio recording alone. However, in the case of the taking of a deposition upon notice by audio recording alone, any party, at least five days before the date noticed for taking the deposition, may apply to the court for an order establishing additional or alternate procedures for the taking of such audio deposition, and upon the making of the application, the deposition may be taken only in accordance with the court order.

(k) Cost. The cost of videotaping or audio recording shall be borne by the party who served the notice for the videotaped or audio recording of the deposition, and such cost shall be a taxable disbursement in the action unless the court in its discretion orders otherwise in the interest of justice.

(l) Transcription for appeal. On appeal, visual and audio depositions shall be transcribed in the same manner as other testimony and transcripts filed in the appellate court. The visual and audio depositions shall remain part of the original record in the case and shall be transmitted therewith. In lieu of the transcribed deposition and, on leave of the appellate court, a party may request a viewing of portions of the visual deposition by the appellate court but, in such case, a transcript of pertinent portions of the deposition shall be filed as required by the court.

Credits


22 NYCRR 202.15, 22 NY ADC 202.15
Section 202.16. Matrimonial actions; calendar control of financial disclosure in actions and proceedings involving alimony, maintenance, child support and equitable distribution; motions for alimony, counsel fees pendente lite, and child support; special rules

(a) **Applicability.** This section shall be applicable to all contested actions and proceedings in the Supreme Court in which statements of net worth are required by section 236 of the Domestic Relations Law to be filed and in which a judicial determination may be made with respect to alimony, counsel fees, *pendente lite*, maintenance, custody and visitation, child support, or the equitable distribution of property, including those referred to Family Court by the Supreme Court pursuant to section 464 of the Family Court Act.

(b) **Form of statements of net worth.** Sworn statements of net worth, except as provided in subdivision (k) of this section, exchanged and filed with the court pursuant to section 236 of the Domestic Relations Law, shall be in substantial compliance with the Statement of Net Worth form contained in Chapter III, Subchapter A of Subtitle D (Forms) of this Title.

(c) **Retainer agreements.**

   (1) A signed copy of the attorney's retainer agreement with the client shall accompany the statement of net worth filed with the court, and the court shall examine the agreement to assure that it conforms to Appellate Division attorney conduct and disciplinary rules. Where substitution of counsel occurs after the filing with the court of the net worth statement, a signed copy of the attorney's retainer agreement shall be filed with the court within 10 days of its execution.

   (2) An attorney seeking to obtain an interest in any property of his or her client to secure payment of the attorney's fee shall make application to the court for approval of said interest on notice to the client and to his or her adversary. The application may be granted only after the court reviews the finances of the parties and an application for attorney's fees.

(d) **Request for judicial intervention.** A request for judicial intervention shall be filed with the court by the plaintiff no later than 45 days from the date of service of the summons and complaint or summons with notice upon the defendant, unless both parties file a notice of no necessity with the court, in which event the request for judicial intervention may be filed no later than 120 days from the date of service of the summons and complaint or summons with notice upon the defendant. Notwithstanding section 202.6(a) of this Part, the court shall accept a request for judicial intervention that is not accompanied by other papers to be filed in court.
(e) **Certification.** Every paper served on another party or filed or submitted to the court in a matrimonial action shall be signed as provided in section 130-1.1a of this Title.

(f) **Preliminary conference.**

(1) In all actions or proceedings to which this section of the rules is applicable, a preliminary conference shall be ordered by the court to be held within 45 days after the action has been assigned. Such order shall set the time and date for the conference and shall specify the papers that shall be exchanged between the parties. These papers must be exchanged no later than 10 days prior to the preliminary conference, unless the court directs otherwise. These papers shall include:

(i) statements of net worth which also shall be filed with the court no later than 10 days prior to the preliminary conference;

(ii) all paycheck stubs for the current calendar year and the last paycheck stub for the immediately preceding calendar year;

(iii) all filed State and Federal income tax returns for the previous three years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;

(iv) all W-2 wage and tax statements, 1099 forms, and K-1 forms for any year in the past three years in which the party did not file State and Federal income tax returns;

(v) all statements of accounts received during the past three years from each financial institution in which the party has maintained any account in which cash or securities are held;

(vi) the statements immediately preceding and following the date of commencement of the matrimonial action pertaining to:

(a) any policy of life insurance having a cash or dividend surrender value; and

(b) any deferred compensation plan of any type or nature in which the party has an interest including, but not limited to, individual retirement accounts, pensions, profit-sharing plans, Keogh plans, 401(k) plans and other retirement plans.

Both parties personally must be present in court at the time of the conference, and the judge personally shall address the parties at some time during the conference.

(2) The matters to be considered at the conference may include, among other things:
(i) applications for *pendente lite* relief, including interim counsel fees;

(ii) compliance with the requirement of compulsory financial disclosure, including the exchange and filing of a supplemental statement of net worth indicating material changes in any previously exchanged and filed statement of net worth;

(iii) simplification and limitation of issues;

(iv) the establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed and the note of issue filed within six months from the commencement of the conference, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(v) the completion of a preliminary conference order substantially in the form contained in Appendix G (see subdivision [m] of this section) to these rules, with attachments; and

(vi) any other matters which the court shall deem appropriate.

(3) At the close of the conference, the court shall direct the parties to stipulate, in writing or on the record, as to all resolved issues, which the court then shall "so order," and as to all issues with respect to fault, custody and finance that remain unresolved. Any issues with respect to fault, custody and finance that are not specifically described in writing or on the record at that time may not be raised in the action unless good cause is shown. The court shall fix a schedule for discovery as to all unresolved issues and, in a noncomplex case, shall schedule a date for trial not later than six months from the date of the conference. The court may appoint an attorney for the infant children, or may direct the parties to file with the court, within 30 days of the conference, a list of suitable attorneys for children for selection by the court. The court also may direct that a list of expert witnesses be filed with the court within 30 days of the conference from which the court may select a neutral expert to assist the court. The court shall schedule a compliance conference unless the court dispenses with the conference based upon a stipulation of compliance filed by the parties. Unless the court excuses their presence, the parties personally must be present in court at the time of the compliance conference. If the parties are present in court, the judge personally shall address them at some time during the conference.

(g) *Expert witnesses.*

(1) Responses to demands for expert information pursuant to CPLR section 3101(d) shall be served within 20 days following service of such demands.

(2) Each expert witness whom a party expects to call at the trial shall file with the court a written report, which shall be exchanged and filed with the court no later than 60 days before the date set for trial, and reply reports, if any, shall be exchanged and filed no later than 30 days before such date. Failure to file with the court a report in conformance with these requirements may, in the court's discretion, preclude the use of the expert. Except for good cause shown, the reports exchanged between the parties shall be the only reports admissible at trial. Late retention of experts and consequent late submission of reports shall be permitted only upon a showing of good cause as authorized by CPLR 3101(d)(1)(i). In the discretion of the court, written reports may be used to substitute for
direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross-examination. In the discretion of the court, in a proper case, parties may be bound by the expert's report in their direct case.

(h) Statement of proposed disposition.

(1) Each party shall exchange a statement setting forth the following:

(i) the assets claimed to be marital property;

(ii) the assets claimed to be separate property;

(iii) an allocation of debts or liabilities to specific marital or separate assets, where appropriate;

(iv) the amount requested for maintenance, indicating and elaborating upon the statutory factors forming the basis for the maintenance request;

(v) the proposal for equitable distribution, where appropriate, indicating and elaborating upon the statutory factors forming the basis for the proposed distribution;

(vi) the proposal for a distributive award, if requested, including a showing of the need for a distributive award;

(vii) the proposed plan for child support, indicating and elaborating upon the statutory factors upon which the proposal is based; and

(viii) the proposed plan for custody and visitation of any children involved in the proceeding, setting forth the reasons therefor.

(2) A copy of any written agreement entered into by the parties relating to financial arrangements or custody or visitation shall be annexed to the statement referred to in paragraph (1) of this subdivision.

(3) The statement referred to in paragraph (1) of this subdivision, with proof of service upon the other party, shall, with the note of issue, be filed with the court. The other party, if he or she has not already done so, shall file with the court a statement complying with paragraph (1) of this subdivision within 20 days of such service.

(i) Filing of note of issue. No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with this section by the party filing the note of issue and certificate of readiness.

(j) Referral to Family Court. In all actions or proceedings to which this section is applicable referred to the Family Court by the Supreme Court pursuant to section 464 of the Family Court Act, all statements, including supplemental
statements, exchanged and filed by the parties pursuant to this section shall be transmitted to the Family Court with the order of referral.

(k) **Motions for alimony, maintenance, counsel fees pendente lite and child support (other than under section 237[c] or 238 of the Domestic Relations Law).** Unless, on application made to the court, the requirements of this subdivision be waived for good cause shown, or unless otherwise expressly provided by any provision of the CPLR or other statute, the following requirements shall govern motions for alimony, maintenance, counsel fees (other than a motion made pursuant to section 237[c] or 238 of the Domestic Relations Law for counsel fees for services rendered by an attorney to secure the enforcement of a previously granted order or decree) or child support or any modification of an award thereof:

(1) Such motion shall be made before or at the preliminary conference, if practicable.

(2) No motion shall be heard unless the moving papers include a statement of net worth in the official form prescribed by subdivision (b) of this section.

(3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, and to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court.

(4) The party opposing any motion shall be deemed to have admitted, for the purpose of the motion but not otherwise, such facts set forth in the moving party's statement of net worth as are not controverted in:

   (i) a statement of net worth, in the official form prescribed by this section, completed and sworn to by the opposing party, and made a part of the answering papers; or

   (ii) other sworn statements or affidavits with respect to any fact which is not feasible to controvert in the opposing party's statement of net worth.

(5) The failure to comply with the provisions of this subdivision shall be good cause, in the discretion of the judge presiding, either:

   (i) to draw an inference favorable to the adverse party with respect to any disputed fact or issue affected by such failure; or

   (ii) to deny the motion without prejudice to renewal upon compliance with the provisions of this section.
(6) The notice of motion submitted with any motion for or related to interim maintenance or child support shall contain a notation indicating the nature of the motion. Any such motion shall be determined within 30 days after the motion is submitted for decision.

(7) Upon any application for an award of counsel fees or fees and expenses of experts made prior to the conclusion of the trial of the action, the court shall set forth in specific detail, in writing or on the record, the factors it considered and the reasons for its decision.

(l) Hearings or trials pertaining to temporary or permanent custody or visitation shall proceed from day to day conclusion. With respect to other issues before the court, to the extent feasible, trial should proceed from day to day to conclusion.

(m) Omission or Redaction of Confidential Personal Information from Matrimonial Decisions.

(1) Except as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, prior to submitting any decision, order, judgment, or combined decision and order or judgment in a matrimonial action for publication, the court shall redact the following confidential personal information:

(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;

(ii) the actual home address of the parties to the matrimonial action and their children;

(iii) the full name of an individual known to be a minor under the age of 18 years of age, except the minor's initials or the first name of the minor with the first initial of the minor's last name: provided that nothing herein shall prevent the court from granting a request to use only the minor's initials or only the word “Anonymous;”

(iv) the date of an individual's birth (including the date of birth of minor children), except the year of birth;

(v) the full name of either party where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, except the party's initials or the first name of the party with the first initial of the party's last name; provided that nothing herein shall prevent the court from granting a request to use only the party's initials or only the word “Anonymous;” and

(vi) 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 (including a health insurance account number), except the last four digits or letters thereof.

(2) Nothing herein shall require parties to omit or redact personal confidential information as described herein or section 202.5(e) of this Part in papers submitted to the court for filing.
(3) Nothing herein shall prevent the court from omitting or redacting more personal confidential information than is required by this rule, either upon the request of a party or sua sponte.

(n) Appendix G.

Appendix G

Credits


22 NYCRR 202.16, 22 NY ADC 202.16
(a) **Applicability.** This section shall be applicable to all matrimonial actions and proceedings in the Supreme Court authorized by section 236(2) of the Domestic Relations Law.

(b) **Service.** The plaintiff in a matrimonial action shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this section in a notice that substantially conforms to the notice contained in Appendix F of this section. The notice shall state legibly on its face that automatic orders have been entered against the parties named in the summons or in the summons and complaint pursuant to this rule, and that failure to comply with these orders may be deemed a contempt of court. The automatic orders shall be binding upon the plaintiff immediately upon filing of the summons, or summons and complaint, and upon the defendant immediately upon service of the automatic orders with the summons. These orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties.

(c) **Automatic Orders.**

Upon service of the summons in every matrimonial action, it is hereby ordered that:

1. Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney’s fees in connection with this action.

2. Neither party shall transfer, encumber, assign, remove, withdraw, or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profiting sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court, except that any party who is already in pay status may continue to receive such payments thereunder.

3. Neither party shall incur unreasonable debts hereafter, including but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards
or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

(6) These automatic orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties.

(7) The failure to obey these automatic orders may be deemed a contempt of court.

(d) Appendix F.

APPENDIX F

NOTICE OF AUTOMATIC ORDERS (D.R.L. 236)

PURSUANT TO DOMESTIC RELATIONS LAW § 236 part B, section 2, as added by chapter 72 of the Laws of 2009, both you and your spouse (the parties) are bound by the following AUTOMATIC ORDERS, which shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties:

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profiting sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court.

(3) Neither party shall incur unreasonable debts hereafter, including but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.
(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

Credits


22 NYCRR 202.16-a, 22 NY ADC 202.16-a
Section 202.16-b. Submission of written applications in contested matrimonial actions

(l) [FN1] Applicability. This section shall be applicable to all contested matrimonial actions and proceedings in Supreme Court authorized by subdivision (2) of Part B of section 236 of the Domestic Relations Law.

(2) Unless otherwise expressly provided by any provision of the CPLR or other statute, and in addition to the requirements of 22 NYCRR section 202.16(k) where applicable, the following rules and limitations are required for the submission of papers on pendente lite applications for alimony, maintenance, counsel fees, child support, exclusive occupancy, custody and visitation unless said requirements are waived by the judge for good cause shown:

(i) Applications that are deemed an emergency must comply with 22 NYCRR section 202.7 and provide for notice, where applicable, in accordance with same. These emergency applications shall receive a preference by the clerk for processing and the court for signature. Designating an application as an emergency without good cause may be punishable by the issuance of sanctions pursuant to Part 130 of the Rules of the Chief Administrative Judge. Any application designated as an emergency without good cause shall be processed and considered in the ordinary course of local court procedures.

(ii) Where practicable, all orders to show cause, motions or cross-motions for relief should be made in one order to show cause or motion or cross-motion.

(iii) All orders to show cause and motions or cross motions shall be submitted on one-sided copy except as otherwise provided in 22 NYCRR section 202.5(a), or electronically where authorized, with one-inch margins on eight and one half by eleven (8.5 x 11) inch paper with all additional exhibits tabbed. They shall be in Times New Roman font 12 and double spaced. They must be of sufficient quality ink to allow for the reading and proper scanning of the documents. Self-represented litigants may submit handwritten applications provided that the handwriting is legible and otherwise in conformity with these rules.

(iv) The supporting affidavit or affidavit in opposition or attorney affirmation in support or opposition or memorandum of law shall not exceed 20 pages. Any expert affidavit required shall not exceed eight additional pages. Any attorney affirmation in support or opposition or memorandum of law shall contain only discussion and argument on issues of law except for facts known only to the attorney. Any reply affidavits or affirmations to the extent permitted shall not exceed 10 pages. Sur-reply affidavits can only be submitted with prior court permission.

(v) Except for affidavits of net worth (pursuant to 22 NYCRR section 202.16(b)), retainer agreements (pursuant to Rule 1400.3 of the Joint Rules of the Appellate Division), maintenance guidelines worksheets and/or child
support worksheets, or counsel fee billing statements or affirmations or affidavits related to counsel fees (pursuant to Domestic Relations Law section 237 and 22 NYCRR section 202.16(k)), all of which may include attachments thereto, all exhibits annexed to any motion, cross motion, order to show cause, opposition or reply may not be greater than three inches thick without prior permission of the court. All exhibits must contain exhibit tabs.

(vi) If the application or responsive papers exceed the page or size limitation provided in this section, counsel or the self-represented litigant must certify in good faith the need to exceed such limitation, and the court may reject or require revision of the application if the court deems the reasons insufficient.

(3) Nothing contained herein shall prevent a judge or justice of the court or of a judicial district within which the court sits from establishing local part rules to the contrary or in addition to these rules.

Credits
Sec. filed through Court Notices in the Aug. 9, 2017 Register, eff. July 1, 2017.

[FN1] 
Paragraph designation so in original


22 NYCRR 202.16-b, 22 NY ADC 202.16-b
Section 202.17. Exchange of medical reports in personal injury and wrongful death actions

Except where the court otherwise directs, in all actions in which recovery is sought for personal injuries, disability or death, physical examinations and the exchange of medical information shall be governed by the provisions hereinafter set forth.

(a) At any time after joinder of issue and service of a bill of particulars, the party to be examined or any other party may serve on all other parties a notice fixing the time and place of examination. Unless otherwise stipulated, the examination shall be held not less than 30 nor more than 60 days after service of the notice. If served by any party other than the party to be examined, the notice shall name the examining medical provider or providers. If the notice is served by the party to be examined, the examining parties shall, within five days of receipt thereof, submit to the party to be examined the name of the medical providers who will conduct the examination. Any party may move to modify or vacate the notice fixing the time and place of examination or the notice naming the examining medical providers, within 10 days of the receipt thereof, on the grounds that the time or place fixed or the medical provider named is objectionable, or that the nature of the action is such that the interests of justice will not be served by an examination, exchange of medical reports or delivery of authorizations.

(b) At least 20 days before the date of such examination, or on such other date as the court may direct, the party to be examined shall serve upon and deliver to all other parties the following, which may be used by the examining medical provider:

(1) copies of the medical reports of those medical providers who have previously treated or examined the party seeking recovery. These shall include a recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those X-ray and technicians reports which will be offered at the trial, including a description of the injuries, a diagnosis and a prognosis. Medical reports may consist of completed medical provider, workers' compensation, or insurance forms that provide the information required by this paragraph;

(2) duly executed and acknowledged written authorizations permitting all parties to obtain and make copies of all hospital records and such other records, including X-ray and technicians' reports, as may be referred to and identified in the reports of those medical providers who have treated or examined the party seeking recovery.

(c) Copies of the reports of the medical providers making examinations pursuant to this section shall be served on all other parties within 45 days after completion of the examination. These shall comply with the requirements of paragraph (b)(1) of this section.
Section 202.17. Exchange of medical reports in personal injury..., 22 NY ADC 202.17

(d) In actions where the cause of death is in issue, each party shall serve upon all other parties copies of the reports of all treating and examining medical providers whose testimony will be offered at the trial, complying with the requirements of paragraph (b)(1) of this section, and the party seeking to recover shall deliver to all other parties authorizations to examine and obtain copies of all hospital records, autopsy or post-mortem reports, and such other records as provided in paragraph (b)(2) of this section. Copies of these reports and the required authorizations shall be served and delivered with the bill of particulars by the party seeking to recover. All other parties shall serve copies of the reports of their medical providers within 45 days thereafter. In any case where the interests of justice will not be promoted by service of such reports and delivery of such authorizations, an order dispensing with either or both may be obtained.

(e) Parties relying solely on hospital records may so certify in lieu of serving medical providers' reports.

(f) No case otherwise eligible to be noticed for trial may be noticed unless there has been compliance with this rule, or an order dispensing with compliance or extending the time therefor has been obtained; or, where the party to be examined was served a notice as provided in subdivision (a) of this section, and the party so served has not responded thereto.

(g) In the event that the party examined intends at the trial to offer evidence of further or additional injuries or conditions, nonexistent or not known to exist at the time of service of the original medical reports, such party shall, within 30 days after the discovery thereof, and not later than 30 days before trial, serve upon all parties a supplemental medical report complying with the requirements of paragraph (b)(1) of this section, and shall specify a time, not more than 10 days thereafter, and a place at which a further examination may be had. Further authorizations to examine and make copies of additional hospital records, other records, X-ray or other technicians' reports as provided in paragraph (b)(2) of this section must also be delivered with the medical reports. Copies of the reports of the examining medical providers, complying with the requirements of subdivision (c) of this section, shall be served within 10 days after completion of such further examination. If any party desires at the trial to offer the testimony of additional treating or examining medical providers, other than whose medical reports have been previously exchanged, the medical reports of such medical providers, complying with the requirements of paragraph (b)(1) of this section, shall be served upon all parties at least 30 days before trial.

(h) Unless an order to the contrary is made, or unless the judge presiding at the trial in the interests of justice and upon a showing of good cause shall hold otherwise, the party seeking to recover damages shall be precluded at the trial from offering in evidence any part of the hospital records and all other records, including autopsy or post mortem records, X-ray reports or reports of other technicians, not made available pursuant to this rule, and no party shall be permitted to offer any evidence of injuries or conditions not set forth or put in issue in the respective medical reports previously exchanged, nor will the court hear the testimony of any treating or examining medical providers whose medical reports have not been served as provided by this rule.

(i) Orders transferring cases pending in other courts which are subject to the provisions of this section, whether or not such cases are consolidated with cases pending in the court to which transferred, shall contain such provisions as are required to bring the transferred cases into compliance with this rule.

(j) Any party may move to compel compliance or to be relieved from compliance with this rule or any provision thereof, but motions directed to the sufficiency of medical reports must be made within 20 days of receipt of such reports. All motions under this rule may be made on affidavits of attorneys, shall be made on notice, and shall be granted or denied.
on such terms as to costs, calendar position and dates of compliance with any provision of this rule as the court in its discretion shall direct.

(k) Where an examination is conducted on consent prior to the institution of an action, the party to be examined shall deliver the documents specified in paragraphs (b)(1) and (2) of this section, and the report of the examining medical provider shall be delivered as provided in subdivision (c) of this section. In that event, examination after institution of the action may be waived. The waiver, which shall recite that medical reports have been exchanged and that all parties waive further physical examination, shall be filed with the note of issue. This shall not be a bar, however, to proceeding under subdivision (g) of this section in a proper case.

Credits


22 NYCRR 202.17, 22 NY ADC 202.17
Section 202.18. Testimony of court-appointed expert witness in matrimonial action or proceeding

In any action or proceeding tried without a jury to which section 237 of the Domestic Relations Law applies, the court may appoint a psychiatrist, psychologist, social worker or other appropriate expert to give testimony with respect to custody or visitation, and may appoint an accountant, appraiser, actuary or other appropriate expert to give testimony with respect to equitable distribution or a distributive award. In the First and Second Judicial Departments, appointments shall be made as appropriate from a panel of mental health professionals pursuant to Parts 623 and 680 of this Title. The cost of such expert witness shall be paid by a party or parties as the court shall direct.

Credits
Sec. filed April 3, 1989; amd. filed Nov. 21, 2008 eff. Nov. 18, 2008.

Section 202.19. Differentiated case management

(a) Applicability. This section shall apply to such categories of cases designated by the Chief Administrator of the Courts as being subject to differentiated case management, and shall be implemented in such counties, courts or parts of courts as designated by the Chief Administrator. The provisions of section 202.12 of this Part, relating to the preliminary conference, and section 202.26 of this Part, relating to the pretrial conference, shall apply to the extent not inconsistent with this section.

(b) Preliminary conference.

(1) In all actions and proceedings to which this section of the rules is applicable, a preliminary conference shall be ordered by the court to be held within 45 days after the request for judicial intervention is filed.

(2) At the preliminary conference, the court shall designate the track to which the case shall be assigned in accordance with the following:

   (i) expedited—discovery to be completed within eight months;

   (ii) standard—discovery to be completed within 12 months; and

   (iii) complex—discovery to be completed within 15 months.

The timeframes must be complied with unless otherwise shortened or extended by the court depending upon the circumstances of the case.

(3) No later than 60 days before the date fixed for completion of discovery, a compliance conference shall be held to monitor the progress of discovery, explore potential settlement, and set a deadline for the filing of the note of issue.

(c) Pretrial conference.

(1) A pretrial conference shall be held within 180 days of the filing of the note of issue.
(2) At the pretrial conference, the court shall fix a date for the commencement of trial, which shall be no later than eight weeks after the date of the conference.

Credits


22 NYCRR 202.19, 22 NY ADC 202.19
Section 202.20. [Reserved], 22 NY ADC 202.20

22 NYCRR 202.20

Section 202.20. [Reserved]


22 NYCRR 202.20, 22 NY ADC 202.20

End of Document
Section 202.21. Note of issue and certificate of readiness

(a) General. No action or special proceeding shall be deemed ready for trial or inquest unless there is first filed a note of issue accompanied by a certificate of readiness, with proof of service on all parties entitled to notice, in the form prescribed by this section. Filing of a note of issue and certificate of readiness is not required for an application for court approval of the settlement of the claim of an infant, incompetent or conservatee. The note of issue shall include the county clerk's index number; the name of the judge to whom the action is assigned; the name, office address and telephone number of each attorney who has appeared; the name, address and telephone number of any party who has appeared pro se; and the name of any insurance carrier acting on behalf of any party. Within 10 days after service, the original note of issue, and the certificate of readiness where required, with proof of service where service is required, shall be filed in duplicate with the county clerk together with payment of the calendar fee prescribed by CPLR 8020 or a copy of an order permitting the party filing the note of issue to proceed as a poor person, and a duplicate original with proof of service shall be filed with the clerk of the trial court. The county clerk shall forward one of the duplicate originals of the note of issue to the clerk of the trial court stamped "Fee Paid" or "Poor Person Order."

(b) Forms. The note of issue and certificate of readiness shall read substantially as follows:

NOTE OF ISSUE
Calendar No. (if any).................... For use of clerk
Index No......
............................. Court, .......................... County
Name of assigned judge .................................
Notice for trial
Trial by jury demanded ______
_____ of all issues
_____ of issues specified below
_____ or attached hereto
Trial without jury ______
Filed by attorney for ______
Date summons served ______
Date service completed ______
Date issue joined ______
Nature of action or special proceeding
Tort:
Motor vehicle negligence ______
Medical malpractice ______
Other tort ______
Contract ______
Contested matrimonial ______
Uncontested matrimonial ______
Special preference claimed Tax certiorari ______
under __________________ Condemnation ______
on the ground that ________ Other (not itemized above) _____
__________ (specify)

Attorney(s) for Plaintiff(s) Indicate if this action is
Office and P.O. Address: brought as a class action _____
Phone No.
Attorney(s) for Defendant(s)
Office and P.O. Address:
Phone No. Amount demanded $ __________
Other relief __________
Insurance carrier(s), if known:
NOTE: The clerk will not accept this note of issue unless accompanied by a
certificate of readiness.

CERTIFICATE OF READINESS FOR TRIAL

(Items 1-7 must be checked)

Not

Complete

Waived

required

1. All pleadings served.

..... ..... ..... 

2. Bill of particulars served.

..... ..... ..... 

3. Physical examinations completed.

..... ..... ..... 

4. Medical reports exchanged.

..... ..... ..... 

5. Appraisal reports exchanged.

..... ..... ..... 

6. Compliance with section
202.16 of the Rules of the

Chief Administrator (22 NYCRR 202.16) in matrimonial

actions.

7. Discovery proceedings

now known to be necessary

completed.

8. There are no outstanding

requests for discovery.

9. There has been a reasonable

opportunity to complete the

foregoing proceedings.

10. There has been compliance

with any order issued

pursuant to section 202.12

of the Rules of the Chief

Administrator (22 NYCRR 202.12).

11. If a medical malpractice

action, there has been
compliance with any order

issued pursuant to section

202.56 of the Rules of the

Chief Administrator (22 NYCRR

202.56).

12. The case is ready for trial.

Dated:_____

(Signature)_____

Attorney(s) for:_____

Office and P.O. address:_____

(c) Jury trials. A trial by jury may be demanded as provided by CPLR 4102. Where a jury trial has been demanded, the action or special proceeding shall be scheduled for jury trial upon payment of the fee prescribed by CPLR 8020 by the party first filing the demand. If no demand for a jury trial is made, it shall constitute a waiver by all parties and the action or special proceeding shall be scheduled for nonjury trial.

(d) Pretrial proceedings. Where a party is prevented from filing a note of issue and certificate of readiness because a pretrial proceeding has not been completed for any reason beyond the control of the party, the court, upon motion supported by affidavit, may permit the party to file a note of issue upon such conditions as the court deems appropriate. Where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.

(e) Vacating note of issue. Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. However, the 20-day time limitation to make such motion shall not apply to tax assessment review proceedings. After such period, except in a tax assessment review proceeding, no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. If the motion to vacate a note of issue is granted, a copy of the order vacating the note of issue shall be served upon the clerk of the trial court.
(f) **Reinstatement of note of issue.** Motions to reinstate notes of issue vacated pursuant to this section shall be supported by a proper and sufficient certificate of readiness and by an affidavit by a person having first-hand knowledge showing that there is merit to the action, satisfactorily showing the reasons for the acts or omissions which led to the note of issue being vacated, stating meritorious reasons for its reinstatement and showing that the case is presently ready for trial.

(g) **Limited specification of damages demanded in certain actions.** This subdivision shall apply only in counties where the Chief Administrator of the Courts has established arbitration programs pursuant to Part 28 of the Rules of the Chief Judge of the State of New York pertaining to the arbitration of certain actions (22 NYCRR Part 28). In a medical malpractice action or an action against a municipality seeking a sum of money only, where the party filing the note of issue is prohibited by the provisions of CPLR 3017(c) from stating in the pleadings the amount of damages sought in the action, the party shall indicate on the note of issue whether the amount of damages exceeds $6,000, exclusive of costs and interest. If it does not, the party shall also indicate if it exceeds $2,000, exclusive of costs and interest.

(h) **Change in title of action.** In the event of a change in title of an action by reason of a substitution of any party, no new note of issue will be required. Notice of such substitution and change in title shall be given to the assigned judge and to the clerk within 10 days of the date of an order or stipulation effecting the party substitution or title change.

(i) **Additional requirements with respect to uncontested matrimonial actions.**

1. Uncontested matrimonial actions, proceedings for dissolution of marriages and applications for declaratory judgments shall be assigned to judges or special parts of court as the Chief Administrator shall authorize.

2. There shall be a Unified Court System Uncontested Divorce Packet which shall contain the official forms for use in uncontested matrimonial actions. The packet shall be available in the office of the clerk of the Supreme Court in each county, and the forms shall be filed with the appropriate clerk in accordance with the instructions in the packet. These forms shall be accepted by the Court for obtaining an uncontested divorce, and no other forms shall be necessary. The Court, in its discretion, may accept other forms that comply with the requirements of law.

3. The proposed judgments shall be numbered in the order in which they are received and submitted in sequence to the judge or referee.

4. Unless the court otherwise directs, the proof required by statute must be in writing, by affidavits, which shall include a sufficient factual statement to establish jurisdiction, as well as all elements of the cause of action warranting the relief sought.

5. If the judge or referee believes that the papers are insufficient, the complaint shall either be dismissed for failure of proof or a hearing shall be directed to determine whether sufficient evidence exists to support the cause of action.
(6) Whether upon written proof or at the conclusion of a hearing, the judge or referee shall render a decision and sign the findings of fact, conclusions of law and the judgment, unless for reasons stated on the record decision is reserved.

(7) Where a hearing has been held, no transcript of testimony shall be required as a condition precedent to the signing of the judgment, unless the judge or referee presiding shall so direct.

Credits


22 NYCRR 202.21, 22 NY ADC 202.21
Section 202.22. Calendars, 22 NY ADC 202.22

(a) A judge to whom cases are assigned under the individual assignment system may establish such calendars of cases as the judge shall deem necessary or desirable for proper case management. These calendars may include:

1. Preliminary conference calendar. A preliminary conference calendar is for the calendaring for conference of cases in which a note of issue and certificate of readiness have not yet been filed.

2. Motion calendar. A motion calendar is for the hearing of motions.

3. General calendar. A general calendar is for actions in which a note of issue and a certificate of readiness have been filed but which have not as yet been transferred to a pretrial conference calendar or a calendar containing cases that are ready for trial.

4. Pretrial conference calendar. A pretrial conference calendar is for actions awaiting conference after the note of issue and certificate of readiness have been filed.

5. Reserve calendar. A reserve calendar is for actions that have had a pretrial conference or where such conference was dispensed with by the court, but where the actions have not yet been transferred to a ready calendar.

6. Ready calendar. A ready calendar is for actions in which a trial is imminent.

7. Military calendar. A military calendar is for cases where a party to an action or a witness necessary upon the trial is in military service, and is not presently available for trial, and a deposition cannot be taken, or, if taken, would not provide adequate evidence.

8. Continuous calendars. In any court not continuously in session, the calendars at the close of one term shall be used to open the following term and actions on the calendars shall retain their positions.

(b) Calendar progression. With due regard to the requirements of statutory preferences and of section 202.24 of this Part, when actions are advanced from one calendar to another they shall progress from the head of one calendar to the foot of the next calendar and otherwise progress in order insofar as practicable unless otherwise determined by the court.
(c) Call of calendars. Judges to whom actions and proceedings are assigned pursuant to the individual assignment system may schedule calls of any calendars they have established at such times as they deem appropriate.

(d) Readiness for trial. When an action has been announced “ready” but a trial is not immediately available, counsel may arrange with the judge to be summoned by telephone, provided they agree to hold themselves available and to appear on one hour's notice, or at such other time as the court may order, at the time assigned for trial.

Credits


22 NYCRR 202.22, 22 NY ADC 202.22
Section 202.23. [Reserved], 22 NY ADC 202.23


22 NYCRR 202.23, 22 NY ADC 202.23
(a) Applications. Any party claiming a preference under CPLR 3403 may apply to the court in the manner prescribed by that rule.

(b) Special requirements in personal injury and wrongful death action. A party seeking a preference pursuant to CPLR 3403(a)(3) in an action for damages for personal injuries or for causing death shall serve and file in support of the demand or application, whether in the note of issue or subsequent thereto, a copy of:

(1) the summons;

(2) the complaint, answer and bill of particulars, conforming to CPLR 3043 and 3044;

(3) each report required by this Part to be served by the parties relating to medical information;

(4) a statement that the venue of the action was properly laid; and

(5) all other papers material to the application.

(c) Counterclaims and cross-claims. A counterclaim or cross-claim which is not entitled to a preference shall not itself defeat the plaintiff's right to a preference under this section.

(d) Result of preference being granted. If a preference is granted, the case shall be placed ahead of all nonpreferred cases pending as of that date, unless the court otherwise orders.

Credits
Section 202.25. Objections to applications for special preference, 22 NY ADC 202.25

(a) Within 20 days of the filing of the note of issue, if the notice of motion for a special preference is filed therewith, or within 10 days of the service of a notice of motion to obtain a preference, if served and filed subsequent to service and filing of the note of issue, any other party may serve upon all other parties, and file with the court affidavits and other relevant papers, with proof of service, in opposition to granting the preference. In the event opposing papers are filed, the party applying for the preference may, within five days thereafter, serve and file in like manner papers in rebuttal.

(b) In any action which has been accorded a preference in trial upon a motion, the court shall not be precluded, on its own motion at any time thereafter, from ordering that the action is not entitled to a preference under these rules.

(c) Notwithstanding the failure of any party to oppose the application, no preference shall be granted by default unless the court finds that the action is entitled to a preference.

Credits


22 NYCRR 202.25, 22 NY ADC 202.25
Section 202.26. Pretrial conference

(a) After the filing of a note of issue and certificate of readiness in any action, the judge shall order a pretrial conference, unless the judge dispenses with such a conference in any particular case.

(b) To the extent practicable, pretrial conferences shall be held not less than 15 nor more than 45 days before trial is anticipated.

(c) The judge shall consider at the conference with the parties or their counsel the following:

   (1) simplification and limitation of the issues;

   (2) obtaining admission of fact and of documents to avoid unnecessary proof;

   (3) disposition of the action, including scheduling the action for trial;

   (4) amendment of pleadings or bill of particulars;

   (5) limitation of number of expert witnesses; and

   (6) insurance coverage, where relevant.

The judge also may consider with the parties any other matters deemed relevant.

(d) In actions brought under the simplified procedure sections of the CPLR, the court shall address those matters referred to in CPLR 3036(5).

(e) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at a pretrial conference. Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement, including those holding liens on any settlement or verdict, to also attend in person or telephonically at the settlement conference. Plaintiff shall submit marked copies
of the pleadings. A verified bill of particulars and a doctor's report or hospital record, or both, as to the nature and extent of injuries claimed, if any, shall be submitted by the plaintiff and by any defendant who counterclaims. The judge may require additional data, or may waive any requirement for submission of documents on suitable alternate proof of damages. Failure to comply with this subdivision may be deemed a default under CPLR 3404. Absence of an attorney's file shall not be an acceptable excuse for failing to comply with this subdivision.

(f) If any action is settled or discontinued by stipulation at a pretrial conference, complete minutes of such stipulation shall be made at the direction of the court. Such transcribed stipulation shall be enforceable as though made in open court.

(g)

(1) At the pretrial conference, if it appears that the action falls within the monetary jurisdiction of a court of limited jurisdiction, there is nothing to justify its being retained in the court in which it is then pending, and it would be reached for trial more quickly in a lower court, the judge shall order the case transferred to the appropriate lower court, specifying the paragraph of CPLR 325 under which the action is taken.

(2) With respect to transfers to the New York City civil court pursuant to CPLR 325, if, at the pretrial conference, the conditions in paragraph (1) of this subdivision are met except that the case will not be reached for trial more quickly in the lower court, the judge, in his or her discretion, may order the case so transferred if it will be reached for trial in the lower court within 30 days of the conference. In determining whether the action will be reached for trial in the lower court within 30 days, the judge shall consult with the administrative judge of his or her court, who shall advise, after due inquiry, whether calendar conditions and clerical considerations will permit the trial of actions in the lower court within the 30-day timeframe. If the action is not transferred to a lower court, it shall be tried in the superior court in its proper calendar progression.

Credits

22 NYCRR 202.26, 22 NY ADC 202.26
Section 202.27. Defaults

At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order as follows:

(a) If the plaintiff appears but the defendant does not, the judge may grant judgment by default or order an inquest.

(b) If the defendant appears but the plaintiff does not, the judge may dismiss the action and may order a severance of counterclaims or cross-claims.

(c) If no party appears, the judge may make such order as appears just.

Credits


22 NYCRR 202.27, 22 NY ADC 202.27
Section 202.27-a. Proof of default judgment in consumer credit matters
(Uniform Civil Rules for the Supreme Court and the County Court)

(a) Definitions.

(1) For purposes of this section, a consumer credit transaction means a revolving or open-end credit transaction wherein credit is extended by a financial institution, which is in the business of extending credit, to an individual primarily for personal, family or household purposes, the terms of which include periodic payment provisions, late charges and interest accrual. A consumer credit transaction does not include debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.

(2) Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense.

(3) Debt buyer means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney for collection litigation.

(4) Credit agreement means a copy of a contract or other document governing the account provided to the defendant evidencing the defendant's agreement to the debt, the amount due on the account, the name of the original creditor, the account number, and the name and address of the defendant. The charge-off statement or the monthly statement recording the most recent purchase transaction, payment or balance transfer shall be deemed sufficient evidence of a credit agreement.

(b) Applicability. Together with any other affidavits required under New York law, the following affidavits shall be required as part of a default judgment application arising from a consumer credit transaction where such application is made to the clerk under CPLR 3215(a).

(1) In original creditor actions, the affidavit set forth in subdivision (c) of this section, effective October 1, 2014.

(2) In debt buyer actions involving debt purchased from an original creditor on or after October 1, 2014, the affidavits set forth in subdivision (d) of this section.
(3) Except as set forth in paragraph (4) of this subdivision, the affidavits set forth in subdivision (d) of this section shall not be required in debt buyer actions involving debt purchased from an original creditor before October 1, 2014. The plaintiff shall be required to affirm in its affidavit of facts that the debt was purchased from the original creditor before October 1, 2014 and attach proof of that fact.

(4) Effective July 1, 2015, the affidavits set forth in subdivision (d) of this section shall be required in all debt buyer actions notwithstanding that the debt was purchased from an original creditor before October 1, 2014.

(5) In all original creditor and debt buyer actions, the affidavit of non-expiration of statute of limitations set forth in subdivision (e) of this section, effective October 1, 2014.

c Where the plaintiff is the original creditor, the plaintiff must submit the AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR.

d Where the plaintiff is a debt buyer, the plaintiff must submit the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF, the AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR and, if applicable, the AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER for each debt seller who owned the debt prior to the plaintiff.

e In all applications for a default judgment arising from a consumer credit transaction, the plaintiff must submit the AFFIRMATION OF NON-EXPIRATION OF STATUTE OF LIMITATIONS executed by counsel.

f The affidavits required by this section may not be combined. Affidavits may be augmented to provide explanatory details, and supplemental affidavits may be filed for the same purpose.

g The affidavits required by this section shall be supported by exhibits, including a copy of the credit agreement as defined in this section, the bill of sale or written assignment of the account where applicable, and relevant business records of the Original Creditor that set forth the name of the defendant; the last four digits of the account number; the date and amount of the charge-off balance; the date and amount of the last payment, if any; the amounts of any post-charge-off interest and post-charge-off fees and charges, less any post-charge-off credits or payments made by or on behalf the defendant; and the balance due at the time of sale.

h If a verified complaint has been served, it may be used as the plaintiff’s affidavit of facts where it satisfies the elements of the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF.

i The County Clerk or clerk of the court shall refuse to accept for filing a default judgment application that does not comply with the requirements of this section.

j Nothing in this section is intended to impair a plaintiff’s ability to make a default judgment application to the court as authorized under CPLR 3215(b).
Credits
Sec. filed through Court Notices in the Oct. 8, 2014 Register.


22 NYCRR 202.27-a, 22 NY ADC 202.27-a
Section 202.27-b. Additional mailing of notice on an action arising from a consumer credit transaction (Uniform Civil Rules for the Supreme Court and the County Court)

(a) Additional mailing of notice on an action arising from a consumer credit transaction.

(1) At the time of filing with the clerk the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped unsealed envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

SUPREME/DISTRICT/CITY COURT. COUNTY/CITY OF_____

COUNTY OF ______INDEX NO. ______

Plaintiff ______Defendant ______

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should respond to the lawsuit as soon as possible by filing an "answer." You may wish to contact an attorney. If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment will affect your credit score and can affect your ability to rent a home, find a job, or take out a loan. You cannot be arrested or sent to jail for owing a debt. Additional information can be found on the court system's website at: www.nycourts.gov

PRECAUCION: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe, tan pronto como le sea posible, responder a la demanda presentando una "contestacion." Quizas usted quiera comunicarse con un abogado. Si usted no presenta una contestacion, el tribunal puede emitir un fallo monetario en contra suya. Una vez emitido, ese fallo es valido y puede ser utilizado contra usted por un periodo de veinte anos, y contra su propiedad personal y su dinero, incluyendo una porcion de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Ademas, un fallo monetario afecta su credito y puede afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un prestamo para comprar un automovil. Usted no puede ser arrestado ni apresado por adeudar dinero. Puede obtener informacion adicional en el sitio web del sistema: www.nycourts.gov

The face of the envelope shall be addressed to the defendant at the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall contain, in the form of a return address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:
(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1) of this subdivision. No default judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk. No default judgment based on defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable, unless the address at which process was served matches the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

Credits
Sec. filed through Court Notices in the Oct. 8, 2014 Register.

22 NYCRR 202.27-b, 22 NY ADC 202.27-b
Section 202.28. Discontinuance of civil actions and notice to the court

22 NYCRR 202.28

Section 202.28. Discontinuance of civil actions and notice to the court

(a) In any discontinued action, the attorney for the defendant shall file a stipulation or statement of discontinuance with the county clerk within 20 days of such discontinuance. If the action 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.

(b) If an action is discontinued under subdivision (a) of this section, or wholly or partially settled by stipulation pursuant to CPLR 2104, or a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy, the parties promptly shall notify the assigned judge in writing of such an event.

Credits

22 NYCRR 202.28, 22 NY ADC 202.28

End of Document
Sections 202.29 to 202.30. [Reserved], 22 NY ADC 202.29 to 202.30

Compilation of Codes, Rules and Regulations of the State of New York Currentness
   Title 22. Judiciary
      Subtitle A. Judicial Administration.
         Chapter II. Uniform Rules for the New York State Trial Courts
            Part 202. Uniform Civil Rules for the Supreme Court and the County Court (Refs & Annos)

22 NYCRR 202.29 to 202.30

Sections 202.29 to 202.30. [Reserved]


22 NYCRR 202.29 to 202.30, 22 NY ADC 202.29 to 202.30

End of Document

Section 202.31. Identification of trial counsel

 Unless the court otherwise provides, 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 no later than 15 days after the pretrial conference or, if there is no pretrial conference, at least 10 days before trial. The notice must be signed by both the attorney of record and the trial counsel.

 Credits


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 of the Courts (22 NYCRR Part 125).

Credits


22 NYCRR 202.32, 22 NY ADC 202.32
Section 202.33. Conduct of the voir dire

(a) **Trial judge.** All references to the trial judge in this section shall include any judge designated by the administrative judge in those instances where the case processing system or other logistical considerations do not permit the trial judge to perform the acts set forth in this section.

(b) **Pre-voir dire settlement conference.** Where the court has directed that jury selection begin, the trial judge shall meet prior to the actual commencement of jury selection with counsel who will be conducting the voir dire and shall attempt to bring about a disposition of the action.

(c) **Method of jury selection.** The trial judge shall direct the method of jury selection that shall be used for the voir dire from among the methods specified in subdivision (f) of this section.

(d) **Time limitations.** The trial judge shall establish time limitations for the questioning of prospective jurors during the voir dire. At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of panels of jurors or individual jurors.

(e) **Presence of judge at the voir dire.** In order to ensure an efficient and dignified selection process, the trial judge shall preside at the commencement of the voir dire and open the voir dire proceeding. The trial judge shall determine whether supervision of the voir dire should continue after the voir dire has commenced and, in his or her discretion, preside over part of or all of the remainder of the voir dire.

(f) **Methods of jury selection.** Counsel shall select prospective jurors in accordance with the general principles applicable to jury selection set forth in subdivision (g) of this section and using the method designated by the judge pursuant to subdivision (c) of this section. The methods that may be selected are:

1. "White's method," as set forth in subdivision (g) of this section;

2. "struck method," as set forth in subdivision (g) of this section;

3. "strike and replace method," in districts where the specifics of that method have been submitted to the Chief Administrator by the Administrative Judge and approved by the Chief Administrator for that district. The strike
and replace method shall be approved only in those districts where the Chief Administrator, in his or her discretion, has determined that experience with the method in the district has resulted in an efficient and orderly selection process; or

(4) other methods that may be submitted to the Chief Administrator for use on an experimental basis by the appropriate Administrative Judge and approved by the Chief Administrator.

(g) Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

APPENDIX E


A. General principles applicable to jury selection. Selection of jurors pursuant to any of the methods authorized by section 202.33(e) of the Rules of the Chief Administrator shall be governed by the following:

(1) If for any reason jury selection cannot proceed immediately, counsel shall return promptly to the courtroom of the assigned trial judge or the Trial Assignment Part or any other designated location for further instructions.

(2) Generally, a total of eight jurors, including two alternates, shall be selected. The court may permit a greater number of alternates if a lengthy trial is expected or for any appropriate reason. Counsel may consent to the use of "nondesignated" alternate jurors, in which event no distinction shall be made during jury selection between jurors and alternates, but the number of peremptory challenges in such cases shall consist of the sum of the peremptory challenges that would have been available to challenge both jurors and designated alternates.

(3) All prospective jurors shall complete a background questionnaire supplied by the court in a form approved by the Chief Administrator. Prior to the commencement of jury selection, completed questionnaires shall be made available to counsel. Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy. With Court approval, which shall take into consideration concern for juror privacy, the parties may supplement the questionnaire to address concerns unique to a specific case.

(4) During the voir dire each attorney may state generally the contentions of his or her client, and identify the parties, attorneys and the witnesses likely to be called. However, counsel may not read from any of the pleadings in the action or inform potential jurors of the amount of money at issue.

(5) Counsel shall exercise peremptory challenges outside of the presence of the panel of prospective jurors.

(6) Counsel shall avoid discussing legal concepts such as burden of proof, which are the province of the court.

(7) If an unusual delay or a lengthy trial is anticipated, counsel may so advise prospective jurors.
(8) If counsel objects to anything said or done by any other counsel during the selection process, the objecting counsel shall unobtrusively request that all counsel step outside of the juror's presence, and counsel shall make a determined effort to resolve the problem. Should that effort fail, counsel shall immediately bring the problem to the attention of the assigned trial judge, the Trial Assignment Part judge or any other designated judge.

(9) After jury selection is completed, counsel shall advise the clerk of the assigned Trial Part or of the Trial Assignment Part or other designated part. If counsel anticipates the need during trial of special equipment (if available) or special assistance, such as an interpreter, counsel shall so inform the clerk at that time.

B. "White's Method"

(1) Prior to the identification of the prospective jurors to be seated in the jury box, counsel shall ask questions generally to all of the jurors in the room to determine whether any prospective juror in the room has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(2) After general questions have been asked to the group of prospective jurors, jury selection shall continue in rounds, with each round to consist of the following: (1) seating prospective jurors in the jury box; (2) questioning of seated prospective jurors; and (3) removal of seated prospective jurors upon exercise of challenges. Jurors removed for cause shall immediately be replaced during each round. The first round shall begin initially with the seating of six prospective jurors (where undesignated alternates are used, additional prospective jurors equal to the number of alternate jurors shall be seated as well).

(3) In each round, the questioning of the seated prospective jurors shall be conducted first by counsel for the plaintiff, followed by counsel for the remaining parties in the order in which their names appear in the caption. Counsel may be permitted to ask follow-up questions. Within each round, challenges for cause shall be exercised by any party prior to the exercise of peremptory challenges and as soon as the reason therefor becomes apparent. Upon replacement of a prospective juror removed for cause, questioning shall revert to the plaintiff.

(4) Following questioning and the exercise of challenges for cause, peremptory challenges shall be exercised one at a time and alternately as follows: In the first round, in caption order, each attorney shall exercise one peremptory challenge by removing a prospective juror's name from a "board" passed back and forth between or among counsel. An attorney alternatively may waive the making of a peremptory challenge. An attorney may exercise a second, single peremptory challenge within the round only after all other attorneys have either exercised or waived their first peremptory challenges. The board shall continue to circulate among the attorneys until no other peremptory challenges are exercised. An attorney who waives a challenge may not thereafter exercise a peremptory challenge within the round, but may exercise remaining peremptory challenges in subsequent rounds. The counsel last able to exercise a peremptory challenge in a round is not confined to the exercise of a single challenge but may then exercise one or more peremptory challenges.
(5) In subsequent rounds, the first exercise of peremptory challenges shall alternate from side to side. Where a side consists of multiple parties, commencement of the exercise of peremptory challenges in subsequent rounds shall rotate among the parties within the side. In each such round, before the board is to be passed to the other side, the board must be passed to all remaining parties within the side, in caption order, starting from the first party in the rotation for that round.

(6) At the end of each round, those seated jurors who remain unchallenged shall be sworn and removed from the room. The challenged jurors shall be replaced, and a new round shall commence.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Designated alternate jurors shall be selected in the same manner as described above, with the order of exercise of peremptory challenges continuing as the next round following the last completed round of challenges to regular jurors. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

C. "Struck Method"

(1) Unless otherwise ordered by the Court, selection of jurors shall be made from an initial panel of 25 prospective jurors, who shall be seated randomly and who shall maintain the order of seating throughout the voir dire. If fewer prospective jurors are needed due to the use of designated alternate jurors or for any other reason, the size of the panel may be decreased.

(2) Counsel first shall ask questions generally to the prospective jurors as a group to determine whether any prospective juror has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires further elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(3) After the general questioning has been completed, in an action with one plaintiff and one defendant, counsel for the plaintiff initially shall question the prospective jurors, followed by questioning by defendant's counsel. Counsel may be permitted to ask follow-up questions. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. A challenge for cause may be made by counsel to any party as soon as the reason therefor becomes apparent. At the end of the period, all challenges for cause to any prospective juror on the panel must have been exercised by respective counsel.

(4) After challenges for cause are exercised, the number of prospective jurors remaining shall be counted. If that number is less than the total number of jurors to be selected (including alternates, where non-designated alternates are being used) plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties (such sum shall be referred to as the "jury panel number"), additional prospective jurors shall be added until the number of prospective jurors not subject to challenge for cause equals or exceeds the jury panel number. Counsel for each party then shall question each replacement juror pursuant to the procedure set forth in paragraph (3).

(5) After all prospective jurors in the panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise allowable peremptory
challenges by alternately striking a single juror's name from a list or ballot passed back and forth between or among
counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory
challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless
following that order would, in the opinion of the court, unduly favor a side. In that event, the court, after consulting
with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall
balance the interests of the parties. An attorney who waives a challenge may not thereafter exercise a peremptory
challenge. Any Batson or other objections shall be resolved by the court before any of the struck jurors are dismissed.

(6) After all peremptory challenges have been made, the trial jurors (including alternates when non-designated
alternates are used) then shall be selected in the order in which they have been seated from those prospective jurors
remaining on the panel.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Counsel shall
select designated alternates in the same manner set forth in these rules, but with an initial panel of not more than 10
prospective alternates unless otherwise directed by the court. The jury panel number for designated alternate jurors
shall be equal to the number of alternates plus the maximum number of peremptory challenges allowed by the court
or by statute that may be exercised by the parties. The total number of peremptory challenges to alternates may be
exercised against any alternate, regardless of seat.
Section 202.34. [Reserved], 22 NY ADC 202.34


End of Document
Section 202.35. Submission of papers for trial, 22 NY ADC 202.35

(a) Upon the trial of an action, the following papers, if not yet submitted, shall be submitted to the court by the party who has filed the note of issue:

(1) copies of all pleadings marked as required by CPLR 4012; and

(2) a copy of the bill of particulars, if any.

(b) Upon the trial of an action, a copy of any statutory provision in effect at the time the cause of action arose shall be submitted to the court by the party who intends to rely upon such statute.

(c) If so ordered, the parties shall submit to the court, before the commencement of trial, trial memoranda which shall be exchanged among counsel.

Credits


22 NYCRR 202.35, 22 NY ADC 202.35
Section 202.36. 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 judge presiding. The court may permit counsel to leave, provided that counsel remain in telephone contact with the court. 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.

Credits

Sections 202.37 to 202.39. [Reserved], 22 NY ADC 202.37 to 202.39

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 22. Judiciary
Subtitle A. Judicial Administration.
   Chapter II. Uniform Rules for the New York State Trial Courts
      Part 202. Uniform Civil Rules for the Supreme Court and the County Court (Refs & Annos)

22 NYCRR 202.37 to 202.39

Sections 202.37 to 202.39. [Reserved]


22 NYCRR 202.37 to 202.39, 22 NY ADC 202.37 to 202.39

End of Document

Section 202.40. Jury trial of less than all issues; procedure

Unless otherwise ordered by the court, whenever a trial by jury is demanded on less than all issues of fact in an action, and such issues as to which a trial by jury is demanded have been specified in the note of issue or in the jury demand, as the case may be, served and filed pursuant to section 202.21 of this Part, the court without a jury first shall try all issues of fact as to which a trial by jury is not demanded. If the determination of these issues by the court does not dispose of the action, a jury shall be empanelled to try the issues as to which a trial by jury is demanded.

Credits


22 NYCRR 202.40, 22 NY ADC 202.40
Section 202.41. [Reserved], 22 NY ADC 202.41

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 22. Judiciary
Subtitle A. Judicial Administration.
Chapter II. Uniform Rules for the New York State Trial Courts
Part 202. Uniform Civil Rules for the Supreme Court and the County Court (Refs & Annos)

22 NYCRR 202.41

Section 202.41. [Reserved]


22 NYCRR 202.41, 22 NY ADC 202.41
22 NYCRR 202.42

Section 202.42. Bifurcated trials

(a) Judges are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action.

(b) Where a bifurcated trial is ordered, the issues of liability and damages shall be severed and the issue of liability shall be tried first, unless the court orders otherwise.

(c) During the voir dire conducted prior to the liability phase of the trial, if the damage phase of the trial is to be conducted before the same jury, counsel may question the prospective jurors with respect to the issue of damages in the same manner as if the trial were not bifurcated.

(d) In opening to the jury on the liability phase of the trial, counsel may not discuss the question of damages. However, if the verdict of the jury shall be in favor of the plaintiff on the liability issue or in favor of the defendant on any counterclaim on the liability issue, all parties shall then be afforded an opportunity to address the jury on the question of damages before proof in that regard is presented to the jury.

(e) In the event of a plaintiff's verdict on the issue of liability or a defendant's verdict on the issue of liability on a counterclaim, the damage phase of the trial shall be conducted immediately thereafter before the same judge and jury, unless the judge presiding over the trial, for reasons stated in the record, finds such procedures to be impracticable.

Credits


22 NYCRR 202.42, 22 NY ADC 202.42

End of Document
Section 202.43. References of triable issues and proceedings to judicial hearing officers or referees

(a) No application to refer an action or special proceeding to a judicial hearing officer or referee will be entertained unless a note of issue, where required, has been filed and the index number is set forth in the moving papers and the proposed order.

(b) The proposed order of reference shall be presented in duplicate, and a signed original order shall be delivered to the referee. If such order is not presented for signature within 20 days after the court directs a reference, the application shall be deemed abandoned.

(c) The proposed order of reference, and the actual order of reference, shall indicate whether the reference is one to hear and determine or to hear and report.

(d) Every order of reference which does not set forth a date certain for commencement of the trial or hearing shall contain the following provision:

    and it is further ORDERED that if trial of the issue or action hereby referred is not begun within 60 days from the date of this order, or before such later date as the referee or judicial hearing officer may fix upon good cause shown, this order shall be cancelled and revoked, shall be remitted by the referee or judicial hearing officer to the court from which it was issued, and the matter hereby referred shall immediately be returned to the court for trial.

(e) The term referee in this section shall include, but not be limited to, commissioners of appraisal, and shall not include receivers or referees in incompetency proceedings or mortgage foreclosure proceedings.

Credits


22 NYCRR 202.43, 22 NY ADC 202.43
Section 202.44. Motion to confirm or reject judicial hearing officer's report or referee's report

(a) When a judicial hearing officer or referee appointed to hear and report has duly filed his or her report, together with the transcript of testimony taken and all papers and exhibits before him or her in the proceedings, if any, and has duly given notice to each party of the filing of the report, the plaintiff shall move on notice to confirm or reject all or part of the report within 15 days after notice of such filing was given. If plaintiff fails to make the motion, the defendant shall so move within 30 days after notice of such filing was given.

(b) If no party moves as specified above, the court, on its own motion, shall issue its determination. Costs of such motion, including reasonable attorneys' fees, shall be borne by the parties pro rata, except a party who did not request any relief. However, the Attorney General of New York, or State, Federal or local governmental agencies or officers thereof, shall not be liable for costs. This subdivision shall not apply to a reference to a special referee or a judicial hearing officer or to a reference to a referee in an uncontested matrimonial action.

(c) The term "referee" in this section shall be used as defined in section 202.43(e) of this Part.

Credits


22 NYCRR 202.44, 22 NY ADC 202.44
Section 202.45. Rescheduling after jury disagreement, mistrial or order for new trial

An action in which there has been an inability by a jury to reach a verdict, a mistrial or a new trial granted by the trial justice or an appellate court shall be rescheduled for trial. Where a new trial is granted by an appellate court, a notice to reschedule shall be filed with the appropriate clerk.

 Credits


22 NYCRR 202.45, 22 NY ADC 202.45
Section 202.46. Damages, inquest after default; proof

(a) In an inquest to ascertain damages upon a default, pursuant to CPLR 3215, if the defaulting party fails to appear in person or by representative, the party entitled to judgment, whether a plaintiff, third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim, may be permitted to submit, in addition to the proof required by CPLR 3215(e), properly executed affidavits as proof of damages.

(b) In any action where it is necessary to take an inquest before the court, the party seeking damages may submit the proof required by oral testimony of witnesses in open court or by written statements of the witnesses, in narrative or question-and-answer form, signed and sworn to.

Credits


22 NYCRR 202.46, 22 NY ADC 202.46
Whenever a county clerk issues a transcript of judgment, which shall be in the form prescribed by law, such clerk shall at
the same time issue a stub. Such stub shall be 3 5/8 x 8 1/2 inches and shall have imprinted thereon the name and address
of the issuing county clerk. The stub shall also contain such other information as shall be required to identify it with the
transcript with which it was issued, so that it may be readily identified upon its return to the issuing county clerk, with
the name of, and the date of receipt by, the receiving clerk endorsed thereon.

Credits

Section 202.48. 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, unless otherwise directed by the court, 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 action, 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 court 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 date of settlement; or

(ii) by mail not less than 10 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. Any proposed counter-order or judgment shall be submitted with a copy clearly marked to delineate each proposed change to the order or judgment to which objection is made.

Credits

Section 202.49. [Reserved], 22 NY ADC 202.49

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 22. Judiciary
Subtitle A. Judicial Administration.
Chapter II. Uniform Rules for the New York State Trial Courts
Part 202. Uniform Civil Rules for the Supreme Court and the County Court (Refs & Annos)

22 NYCRR 202.49

Section 202.49. [Reserved]


22 NYCRR 202.49, 22 NY ADC 202.49

End of Document
Section 202.50. Proposed judgments in matrimonial actions; forms, 22 NY ADC 202.50

(a) Form of judgments. Findings and conclusions shall be in a separate paper from the judgment, which papers shall be labelled "FINDINGS OF FACT AND CONCLUSIONS OF LAW" and "JUDGMENT," respectively.

(b) Approved forms.

(1) Contested actions. The paragraphs contained in Chapter III, Subchapter B of Subtitle D (Forms) of this Title, modified or deleted as may be necessary to conform to the law and facts in a particular action, shall be used in the preparation of "FINDINGS OF FACT AND CONCLUSIONS OF LAW," "JUDGMENT," or "REFEREE'S REPORT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW." Parenthesized portions indicate alternative provisions.

(2) Uncontested actions. Parties in uncontested matrimonial actions shall use the forms in the Unified Court System Uncontested Divorce Packet as set forth in section 202.21(i)(2) of this Part, unless the court permits otherwise pursuant to that section.

(3) Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce. In addition to satisfying the requirements of paragraphs (1) and (2) of this subdivision, every judgment of divorce, whether uncontested or contested, shall include language substantially in accordance with the following decretal paragraphs which shall supersede any inconsistent decretal paragraphs currently required for such forms:

ORDERED AND ADJUDGED that the Settlement Agreement entered into between the parties on the ___ day of ____, [ ] an original OR [ ] a transcript of which is on file with this Court and incorporated herein by reference, shall survive and shall not be merged into this judgment,* and the parties are hereby directed to comply with all legally enforceable terms and conditions of said agreement as if such terms and conditions were set forth in their entirety herein; and it is further

*In contested actions, this paragraph may read either [shall survive and shall not be merged into this judgment] or [shall not survive and shall be merged into this judgment].

ORDERED AND ADJUDGED, that the Supreme Court shall retain jurisdiction to hear any applications to enforce the provisions of said Settlement Agreement or to enforce or modify the provisions of this judgment, provided the court retains jurisdiction of the matter concurrently with the Family Court for the purpose of specifically enforcing, such of the provisions of that (separation agreement) (stipulation agreement) as are capable of specific enforcement to the extent
permitted by law, and of modifying such judgment with respect to maintenance, support, custody or visitation to the extent permitted by law, or both; and it is further

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of said Settlement Agreement or to enforce or modify the provisions of this judgment shall be brought in a County wherein one of the parties resides; provided that if there are minor children of the marriage, such applications shall be brought in a county wherein one of the parties or the child or children reside, except in the discretion of the judge, for good cause. Good cause applications shall be made by motion or order to show cause. Where the address of either party and any child or children is unknown and not a matter of public record, or is subject to an existing confidentiality order pursuant to DRL section 254 or FCA section 154-b, such applications may be brought in the county where the judgment was entered; and it is further

(c) Judgments submitted to the court shall be accompanied by a complete form UCS 111 (Child Support Summary Form).

Credits


22 NYCRR 202.50, 22 NY ADC 202.50

End of Document
In all actions in which the accounts of a receiver appointed in an action for the dissolution of a corporation are presented for settlement or to be passed upon by the court, a notice or a copy of an advertisement requiring the creditors to present their claims to a referee must be mailed, with the postage thereon prepaid, to each creditor whose name appears on the books of the corporation, at least 20 days before the date specified in such notice or advertisement. Proof of such mailing shall be required on the application for a final decree passing the accounts of the receiver unless proof is furnished that personal service of such notice or copy of advertisement has been made upon the creditors.

Credits

(a) Every receiver or assignee who, as such, receives any funds shall promptly deposit them in a checking account or in an interest-bearing account, as determined by the court, in a bank or trust company designated by the court. Such account shall be in his or her name as receiver or assignee and shall show the name of the case. The depository shall furnish monthly statements to the receiver or assignee and to the attorney for the receiver or the assignee.

(b) No funds shall be withdrawn from a receiver's or assignee's account, and no check thereon shall be honored, unless directed by court order or the check is countersigned by the receiver's or assignee's surety.

(c) The order appointing a receiver or assignee shall incorporate subdivisions (a) and (b) of this section.

(d) All checks by a receiver or assignee for the withdrawal of moneys shall be numbered consecutively. On the stub of each check shall be noted the number, the date, the payee's name and the purpose for which the check is drawn. Checkbooks, stubs, cancelled checks and bank statements of such bank accounts shall be maintained at the office of the receiver or assignee, or his or her attorney, and shall be available for inspection by creditors or parties during business hours.

(e) Receivers shall file with the court an accounting at least once each year. An application by a receiver for final settlement of his or her account, or by an assignee for leave to sell assets, shall include a county clerk's certificate stating the date that the bond of the applicant was filed, that it is still on file and that no order has been entered cancelling the bond or discharging the surety thereon.
Section 202.53. Trust accountings; procedure

(a) Applications by trustees for interlocutory or final judgments or final orders in trust accountings or to terminate trusts shall be by notice of petition or order to show cause after the account has been filed in the county clerk’s office.

(b) In all actions involving an accounting of a testamentary trustee or a trustee under a deed, notice must be given to the State Tax Commission before the accounts of such trustees may be approved.

(c) Where all parties file a written consent to the entry of a judgment or order, it may be presented at a motion part for consideration by the court.

Credits


22 NYCRR 202.53, 22 NY ADC 202.53
Section 202.54. Proceedings relating to appointments of guardians with respect to patients in facilities defined in the Mental Hygiene Law

Where a patient in a facility defined in the Mental Hygiene Law is the subject of a proceeding for the appointment of a guardian, pursuant to the Mental Hygiene Law or article 17-A of the Surrogate's Court Procedure Act, or for any substitute for or successor to such person:

(a) A copy of the notice of application for the appointment shall be served on the director of the Mental Hygiene Legal Service in the department in which the facility is located. The director shall submit to the court for its consideration such papers as the director may deem appropriate.

(b) Within 10 days after the order determining the application is signed, a copy shall be served on the director.

(c) Within 10 days after qualification of the guardian, proof of qualification shall be served on the director.

(d) A notice of an application for a judicial accounting by the guardian shall be served on the director.

(e) With respect to a patient in a facility located in a judicial department other than the department where the proceeding is initiated, copies of the application, order or proof of qualification shall be served upon the directors in both departments.

(f) Whenever the patient, or a person on behalf of the patient, or the director requests a court hearing, at least five days notice, if notice is given personally or by delivery at the home of the person receiving notice, or eight days notice, if notice is given by mail, excluding Sundays and holidays, of the date and place of the hearing, shall be given to the patient and any person requesting the hearing.

Credits


22 NYCRR 202.54, 22 NY ADC 202.54
Section 202.55. Procedure for perfection of civil appeals to the County Court

(a) Within 20 days after the papers described in section 1704 of the Uniform Justice Court Act or section 1704 of the Uniform City Court Act have been filed with the County Court, appellants shall notice the appeal for the next term or special term of County Court by filing with the clerk of the County Court, not less than 14 days prior to the date for which the appeal has been noticed, a notice of argument and a brief or statement of contentions with proof of service of a copy of each upon respondent. Respondent's papers shall be filed with the judge of the County Court within 12 days after service of appellant's brief or statement of contentions, with proof of service of a copy upon appellant.

(b) If appellant does not comply herewith, the County Court may, upon respondent's motion or upon its own motion, dismiss the appeal.

(c) Upon motion, the County Court judge hearing the appeal may for good cause shown extend the time to a subsequent term or special term, in which case the appellant must notice the appeal for such subsequent term. Unless otherwise ordered by the court, appeals may be submitted without oral argument. Motions for reargument may be made after decision is rendered, and must be made within 30 days after service upon the moving party of a copy of the order entered on the decision, with written notice of its entry.

Credits


22 NYCRR 202.55, 22 NY ADC 202.55
Section 202.56. Medical, dental and podiatric malpractice actions; special rules

(a) Notice of medical, dental or podiatric malpractice action.

(1) Within 60 days after joinder of issue by all defendants named in the complaint in an action for medical, dental or podiatric malpractice, or after the time for a defaulting party to appear, answer or move with respect to a pleading has expired, the plaintiff shall obtain an index number and file a notice of such medical, dental or podiatric malpractice action with the appropriate clerk of the county of venue, together with:

(i) proof of service of the notice upon all other parties to the action;

(ii) proof that, if demanded, authorizations to obtain medical, dental and hospital records have been served upon the defendants in the action;

(iii) copies of the summons, notice of appearance and all pleadings, including the certificate of merit if required by CPLR 3012-a;

(iv) a copy of the bill of particulars, if one has been served;

(v) a copy of any arbitration demand, election of arbitration or concession of liability served pursuant to CPLR 3045; and

(vi) if requested and available, all information required by CPLR 3101(d)(1)(i). The notice shall be served simultaneously upon all such parties. If the bill of particulars, papers served pursuant to CPLR 3045, and information required by CPLR 3101(d)(1)(i) are not available, but later become available, they shall be filed with the court simultaneously when served on other parties. The notice shall be in substantially the following form:

Notice of Medical, Dental or Podiatric Malpractice Action

Malpractice

Calendar No.
Please take notice that the above action for medical, dental or podiatric malpractice was commenced by service of summons on _____, that issue was joined therein on _____, and that the action has not been dismissed, settled or otherwise terminated.

1. State full name, address and age of each plaintiff.

2. State full name and address of each defendant.

3. State alleged medical specialty of each individual defendant, if known.

4. Indicate whether claim is for

   _____ medical malpractice
   _____ dental malpractice
   _____ podiatric malpractice
5. State date and place claim arose.


7. (Following items must be checked)

(a) Proof is attached that authorizations
to obtain medical, dental, podiatric
and hospital records have been
served upon the defendants in the
action
____
or
demand has not been made for such
authorizations. ____

(b) Copies of the summons, notice of
appearance, all pleadings, certificate
of merit, if required, and the bill of
particulars if one has been served,
are attached.
____

(c) A copy of any demand for arbitration,
election of arbitration or concession
of liability is attached
or

demand has not been made for

  arbitration. _____

(d) All information required by CPLR

3101(d)(1)(i) is attached

_____ 

or

  a request for such information has

not been made _____ 

or

  such information is not available. _____ 

8. State name, addresses and telephone numbers of counsel for all parties.

__________ 

(PRINT NAME)

Attorney for Plaintiff

Address

Telephone number

Dated:

Instructions:

  1. Attach additional 8 1/2 x 11 rider sheets if necessary.

  2. Attach proof of service of this notice upon all other parties to the action.
(2) The filing of the notice of medical, dental or podiatric malpractice action in an action to which a judge has not been assigned shall be accompanied by a request for judicial intervention, pursuant to section 202.6 of this Part, and shall cause the assignment of the action to a judge.

(3) Such notice shall be filed after the expiration of 60 days only by leave of the court on motion and for good cause shown. The court shall impose such conditions as may be just, including the assessment of costs.

(b) Medical, dental and podiatric malpractice preliminary conference.

(1) The judge, assigned to the medical, dental or podiatric malpractice action, as soon as practicable after the filing of the notice of medical, dental or podiatric malpractice action, shall order and conduct a preliminary conference and shall take whatever action is warranted to expedite the final disposition of the case, including but not limited to:

   (i) directing any party to utilize or comply forthwith with any pretrial disclosure procedure authorized by the Civil Practice Law and Rules;

   (ii) fixing the date and time for such procedures, provided that all such procedures must be completed within 12 months of the filing of the notice of medical, dental or podiatric malpractice action unless otherwise ordered by the court;

   (iii) establishing a timetable for offers and depositions pursuant to CPLR 3101(d)(1)(ii);

   (iv) directing the filing of a note of issue and a certificate of readiness when the action otherwise is ready for trial provided that the filing of the note of issue and certificate of readiness, to the extent feasible, be no later than 18 months after the notice of medical, dental or podiatric malpractice action is filed;

   (v) fixing a date for trial;

   (vi) signing any order required;

   (vii) discussing and encouraging settlement, including use of the arbitration procedures set forth in CPLR 3045;

   (viii) limiting issues and recording stipulations of counsel; and

   (ix) scheduling and conducting any additional conferences as may be appropriate.

(2) A party failing to comply with a directive of the court authorized by the provisions of this subdivision shall be subject to appropriate sanctions, including costs, imposition of appropriate attorney's fees, dismissal of an action,
claim, cross-claim, counterclaim or defense, or rendering a judgment by default. A certificate of readiness and a note of issue may not be filed until a preliminary conference has been held pursuant to this subdivision.

(3) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

c) Settlement conferences.

(1) The court shall hold a settlement conference in accordance with CPLR 3409 within 45 days after the filing of the note of issue and certificate of readiness or, if a party moves to vacate the note of issue and certificate of readiness and that motion is denied, within 45 days after denial of the motion.

(2) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to dispose of the case, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(3) Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or other persons having an interest in any settlement to attend the settlement conference in person, by telephone, or by other electronic media.

Credits


22 NYCRR 202.56, 22 NY ADC 202.56
Section 202.57. Judicial review of orders of the State Division of Human Rights; procedure

(a) Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.

(b) Except as set forth in subdivision (c) of this section, and unless otherwise ordered by the court, the State Division of Human Rights shall have 20 days after service of the notice of petition and petition to file with the court the written transcript of the record of all prior proceedings upon which its order was made.

(c) Where the petition seeks review of an order issued after a public hearing held pursuant to section 297(4)(a) of the Executive Law:

(1) the petition shall have annexed to it a copy of such order;

(2) the Supreme Court, upon the filing of the petition, shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the judicial department embracing the county in which the proceeding was commenced; and

(3) the time and manner of the filing of the written transcript of the record of all prior proceedings shall be determined by the Appellate Division to which the proceeding is transferred.

Credits


22 NYCRR 202.57, 22 NY ADC 202.57
Section 202.58. Small claims tax assessment review proceedings; small claims sidewalk assessment review proceedings; special rules

(a) Establishment.

(1) There is hereby established in the Supreme Court of the State of New York in each county a program to hear special proceedings for small claims tax assessment review pursuant to title 1-A of article 7 of the Real Property Tax Law; provided, however, that insofar as Hamilton County may lack required personnel and facilities, Fulton and Hamilton Counties shall be deemed one county for the purposes of this rule.

(2) There also is established in the Supreme Court in each county within the City of New York a program to hear special proceedings for small claims sidewalk assessment review pursuant to section 19-152.3 of the Administrative Code of the City of New York.

(b) Commencement of Small Claims Tax Assessment Review Proceeding.

(1) A special proceeding pursuant to title 1-A of article 7 of the Real Property Tax shall be commenced by a petition in a form in substantial compliance with the forms prescribed by the Chief Administrator of the Courts. Forms shall be available at no cost at each county clerk's office.

(2) Except as otherwise provided hereafter, three copies of the petition shall be filed with the County Clerk in the county in which the property is located within 30 days after the final completion and filing of the assessment roll containing the assessment at issue, except that in the City of New York, the petition shall be filed before the 25th day of October following the time when the determination sought to be reviewed was made. The petition may be filed with the County Clerk by ordinary mail if mailed within the 30-day time period, or in the City of New York, if mailed prior to the 25th day of October, as evidenced by the postmark. In counties in which electronic filing is authorized by the Chief Administrator, the petition may or shall be filed electronically through the New York State Courts Electronic Filing System (“NYSCEF”) within the deadline set forth above. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the County Clerk.

(3) Within 10 days of filing the petition with the county clerk, the petitioner shall send by mail, a copy of the petition to:
(i) the clerk of the assessing unit named in the petition or, if there is no such clerk, to the officer who performs the customary duties of the clerk, except that in the City of New York the petition shall be mailed to the president of the New York City Tax Commission or to a designee of the president;

(ii) except in the cities of Buffalo, New York, Rochester, Syracuse and Yonkers, to the clerk of any school district within which any part of the real property on which the assessment to be reviewed is located or, if there is no clerk of the school district or such name and address cannot be obtained, to a trustee of the school district;

(iii) the treasurer of any county in which any part of the real property is located; and

(iv) the clerk of a village which has enacted a local law, in accordance with the provisions of subdivision 3 of section 1402 of the Real Property Tax Law, providing that the village shall cease to be an assessing unit and that village taxes shall be levied on a copy of the part of the town or county assessment roll.

(4) The County Clerk shall assign a small claims assessment review filing number to each petition, and, in proceedings commenced by filing in hard copy, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process assessment review petitions.

(c) Commencement of small claims sidewalk assessment review proceeding.

(1) A special proceeding pursuant to section 19-152.3 of the Administrative Code of the City of New York shall be commenced by a petition in a form prescribed by the Department of Transportation of the City of New York in consultation with the Office of Court Administration. Forms shall be available at no cost at each county clerk's office within the City of New York.

(2) Three copies of the petition shall be filed with the county clerk in the county in which the property is located, provided that at least 30 days have elapsed from the presentation of the notice of claim to the Office of the Comptroller pursuant to section 19-152.2 of the Administrative Code. The petition may be filed with the county clerk by ordinary mail. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the county clerk.

(3) Within seven days of filing the petition with the county clerk, the petitioner personally shall deliver or send by certified mail, return receipt requested, a copy of the petition to the Commissioner of Transportation of the City of New York or the commissioner's designee.

(4) The county clerk shall assign a sidewalk assessment review filing number to each petition, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process sidewalk assessment review petitions.

(d) Selection of hearing officer panels.
(1) The Chief Administrator of the Courts shall establish panels of small claims hearing officers found qualified to hear small claims tax assessment review proceedings pursuant to title 1-A of article 7 of the Real Property Tax Law and panels of small claims hearing officers found qualified to hear small claims sidewalk assessment review proceedings pursuant to section 19-152.3(d) of the Administrative Code of the City of New York.

(2) The administrative judge of the county in which the panel will serve, or the deputy chief administrative judge for the courts within the City of New York, if the panel is to serve in New York City, shall invite applicants to apply by publishing an announcement in the appropriate law journals, papers of general circulation or trade journals, and by communicating directly with such groups as may produce qualified candidates.

(3) The announcements and communications shall set forth the nature of the position, the qualifications for selection as contained in section 731 of the Real Property Tax Law, or section 19-152.3(d) of the Administrative Code of the City of New York, and the compensation.

(4) The administrative judge shall screen each applicant in conformance with the requirements set forth in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of New York, for qualifications, character and ability to handle the hearing officer responsibilities, and shall forward the names of recommended nominees, with a summary of their qualifications, to the Chief Administrator for appointment.

(5) Hearing officers shall serve at the pleasure of the chief administrator, and their appointments may be rescinded by the chief administrator at any time.

(6) The chief administrator may provide for such orientation courses, training courses and continuing education courses for persons applying to be hearing officers and for persons serving on hearing officer panels as the chief administrator may deem necessary and desirable.

(e) Assignment of Hearing Officers.

(1) The assessment review clerk of the county in which the panel will serve shall draw names of hearing officers at random from the panel and shall assign to each hearing officer at least the first three, but no more than six, petitions filed with the county clerk pursuant to these rules; provided, however, where necessary to ensure the fair and expeditious administration of justice, the Chief Administrator may authorize the assignment of related petitions and the assignment of more than six petitions to a single hearing officer.

(2) No person who has served as a hearing officer shall be eligible to serve again until all other hearing officers on the panel have had an opportunity to serve.

(3) A hearing officer shall disqualify himself or herself from hearing a matter where a conflict exists as defined by the Public Officers Law or, with respect to small claims tax assessment review hearing officers, by subdivision 2 of section 731 of the Real Property Tax Law. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator or designee and the matter shall be reassigned to another hearing officer.
(4) The hearing officer shall determine, after contacting the parties, the date, time and place for the hearing, which shall be held within 45 days with respect to a small claims tax assessment review proceeding, and within 30 days with respect to a small claims sidewalk assessment review proceeding, after the filing of the petition, or as soon thereafter as is practicable, and which shall be held, where practicable, at a location within the county where the real property is located. The hearing officer shall schedule hearings in the evening at the request of any party, unless special circumstances require otherwise. Written notice of the date, time and place of the hearing shall be sent by mail by the hearing officer to the parties or their attorneys, if represented, at least 10 working days prior to the date of the hearing, except that in an electronically filed proceeding, such notice may be sent by e-mail to parties participating in e-filing; provided, however, failure to receive such notice in such period shall not bar the holding of a hearing.

(5) Adjournments shall not be granted by the hearing officer except upon good cause shown.

(6) All parties are required to appear at the hearing. Failure to appear shall result in the petition being dismissed or in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

(f) Decision and Order.

(1) The decision and order of the hearing officer shall be rendered expeditiously and, in a small claims tax assessment review proceeding, the notice required by section 733(4) of the Real Property Tax Law shall be attached to the petition form.

(2) Costs.

   (i) In a small claims tax assessment review proceeding, if the assessment is reduced by an amount equal to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the respondent assessing unit in the amount of $25. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed $25.

   (ii) In a small claims sidewalk assessment review proceeding, if the hearing officer grants the petition in full or in part, the hearing officer shall award the petitioner costs against the respondent in the amount of $25. In any other case, the hearing officer, in his or her discretion, may award the petitioner costs in the amount of $25, if he or she deems it appropriate.

(3) The hearing officer in a small claims tax assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, or may, in an electronically filed proceeding, transmit instead a copy via NYSCEF, to the petitioner, the clerk of the assessing unit and the assessment review clerk of the court. The hearing officer in a small claims sidewalk assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the Commissioner of Transportation of the City of New York or the commissioner's designee, and the assessment review clerk of the court.
(4) The assessment review clerk shall file the petition and the attached decision and order with the County Clerk. In an electronically filed proceeding, the decision and order shall be posted with the NYSCEF site, which shall constitute filing with the County Clerk.

(5) The assessment review clerk shall make additional copies of the decision and order, as necessary, and, in the case of a small claims tax assessment review proceeding, shall transmit a copy to the clerk of each tax district relying on the assessment that is named in the petition and to the treasurer of any county in which any part of the real property is located. In the case of a small claims sidewalk assessment review proceeding, where the order grants the petition in full or in part, the assessment review clerk shall mail a copy of the decision and order to the Collector of the City of New York.

(g) Advertising by hearing officers. No person who is appointed a hearing officer shall, in any public advertisement published or distributed to advance such person's business or professional interests, refer to his or her status as a hearing officer. No hearing officer shall use letterhead or business cards bearing the title of hearing officer except in direct connection with such person's official duties as hearing officer.

(h)

(1) Proceedings pursuant to title 1-A of article 7 of the Real Property Tax Law may be heard and determined by a judicial hearing officer. The judicial hearing officer shall be designated and assigned by the appropriate administrative judge to hear such proceedings as determined by that judge or by the assessment review clerk, and the hearing shall be conducted in accordance with this section.

(2) Judicial hearing officers appointed to hear proceedings pursuant to this section shall receive compensation as provided in section 122.8 of this Title, or such other compensation as the chief administrator may direct. A location in which a hearing is held pursuant to this section shall be deemed a "facility designated for court appearances" within the meaning of section 122.8 of this Title.

(i) Collateral proceedings. All applications for judicial relief shall be made in the Supreme Court in the county where the real property subject to review is located. If a judicial hearing officer has heard and determined a proceeding under the section, any application for judicial relief may not be heard by a judicial hearing officer, except upon consent of the parties.

Credits


22 NYCRR 202.58, 22 NY ADC 202.58
Section 202.59. Tax assessment review proceedings in counties outside the City of New York; special rules

(a) Applicability. This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of article 7 of the Real Property Tax Law in counties outside the City of New York.

(b) Statement of income and expenses. Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income-producing, or a copy of a verified or certified statement of the income and expenses on the property for each tax year under review. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(c) Audit. Within 60 days after the service of the statement of income and expenses, the respondent, for the purpose of substantiating petitioner's statement of income and expenses, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

(d) Filing note of issue and certificate of readiness; additional requirements.

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed.

(2) A separate note of issue shall be filed for each property for each tax year.

(e) Pretrial conference.

(1) At any time after filing of the note of issue and certificate of readiness, any party to a tax assessment review proceeding may demand, by application served on all other parties and filed with the court, together with proof of such service, a pretrial conference, or the court on its own motion may direct a pretrial conference at a time and date
to be fixed by the court. At the pretrial conference, the judge shall take whatever action is warranted to expedite final disposition of the proceedings, including but not limited to:

(i) directing the parties to obtain appraisals and sales reports, and to exchange and file appraisal reports and sales reports by dates certain before the trial, provided that if the court dispenses with a pretrial conference, such exchange and filings shall be accomplished at least 10 days before trial;

(ii) fixing a date for trial, or by which the parties must be ready for trial;

(iii) signing any order required;

(iv) conducting conferences for the purpose of facilitating settlement; and

(v) limiting issues and recording stipulations of counsel.

(2) Failure to comply with any order or directive of the court authorized by this subdivision shall be subject to the appropriate sanctions.

(f) Consolidation or joint trial. Consolidation or joint trial of real property tax assessment review proceedings in the discretion of the court shall be conditioned upon service having been made of the verified or certified income and expense statement, or a statement that the property is not income-producing, for each of the tax years under review.

(g) Exchange and filing of appraisal reports.

(1) The exchange and filing of appraisal reports shall be accomplished by the following procedure:

(i) The respective parties shall file with the clerk of the trial court one copy, or in the event that there are two or more adversaries, a copy for each adversary, of all appraisal reports intended to be used at the trial.

(ii) When the clerk shall have received all such reports, the clerk forthwith shall distribute simultaneously to each of the other parties a copy of the reports filed.

(iii) Where multiple parties or more than one parcel is involved, each appraisal report need be served only upon the taxing authority and the party or parties contesting the value of the property which is the subject of the report. Each party shall provide an appraisal report copy for the court.

(2) The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear
and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also may contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.

(3) Where an appraiser appraises more than one parcel in any proceeding, those parts of the separate appraisal reports for each parcel that would be repetitious may be included in one general appraisal report to which reference may be made in the separate appraisal reports. Such general appraisal reports shall be served and filed as provided in paragraph (1) of this subdivision.

(4) Appraisal reports shall comply with any official form for appraisal reports that may be prescribed by the Chief Administrator of the Courts.

(h) Use of appraisal reports at trial. Upon the trial, expert witnesses shall be limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value; provided, however, upon the application of any party on such notice as the court shall direct, the court may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances.

Credits


22 NYCRR 202.59, 22 NY ADC 202.59
Section 202.60. Tax assessment review proceedings in counties within the City of New York; special rules

(a) **Applicability.** This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of article 7 of the real Property Tax Law in a county within the City of New York.

(b) **Preliminary conference.**

(1) Any party to a tax assessment review proceeding may demand, by application served on all other parties and filed with the court, together with proof of such service, a preliminary conference, or the court on its own motion may direct a preliminary conference. The court, in its notice to the parties setting the date for the conference, shall direct the petitioner to serve upon the respondent by a date certain before the date of the conference, the completed statement of income and expenses required by this section, together with any ancillary papers or documents that may be necessary. No note of issue may be filed until a preliminary conference has been held.

(2) The judge presiding at the preliminary conference shall take whatever action is warranted to expedite final disposition of the case, including but not limited to:

   (i) directing any party to utilize or comply by a date certain with any pretrial disclosure or bill of particulars procedure authorized by the Civil Practice Law and Rules;

   (ii) directing the parties to obtain appraisals and sales reports, and to exchange and file appraisal reports and sales reports by dates certain before the trial;

   (iii) directing the filing of a note of issue and certificate of readiness;

   (iv) fixing a date for trial, or by which the parties must be ready for trial;

   (v) signing any order required;

   (vi) conducting conferences for the purpose of facilitating settlement; and

   (vii) limiting issues and recording stipulations of counsel.
(3) Failure to comply with any order or directive of the court authorized by this subdivision shall be subject to appropriate sanctions.

(4) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(c) **Statement of income and expenses.** Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income-producing or a copy of a verified or certified statement of the income and expenses of the property for each tax year under review. If the property is income-producing, the petitioner must serve the statement of income and expenses on forms provided by the Tax Certiorari Division of the Office of the Corporation Counsel of the City of New York. The petitioner shall complete all items listed on such form. A copy of such completed form shall also be filed with the note of issue and certificate of readiness. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(d) **Audit.** Within 60 days after the first preliminary conference, the respondent, for the purpose of substantiating petitioner's completed statement of income and expenses, as required by subdivision (c) of this section, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

(e) **Filing note of issue and certificate of readiness; additional requirements.**

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed. A note of issue and certificate of readiness may not be filed in any action where a preliminary conference was requested or was directed by the court until the conference has been held and there has been compliance with any orders or directives of the court or stipulations of counsel made at such conference.

(2) A separate note of issue shall be filed for each property for each tax year.

(f) **Consolidation or joint trial.** Consolidation or joint trial of real property tax assessment review proceedings in the discretion of the court shall be conditioned upon service having been made of the verified or certified income and expense statement, or a statement that the property is not income-producing, for each of the tax years under review.

(g) **Exchange and filing of appraisal reports.**
(1) Upon the filing of the note of issue and certificate of readiness, the court, if it has not previously so directed, shall direct that appraisal reports and sales reports be obtained and that appraisal reports and sales reports be exchanged and filed by a date certain a specified time before the date scheduled for trial.

(2) The exchange and filing of appraisal reports shall be accomplished by the following procedure:

(i) the respective parties shall file with the clerk of the trial court one copy, or in the event that there are two or more adversaries, a copy for each adversary, of all appraisal reports intended to be used at the trial.

(ii) When the clerk shall have received all such reports, the clerk forthwith shall distribute simultaneously to each of the other parties a copy of the reports filed.

(iii) Where multiple parties or more than one parcel is involved, each appraisal report need be served only upon the taxing authority and the party or parties contesting the value of the property which is the subject of the report. Each party shall provide an appraisal report copy for the court.

(3) The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also shall contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.

(4) Where an appraiser appraises more than one parcel in any proceeding, those parts of the separate appraisal reports for each parcel that would be repetitious may be included in one general appraisal report to which reference may be made in the separate appraisal reports. Such general appraisal reports shall be served and filed as provided in paragraph (1) of this subdivision.

(5) Appraisal reports shall comply with any official form for appraisal reports that may be prescribed by the Chief Administrator of the Courts.

(h) Use of appraisal reports at trial. Upon the trial, expert witnesses shall be limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value; provided, however, upon the application of any party on such notice as the court shall direct, the court may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances.

Credits
Section 202.61. Exchange of appraisal reports in eminent domain proceedings

(a)

(1) In all proceedings for the determination of the value of property taken pursuant to eminent domain, the exchange of appraisal reports shall be accomplished in the same manner as provided for the exchange of such reports by section 202.59(g) and 202.60(g) of this Part, except that such reports shall be filed no later than nine months after service of the claim, demand or notice of appearance required by section 503 of the Eminent Domain Procedure Law unless otherwise extended by the court. A note of issue may not be filed until such reports have been filed.

(2) If a party intends to offer at trial expert evidence in rebuttal to any report, an expert's report shall be filed within 60 days after receipt of the document sought to be rebutted.

(3) Upon application of any party upon such notice as the court in which the proceeding is pending shall direct, the court may, upon good cause shown, relieve a party of a default in filing a report, extend the time for filing reports, or allow an amended or supplemental report to be filed upon such conditions as the court may direct.

(b) In proceedings where more than one parcel is involved, the appraisal reports shall be distributed only to the taking authority and to the claimant or claimants who are owners of parcels which are the subject of the appraisal report. In the event that a party defaults in filing an appraisal report within the time limitation prescribed, the clerk shall return the filed copies of each party's appraisal report, with notice to the party in default.

(c) The contents and form of each appraisal report, including any rebuttal, amended or supplementary report, shall conform to the requirements of sections 202.59(g) and 202.60(g) of this Part.

(d) All appraisals of fixtures submitted on behalf of the claimants and the condemnor for which claim is made shall be filed and distributed as provided by these rules with respect to appraisal reports and shall set forth the appraisal value of each item in the same numerical order as in the inventory annexed to the claim.

(1) Where the condemnor puts in issue the existence of any item in the inventory, the appraisal submitted on its behalf shall so state.
(2) Where the condemnor puts in issue the description of any item in the inventory, the appraisal submitted on behalf of the condemnor shall state its appraiser's description of such item and his or her estimate of value.

(3) Where the condemnor puts in issue the compensability of any item in the inventory, the appraisal report submitted by the condemnor shall so state and shall state the ground therefor, as well as its appraiser's estimate of the value of such item for consideration in the event that the court should determine that it is compensable.

(e) Upon trial, all parties shall be limited in their affirmative proof of value to matters set forth in their respective appraisal reports. Any party who fails to file an appraisal report as required by this section shall be precluded from offering any appraisal testimony on value.

Credits


22 NYCRR 202.61, 22 NY ADC 202.61
Section 202.62. Payment of eminent domain award to other than the named awardee

On all applications for payment of awards in eminent domain proceedings by parties other than the party named in the decree, the applicant shall give notice of its motion to all parties with an interest in the award.

Credits


22 NYCRR 202.62, 22 NY ADC 202.62
Section 202.63. Assignment for benefit of creditors

(a) Records and papers.

(1) In assignments for the benefit of creditors, the clerk shall keep a register and docket. The clerk shall enter in the register in full every final order according to date; the docket shall contain a brief note of each day's proceedings under the respective title.

(2) Every petition, order, decree or other paper shall have endorsed on the outside the nature of such paper, the date of filing, and the name, number and page of the book in which the proceedings are entered by the clerk.

(3) The papers in each proceeding shall be kept in a separate file, as required by section 18 of the Debtor and Creditor Law. No paper shall be removed from the files of the court except by order of the court.

(4) Except as otherwise provided by law, every notice or citation, subpoena, and all process shall issue out of the court under seal and be attested by the clerk.

(b) Appearances.

(1) Any person interested in an assignment for the benefit of creditors may appear either in person or by attorney. If in person, his or her address and telephone number, and if by attorney, the name, address and telephone number, shall be endorsed on every appearance filed by such attorney. The name of such person or attorney shall be entered in the docket.

(2) The assignee's attorney shall file a written notice of appearance as soon as possible, but not later than 10 days after being retained.

(3) When an assignee is removed, voluntarily or involuntarily, and another person has been appointed as assignee, a certified copy of the order shall be filed with the clerk of the county where the original assignment was recorded. The clerk shall make an entry on the record of the original assignment to show the appointment of the substituted assignee, and the copy of the order of substitution shall be attached to the original assignment.
(c) Duties of the assignor and assignee.

(1) The assignor shall deliver all books, records and documents to the assignee immediately upon filing the assignment, but the assignee shall make them available to the assignor to prepare the schedules.

(2) The assignee's attorney shall require the person in charge of the assignor's business to submit to examination under oath and shall complete such examinations within 30 days, unless extended by the court for good cause.

(3) The assignee shall promptly require the assignor, if an individual, or its officers and persons in charge of its finances, if a corporation, to pay to the assignee all trust funds withheld for accounting to any governmental authorities, together with any preferential payments paid to them or to others by the assignor.

(4)

(i) Upon the filing of an assignment, the court, upon application, may stay any prospective sale or transfer to enforce a lien against property in the custody of the court, whether by a secured creditor, a judgment creditor, a lienor or otherwise.

(ii) With respect to property not in the custody of the court, possession having been acquired by the secured creditor, judgment creditor or lienor, the assignee may, upon notice to the adverse party, apply to the court where such assignment proceedings are pending to enjoin any prospective sale and to permit the assignee to conduct the sale, whether private or a public auction, upon such terms and conditions as in its discretion will not prejudice the interest of the secured party and yet preserve the interest of the assigned estate by affording the assignee an opportunity to liquidate the assets under the most favorable terms and conditions.

(5) Every assignee shall keep full, exact and regular books of account of all receipts, payments and expenditures of monies.

(6) In making sales at auction of personal property, the assignee shall give at least 10 days’ notice of the time and place of sale and of the articles to be sold, by advertisement in one or more newspapers. Such sale shall be held within 15 days after the entry of the order authorizing the same, unless in the meantime an order of the court has been obtained granting an extension of the time for such sale; and he or she shall give notice of the sale at auction of any real estate at least 20 days before such sale. Upon such sale, the assignee shall sell by printed catalogue, in parcels, and shall file a copy of such catalogue, with the prices obtained for the goods sold, within 20 days after the date of such sale.

(7)

(i) Notwithstanding subdivision (f) of this section, upon receipt of an offer for all or a substantial part of the assets, an assignee may for good cause shown make application to the court for leave to sell at a private sale in lieu of a public auction sale. A hearing thereon shall be scheduled for the purpose of considering that offer.
Section 202.63. Assignment for benefit of creditors, 22 NY ADC 202.63

or any higher or better offers that may be submitted upon such notice and advertising as the court may deem appropriate.

(ii) Upon application by an assignee or a creditor, setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be a loss if the same is not sold immediately, the judge presiding, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold with or without notice to creditors.

(8) Upon an application made for a notice of filing of his or her account and for a hearing thereon, the assignee shall file with his or her petition his or her account with the vouchers.

(d) Accounting and schedules.

(1) The assignee must file an account in all cases.

(2) Failure to file an interim accounting in a pending proceeding within six months after the filing of an assignment may cause a forfeiture of commissions and fees of the assignee and his or her attorney and shall constitute grounds for their removal.

(3) Where more than one sheet of paper is necessary to contain the schedule of liabilities and inventory of assets required to be filed by the assignor or assignee, each page shall be signed by the person or persons verifying the same. Contingent liabilities shall appear on a separate sheet of paper. The sheets on which such schedule and inventory are written shall be securely fastened before the filing thereof and shall be endorsed with the full name of the assignor and assignee; and when filed by an attorney, the name and address of such attorney shall also be endorsed thereon. Such schedule and inventory shall fully and fairly state the nominal and actual value of the assets and the cause of differences between such values. A separate affidavit will be required explaining such stated cause of difference. If it is deemed necessary, affidavits of disinterested experts as to the claimed values must be furnished; and if such schedule and inventory are filed by the assignee, they must be accompanied by affidavits made by such assignee and by some disinterested expert showing, in detail, the nature and value of the property assigned. The name, residence, occupation and place of business of the assignor, and the name and place of residence of the assignee must be annexed to the schedule and inventory or incorporated in the affidavit verifying the same. There shall be a recapitulation at the end of such schedule and inventory, as follows:

Debts and liabilities amount to ........... $

Fair value of assets ........... $

Assets realized on liquidation ........... $

(4) Application to amend the schedule shall be made by verified petition in which the amendment sought to be made shall appear in full, and such amendment shall be verified in the same manner as the original schedule.
(5) The account of the assignee shall be in the nature of a debit and credit statement; he or she shall debit himself or herself with the assets as shown in the schedule, as filed, and credit himself or herself with any decrease and expenses.

(6) The statement of expenditures shall be full and complete and the vouchers for all payments shall be attached to the account.

(7) The affirmative on the accounting shall be with the assignee; the objections to the account may be presented to the court or designated referee in writing or be brought out on a cross-examination. In the latter case, they must be specifically taken and entered in the minutes.

(8) The testimony taken and all exhibits marked in evidence shall be filed with the report of the referee.

(9) It shall be the duty of the assignee to close up the estate as expeditiously as possible; and, unless good cause for greater delay can be shown and authorized by an order of the court obtained prior to the expiration of the permissible time, the assignee's account shall be filed within 15 months from the date of the execution of the assignment deed.

(10) The court may order notice to creditors by publication to present their claims as provided in section 5 of the Debtor and Creditor Law.

(e) Court-appointed referee.

(1) The court may appoint a referee to take and state any contested account or to hear and report on any issue of fact raised in an application to the court by any interested party.

(2) Notice of the time and place of the hearing before a referee appointed to take and state an assignee's account or to hear and report on a referred issue of fact shall be given by mail, with the postage thereon prepaid, at least 20 days before the date specified in said notice, to the assignor, the assignee's surety and to each creditor whose name appears on the books of the assignor or on the schedule, or who has presented his or her claim or address to the assignee, and to each attorney who has appeared for any person interested in the assigned estate.

(3) A notice or a copy of an advertisement, requiring the creditors to present their claims, with the vouchers therefor duly verified to the referee, must be mailed to each creditor whose name appears on the books of the assignor or on the schedule, with the postage thereon prepaid, at least 10 days before the date specified in such notice or advertisement. Proof of such mailing shall be required on the application for a final decree approving the account of the assignee unless proof is furnished that personal service of such notice or a copy of such advertisement has been made upon the creditor.

(4) The report of the referee shall show all the jurisdictional facts necessary to confer power on the court, such as the proper execution and acknowledgment of the assignment, its recording, the filing of the schedule and bond, the publication and mailing of notice to creditors to present claims, the filing of the assignee's account, the issuance and
service of notice of application for settlement of the account, and, where any items in the account of the assignee are disallowed, the same shall be fully set out in the report, together with the reason therefor.

(5) The report of the referee after a hearing of a disputed claim under the statute shall be filed with the clerk of the court and a copy served on each party to the proceeding. The court shall, on application of any party, or on its own motion, confirm or disaffirm the referee's report; such report shall then be reviewed only by appeal to the Appellate Division.

(f) **Discharge of assignee.**

(1) No discharge shall be granted an assignee who has not advertised for claims pursuant to section 5 of the Debtor and Creditor Law and the applicable provisions of this section.

(2) No discharge shall be granted an assignee and his or her sureties in any case, whether or not the creditors have been paid, or have released, or have entered into composition, except in a regular proceeding for an accounting under the applicable provisions of the Debtor and Creditor Law, commenced by petition, and after due and timely notice thereof to all persons interested in the estate.

(3) Provisional and final bond. The affidavit upon which application is made for leave to file a provisional bond must show fully and fairly the nature and extent of the property assigned, and good and sufficient reason must be shown why the schedule and inventory cannot be filed. It must appear satisfactorily to the court that a necessity exists for filing of such provisional bond; and the affidavits filed shall be deemed a schedule and inventory of the assigned property until such time as the regular schedule and inventory of the assigned property shall be filed. Upon the filing of the schedule and inventory, the amount of the bond shall be determined finally. Should the provisional bond already filed be deemed sufficient, an order may be granted making such bond, as approved, the final bond.

(4) Upon all applications made to the court by assignees under general assignments for the benefit of creditors for the filing of a provisional bond, or for permission to sell the property of the assignor, the applicant shall present proof by affidavit whether any petition in bankruptcy has been filed by or against the assignor.

(5) The final bond shall be joint and several in form and must be accompanied by the affidavit prescribed by CPLR 2502, and also by the affidavit of each surety, setting forth his business, where it is carried on, and the amount in which he or she is required to justify over and above his debts and liabilities.

(g) **Justification of sureties.** The court may in its discretion require any surety to appear and justify. If the penalty of the bond be $20,000 or over, it may be executed by two sureties each justifying in that sum, or by more than two sureties, the amount of whose justification, united, is double the penalty of the bond.

(h) **Application to continue business of assignor.** An application for authority to continue the business of an assignor must be made upon duly verified petition and upon notice given to, or order to show cause served upon, the assignor, the assignee’s surety and all creditors, secured, general or otherwise, of the assigned estate. If more than one application for such authority is subsequently made, the petition must set forth, by a statement of receipts, disbursements and expenses, the result of the continuance of such business for or during the period for which the same was previously authorized.
(i) **Involuntary petition in bankruptcy of the assigned estate.** Where an order for relief pursuant to [section 503 of title 11 of the United States Code](https://www.gpo.gov/fdsys/search/code/11USC503) has been entered, the assignee shall file with the clerk a certified copy of such petition in bankruptcy, together with proof by affidavit on the part of the assignee showing that he has turned over all assets of the assigned estate to the trustee or receiver in bankruptcy.

(j) **Assignee's commissions and attorney's fees.** Assignee's allowances and attorney fees are to be fixed by the court upon a motion to settle and approve the assignee's account or upon the confirmation of the referee's report regarding the account. No allowances, fees or commissions shall be paid out until so fixed and directed by the court.

(k) **Service of notice by mail.** When any notice is served by mail on the creditors of the insolvent debtor pursuant to the provisions of the applicable statute or this section, every envelope containing such notice shall have upon it a direction to the postmaster at the place to which it is sent, to return the same to the sender whose name and address shall appear thereon, unless called for or delivered.

**Credits**


22 NYCRR 202.63, 22 NY ADC 202.63
(a) All applications to the Supreme Court, or to a judge thereof, pursuant to the Election Law, shall be made at the special part designated for such proceedings, and where there is no special part, before the judge to whom the proceeding is assigned. As far as practicable, the application shall be brought in the county in which it arose.

(b) The judge may hear and determine the proceeding or assign it to a referee for hearing or decision, and such proceedings shall have preference over all other business of the part to which it is assigned or before the judge to whom it is assigned.

(c) The final order in an election proceeding shall state the determination and the facts upon which it was made.

Credits


End of Document
Section 202.65. Registration of title to real property; sales of real estate under court direction

(a) Petitions for registration. Petitions for the registration of titles to land made pursuant to article 12 of the Real Property Law shall be made to the Supreme Court in the county where the land or portion thereof affected by the petition is situated. Where a particular part has been designated for this purpose as a title part under the provisions of section 371 of such law, all petitions to register titles to land under the law must be returnable at the said title part. If there is no such part, petitions shall be returnable before the judge is assigned. Such title part or assigned judge is hereinafter denominated as the appropriate part or judge in this section.

(b) Application for final order and judgment of registration. After the time provided in the notice of hearing shall have expired, or within such further time as may have been allowed by the court, if there have been no appearances or answers to the petition, the petitioner may apply to the appropriate part or judge for a final order and judgment of registration, as provided for in the law. In all applications for such final order and judgment of registration, the applicant or petitioner must present to the court proof by affidavit that all the provisions of the law entitling the petitioner to such final order and judgment of registration have been complied with.

(c) Application for jury trial. Where an answer is interposed which raises an issue of fact which in an action relating to the title to real property would be triable by a jury, either or any party to the registration proceeding who is entitled to have such issue determined may apply to the appropriate part or judge within 20 days after the issue has been joined to have the issues framed to be tried by a jury, as provided by CPLR 4102(b). The trial of such issues shall be had and the subsequent proceedings in relation thereto shall be such as are prescribed by the CPLR. After such issues are disposed of, either or any party to the registration proceeding may apply to the appropriate part or judge, upon eight days' notice to all who have appeared in the registration proceeding, for a final order and judgment of registration, and on such application the court shall try all other issues in the proceeding not disposed of by the jury, or may refer any such issues undisposed of to be tried by an official examiner of title as referee. Where all issues have been disposed of, any party, upon eight days' notice to all who have appeared in the proceeding, may apply for the final order and judgment of registration at the appropriate part or before the appropriate assigned judge.

(d) Applications; notice requirements. All applications to the court after a certificate of registration of title has been issued under the provisions of the law must be made at the appropriate part or before the appropriate assigned judge hereinbefore designated upon 20 days' notice to all persons interested in the said application. All applications to the court under sections 404-a and 422 of the Real Property Law shall be made to the appropriate part or judge upon eight days' notice to all persons in interest, as provided by that section. All applications made to the court under section 428 of the Real Property Law shall also be made to the appropriate part or judge, upon eight days' notice to the city or county treasurer and all other parties who have appeared in the proceeding to recover for loss or damage or deprivation of real property out of the assurance fund provided for by law.
(e) Sales of real estate. All sales of real estate or an interest therein, made pursuant to a judgment, decree or order, or by an officer of the court under its direction, shall be made pursuant to section 231 of the Real Property Actions and Proceedings Law, after notice as prescribed in that section. An auctioneer selected for this purpose must be an attorney, or a licensed real estate broker, or a salesman licensed for at least five years. The auctioneer’s fee for conducting the sale shall be as prescribed by law.

Credits


22 NYCRR 202.65, 22 NY ADC 202.65
Section 202.66. Workers' compensation settlements

(a) Applications for approval of compromises of third-party actions pursuant to subdivision 5 of section 29 of the Workers' Compensation Law must include all papers described therein, and a proposed order providing that the appropriate insuring body file an affidavit within a specified time consenting to or opposing the application. A copy of all such application papers shall be served on the insurance carrier that is liable for the payment of claims under the Workers' Compensation Law.

(b) If, prior to the return of the application, the court directs that the parties place their stipulation on the record, the transcript shall be filed as part of the papers. In such cases, the matter shall be marked settled subject to written consent of the insuring body, or the entry of an order pursuant to subdivision 5 of section 29 of the Workers' Compensation Law.

(c) On the return of the application, the court may hear the matter forthwith or schedule the matter for later hearing if affidavits in opposition to the compromise show that the amount is grossly inadequate in view of the injuries involved, the potential monetary recovery against the third party and the possible exposure of the insuring body to future claims by the plaintiff-petitioner arising out of the same accident.

(d) Nothing in this section shall preclude the insuring body from consenting to a reduction of its lien.

Credits


22 NYCRR 202.66, 22 NY ADC 202.66
(a) The settlement of an action or claim by an infant or judicially declared incapacitated person (including an incompetent or conservatee) shall comply with CPLR 1207 and 1208 and, in the case of an infant, with section 474 of the Judiciary Law. The proposed order in such cases may provide for deduction of the following disbursements from the settlement:

1. motor vehicle reports;
2. police reports;
3. photographs;
4. deposition stenographic expenses;
5. service of summons and complaint and of subpoenas;
6. expert's fees, including analysis of materials; and
7. other items approved by court order.

The order shall not provide for attorney's fees in excess of one third of the amount remaining after deduction of the above disbursements unless otherwise specifically authorized by the court.

(b) The petition or affidavit in support of the application also shall set forth the total amount of the charge incurred for each doctor and hospital in the treatment and care of the infant, or incapacitated person and the amount remaining unpaid to each doctor and hospital for such treatment and care. If an order be made approving the application, the order shall provide that all such charges for doctors and hospitals shall be paid from the proceeds, if any, received by the parent, guardian, or other person, in settlement of any action or claim for the loss of the infant's, or incapacitated person's services; provided, however, that if there be any bona fide dispute as to such charges, the judge presiding, in the order, may make such provision with respect to them as justice requires. With respect to an incapacitated person, the judge presiding may provide for the posting of a bond as required by the Mental Hygiene Law.
(c) If the net amount obtained for the infant, or incapacitated person in any approved settlement does not exceed the amount set forth in CPLR 1206(b), the court may permit it to be paid pursuant to CPLR 1206(b). The court may order in any case that the money be deposited or invested pursuant to CPLR 1206(c) or held for the use and benefit of the infant, or incapacitated person as provided in CPLR 1206(d) and CPLR 1210(d).

(d) The affidavit of the attorney for a plaintiff, in addition to complying with CPLR 1208, must show compliance with the requirements for filing a retainer statement and recite the number assigned by the Office of Court Administration, or show that such requirements do not apply.

(e) Applications for approval of an infant's or incapacitated person's compromise shall be made returnable before the judge who presided over the compromise or, where the agreement was reached out-of-court, before the appropriate assigned judge.

(f) A petition for the expenditure of the funds of an infant shall comply with CPLR article 12, and also shall set forth:

(1) a full explanation of the purpose of the withdrawal;

(2) a sworn statement of the reasonable cost of the proposed expenditure;

(3) the infant's age;

(4) the date and amounts of the infant's and parents' recovery;

(5) the balance from such recovery;

(6) the nature of the infant's injuries and present condition;

(7) a statement that the family of the infant is financially unable to afford the proposed expenditures;

(8) a statement as to previous orders authorizing such expenditures; and

(9) any other facts material to the application.

(g) No authorization will be granted to withdraw such funds, except for unusual circumstances, where the parents are financially able to support the infant and to provide for the infant's necessaries, treatment and education.

(h) Expenditures of the funds of an incapacitated person shall comply with the provisions of the Mental Hygiene Law.
(i) The required notice of the filing of a final account by an incapacitated person's guardian and of a petition for settlement thereof shall show the amounts requested for additional services of the guardian and for legal services. Prior to approving such allowances, the court shall require written proof of the nature and extent of such services. Where notice is given to the attorney for the Veteran's Administration, if the attorney for the Veteran's Administration does not appear after notice, the court shall be advised whether the Veteran's Administration attorney has examined the account and whether he objects to it or to any proposed commission or fee.

Credits


22 NYCRR 202.67, 22 NY ADC 202.67
Section 202.68. Proceedings involving custody of an Indian child

In any proceeding in which the custody of a child is to be determined, the court, when it has reason to believe that the child is an Indian child within the meaning of the Indian Child Welfare Act of 1948 (92 Stat. 3069), shall require the verification of the child's status in accordance with that act and proceed further, as appropriate, in accordance with the provisions of that act.

Credits


22 NYCRR 202.68, 22 NY ADC 202.68
Section 202.69. Coordination of related actions pending in more than one judicial district

(a) Application. This section shall apply when related actions are pending in the courts of the Unified Court System in more than one judicial district and it may be appropriate for these actions to be coordinated pursuant to the criteria and procedures set forth in this section. Coordination pursuant to this section shall apply to pretrial proceedings, including dispositive motions.

(b) Litigation coordinating panel.

(1) Composition. The Chief Administrator of the Courts, in consultation with the Presiding Justice of each Appellate Division, shall create a Litigation Coordinating Panel composed of one justice of the Supreme Court from each judicial department of the State.

(2) Procedure. The panel shall determine, sua sponte or upon application of a party to an action, a justice before whom such an action is pending, or an administrative judge, whether the related actions should be coordinated before one or more individual justices. The panel shall provide notice and an opportunity to be heard to all parties to the actions sought to be coordinated and shall inform the justices before whom such actions are pending of the initiation of proceedings before the panel.

(3) Standards for coordination. In determining whether to issue an administrative order of coordination, the panel shall consider, among other things, the complexity of the actions; whether common questions of fact or law exist, and the importance of such questions to the determination of the issues; the risk that coordination may unreasonably delay the progress, increase the expense, or complicate the processing of any action or otherwise prejudice a party; the risk of duplicative or inconsistent rulings, orders or judgments; the convenience of the parties, witnesses and counsel; whether coordinated discovery would be advantageous; efficient utilization of judicial resources and the facilities and personnel of the court; the manageability of a coordinated litigation; whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and the pendency of related matters in the Federal courts and in the courts of other states. The panel may exclude particular actions from an otherwise applicable order of coordination when necessary to protect the rights of parties.

(4) Determination.

(i) The panel shall issue a written decision on each application. If the panel determines to direct coordination, it shall issue an administrative order identifying the actions that shall be coordinated. The order may address actions subsequently filed or not otherwise then before the panel.
(ii) The order of the panel shall specify the number of Coordinating Justices and the county or counties in which the coordinated proceedings shall take place. In making this decision, the panel shall consider, among other things, the venues of origin of the cases to be coordinated; whether the actions arise out of an accident or events in a particular county; judicial caseloads in prospective venues; fairness to parties; the convenience of the parties and witnesses; the convenience of counsel; and whether the purposes of this section can best be advanced by coordination before more than one Coordinating Justice.

(c) Coordinating Justice.

(1) Designation. The Administrative Judge charged with supervision of the local jurisdiction within which coordinated proceedings are to take place shall select the Coordinating Justice or Justices, in consultation with the appropriate Deputy Chief Administrative Judge. In deciding whom to designate, the Administrative Judge shall consider, among other things, the existing caseload of each prospective appointee and the overall needs of the court in which that justice serves; the familiarity of that justice with the litigation at issue; the justice's managerial ability; and the previous experience of the justice with the field of law involved and with coordinated litigation. The Administrative Judge may designate a justice from another local jurisdiction as a Coordinating Justice with the approval of the Administrative Judge thereof.

(2) Authority. The Coordinating Justice shall have authority to make any order consistent with this section and its purposes, including to remand to the court of origin any portion of a case not properly subject to coordination under the administrative order of the panel; assign a master caption; create a central case file and docket; establish a service list; periodically issue case management orders after consultation with counsel; appoint and define the roles of steering committees and counsel of parties and liaison counsel, provided that the committees and counsel shall not deprive any party of substantive rights; issue protective orders pursuant to article 31 of the Civil Practice Law and Rules; establish a document depository; direct the parties to prepare coordinated pleadings and deem service upon liaison counsel or steering committee service upon the respective parties; require service of uniform requests for disclosure and establish a uniform method for the conduct of physical and mental examination; rule upon all motions; require the parties to participate in settlement discussions and court-annexed alternative dispute resolution; and try any part of any coordinated case on consent of the parties to that action.

(3) Coordination with Federal or other states' actions. If actions related to those pending before a Coordinating Justice are proceeding in Federal courts or in the courts of other states, the Coordinating Justice shall consult with the presiding judge(s) in an effort to advance the purposes of this section. Where appropriate, the Coordinating Justice, while respecting the rights of parties under the Civil Practice Law and Rules, may require that discovery in the cases coordinated pursuant to this section proceed jointly or in coordination with discovery in the Federal or other states' actions.

(d) Termination of coordination. The Coordinating Justice, sua sponte or upon motion by any party, may terminate coordination, in whole or in part, if the Justice determines that coordination has been completed or that the purposes of this section can be best advanced by termination of the coordination. Upon termination, the actions shall be remanded to their counties of origin for trial unless the parties to an action consent to trial of that action before the Coordinating Justice.
Credits


22 NYCRR 202.69, 22 NY ADC 202.69
Section 202.70. Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds. Except as set forth in subdivision (b) of this section, the monetary thresholds of the Commercial Division, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed, are established as follows:

Albany County $50,000
Eighth Judicial District $100,000
Kings County $150,000
Nassau County $200,000
New York County $500,000
Onondaga County $50,000
Queens County $100,000
Seventh Judicial District $50,000
Suffolk County $100,000
Westchester County $100,000

(b) Commercial cases. Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(2) transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);

(3) transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(4) shareholder derivative actions—without consideration of the monetary threshold;
(5) commercial class actions—without consideration of the monetary threshold;

(6) business transactions involving or arising out of dealings with commercial banks and other financial institutions;

(7) Internal affairs of business organizations;

(8) malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;

(9) environmental insurance coverage;

(10) commercial insurance coverage (e.g., directors and officers, errors and omissions, and business interruption coverage);

(11) dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures—without consideration of the monetary threshold; and

(12) applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues. Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in subdivision (a) of this section shall not apply.

(c) Non-commercial cases. The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) Home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units;

(5) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(6) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and
(7) Attorney malpractice actions except as otherwise provided in paragraph (b)(8) of this section.

(d) Assignment to the Commercial Division.

(1) Within 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJI) that attaches a completed Commercial Division RJI Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section. Except as provided in subdivision (e) of this section, failure to file an RJI pursuant to this subdivision precludes a party from seeking assignment of the case to the Commercial Division.

(2) Subject to meeting the jurisdictional requirements of subdivisions (a), (b) and (c) of this section and filing an RJI in compliance with subsection (d)(1) above, the parties to a contract may consent to the exclusive jurisdiction of the Commercial Division of the Supreme Court by including such consent in their contract. A sample choice of forum provision can be found at Appendix C to these Rules of the Commercial Division. Alternatively, subject to meeting the jurisdictional and procedural requirements applicable to the Commercial Division and the federal courts, the parties to a contract may consent to the exclusive jurisdiction of either the Commercial Division of the Supreme Court or the federal courts in New York State by including such consent in their contract. An alternative sample choice of forum provision to that effect can also be found at Appendix C to these Rules of the Commercial Division. In addition, the parties to a contract may consent to having New York law apply to their contract, or any dispute under the contract. A sample choice of law provision can be found at Appendix D to these Rules of the Commercial Division.

(e) Transfer into the Commercial Division. If an RJI is filed within the 90-day period following service of the complaint and the case is assigned to a noncommercial part because the filing party did not designate the case as "commercial" on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within 10 days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. Further, notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge. In addition, a non-Commercial Division justice to whom a case is assigned may sua sponte request the Administrative Judge to transfer a case that meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section to the Commercial Division. The determinations of the Administrative Judge with respect to any letter applications or requests under this subdivision shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division.

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the administrative judge within 10 days of receipt of the designation of the case...
to a non-commercial part. The determination of the administrative judge shall be final and subject to no further administrative review or appeal.

(g) Rules of practice for the Commercial Division. Unless these rules of practice for the Commercial Division provide specifically to the contrary, the rules of this Part also shall apply to the Commercial Division, except that Rules 7 through 15 shall supersede section 202.12 (Preliminary Conference) and Rules 16 through 24 shall supersede section 202.8 (Motion Procedure) of this Part.

Preamble. The Commercial Division understands that the businesses, individuals and attorneys who use this Court have expressed their frustration with adversaries who engage in dilatory tactics, fail to appear for hearings or depositions, unduly delay in producing relevant documents, or otherwise cause the other parties in a case to incur unnecessary costs. The Commercial Division will not tolerate such practices. The Commercial Division is mindful of the need to conserve client resources, encourage proportionality in discovery, promote efficient resolution of matters, and increase respect for the integrity of the judicial process. Litigants and counsel who appear in this Court are directed to review the Rules regarding sanctions, including the provisions in Rule 12 regarding failure to appear at a conference, Rule 13(a) regarding adherence to discovery schedules, and Rule 24(d) regarding the need for counsel to be fully familiar with the case when making appearances. Sanctions are also available in this Court under Rule 3126 of the Civil Practice Law and Rules and Part 130 of the Rules of the Chief Administrator of the Courts. The judges in the Commercial Division will impose appropriate sanctions and other remedies and orders as is warranted by the circumstances. Use of these enforcement mechanisms enables the Commercial Division to function efficiently and effectively, and with less wasted time and expense for the Court, parties and counsel. Nothing herein is intended to expand or alter the scope and/or remedies available under the above-cited sanction rules.

Rule 1. Appearance by Counsel with Knowledge and Authority.

(a) Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12 of this subdivision.

(b) Consistent with the requirements of Rule 8(b) of this subdivision, counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

(c) It is important that counsel be on time for all scheduled appearances.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the county clerk.

Rule 3. Alternative Dispute Resolution (ADR); Settlement Conference Before a Justice Other Than the Justice Assigned to the Case.
(a) At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation. Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

(b) Should counsel wish to proceed with a settlement conference before a justice other than the justice assigned to the case, counsel may jointly request that the assigned justice grant such a separate settlement conference. This request may be made at any time in the litigation. Such request will be granted in the discretion of the justice assigned to the case upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice. If the request is granted, the assigned justice shall make appropriate arrangements for the designation of a “settlement judge.”

Rule 4. Electronic Submission of Papers. (a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5(a) of this Part except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a computer disk along with an original and courtesy copy.

Rule 5. (This rule shall apply only in the First and Second Judicial Departments) Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by chambers.

Rule 6. Form of Papers. All papers submitted to the Commercial Division shall comply with CPLR 2101 and section 202.5(a) of this Part. Papers shall be double-spaced and contain print no smaller than 12-point, or 8 1/2 x 11 inch paper, bearing margins no smaller than one inch. The print size of footnotes shall be no smaller than 10-point. Papers also shall comply with Part 130 of the Rules of the Chief Administrator. Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.

Rule 7. Preliminary Conference; Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. Except for good cause shown, no preliminary conference shall be adjourned more than once or for more than 30 days. If a request for judicial intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto.

Rule 8. Consultation prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery and any other issues to be discussed at the conference, including the timing and scope of
expert disclosure under Rule 13(c); (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

(b) Prior to the preliminary conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed with the court at the preliminary conference and shall include but not be limited to (i) identification of potentially relevant types or categories of electronically stored information ("ESI") and the relevant time frame; (ii) disclosure of the applications and manner in which the ESI is maintained; (iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible; (iv) implementation of a preservation plan for potentially relevant ESI; (v) identification of the individual(s) responsible for preservation of ESI; (vi) the scope, extent, order, and form of production; (vii) identification, redaction, labeling, and logging of privileged or confidential ESI; (viii) claw-back or other provisions for privileged or protected ESI; (ix) the scope or method for searching and reviewing ESI; (x) the anticipated cost and burden of data recovery and proposed initial allocation of such costs; (xi) designation of experts; and (xii) the need to vary the presumptive number or duration of depositions set forth in Rule 11-d.


(a) This rule is applicable to all actions, except to class actions brought under Article 9 of the CPLR, in which the court by written consent of the parties is authorized to apply the accelerated adjudication procedures of the Commercial Division of the Supreme Court. One way for parties to express their consent to this accelerated adjudication process is by using specific language in a contract, such as: "Subject to the requirements for a case to be heard in the Commercial Division, the parties agree to submit to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court and to the application of the Court's accelerated procedures, in connection with any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement or validity thereof."

(b) In any matter proceeding through the accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties shall be ready for trial within nine months from the date of filing of a Request of Judicial Intervention (RJI).

(c) In any accelerated action, the court shall deem the parties to have irrevocably waived:

(1) any objections based on lack of personal jurisdiction or the doctrine of forum non conveniens;

(2) the right to trial by jury;

(3) the right to recover punitive or exemplary damages;

(4) the right to any interlocutory appeal; and

(5) the right to discovery, except to such discovery as the parties might otherwise agree or as follows:

   (i) There shall be no more than seven interrogatories and five requests to admit;
(ii) Absent a showing of good cause, there shall be no more than seven discovery depositions per side with no deposition to exceed seven hours in length. Such depositions can be done either in person at the location of the deponent, a party or their counselor in real time by any electronic video device; and

(iii) Documents requested by the parties shall be limited to those relevant to a claim or defense in the action and shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain.

(d) In any accelerated action, electronic discovery shall proceed as follows unless the parties agree otherwise:

(1) the production of electronic documents shall normally be made in a searchable format that is usable by the party receiving the e-documents;

(2) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and

(3) where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the court will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

Rule 10. Submission of Information; Certification Relating to Alternative Dispute Resolution. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone number, e-mail address and fax number of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are anticipated; and (v) copies of any decisions previously rendered in the case. Counsel for each party shall also submit to the court at the preliminary conference and each subsequent compliance or status conference, and separately serve and file, a statement, in a form prescribed by the Office of Court Administration, certifying that counsel has discussed with the party the availability of alternative dispute resolution mechanisms provided by the Commercial Division and/or private ADR providers, and stating whether the party is presently willing to pursue mediation at some point during the litigation.

Rule 11. Discovery.

(a) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program, including, in all cases in which the parties certify their willingness to pursue mediation pursuant to Rule 10, provision of a specific date by which a mediator shall be identified by the parties for assistance with resolution of the action; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.
(b) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

(c) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

(d) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF __________________
-------------------------------------------------------X
Plaintiff(s), Part:

____________________________
Index
No.:__________
-against-
ALTERNATIVE
DISPUTE RESOLUTION
("ADR") ATTORNEY
CERTIFICATION
Defendant(s).
-------------------------------------------------------X
Pursuant to Rule 10 of the Commercial Division Rules, I certify that I have discussed with my client any Alternative Dispute Resolution options available through the Commercial Division and those offered by private entities. My client:

( ) presently wishes to jointly engage a mediator at an appropriate time to aid settlement.

( ) does not presently wish to jointly engage a mediator at an appropriate time to aid settlement.

Dated: __________________________ Signature: ____________________________

Attorney Name and Address:

____________________________
ATTORNEY FOR:

Note: This certification must be served and filed pursuant to Rule 10 of the Commercial Division Rules, with a copy submitted to the court at the time of the Preliminary Conference and each subsequent Compliance or Status Conference. Unless otherwise indicated by the Court, a separate certification is required for each party represented.

Rule 11-a. Interrogatories.

(a) Interrogatories are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well.
(b) Unless otherwise ordered by the court, interrogatories are limited to the following topics: name of witnesses with knowledge of information material and necessary to the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location and general description of material and necessary documents, including pertinent insurance agreements, and other physical evidence.

(c) During discovery, interrogatories other than those seeking information described in paragraph (b) above may only be served:

(1) if the parties consent; or

(2) if ordered by the court for good cause shown.

(d) At the conclusion of other discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the Court has ordered otherwise.

Rule 11-b. Privilege Logs.

(a) Meet and Confer: General. Parties shall meet and confer at the outset of the case, and from time to time thereafter, to discuss the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

(b) Categorical Approach or Document-By-Document Review.

(1) The preference in the Commercial Division is for the parties to use categorical designations, where appropriate, to reduce the time and costs associated with preparing privilege logs. The parties are expected to address such considerations in good faith as part of the meet and confer process (see paragraph (a) of this section) and to agree, where possible, to employ a categorical approach to privilege designations. The parties are encouraged to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that may be established, the producing party shall provide a certification, pursuant to 22 NYCRR section 130-1.1a, setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if the latter, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined below, or by the party, through an authorized and knowledgeable representative.

(2) In the event the requesting party refuses to permit a categorical approach, and instead insists on a document-by-document listing on the privilege log, then unless the Court deems it appropriate to issue a protective order pursuant to CPLR 3103 based upon the facts and circumstances before it, the requirements set forth in CPLR 3122 shall be followed. In that circumstance, however, the producing party, upon a showing of good cause, may apply to the court...
for the allocation of costs, including attorneys' fees, incurred with respect to preparing the document-by-document log. Upon good cause shown, the court may allocate the costs to the requesting party.

(3) To the extent that a party insists upon a document-by-document privilege log as contemplated by CPLR 3122, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following:

(i) an indication that the e-mails represent an uninterrupted dialogue;

(ii) the beginning and ending dates and times (as noted on the e-mails) of the dialogue;

(iii) the number of e-mails within the dialogue; and

(iv) the names of all authors and recipients - together with sufficient identifying information about each person (e.g., name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(c) Special Master. In complex matters likely to raise significant issues regarding privileged and protected material, parties are encouraged to hire a Special Master to help the parties efficiently generate privilege logs, with costs to be shared.

(d) Responsible Attorney. The attorney having supervisory responsibility over the privilege review shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken to ensure that responsive, non-privileged documents are timely produced.

(e) Court Order. Agreements and protocols agreed upon by parties should be memorialized in a court order.

Rule 11-c. Discovery of Electronically Stored Information from Nonparties. Parties and nonparties should adhere to the Commercial Division's Guidelines for Discovery of Electronically Stored Information ("ESI") from nonparties, which can be found in Appendix A to these Rules of the Commercial Division.

*Editorial note: As per the December 23, 2014 Administrative Order of the Chief Administrative Judge of the Courts, Rule 11-d is applicable to cases filed in the Commercial Division on and after April 1, 2015.*

Rule 11-d. Limitations on Depositions.

(a) Unless otherwise stipulated to by the parties or ordered by the court:

(1) the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and

(2) depositions shall be limited to seven hours per deponent.
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(b) Notwithstanding subsection (a)(1) of this Rule, the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.

c) For the purposes of subsection (a)(1) of this Rule, the deposition of an entity through one or more representatives shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.

d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative, shall constitute a separate deposition.

e) For the purposes of subsection (a)(2) of this Rule, the deposition of an entity shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive durational limit may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely granted.

(f) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.

g) Nothing in this Rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

Rule 11-e. Responses and Objections to Document Requests.

(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the “Responses”), either:

i. state that the production will be made as requested; or

ii. state with reasonable particularity the grounds for any objection to production.

(b) By a date agreed to by the parties or at such time set by the Court, the responding party shall serve the Responses contemplated by Rule 11-e(a)(ii), which shall set forth specifically: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objections forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (iii) the manner in which the responding party intends to limit the scope of its production.

(c) By agreement of the parties to a date no later than the date set for the commencement of depositions, or at such time set by the Court, a date certain shall be fixed for the completion of document production by the responding party.

(d) By agreement of the parties to a date no later than one month prior to the close of fact discovery, or at such time set by the Court, the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is
complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified.

(e) Nothing contained herein is intended to conflict with a party's obligation to supplement its disclosure obligations pursuant to CPLR 3101(h).

Rule 11-f. Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than 10 days prior to the scheduled deposition:

1. the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

2. such designation must include the identity, description or title of such individual(s); and

3. if the named entity designates more than one individual, it must set out the matters on which each individual will testify.

(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then:

1. pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than 10 days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;

2. pursuant to CPLR 3106(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and

3. if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.
(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.

(f) The individual(s) designated must testify about information known or reasonably available to the entity.

(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.

(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.

Rule 11-g. Proposed Form of Confidentiality Order.

The following procedure shall apply in those parts of the Commercial Division where the justice presiding so elects:

(a) For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix B to these Rules of the Commercial Division.

(b) In the event the parties wish to deviate from the form set forth in Appendix B, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(c) Nothing in this rule shall preclude a party from seeking any form of relief otherwise permitted under the Civil Practice Law and Rules.

Rule 12. Non-Appearance at Conference. The failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27 of this Part, including dismissal, the striking of an answer, an inquest or direction for judgment, or other appropriate sanction.


(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Such deadlines, however, may be modified upon the consent of all parties, provided that all discovery shall be completed by the discovery cutoff date set forth in the preliminary conference order. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing such demanded documents at trial.

(c) If any party intends to introduce expert testimony at trial, no later than 30 days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure—including the identification of experts, exchange
of reports, and depositions of testifying experts—all of which shall be completed no later than four months after the completion of fact discovery. In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection with the court.

Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report, prepared and signed by the witness, if either (1) the witness is retained or specially employed to provide expert testimony in the case, or (2) the witness is a party's employee whose duties regularly involve giving expert testimony. The report must contain:

(A) a complete statement of all opinions the witness will express and the basis and the reasons for them;

(B) the data or other information considered by the witness in forming the opinion(s);

(C) any exhibits that will be used to summarize or support the opinion(s);

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases at which the witness testified as an expert at trial or by deposition during the previous four years; and

(F) a statement of the compensation to be paid to the witness for the study and testimony in the case.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure. Expert disclosure provided after these dates without good cause will be precluded from use at trial.

Rule 14. Disclosure Disputes. If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case. If the court's Part Rules are silent with respect to discovery disputes, the following Rule will apply. Discovery disputes are preferred to be resolved through court conference as opposed to motion practice. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See Section 202.7. If counsel are unable to resolve any disclosure dispute in this fashion, counsel for the moving party shall submit a letter to the court not exceeding three single-spaced pages outlining the nature of the dispute and requesting a telephone conference. Such a letter must include a representation that the party has conferred with opposing counsel in a good faith effort to resolve the issues raised in the letter or shall indicate good cause why no such consultation occurred. Not later than four business days after receiving such a letter, any affected opposing party or non-party shall submit a responsive letter not exceeding three single-spaced pages. After the submission of letters, the court will schedule a telephone or in-court conference with counsel. The court or the court's law clerks will attempt to address the matter through a telephone conference where possible. The failure of counsel to comply with this rule may result in a motion being held in abeyance until the court has an opportunity to confer with the matter. If the parties need to make a record, they will still have the opportunity to submit a formal motion.

Rule 14-a. Rulings at Disclosure Conferences. The following procedures shall govern all disclosure conferences conducted by non-judicial personnel.

(a) At the request of any party
(1) prior to the conclusion of the conference, the parties shall prepare a writing setting forth the resolutions reached and submit the writing to the court for approval and signature by the presiding justice; or

(2) prior to the conclusion of the conference, all resolutions shall be dictated into the record, and either the transcript shall be submitted to the court to be “so ordered,” or the court shall otherwise enter an order incorporating the resolutions reached.

(b) With respect to telephone conferences, upon request of a party and if the court so directs, the parties shall agree upon and jointly submit to the court within one (1) business day of the telephone conference a stipulated proposed order, memorializing the resolution of their discovery dispute. If the parties are unable to agree upon an appropriate form of proposed order, they shall so advise the court so that the court can direct an alternative course of action.

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

Rule 16. Motions in General. (a) Form of motion papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) Proposed orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 25 pages each; (ii) reply memorandum shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 25 pages each.

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this rule shall not respond in kind.
Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Rule 20 of this subdivision. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts. (a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b) of this rule, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Editorial Note: This rule is amended through Court Notices, effective July 1, 2017.

Rule 20. Temporary Restraining Orders. Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, a temporary restraining order will not be issued ex parte. The applicant must give notice, including copies of all supporting papers, to the opposing parties sufficient to permit them an opportunity to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means System.

Rule 22. Oral Argument. Any party may request oral argument on the face of its papers or in an accompanying letter. Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether oral argument will be heard and, if so, when counsel shall appear. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

Rule 23. 60-Day Rule. If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 24. Advance Notice of Motions (a) Nothing in this rule shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, in order to permit the court the opportunity to resolve issues before motion practice ensues, and to control its calendar in the context of the discovery
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and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this rule may result in the motion being held in abeyance until the court has an opportunity to conference the matter.

(b) This rule shall not apply to disclosure disputes covered by Rule 14 of this subdivision nor to dispositive motions pursuant to CPLR 3211, 3212 or 3213 made at the time of the filing of the request for judicial intervention or after discovery is complete. Nor shall the rule apply to motions to be relieved as counsel, for pro hac vice admission, for reargument or in limine.

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion.

(d) Upon review of the motion notice letter, the court will schedule a telephone or in-court conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(e) If the matter can be resolved during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered." At the discretion of the court, the conference may be held on the record.

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(g) On the face of all notices of motion and orders to show cause, there shall be a statement that there has been compliance with this rule.

(h) Where a motion must be made within a certain time pursuant to the CPLR, the submission of a motion notice letter, as provided in subdivision (a) of this rule, within the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Rule 25. Trial Schedule. Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled trial date. Once a trial date is set, counsel shall immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within 10 days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that trials proceed without interruption. Trials shall commence each court day promptly at such times as the court directs. Failure of counsel to attend the trial at the time scheduled without good cause shall constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to trials scheduled more than 60 days in advance, section 125.1(g) of the Rules of the Chief Administrator
shall apply and the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial.

Editorial Note: This rule is amended through Court Notices, effective July 1, 2017.

Rule 26. Length of Trial. At least ten days prior to trial or such other time as the court may set, the parties, after considering the expected testimony of and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial. If requested by the Court, the estimate shall also contain a request by each party for the total number of hours which each party believes will be necessary for its direct examination, cross examination, redirect examination, and argument during the trial. The court may rule on the total number of trial hours which the court will permit for each party. The court in its discretion may extend the total number of trial hours as justice may require.

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than 10 days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to the pre-trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered by it as to which objection has not been made and, identified separately, a list of deposition testimony as to which objection has been made. At least 10 days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of the deposition testimony as to which objection has been made. The court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Settlement and Pre-Trial Conferences. (a) Settlement conference. At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) Pre-trial conference. Prior to the pre-trial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29 of this subdivision, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

(c) Consultation regarding expert testimony. The court may direct that prior to the pre-trial conference, counsel for the parties consult in good faith to identify those aspects of their respective experts’ anticipated testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation.

Rule 31. Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions. (a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e).
A single memorandum no longer than 25 pages shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit an indexed binder or notebook of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 12 format, as directed by the court.

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

Rule 32-a. Direct Testimony by Affidavit. The court may require that direct testimony of a party's own witness in a non-jury trial or evidentiary hearing shall be submitted in affidavit form, provided, however, that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony. The submission of direct testimony in affidavit form shall not affect any right to conduct cross-examination or re-direct examination of the witness.

Rule 33. Preclusion. Failure to comply with Rules 28, 29, 31 and 32 of this subdivision may result in preclusion pursuant to CPLR 3126.

Rule 34. Staggered Court Appearances. Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process in the Commercial Division, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigating in the Commercial Division by instituting staggered court appearances of matters before the court, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel.

(a) Each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot. The length of the time slot allotted to each matter is solely in the discretion of the court.

(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding ex parte communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court. However, if an individual is appearing as a self-represented person, that individual must appear at each and every scheduled court appearance regardless of whether he or she anticipates being heard.

(c) Since the court is setting aside a specific time slot for the case to be heard and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification,
each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments or to appear telephonically must be e-filed and received in writing by the court by no later than 48 hours before the hearing.

APPENDIX A. GUIDELINES FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("ESI") FROM NONPARTIES.

Purpose

The purpose of these Guidelines for Discovery of ESI from Nonparties (the "Guidelines") is to:

· Provide for the efficient discovery of ESI from nonparties in Commercial Division cases;

· Encourage the early assessment and discussion of the potential costs and burdens to be imposed on nonparties in preserving, retrieving, reviewing and producing ESI given the nature of the litigation and the amount in controversy;

· Identify the costs of nonparty ESI discovery that will require defrayal by the party requesting the discovery; and

· Encourage the informal resolution of disputes between parties and nonparties regarding the production of ESI, without Court supervision or intervention whenever possible.

These Guidelines are not intended to modify governing case law or to replace any parts of the Rules of the Commercial Division of the Supreme Court (the "Commercial Division Rules"), the Uniform Civil Rules for the Supreme Court (the "Uniform Civil Rules"), the New York Civil Practice Law and Rules (the "CPLR"), or any other applicable rules or regulations pertaining to the New York State Unified Court System. These Guidelines should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, and any other applicable rules and regulations.

Parties seeking ESI discovery from nonparties in Commercial Division cases are recommended to cite to or reference Rule 11-c of the Commercial Division Rules and these Guidelines in their requests for ESI discovery.

Definition of ESI

As used herein, "ESI" includes any electronically stored information stored in any medium from which such information can be obtained, either directly or after translation by the responding party into a reasonably usable form.

Guidelines

I. Subject to all applicable court rules regarding discovery, a party seeking ESI discovery from a nonparty and the nonparty receiving the request for ESI discovery are encouraged to engage in discussions regarding the ESI to be sought as early as permissible in an action.
II. Notwithstanding whether or when the legal duty to preserve ESI arises, which is governed by case law, a party seeking ESI discovery from a nonparty is encouraged to discuss with the nonparty any request that the nonparty implement a litigation hold.

III. A party seeking ESI discovery from a nonparty should reasonably limit its discovery requests, taking into consideration the following proportionality factors:

A. The importance of the issues at stake in the litigation;

B. The amount in controversy;

C. The expected importance of the requested ESI;

D. The availability of the ESI from another source, including a party;

E. The "accessibility" of the ESI, as defined in applicable case law; and

F. The expected burden and cost to the nonparty.

IV. The requesting party and the nonparty should seek to resolve disputes through informal mechanisms and should initiate motion practice only as a last resort. The requesting party and the nonparty should meet and confer concerning the scope of the ESI discovery, the timing and form of production, ways to reduce the cost and burden of the ESI discovery (including but not limited to: an agreement providing for the clawing-back of privileged ESI; and the use of advanced analytic software applications and other technologies that can screen for relevant and privileged ESI), and the requesting party's defrayal of the nonparty's reasonable production expenses. In connection with the meet and confer process, the requesting party and the nonparty should consider the proportionality factors set forth in paragraph III. In the event no agreement is reached through the meet and confer process, the requesting party and the nonparty are encouraged to seek resolution by availing themselves of the Court System's resources, such as by requesting a telephonic conference with a law clerk or special referee or the appointment of an unpaid mediator in accordance with Rule 3 of the Commercial Division Rules.

V. The requesting party shall defray the nonparty's reasonable production expenses in accordance with Rules 3111 and 3122(d) of the CPLR. Such reasonable production expenses may include the following:

A. Fees charged by outside counsel and e-discovery consultants;

B. The costs incurred in connection with the identification, preservation, collection, processing, hosting, use of advanced analytical software applications and other technologies, review for relevance and privilege, preparation of a privilege log (to the extent one is requested), and production;
C. The cost of disruption to the nonparty's normal business operations to the extent such cost is quantifiable and warranted by the facts and circumstances; and

D. Other costs as may be identified by the nonparty.

APPENDIX B. STIPULATION AND ORDER FOR THE PRODUCTION
AND EXCHANGE OF CONFIDENTIAL INFORMATION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ___________________

This matter having come before the Court by stipulation of plaintiff, _____________, and defendant, _____________, (individually “Party” and collectively “Parties”) for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the “Documents” or “Testimony”).

2. Any Party or, as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action as “confidential,” either by notation on each page of the Document so designated, statement on the record of the deposition, or written advice to the respective undersigned counsel for the Parties hereto, or by other appropriate means.

3. As used herein:
(a) **Confidential Information** shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients.

(b) **Producing Party** shall mean the parties to this action and any non-parties producing **Confidential Information** in connection with depositions, document production or otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(c) **Receiving Party** shall mean the Parties to this action and/or any non-party receiving **Confidential Information** in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Information. If such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) personnel of the Parties actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;

(b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

(d) the Court and court personnel;
(e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;

(f) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof; and

(g) any other person agreed to by the Producing Party.

6. Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes.

7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party making such disclosure shall provide to the expert witness or consultant a copy of this Stipulation and obtain the expert's or consultant's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.

8. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

9. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.

10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as “Confidential Information” under the terms hereof. Any deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other Parties and, as appropriate, a non-party that is a Producing Party. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness's compliance with the Stipulation.

11. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped
or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

In Counties WITH Electronic Filing

12. (a) A Party or, as appropriate, non-party, who seeks to file with the Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which have previously been designated as comprising or containing Confidential Information, or (ii) any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information shall file the document, pleading, brief, or memorandum on the NYSCEF system in redacted form until the Court renders a decision on any motion to seal (the “Redacted Filing”). If the Producing Party fails to move to seal within seven (7) days of the Redacted Filing, the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(b) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is a non-party, the filing Party shall so notify that Producing Party within twenty four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant Producing Party's Confidential Information unredacted.

(c) If the Producing Party makes a timely motion to seal, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the court, portions of documents) that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 shall, contemporaneously with or prior to making the Redacted Filing, provide the other Parties and the Court with a complete and unredacted version of the filing.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any materials which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

In Counties WITHOUT Electronic Filing

13. (a) A Party or, as appropriate, non-party, who seeks to file with the Court any deposition transcripts, exhibits, answers to interrogatories, and other documents which have previously been designated as comprising or containing Confidential Information, or any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information, shall (i) serve upon the other Parties (and, as appropriate, non-parties) a Redacted Filing and a complete and unredacted version of the filing; (ii) file a Redacted Filing with the court; and (iii) transmit the Redacted Filing and a complete unredacted version of the filing to chambers. Within three (3) days thereafter, the Producing Party may file a motion to seal such Confidential Information.
(b) If the Producing Party does not file a motion to seal within the aforementioned three (3) day period, the Party (or, as appropriate, non-party) that seeks to file the Confidential Information shall take steps to file an unredacted version of the material.

(c) In the event the motion to seal is granted, all (or, if directed by the court, portions of) deposition transcripts, exhibits, answers to interrogatories, and other documents which have previously been designated by a Party (or, as appropriate, non-party) as comprising or containing Confidential Information, and any pleading, brief or memorandum which reproduces, paraphrases or discloses such material, shall be filed in sealed envelopes or other appropriate sealed container on which shall be endorsed the caption of this litigation, the words “CONFIDENTIAL MATERIAL-SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION” as well as an indication of the nature of the contents and a statement in substantially the following form:

"This envelope, containing documents which are filed in this case by (name of Party or as appropriate, non-party), is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties and their counsel of record, except by order of the Court or consent of the parties. Violation hereof may be regarded as contempt of the Court.”

In the event the motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is non-party, the Party (or, as appropriate, non-party) making the filing shall so notify the Producing Party within twenty four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant non-party's Confidential Information unredacted.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any documents which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

14. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof and shall use reasonable measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

15. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its “confidential” nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as “confidential” within a reasonable time following the discovery that the document or information has been produced without such designation.

16. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.
17. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential Information designation shall not preclude a subsequent challenge thereto.

18. This Stipulation is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

19. This Stipulation shall continue to be binding after the conclusion of this litigation except that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action.

20. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

21. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter.

22. If a Receiving Party is called upon to produce Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information is sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information, if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body.
23. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

24. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

[FIRM]

By: ________________________________

__________________________________

New York, New York

Tel: ______________________________

Attorneys for Plaintiff

Date: ____________________________

SO ORDERED

__________________________________

J.S.C.

[FIRM]

By: ________________________________

__________________________________

New York, New York

Tel: ______________________________

Attorneys for Defendant

EXHIBIT “A”
AGREEMENT WITH RESPECT TO CONFIDENTIAL MATERIAL

Plaintiff, :
- against - :
_______________________ :
Defendent. :

. . . . . . . . . . . . . . . x
. . . . . . . . . . . . . . .

I, ____________________ state that:

1. My address is _______________________________-

2. My present occupation or job description is ____________________________

3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the “Stipulation”) entered in the above-entitled action on _________________________________

4. I have carefully read and understand the provisions of the Stipulation.

5. I will comply with all of the provisions of the Stipulation.

6. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information that is disclosed to me.

7. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information.

8. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: ____________________ ____________________

APPENDIX C. COMMERCIAL DIVISION SAMPLE CHOICE OF FORUM CLAUSES

Purpose

The purpose of these sample forum-selection provisions is to offer contracting parties streamlined, convenient tools in expressing their consent to confer jurisdiction on the Commercial Division or to proceed in the federal courts in New York State.
These sample provisions are not intended to modify governing case law or to replace any parts of the Rules of the Commercial Division of the Supreme Court (the “Commercial Division Rules”), the Uniform Civil Rules for the Supreme Court (the “Uniform Civil Rules”), the New York Civil Practice Law and Rules (the “CPLR”), the Federal Rules of Civil Procedure, or any other applicable rules or regulations pertaining to the New York State Unified Court System or the federal courts in New York. These sample provisions should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, the Federal Rules of Civil Procedure, and any other applicable rules and regulations. Parties which use these sample provisions must satisfy all jurisdictional, procedural, and other requirements of the courts specified in the provisions.

The Sample Forum Selection Provision

To express their consent to the exclusive jurisdiction of the Commercial Division, parties may include specific language in their contract, such as: “THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF.”

Alternatively, in the event that parties wish to express their consent to the exclusive jurisdiction of either the Commercial Division or the federal courts in New York State, the parties may include specific language in their contract, such as: “THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, OR THE FEDERAL COURTS IN NEW YORK STATE, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF.”

APPENDIX D. COMMERCIAL DIVISION SAMPLE CHOICE OF LAW PROVISION

Purpose

The purpose of this sample choice of law provision is to offer contracting parties a streamlined, convenient tool in expressing their consent to having New York law apply to their contract, or any dispute under the contract.

This sample provision is not intended to modify governing case law or to replace any parts of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, or any other applicable rules or regulations. This sample provision should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, and any other applicable rules and regulations. Parties which use this sample provision must meet any requirements of applicable law.

The Sample Choice of Law Provision

To express their consent to have New York law apply to the contract between them, or any disputes under such contract, the parties may include specific language in their contract, such as: “THIS AGREEMENT AND ITS ENFORCEMENT, AND ANY CONTROVERSY ARISING OUT OF OR RELATING TO THE MAKING OR PERFORMANCE OF THIS AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN
ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO NEW YORK'S PRINCIPLES OF CONFLICTS OF LAW.”

Credits


22 NYCRR 202.70, 22 NY ADC 202.70

End of Document
Section 202.71. Recognition of Tribal Court judgments, decrees and orders

Any person seeking recognition of a judgment, decree or order rendered by a court duly established under tribal or federal law by any Indian tribe, band or nation recognized by the State of New York or by the United States may commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment, decree or order appended thereto in the County Clerk's office in any appropriate county of the state. If the court finds that the judgment, decree or order is entitled to recognition under principles of the common law of comity, it shall direct entry of the tribal judgment, decree or order as a judgment, decree or order of the Supreme Court of the State of New York. This procedure shall not supplant or diminish other available procedures for the recognition of judgments, decrees and orders under the law.

Credits
Sec. filed through Court Notices in the June 24, 2015 Register.

Earldom of Grantham, Downton Abbey

Colours show peerage lines of descent (Baronety while hereditary, is not part of the peerage). Strokes through name indicates deceased heir.
In order to assist us in the preparation of a tax-efficient and personally satisfying estate plan for you, we would like you to answer the following questions. Please feel free to use additional sheets if necessary.

Date: ______________

Client Personal Information

Name: ___________________________________________________________

Residence Address: _____________________________________________________

_____________________________________________________

Business Address: _____________________________________________________

_____________________________________________________

Telephone: Business: ____________________ Home: _________________________

Fax: Business: ________________________ Home: ___________________________

E-mail: Business _____________________ Home: ____________________________

Preferred address for correspondence: __________ For e-mail: _____________

Date of Birth: _______________ Condition of Health: _________________

Citizenship: _______________ Social Security No.: _______________________

If naturalized, date and place of naturalization: _________________________________

_______________________________________________________________________

Marital Status:

If married, date of marriage: _____________________________________________

If divorced, please indicate name(s) of former spouse(s) and date(s) of divorce(s):

_______________________________________________________________________

If widowed, please indicate name(s) of deceased spouse(s) and date(s) of death(s):

_______________________________________________________________________

Where was deceased spouse’s estate probated or administered: ____________
II. **Family Information**

A. **Spouse**

Name: ___________________________________________________________

Residence Address: _____________________________________________________

_____________________________________________________

Business Address:  _____________________________________________________

_____________________________________________________

Telephone: Business: ____________________   Home:  _________________________

Fax: Business: ________________________   Home:  ___________________________

E-mail: Business  _____________________  Home:  ____________________________

Preferred address for correspondence: ______________  For e-mail:   _____________

Date of Birth:  __________________  Condition of Health: _______________________

Citizenship:  __________________  Social Security No.: ________________________

If naturalized, date and place of naturalization: ________________________________

________________________________________________________________________

If divorced, name(s) of former spouse(s) and date(s) of divorce(s): __________________

________________________________________________________________________

If widowed, name of deceased spouse and date of death: _________________________

B. **Children**

1. **Client’s:** Please provide the following information concerning your children:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of birth</th>
<th>If from prior marriage, former spouse’s name</th>
<th>Adopted?</th>
</tr>
</thead>
</table>

a. __________________________________________________________

b. __________________________________________________________

c. __________________________________________________________
2. **Spouse’s**: Please provide the following information concerning your children:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of birth</th>
<th>If from prior marriage, former spouse’s name</th>
<th>Adopted?</th>
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</thead>
<tbody>
<tr>
<td>a.</td>
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<td>c.</td>
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</table>

C. **Grandchildren**

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of birth</th>
<th>If from prior marriage, former spouse’s name</th>
<th>Adopted?</th>
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<tbody>
<tr>
<td>a.</td>
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<tr>
<td>c.</td>
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D. **Parents (with date of death, if applicable)**

1. **Client’s Parents**

   Father: ________________________  Mother: ________________________

   Date of Birth: ________________________  Date of Birth: ________________________

   Date of Death: ________________________  Date of Death: ________________________

2. **Spouse’s Parents**

   Father: ________________________  Mother: ________________________

   Date of Birth: ________________________  Date of Birth: ________________________

   Date of Death: ________________________  Date of Death: ________________________

E. **Siblings**

1. **Client’s Siblings**: Please list the names and addresses of all brothers and sisters and any children of theirs:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Nieces/Nephews</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td></td>
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</table>
b.

2. Spouse’s Siblings:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Nieces/Nephews</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
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<tr>
<td>b.</td>
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III. Assets

A. Real Estate (Including real estate owned outright, cooperative and condominium apartments, and excluding real estate owned in a trust, corporation or partnership):

<table>
<thead>
<tr>
<th>Property Address</th>
<th>Fair Market Value</th>
<th>Outstanding Mortgage</th>
<th>Form of Ownership</th>
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</thead>
<tbody>
<tr>
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</table>

B. Securities and Cash Equivalents (Other than assets owned in a retirement or pension plan):

Stock/Brokerage Accounts: __________________________________________________________

Bonds: __________________________________________________________________________

Mutual Funds: _________________________________________________________________

Cash Equivalents: ____________________________________________________________

C. Bank Accounts:

1. Bank: _________________________________________________________________

   Type of Account (savings, checking, etc.): ________ Account No.: _____________

   Owner(s) of Account: ____________ Approximate Balance: ______________

2. Bank: _________________________________________________________________

   Type of Account (savings, checking, etc.): ________ Account No.: _____________

* C = Client; S = Spouse; J = Joint tenancy or tenancy by the entirety
Owner(s) of Account: _____________   Approximate Balance: _____________

D. **Life Insurance Policies.** If beneficiary is a Trust, indicate the name(s) of the Trustee(s):

1. **Life Insurance Company:** __________________________________________________
   Policy No.: ________________  Type (term, whole, variable, etc.): _______________
   Insured: _________________________  Owner: _______________________________
   Beneficiary: _____________________  Contingent Beneficiary: _________________
   Face value: ______________________  Cash Replacement Value__________________

2. **Life Insurance Company:** __________________________________________________
   Policy No.: ________________  Type (term, whole, variable, etc.): _______________
   Insured: _________________________  Owner: _______________________________
   Beneficiary: _____________________  Contingent Beneficiary: _________________
   Face value: ______________________  Cash Replacement Value__________________

3. **Life Insurance Company:** __________________________________________________
   Policy No.: ________________  Type (term, whole, variable, etc.): _______________
   Insured: _________________________  Owner: _______________________________
   Beneficiary: _____________________  Contingent Beneficiary: _________________
   Face value: ______________________  Cash Replacement Value__________________

4. **Life Insurance Company:** __________________________________________________
   Policy No.: ________________  Type (term, whole, variable, etc.): _______________
   Insured: _________________________  Owner: _______________________________
   Beneficiary: _____________________  Contingent Beneficiary: _________________
   Face value: ______________________  Cash Replacement Value__________________

   Have you transferred any life insurance policies to another individual or to a trust, or are you the owner of a life insurance policy on another individual? __________________________
   If yes, please explain ________________________________________________________

E. **Tangible Personal Property.** Please list approximate values:

-5-
Furniture and Furnishings: ____________________   Jewelry: ____________________
Automobile(s): ___________________________  Art: ___________________________
Antiques: _________________________________  Library: _______________________
Other: Furs: _______________________________  Other: _________________________

**F. Employee Benefits.** Please describe all retirement plans, IRAs, profit sharing plans, stock options, group life insurance, including nature of plan benefits, plan owner, present value and beneficiary:

<table>
<thead>
<tr>
<th>Asset Type</th>
<th>Owner</th>
<th>Present Value of Benefits</th>
<th>Designated Beneficiary</th>
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<tbody>
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<td>1.</td>
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Has the owner elected any form or method of payout for any of the above plans, and/or is the owner past his or her Required Beginning Date (RBD)? ________ Please explain. ________

**G. Closely Held Business or Partnership Interests.** Please describe any closely-held business, general or limited liability company or partnership interests of which you are an owner or interest holder, and, if there are any purchase or restrictive agreements relating to any of these interests, please provide us with copies of any such agreements. Also indicate whether the present value of your interest is discounted:

<table>
<thead>
<tr>
<th>Corporate/Partnership Name</th>
<th>Business Form (Corporation, Partnership, etc.)</th>
<th>Present Value of Owner’s Interest (Discounted?)</th>
<th>Owner</th>
</tr>
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<tbody>
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* i.e., profit sharing (including ESOP and 401(k)), Pension (including money purchase and defined benefit), stock bonus, traditional or Roth IRA or other form.
H. **Trust Interests.** Are you a beneficiary of any trust, whether income or principal beneficiary, remainderman, or holder of a power of appointment? If so, please provide us with a copy of the Will or Trust Agreement, and describe below:

<table>
<thead>
<tr>
<th>Trust</th>
<th>Approximate Value</th>
<th>Nature of Interest(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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</table>

I. **Jointly-held Property.** Please describe any jointly-held property not otherwise listed above:

1. ___________________________________________
2. ___________________________________________
3. ___________________________________________

J. **Community Property.** During your marriage (if any), have you at any time lived in a community property state (Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas or Washington) and/or a quasi-community property state (Wisconsin or Alaska)? If so, please indicate the state(s) in which you have lived, whether you have made an affirmative election into or out of community property ownership, and the extent or nature of your community property assets:

1. ___________________________________________
2. ___________________________________________
3. ___________________________________________

K. **Other Assets.** Please indicate the nature and value of any other assets that we should know about (e.g., copyrights, trademarks, royalties, patents, annuities, expectancies (expected inheritances) from family, oil, gas or mineral interests, etc.:

1. ___________________________________________
2. ___________________________________________
3. ___________________________________________
4. ___________________________________________

IV. **Liabilities.** Do you have any substantial debts or liabilities (other than mortgages secured by real estate described above)?

Please indicate the nature and amount of any liabilities.
<table>
<thead>
<tr>
<th>Name of Creditor</th>
<th>Principal Amount</th>
<th>Secured (by what)?</th>
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<tbody>
<tr>
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<tr>
<td>4</td>
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</tr>
</tbody>
</table>

Are you, or is your Spouse, a guarantor on any debt other than those listed above? __________
If so, please provide details. _______________________________________________________

Are you, or is your Spouse, the defendant in any pending or threatened action? __________
If so, please provide details. _______________________________________________________

V. **Miscellaneous**

A. Do you have a Will? __________ Does your Spouse have a Will? __________
If so, what is the date of Will and where is it kept? _______________________________
Please provide us with copies of any existing Wills.

B. Do you or does your Spouse have a safe deposit box? ________________
If so, please provide the name of the Bank, its address and the name(s) in which the box is registered. ____________________________________________________________

C. Have you created any trusts, including revocable or irrevocable trusts? ______
Please attach a copy of each trust and describe. ______________________________________

D. Have you made any gifts in any one year to any person(s) which exceeded the annual exclusion amount? ________ If made by both you and your Spouse did your Spouse consent to gift-splitting? __________
If so, please describe ____________________________________________________________
E. Have you (or did your Spouse) ever filed any Federal or State gift tax returns? 
___________ If so, please attach a copy of any such returns.

F. Are you a Trustee of any trust? _____________________________________________________________________
If so, please attach a copy of the Will(s) or Trust Agreement(s) creating such trust(s).

G. Do you have any rights or obligations under an agreement with a former spouse? 
___________ If so, please attach a copy of any such agreement.

H. Do you or your Spouse have a Living Will? ______________________________
    Do you or your Spouse have a Health-Care Proxy? ______________________________
    Do you or your Spouse have a Power of Attorney? ______________________________
If so, please attach a copy or copies of such documents. ______________________________

I. Did you and your Spouse execute a pre- or post-nuptial agreement? _____________
If so, please attach a copy, together with any amendments and/or modifications.

J. Please note any special circumstances relating to yourself, your family or your assets.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
<table>
<thead>
<tr>
<th>Matter of Colt</th>
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<tbody>
<tr>
<td>2017 NY Slip Op 30934(U)</td>
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<tr>
<td>April 11, 2017</td>
</tr>
<tr>
<td>Surrogate's Court, New York County</td>
</tr>
<tr>
<td>Docket Number: 2008-4673/B</td>
</tr>
<tr>
<td>Judge: Rita M. Mella</td>
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</tbody>
</table>

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.
These are contested proceedings for the settlement of the accounts of SR (SR, or the Fiduciary), as executor of the will of Alvin Colt and as successor trustee of a revocable inter vivos trust created by Colt in March 2006. After the dismissal of certain objections and withdrawal of others, the only outstanding objections are to the amount of legal fees paid from the estate and trust to SR’s counsel, M&F, a professional corporation.\textsuperscript{1} The court held a hearing on this issue over four days, at which testimony was taken from AF, a senior attorney and one of two shareholders of M&F; SR; and LB, counsel for the remaining objecting beneficiaries.\textsuperscript{2}

\textsuperscript{1} M&F did not render separate invoices to the estate and trust. The firm billed SR in his two fiduciary capacities together based on time records that do not distinguish between services to the estate and services to the trust. The estate pours into the trust, and the court’s analysis of the fees does not require an allocation of the charges. For purposes of this decision the court treats the estate and trust as a single entity.

\textsuperscript{2} Prior to taking testimony on the fee issue, and on the record of the April 28, 2015 proceedings, the court denied two motions by SR. As to his motion to dismiss certain objections for failure to state a ground for relief, or for failure to plead with sufficient particularity, the court noted that the objections, as amended, stated a valid claim for excessive legal fees and were sufficiently particular to give adequate notice. The court in its discretion denied SR’s motion for sanctions under Rule 130-1.1.
M&F seeks approval for total charges of $1,037,183. The firm has waived its claim to another $853,880 in time charges, in part because of the limited funds remaining on hand. The amount requested is approximately 33.7% of the total of the estate and trust assets for which the Fiduciary has accounted, that is, principal received, income collected, and realized gains.

Background

Alvin Colt died in 2008 with assets that consisted largely of a brokerage account at Merrill Lynch (worth approximately $1.38 million on date of death) and a condominium apartment (valued at $1.137 million). Much of the contested legal fees in this otherwise routine administration were generated by a controversy as to which of two revocable inter vivos trusts that Colt created held title to the brokerage account and to the condominium. This was a significant issue because the respective beneficiaries of the two trusts are not the same.

Colt created the first trust with himself as trustee in April 2004. This trust purchased the condominium in June 2004, and the deed was recorded in the name of “Alvin Colt Trust, Alvin Colt, as Trustee.” The 2004 trust also held the brokerage account, titled in the name of “Alvin Colt as Trustee” without further specification. The 2004 trust was designated the beneficiary of Colt’s residuary probate estate under a pour-over will he executed on the same date as that of the 2004 trust. The 2004 trust instrument provided on Colt’s death for various cash bequests and a charitable remainder annuity trust, of which his niece, Susan Noack (Noack), was the lifetime annuitant. The remainder was to pass on her death to two designated charities (the Charities).

Of the amount requested, $667,380 has been paid. SR, an attorney, had an “Of Counsel” agreement with M&F, beginning in 2007. It is unclear whether SR should have made an application under SCPA 2111 before compensating the firm. SR and M&F deny they shared fees for this matter.
In March 2006 Colt executed a second revocable trust, again with himself as trustee. On the same day he executed a new will which left his probate estate to the 2006 trust. The new trust instrument made cash gifts to the same persons who were pecuniary legatees under the 2004 trust, but the trust remainder instead now passed outright on Colt's death: 80% to Noack and 10% to each of two other individuals. There was no further trust after Colt's death and no provision for the Charities.

Both wills and both trust agreements were drafted by SR, an estate planning attorney, now the executor and trustee. He acknowledges that Colt's intent was for his assets to pass pursuant to the terms of the later, 2006 trust, and has conceded his mistake in failing to have his client revoke the 2004 trust and fund the 2006 trust with the brokerage account and the condominium (Tr. 311, 317; see also Fiduciary's Post-Trial Mem. at 3, referring to the Fiduciary's "admitted error"). With the assistance of the court, the heart of the controversy was settled in late December 2011, when the Charities agreed to accept $37,500 each in satisfaction of their claims.

The Estate and Trust Administration and Current Procedural Posture

The legal work necessary to administer Colt's estate and trust entailed probate of the 2006 will; negotiation of a contract with the cemetery for perpetual care as directed in the will; sale of the condominium; and the routine tasks of any administration, including paying expenses, filing tax returns, accounting, and distributing the net probate and trust estates to the beneficiaries. In addition to these routine matters, the attorneys devoted very substantial time to litigation that ensued as a direct result of the failure to fund the 2006 trust. The extensive

4 References to pages in the hearing transcript are denoted "Tr. __".

3
proceedings included an action by the Fiduciary in the Supreme Court, commenced in 2009, seeking a declaration that all the assets were property of the 2006 trust; and counterclaims by the beneficiaries for negligence and breach of fiduciary duty, demands for accountings and removal of SR as executor and trustee, and cross-motions for partial summary judgment in that action. In July 2011, the Supreme Court transferred the action to Surrogate’s Court, where SR eventually brought these proceedings to settle his accounts. The currently outstanding objections were filed by Noack and the other two remainder beneficiaries of the 2006 trust (Objectants).

Standards for Fixing Legal Fees

A fiduciary is allowed to pay from an estate or trust “any reasonable counsel fees he may necessarily incur” (EPTL 11-1.1 [b][22]). It is well established that the Surrogate has the ultimate authority and broad discretion in fixing the fee (e.g. Stortecky v Mazzone, 85 NY2d 518 [1995]; Matter of Verplanck, 151 AD2d 767 [2d Dept 1989]). In determining the reasonableness and necessity of attorneys’ fees, the courts are often guided by the factors enumerated in Matter of Freeman (34 NY2d 1, 9 [1974]): the “time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer’s experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved” (see also Matter of Potts, 213 App Div 59, 62 [4th Dept 1925], aff’d 241 NY 593 [1925] [in fixing fees for settlement of an estate the court should generally consider “the time spent, the difficulties involved in the matters

5 The Objectants also brought a proceeding to compel distribution of legacies. The decision here will enable the Fiduciary to compute the balance available for distribution, which renders that proceeding moot.
in which the services were rendered, the nature of the services, the amount involved, the
professional standing of the counsel, and the results obtained”). The burden of establishing the
allowable amount of the fees is on the fiduciary, as the party seeking approval (id.).

*Analysis of Legal Fees Charged*

**Time required.** From the time records submitted, the court finds inefficiencies that were
both extreme and pervasive. For example, and despite M&F’s acknowledgment that there were
no major issues in the probate proceeding (see Fiduciary’s Post-Trial Mem. at 7), diary entries
reflect review upon review of the probate papers, revisions upon revisions, and research of basic
procedures that should not have been necessary in a firm that purports to have familiarity with
this type of work. More than 20 time entries refer to the probate petition alone, a fairly simple
document with no complications. As another example, for May and June of 2009, at least 37
separate entries refer to drafting, revising, reviewing, discussing, and “coordinating” a letter to
the Charities. AF testified that his firm had to respond to the Charities’ numerous inquiries, but
has not met the Fiduciary’s burden of justifying the extraordinary amount of attention given to
this effort, which primarily consisted of furnishing readily available information. In a third
example, M&F recorded more than 50 entries for drafting, reviewing, “coordinating,” revising,
or editing the stipulation of settlement.

Work devoted to the negotiation of the contract for the sale of decedent’s condominium,
preparation for and attendance at the closing, and preparation of a closing statement was all
appropriate, but again the fee charged in connection with the sale is excessive. AF testified that
his firm expended 42.7 hours for this work, which translated to approximately $15,000 in time
charges (Tr. 104, 196, 338). According to his trial testimony, complications stemming from the
question of title were resolved by the title company after “a bunch of phone calls back and forth” (Tr. 41), and the transaction was otherwise routine, with no lending institutions involved on either side.

The court also finds scores of entries for time recorded by the two principals of M&F for conversations with each other, both of whom are attorneys with decades of experience. At their blended rate, these exchanges were billed at approximately $1,000 per hour. While intra-office communications are not per se improper, testimony at the hearing did not provide adequate justification for the extent of these discussions between the senior attorneys.

The court also observes that time has been improperly charged for travel for court appearances, certain executorial duties, and, despite the waiver of some charges for work to support the fees requested, other fees for such work have been included in the invoices (see e.g. Matter of Trotman, NYLJ, May 13, 1998, at 29, col 3 [Sur Ct, Nassau County] [charges for travel time spent on executorial services not compensable]; Matter of Gallagher, NYLJ, Feb. 2, 1993, at 26, col 3 [Sur Ct, Bronx County] [time spent on fee application not compensable]). Based on the above, a substantial reduction in the number of hours that are compensable is appropriate.

Necessity of litigation services provided. Litigation is by far the largest category of work for which M&F seeks compensation. The firm maintains that its time charges were largely attributable to the Objectants’ own conduct throughout the litigation. It claims that the firm was obligated to correct or otherwise respond to unnecessary and wasteful actions on the part of the Objectants, related, among other things, to false statements in the Objectants’ pleadings; the Objectants’ failure to recognize the irrelevancy of the 2004 will after the 2006 will had been probated; inappropriate “gang-buster” mentality regarding settlement; frivolous affirmative
defenses and counterclaims, including a claim for SR’s malpractice; delay in concluding the partial settlement with the Charities; badgering the Fiduciary for further distributions without obtaining a court order, contrary to an alleged agreement between counsel; a failed removal proceeding; and unreasonable requests for backup documents.

In analyzing the necessity of the litigation and attendant expense, the court will not substitute its judgment for every strategy employed by M&F, but makes the following observations to address some of the criticism each side has directed at the other. First, it was not inappropriate for the Fiduciary to bring the action for declaratory judgment, in light of the controversy surrounding title to the assets and the Fiduciary’s duty to distribute those assets to the proper beneficiaries. Supreme Court was not necessarily the “wrong” court for the lawsuit, as the Objectants contend, and the fees attributable to the discretionary, unopposed transfer of the action to Surrogate’s Court are relatively small. Nor was it inappropriate for the Fiduciary to defend himself against the failed application for his removal, or to resist a demand for an accounting that he reasonably believed was premature. Further, the reasonable cost of preparing trust and estate accounts and prosecuting the proceedings for their settlement (whether or not compelled) is a necessary legal expense that is normally reimbursable from the trust or probate estate.

The Objectants argue strenuously that the Charities’ claims could have been settled much earlier, based upon the Objectants’ allegations that the Charities offered a settlement in early 2009 for a figure substantially less than the legal fees incurred afterwards to settle with them. The evidence suggests, however, that this offer covered only the Charities’ claim to an interest in the condominium, and did not include a claim to an interest in the brokerage account. In any
event, whether, when, and at what amount the case could have settled earlier is wholly speculative.

Weighing against the necessity of the litigation fees incurred are charges for the extensive efforts M&F describes to force the Objectants to “correct” their “nonsensical” objections, even going so far as to draft amended pleadings for the Objectants, their own client’s adversaries. Much of this work was not appropriate or required and is non-compensable from the estate. After reasonable attempts at negotiation failed, M&F could simply have moved to dismiss improper pleadings for failure to state a cause of action, could have denied the allegations in the cross-claims and counterclaims, or could have moved for summary judgment on any demonstrably unsupportable claims. The court also deems unwarranted the time spent drafting a complaint against the Objectants’ attorney under Judiciary Law 487, intended to threaten him with an action for treble damages when he did not respond to M&F’s demand to correct alleged misstatements in the Objectants’ pleadings (see Thomas v Chamberlain, D’Amanda, Oppenheimer & Greenfield, 115 AD2d 999, 999-1000 [4th Dept 1985] [“Assertion of unfounded allegations in a pleading, even if made for improper purposes, does not provide a basis for liability under [Judiciary Law 487]”]).

M&F appropriately engaged in settlement discussions with the Charities and with Colt’s niece, Noack, who had the greatest stake in the outcome, although testimony confirmed that much of the negotiation was conducted by Noack’s attorney with little participation by M&F (e.g. Tr. 50). After the figure of $75,000 was agreed upon in December 2011, however, the settlement was not immediately completed because M&F continued to negotiate with the Objectants over, among other things, whether the Fiduciary should personally fund the
settlement, and whether he should be required to waive his commissions (see Tr. 233). In December 2011, if not before, the continued negotiations were for the primary benefit of the Fiduciary, personally, and not in furtherance of the interest of the estate or trust. He did not need the Objectants’ consent to conclude the $75,000 agreement with the Charities. His maximum exposure to the Objectants was $75,000, far less than the subsequent legal fees he incurred and approved to protect his own interests. Negotiating with the Objectants after December 2011 was largely unwarranted, and the majority of the legal fees for such discussions is therefore non-compensable by payment from the estate.

Size of the Estate. The legal fees charged must not exceed a reasonable proportion of the size of the estate (e.g. Matter of Efstathiou, 41 Misc 3d 1219 [A] [Sur Ct, Nassau County 2013], and cases cited therein). Even after M&F’s waiver of substantial charges allegedly attributable to time spent, and taking into account the litigation, the 33.7% fee M&F requests is far in excess of a typical fee for the services they performed (see Turano & Radigan, New York Estate Administration § 13.03 [2017 ed] [“The courts often approve attorney’s fees ranging up to five percent of the estate for the first $50,000 or so and smaller percentages on higher amounts”]).

The Heino case (NYLJ, Jan. 28, 2014, at 31 [Sur Ct, Kings County]) cited by M&F is distinguishable. There, the court approved fees amounting to 31% of the estate, but the fees were found attributable to the conduct of the beneficiaries themselves, during the administration, and

6 See EPTL 11-1.1 (b) (13), authorizing a fiduciary to settle claims.

7 The only additional substantive term of this partial settlement was that the assets be treated as if belonging to the 2006 trust, rather than the 2004 trust. It could not have been difficult to strike this part of the bargain. Once the Charities had agreed to accept $75,000, all of the other beneficiaries fared better under the 2006 trust.
the beneficiaries were also the estate fiduciaries. Further, to the extent the beneficiaries here may have driven some of the work performed by M&F, such work was largely unnecessary, as discussed above.

Results Achieved. Achieving a settlement with the Charities for $75,000 was a good result. The assets were never registered in the name of the 2006 Trust, as required by EPTL 7-1.18, which put the Objectants in a difficult legal position. M&F has acknowledged, however, that the settlement negotiations were primarily conducted by Noack’s attorneys (Tr. 50, 163). It took more than three years to reach the settlement, and, even then, M&F concedes it was the court attorney assigned to this matter who was “the crucial part of the settlement” (Tr. 61). M&F is not entitled to any premium for its role in the favorable settlement of the litigation.

Time Spent. The time spent on the various aspects of the trust and estate administration, as opposed to the time required, treated above, is virtually impossible to assess. M&F has submitted hundreds of pages of contemporaneous time records, but in many instances the descriptions of the work performed—especially by the two principals, who command the highest billing rates in the firm—merely indicate “discussions with . . .” or “telephone call with . . .,” omitting any further specification of the particular services provided, as M&F concedes (e.g. Tr. 196). Many other entries bundle the time for various services without allocation. Testimony at the hearing did not provide clarity. M&F disputed the Objectants’ analysis of its time records, but offered very little breakdown of its own. When asked for specifics or confirmation of the Objectants’ tallies, AF responded many times “I don’t know . . .” or “I don’t recall . . .” or “I’d have to do my own calculation . . .” (e.g. Tr. 196-197). In these circumstances, the court’s analysis is necessarily informed primarily by the time periods for which the services were
charged, and M&F’s narrative of the work performed. Total time charges will be afforded relatively little weight (Matter of Kelly, 187 AD2d 718, 719 [2d Dept 1992] [Surrogate not obligated to accept “at face value” diary entries that “fail[ed] to comprehensibly document . . . entitlement to the requested fee”]). Thus, for example, although the court finds (contrary to the Objectants’ position) that it was appropriate for M&F to negotiate with the cemetery to carry out a directive in the decedent’s will, it is not possible to determine from the evidence how much time M&F expended for this work. The same is true for the performance of routine administrative matters, including tax and accounting services.

Nor is the court obligated to make a precise calculation of the charges attributable to each service. As stated in Matter of Nicastro (186 AD2d 805, 805 [2d Dept 1992]), “The evaluation of what constitutes reasonable counsel fees is a matter within the sound discretion of the court [internal citations omitted] which is in a ‘far superior position to judge those factors integral to the fixing of counsel fees such as the time, effort and skill required . . . and the review of contemporaneous time records.’ ”

In consideration of the foregoing factors, as well as the standing of counsel, the court fixes the fees of M&F for its representation of the Fiduciary in the total amount of $520,000. This conclusion balances a number of elements. The court has given particular weight to the failure of the Fiduciary to carry his burden to justify the necessity of M&F’s charges for the various categories of work, the firm’s failure to detail all of the time records to support the charges, the largely routine nature of the administration, and, significantly, the ratio of the amount of the fee request to the value of the estate and trust.
M&F is directed to refund to the 2006 Trust the difference between the amount paid in legal fees (including any sums paid for “Miscellaneous Reimbursable Expenses”\(^8\)) and the sum of $520,000 as allowed in this decision.

**Commissions**

A fiduciary is presumptively entitled to statutory commissions, but commissions are by no means guaranteed. As the court stated in *Matter of Smith* (91 AD2d 789, 791 [3d Dept 1982]):

“[I]t is well settled that when the fiduciary is derelict in the performance of his or her duties, the denial of commissions is within the discretion of the Surrogate.”

Thus, although it is the rare case where commissions are denied, denial is warranted in certain circumstances, some of which are enumerated in *Matter of Cushman* (NYLJ, July 23, 2010, at 34, col 4 [Sur Ct, Bronx County]):

“[T]he allowance of commissions is within the discretion of the court, and the harsh determination that a personal representative should not receive any compensation for administering the estate is limited to those cases involving bad faith, neglect of duty or wanton disregard of the rights of the beneficiaries of the estate [citations omitted].”

This case presents an unusual situation in that much of the substantial legal fees incurred

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\(^8\) M&F’s invoices included a flat 2.5% fee added to all its time charges, for what it labels “Miscellaneous Reimbursable Expenses,” totaling $14,397.34 through the October 12, 2012 statement. The parties’ retainer agreement indicates that these charges were not to reimburse for out-of-pocket expenses but rather for in-house “copying, telephone charges, and faxes” and other expenses that are considered office overhead and are not reimbursable, in absence of an affidavit explaining that the expenses were extraordinary (*Matter of Herlinger*, NYLJ, Apr. 28, 1994, at 28, col 6 [Sur Ct, NY County]).
and approved by the Fiduciary would not have been necessary but for his own wrongdoing. The court will exercise its authority to review sua sponte his commissions as executor and trustee (Stortecky v Mazzone, 85 NY2d 518 [1995]; Matter of Taft, 145 Misc 435 [Sur Ct, Kings County 1932]).

The parties have devoted considerable argument to the question of SR’s potential insulation from a malpractice claim on the grounds, first, that the three-year statute of limitations had expired before the Objectants filed their counterclaim against SR in the Supreme Court action for declaratory judgment; and, second, that the Objectants lacked the requisite privity with SR to give them standing to sue him under New York law.9

Contrary to the Fiduciary’s position that the statute of limitations began to run in 2006 when the second trust was executed, the court concludes that Colt’s date of death is the appropriate date of reckoning. The estate planning error here did not lie in the creation of the 2006 Trust or the failure per se to revoke the 2004 Trust, but in the failure to fund the 2006 Trust with the assets of the 2004 Trust (which by its terms allowed Colt to withdraw those assets at any time). The funding could have been accomplished at any point until Colt’s death in May 2008, when both trusts became irrevocable and the provisions for the beneficiaries of both trusts became operative. No harm occurred before then.

In June 2010, the Court of Appeals held that an executor has standing to sue the decedent’s estate planning attorney for malpractice (Schneider v Finmann, 15 NY3d 306). With

9 Also pending before the court is SR’s motion for summary judgment dismissing the Objectants’ counterclaim for malpractice in the declaratory judgment action. That motion is being determined in a separate decision rendered contemporaneously with this decision.
any technical barriers removed at that point, any other person serving as executor clearly would be derelict in his or her fiduciary responsibilities for failing to pursue a malpractice claim against SR. Colt’s estate had a claim against SR, in his individual capacity, for damages in the amount of the legal fees necessarily incurred to resolve the trust issues that SR acknowledges he created. SR had an even greater duty to the beneficiaries than a hypothetical disinterested fiduciary, because the wrong he failed to redress was a wrong he himself committed. He breached not only his fiduciary duty to satisfy the estate’s claim against himself, but also his duty of loyalty to the estate, in effect putting his own interests first.

Even if the statute of limitations had expired or SR had been shielded from claims under the privity doctrine, his duty as an executor required that he make the estate whole for the legal fees attributable to his negligence. In Matter of Schultz (104 AD3d 1146 [4th Dept 2013]), the court considered an executor’s standing to object to his co-fiduciary’s account for the co-fiduciary’s failure to collect a loan. Although the objecting fiduciary had no personal interest in the loan, and had releases from the beneficiaries that protected him from liability for his co-fiduciary’s breach, the court concluded that he had standing to object. Relying on the special duty a fiduciary owes to the estate, the court stated:

“An executor’s duty is not fulfilled merely because he or she has obtained releases from liability. The standard of care for a fiduciary cannot be set so low; rather, a fiduciary has a ‘duty of active vigilance in the collection of assets belonging to the estate’”

(id. at 1148-1149 [citations omitted]).

Here, the Fiduciary’s failure to make the estate whole for the harm that he caused was a serious violation of his “duty of active vigilance in the collection of assets belonging to the
The violation was exacerbated by his affirmative approval of the skyrocketing legal fees, for which he offered no evidence of attempts to control. He has demonstrated a gross neglect of duty and a substantial disregard of the rights of the beneficiaries that warrants denial of his commissions.

Accordingly, the Fiduciary’s commissions both as executor and trustee are denied in their entirety, and he is directed to refund commissions previously taken.

Settle decree on accounting in accordance with the foregoing.

Clerk to notify the parties of this decision by mail.

Dated: April 11, 2017

S U R R O G A T E
IN THE MATTER OF ROBERTA W. SEAMAN, DECEASED.
CHARLOTTE LINDNER GAYNOR, APPELLANT, WILLIAM H.
BAXTER, ET AL., RESPONDENTS.
November 21, 1991

4 No. 199
Decided November 21, 1991

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Robert K. Weiler, for Appellant.
David M. Garber, for Respondents.

SIMONS, J.:

The novel question presented by this appeal is whether the right of an adopted-out child to inherit from his natural family extends to his daughter, the petitioner in this proceeding, who is otherwise qualified to inherit under EPTL 4-1.1, or whether the daughter is precluded by Domestic Relations Law § 117 from sharing in a natural family member's estate. At stake is an estate of approximately $1 million to be distributed either to petitioner, the half-niece of decedent, or to objectants, decedent's first cousins. The Surrogate found that petitioner was not a distributee of decedent and the Appellate Division affirmed for the reasons stated in his opinion (see, Matter of Seaman, 144 Misc 2d 84, aff'd ___AD2d__). We granted leave to appeal and now reverse.

I

Petitioner was related to decedent as follows.

Lloyd I. Seaman (petitioner's grandfather) married twice. His first wife, Gladys, gave birth to Lloyd Dudley Seaman (Dudley), petitioner's father. Lloyd I. Seaman's second wife, Mary, gave birth to a daughter (Roberta), the decedent.
Thus, Dudley was Roberta's half-brother. Dudley predeceased Roberta leaving as his only issue the petitioner, Charlotte, a half-niece of decedent. The objectants, the only other possible distributees, are children of Roberta's aunt and uncles (her mother's sister and her father's brothers).

On these facts, and absent Dudley's adoption, Charlotte would be the sole distributee of Roberta because half-blood relatives are considered whole and she is closer in degree of kinship to decedent than the cousins. Because Dudley was adopted by his mother's second husband, however, the Surrogate held that petitioner was foreclosed from inheriting as an intestate distributee under Domestic Relations Law § 117[f] and § 117[1][e], in the absence of language expressly extending Dudley's rights to his "issue". Respondents contend that the Surrogate's reading of the statute is not only correct but is supported by policy reasons stated by this Court in Matter of Best (66 NY2d 151, 155-157).

We conclude that neither the language of Domestic Relations Law § 117, the legislative history preceding it, nor policy reasons advanced in Matter of Best, support the result. Accordingly, the order should be reversed and the matter remitted to Surrogates Court for entry of a decree in conformance with this decision (see, SCPA 2702).

II

Intestate succession is governed by the Estate, Powers and Trusts Law 4-1.1. As relevant here, the statute provides that if the decedent is survived by "[b]rothers or sisters or their issue and no spouse, issue or parent," the whole of the decedent's estate shall be distributed to the brothers and sisters or their issue per stirpes (EPTL 4-1.1[a][7]). The statute also provides that half-blood relatives are to be treated as if they were relatives of the whole blood (EPTL 4-1.1[d]). Thus, decedent's half-brother, Dudley, would be considered her full brother for purposes of intestate distribution and if he had not been adopted-out, petitioner would qualify as sole distributee since she is his only living issue (EPTL 4- 1.1[a][7]).

Estates, Powers and Trusts Law 4-1.1[f] provides, however, that "[t]he right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law." Inasmuch as petitioner is related to the decedent through decedent's adopted-out half-brother, we turn to the Domestic Relations Law to determine what
limitations, if any, that statute imposes on her right to inherit as an intestate distributee.

Domestic Relations Law § 117[1][b] terminates "the rights of an adoptive child to inheritance and succession from and through the natural parents..." There are exceptions, however, and relevant here is the exception which provides for inheritance if: (1) the decedent is the adoptive child's natural grandparent or is a descendant of such grandparent, and (2) an adoptive parent is married to the child's natural parent (Domestic Relations Law § 117[1][e]). Petitioner's father Dudley came within this provision because Roberta was a descendant of Dudley's natural grandparents (Lloyd I. Seaman's parents), and Dudley's adoptive father married his natural mother. Thus, Dudley's right to inherit from or through either natural parent, as provided in EPTL 4-1.1, did not terminate upon his adoption. From this, it would seem that petitioner's right to so inherit is equally preserved because her right is contingent, in part, on her father's ability to inherit from the natural family following the adoption. This conclusion is supported by the language of the statutes and the legislative history preceding their enactment.

III

Adoption was unknown to the common law of England: it exists in New York only by statute (see, Second Report of Temporary State Commn on Modernization, Revision and Simplification of the Law of Estates, "Intestate Succession and the Adopted Child", 1963 NY Legis. Doc., No. 18-27, Appendix E, pp 148-160; 9 Rohan, NY Civ Prac, EPTL para 4-1.1[11]). Because of this, a legal adoption does not automatically terminate the children's right to inherit from their natural kindred, nor grant them the right to inherit from their adoptive family (see, Second Report of Temporary State Commn on Modernization, Revision and Simplification of the Law of Estates, "Intestate Succession and the Adopted Child", 1963 NY Legis Doc, No. 18-27, Appendix E, pp 148-152). Rather, these inheritance rights are controlled by statute.

In 1887, the Legislature granted adopted children and their heirs the right to inherit from their adoptive parents; their right of inheritance from the natural parents were not altered, however, because the statute failed to sever them (see, L 1887, ch 703; see generally, 9 Rohan, NY Civ Prac, EPTL para 4-1.1[11]; Note, When Blood Isn't Thicker Than Water: The Inheritance Rights of Adopted-out Children In New York, 53 Brooklyn L Rev 1007, 1011-1012.
[1988]). Indeed, in 1896, the Legislature amended the Domestic Relations Law to state explicitly that an adopted child's "rights of inheritance and succession from his natural parents remain unaffected by such adoption" (L 1896, ch 272, § 64). That remained the law until 1963, when the Legislature severed the adopted child's right to inherit from biological kindred, except from a custodial and natural parent who had remarried and consented to the child's adoption by the step-parent (L 1963, ch 406, § 1 [now found in Domestic Relations Law § 117(1)(b),(d)]; see also, Second Report of Temporary State Commn on Modernization, Revision, and Simplification of the Law of Estates, Intestate Succession and the Adopted Child, NY Legis Doc, 1963, No. 18-27, Appendix E, pp 148-160; Rohan, NY Civ Prac, EPTL para 4-1.1[11]; Note, When Blood Isn't Thicker Than Water: The Inheritance Rights of Adopted-out Children In New York, 53 Brooklyn L Rev 1007, 1011- 1012 [1988]). In 1987, the Legislature amended the Domestic Relations Law again, this time to restore an adopted child's right of intestate inheritance from and through either natural parent under limited circumstances (see, L 1987, ch 499 [now found in Domestic Relations Law § 117(1)(e)]). It is this amendment which authorized Dudley to inherit from his half-sister's estate.

However, this case concerns the inheritance rights of Dudley's issue, petitioner. Her right to inherit is contingent on her father's ability to inherit from the natural family. This is so because prior to the 1963 amendment, the issue of a predeceased adopted child also retained the right to inherit from the natural family. There are no decisions directly on point, but the prevailing view of the commentators is that the issue of an adopted child retained a right to inherit from the natural family to the extent that the adopted child did because the issue of the predeceased adopted child occupied the same status as the parent would have had he or she survived (see, Rohan, NY Civ Prac, EPTL para 4-1.1[11]; Intestate Succession and the Adopted Child, pp 150, 156; NY Legis Doc, 1963, No. 18-27, Appendix E; see also, Binavince, Adoption and Distribution: A Comparative Study and a Proposal for Model Legislation, 51 Cornell Law Quarterly 152, 165; Legislation, New York's Law of Estate and Distribution: The New York Status of the Adopted Child, 38 St. Johns L Rev 380, 383; cf. Matter of Whitcomb, 170 Misc 579). The issue's right to inherit from the natural family was severed, however, in 1963 when the Legislature severed the adopted child's right to so inherit (see, Domestic Relations Law § 117[1][b]). From this, it follows that when the Legislature restored the right of the adopted-out child to inherit from the natural family under the circumstances specified in Domestic Relations Law § 117[1][e], it also restored the right of
the adopted-out child's issue to do so (see generally, Rohan, NY Civ Prac, EPTL para 4-1.1[11]; Intestate Succession and the Adopted Child; NY Legis Doc, 1963, No. 18-27, Appendix E, pp 150, 156; Recommendation of the Law Revision Commission to the 1986 Legislature, 1986 McKinney's Session Laws of NY, at 2560, 2568-2576). Thus, petitioner's right to inherit through her father from decedent is preserved under Domestic Law § 117[1][e].

The Surrogate concluded that the Legislature did not intend to extend rights granted to the adopted-out child under Domestic Relations Law § 117[1][e] to the child's issue because the Law Revision Commission failed to mention the "descendants" or "issue" of the adopted-out child in its recommendation to the Legislature and because the Legislature excluded any reference to "descendants" or "issue" when it enacted the section. It was unnecessary for the Legislature to expressly refer to the adopted-out child's "issue" when it enacted that provision, however: it implicitly restored those rights to the issue of the adopted-out child when it restored them to the child (see generally, Rohan, NY Civ Prac, EPTL para 4-1.1[11]; Second Report of Temporary State Commn on Modernization, Revision, and Simplification of the Law of Estates, Intestate Succession and the Adopted Child; NY Legis Doc, 1963, No. 18-27, Appendix E, pp 150, 156; Recommendation of the Law Revision Commission to the 1986 Legislature, 1986 McKinney's Session Laws of NY, at 2560, 2568-2576).

This conclusion is further supported by an examination of the language of the provisions of Domestic Relations Law § 117[1] relating to the severance and restoration of the adopted child's right to inherit from the natural family. Subsection [b] of section 117[1] states that the adopted child's right to inherit from or through the natural family "shall terminate" upon the making of the order of adoption except as otherwise provided in that section. The "issue" of the adopted child is not mentioned but it follows logically that the section also implicitly severed the right of the "issue" to take (cf. In re Fodor, 202 Misc 1101, 1103 [adoption statute which severed the natural parents' right to inherit from the adopted child also implicitly severed the natural kindred and blood relatives rights to do so because the substructure which joined the blood relatives with the adopted child was removed and, therefore, anyone who must trace his or her relationship through a natural parent may not inherit from the adopted child]). Subsection [e] of section 117[1] states that the adopted child's right to inherit from or through the natural family "shall not terminate," in limited circumstances, upon the making of the order of adoption. "Issue" of the adopted child is not mentioned in that section either but, because the provisions
of section 117[1][b] and 117[1][e] are symmetrical, it follows that the issue's right to inherit was implicitly restored under that provision (cf. Matter of Monroe's Executors, 132 Misc 279, 281 [foster child's right to inherit from blood relative was preserved because the adoption statute did not expressly dissolve the child's right to inherit from the natural parents and, therefore, the foundation which joined that child to his blood relatives remained unaltered by adoption]).[n 1]

Moreover, inclusion of the word "issue" in Domestic Relations Law § 117[1][e] was unnecessary because whether the issue of a predeceased adopted child inherits through that child from the natural family is determined by the provisions in EPTL 4-1.1, unless otherwise expressly limited in the Domestic Relations Law (see, Carpenter v Buffalo General Electric Co., 213 NY 101, 104 [adoption statute must be read in connection with the provisions of the Decedent Estate Law]; Matter of Landers, 100 Misc 635; EPTL 4-1.1[f]; see generally, 9 Rohan, NY Prac, EPTL para 4-1.1[6]). The adoption statute and the descent and distribution statute are in pari materia, and should be read and construed together whenever possible. This is so, because the adoption statute does not completely define the incidents of the relation between the adopted child and its natural kindred, but merely determines what limitations, if any, are imposed on that relationship (see generally, New York Jur 2d, Vol 46, Domestic Relations, §§ 506-513; New York Jur, Vol 2, Adoption, §§ 13-22). Indeed, the Law Revision Commission reports on the enactment of Domestic Relations Law § 117[1][e] support this reading of the statutes by referring to EPTL 4-1.1, indicating the Commission's intent to continue the rights of an adopted child and those inheriting by representation, i.e., the surviving issue, to take from the natural family in accordance with the Estates, Powers and Trusts Law (see, Recommendation of the Law Revision Commission to the 1987 Legislature, 1987 McKinney's Session Laws of NY, at 1926, 1929; Recommendation of the Law Revision Commission to the 1986 Legislature, 1986 McKinney's Session Laws of NY, at 2560, 2585-86).

It is also noteworthy that the Law Revision Commission, in its 1987 recommendation for enactment of the current Domestic Relations Law § 117[1][e], stated that it believed "there should be no distinction between the right of inheritance under the laws of intestacy and that under the laws of wills and other instruments where the adopted-out person remains within the natural family unit" (Recommendation of the Law Revisions Commission to the 1987 Legislature, 1987 McKinney's Session Laws of New York, at 1930, 1941-42;
see also, 1986 McKinney's Session Laws of New York, at 2560, 2586-87). Under section 117[2][b] of the Domestic Relations Law, a class gift in a will or lifetime instrument includes the adopted children and their issue. While distinctions exist between the laws of intestacy and the laws of wills, the Commission sought consistency between them to the extent possible in the case of adopted-out persons who remain within the natural family unit, even absent an express reference to "issue" in Domestic Relations Law § 117[1][e].

Finally, the Surrogate concluded that petitioner was not qualified to take because Domestic Relations Law § 117[1][f] permitted distributees of an adopted-out child to inherit solely through the adoptive parent, and not through the replaced natural parent. His conclusion rested on the statutory language that "[t]he right of inheritance of an adoptive child extends to the distributees of such child and such distributees shall be the same as if he were the natural child of the adoptive parent." The manifest purpose of this provision is to ensure that the distributees of the adopted child are determined in relation to the child's adoptive family members, and not his natural family members whose ties have been severed pursuant to the Domestic Relations Law (see, Carpenter v Buffalo General Electric Co., 213 NY 101; Matter of Riggs, 109 Misc 2d 644; see also, Second Report of Temporary State Commn on Modernization, Revision and Simplification of the Law of Estates, "Intestate Succession and the Adopted Child," NY Legis Doc, 1963, No. 18-27, Appendix E, pp 146, 150). We find no support for the contention that it was intended to limit the distributees' right of inheritance to the adoptive family. Thus, absent an express provision to the contrary in Domestic Relations Law § 117, petitioner could inherit through her adopted-out father under EPTL 4-1.1[a][7].

IV

The policy considerations advanced in Matter of Best (66 NY2d 151, 155-157) do not require a different construction of the statute.

In Best, we held that a child born out of wedlock and adopted out of the biological family at birth was not entitled to share in a trust estate devised by his biological grandmother to her daughter's issue. In so holding, we identified several policy considerations militating against the child's claim: We concluded that recognition of a right to inherit would be inconsistent with the child's complete assimilation into the adoptive family, would undermine the stability and finality of administration of estates because there would always lurk the
possibility of uncited and unknown persons, would lead to a breach of confidentiality of adoption records, and would allow the child to inherit from both the biological and adoptive families (see, Matter of Best, 66 NY2d 151, 155-157).

Respondents maintain that these policy considerations apply equally here, where an adopted-out child's issue seeks to inherit from the biological family that has been replaced by the adoptive family. Best is distinguishable, however, because it involved a child who was born out of wedlock and adopted by strangers. In the case before us, the adopted child was adopted by his mother's second husband following her divorce to the child's father -- a form of adoption expressly over which we reserved opinion in Matter of Best (supra, at 155, footnote 1). It is clear that the Legislature considered the distinction between these types of cases, however, when it revised the Domestic Relations Law in 1986 and 1987, following our decision in Best, and restored the inheritance rights of children adopted by close natural kindred (see, Recommendation of the Law Revision Commission to the 1986 Legislature, 1986 McKinney's Session Laws, at 2560, 2562-2565; 1987 McKinney's Session Laws, at 1928, 1930-1931). It concluded that cases such as this, involving the exceptions contained in Domestic Relations Law § 117(e), should be treated differently from other adoptions because they invariably involve situations in which natural family ties are maintained.[n 2]

Moreover, the Law Revision Commission, in its report on the Domestic Relations amendment, acknowledged the various policy concerns raised in Matter of Best (supra) and specifically addressed each. On the issue of disrupting the adopted child's assimilation into the adoptive family, it concluded that complete severance of the natural relationship was not necessary when the adopted person remained within the natural family unit as a result of an intra-family adoption (see, 1986 McKinney's Session Laws, at 2560, 2573, 2582-83; 1987 McKinney's Session Laws, at 1928, 1931-35, 1941-42). The Commission further concluded that the amendments would not create "uncertainty" in titles of property because in most cases there would be knowledge within the family of the identity of all the parties since only children adopted by closely related persons are eligible to inherit under the amendments to Domestic Relations Law § 117, and that this knowledge of the adoption would also prevent the need to breach the privacy of the adoption proceedings (see, 1986 McKinney's Session Laws, at 2560, 2574-75, 2584-85; 1987 McKinney's Session Laws, at 1928, 1940-42). Finally, it discussed the problem
of allowing inheritance from both the natural and adoptive family and concluded that this was a logical consequence when there are adoptions within the natural family unit (see, 1986 McKinney's Session Laws, at 2560, 2575-76; 1987 McKinney's Session Laws, at 1928, 1940-41). Thus, the policy concerns raised in Matter of Best were thoroughly addressed by the Commission when it proposed that the Legislature amend the Domestic Relations Law and reinstate the rights of an adopted child to inherit from the natural family under limited circumstances. Inasmuch as the Legislature by enacting these amendments chose to set aside the concerns of Best, and it did so without limiting the right of the issue of the adopted-out child to inherit from the natural family, we conclude it intended no limitation.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the matter remitted to Surrogate's Courts, for the entry of a decree in accordance with this opinion.

**FOOTNOTES**

1. It is noteworthy that Domestic Relations Law § 117[1][d], which preserves the inheritance rights of the adopted child from and through a custodial natural parent when the child is adopted by a step-parent, does not expressly refer to the "issue" of an adopted child. Yet, it would seem indisputable that the rights of the "issue" would be implicitly preserved (§ 117[1][d]) in that situation, to the extent not otherwise expressly limited by Domestic Relations Law § 117.

2. Intra-family adoptions are the type of adoptions covered by Domestic Relations Law § 117[1][e] and 117[2][b], and typically include situations where an orphaned child is adopted by a blood relative; where one biological parent dies while still married to the other, and the surviving biological parent eventually marries a new spouse who adopts the child; or where, as here, following divorce of the biological parents the custodial parent remarries and the step-parent adopts the child with the consent of, or after the death of, the noncustodial parent (Recommendation of Law Revision Commission to 1987 Legislature, 1987 McKinney's Session Laws, at 1928, 1931-32). In these types of cases, the Legislature has chosen not to cut off inheritance ties between the adopted-out child and the natural family that has been replaced because of the
likelihood of continued contact with that family. It is true, as noted by the Surrogate, that in the case at bar petitioner apparently had no contact with her father's natural family. However, this fact is irrelevant for purposes of determining whether petitioner is qualified to inherit as a distributee of the decedent. The quantum of contacts or closeness between a distributee and a decedent was already considered by the Legislature when it defined the degree of kinship necessary to qualify adopted-out children and their issue as distributees under Domestic Relations Law § 117 and EPTL 4-1.1.

Order reversed, with costs to all parties appearing separately and filing separate briefs payable out of the estate, and matter remitted to Surrogate's Court, Onondaga County for further proceedings in accordance with the opinion herein. Opinion by Judge Simons. Chief Judge Wachtler and Judges Kaye, Alexander, Titone, Hancock and Bellacosa concur.
Date

Donald and Melania Trump
White House
1600 Pennsylvania Avenue
Washington, DC

Re: Engagement Letter – New Will and Estate Planning

Dear Donald and Melania:

I enjoyed meeting with you again and look forward to working with you in the preparation of new Wills and any other documents or planning that you desire us to assist you with. In order for this Firm to represent you, New York law now requires that we send new clients a formal “Engagement Letter” explaining, among other things, what services we will be performing, how we compute our legal charges, and the estimated cost of our services. This Engagement Letter will also explain to you what we need before we begin our work for you.

I have partially completed a copy of our “Estate Planning Checklist”, based on the information from my meeting with Donald. I am a copy to you for your review. I would ask you to confirm the information. That document will assist us in preparing your new Wills as well as an estate plan that is tailored to your needs, to accomplish your desired distribution of assets upon your passing and the minimization of Federal and State estate/inheritance taxes, if that is one of your goals.

This Engagement Letter will summarize for you what we propose to do in assisting you with your estate planning, as well as our estimated fee for each of these services.

I.

First, you should know what we believe our responsibilities to you are with regard to your estate planning and Wills. We do not believe we can prepare properly planned Wills for you until we have the following information:

A. Full details about both of you and your family, including names, citizenship, home and temporary addresses, birth dates (and dates of death where appropriate) of your parents, siblings, and their descendants (occasionally, we will need such information with regard to more remote collateral relatives.)
B. Full details as to your assets and liabilities (what and where they are, in whose names they are held, beneficiary designations where relevant, whatever information you have as to income tax cost basis, as well as current market value, etc.)

C. Complete information as to any trusts or estates in which you now have any interest, including copies of the relevant documents.

D. Whatever information is available to you with regard to your expectancies (potential future financial benefits, including inheritances).

E. Complete information as to present and prior marriages, if any, including related contractual or court ordered rights or obligations, and copies of the relevant documents.

F. Your wishes as to disposition of your estates, and those who will manage them and see to their distribution for you.

We expect you to provide the information noted in Paragraphs A. through F. above. This is why we provided you with a copy of our confidential Estate Planning Checklist. If, after reviewing your completed checklist, we find we need any additional information as we prepare your estate plans, we will let you know. We will use this information to prepare an estate plan for you reflecting:

A. The impact of transfer taxes on your estates, including calculations of the relevant taxes.

B. The feasibility of your plans, including a cash flow analysis – i.e., do you have sufficient liquid assets to pay taxes, debts, administration and funeral expenses and still carry out your dispositive goals?

II.

Second, we regard the process which you have initiated as “estate planning.” As you can see from the list of information which we need in order to carry out that process, as set forth above, preparation of Wills on your behalf is part of the culmination of that process.

If, in the alternative, you wish us to limit our involvement to the drafting of Wills for you, based on your instructions to us:

A. We cannot take responsibility for any other aspect of the estate planning process, and

B. We can proceed only after you confirm to us in writing that you do not expect us to be responsible for those other aspects.
III.

In addition to preparing your new Wills, we would suggest that you execute, if you haven’t already, the following additional estate planning documents which could be effective should you become disabled:

A. A Health Care Proxy to designate a health care agent and alternate(s), to make medical decisions if you are not able to do so, and provide instructions to your health care agent with respect to how you desire to be treated in any terminal illness.

B. A Power of Attorney to permit you to designate one or more individuals, and alternate(s), to manage your financial affairs and assets.

C. A Nomination of Guardian to designate your choice (for Court consideration) of a Guardian of your person and/or of your assets in the event you are declared by a Court to be unable to manage your personal affairs and/or your finances and assets. This instrument should also include your choices of persons to act as “alternates” if your primary designee is unable or unwilling to serve.

IV.

As I previously indicated, New York law requires us to provide you with a detailed “Engagement Letter” of this nature describing the services to be performed, advising you of our billing procedures and practices, providing you with an estimate of the cost of our services, and other disclosures.

If you desire to engage our services to proceed with drafting new Wills for you, as you requested, I estimate that our fee for attending to the preparation and execution of your Wills will be approximately $1500 to $2000, plus any out-of-pocket disbursements incurred, unless there are extraordinary provisions you desire included in your Wills, such as the creation of Generation-Skipping Trusts or other types of special Trusts.

Please keep in mind that as to the preparation of your Wills, however, it is impossible to precisely predict how much our services will cost, because this will depend, for example, on the ultimate complexity of your Will provisions, based upon the nature of your assets, the nature of the terms and provisions of any Trusts, as previously indicated, that you desire to have established under your Wills, as well as the required changes that you may desire be made to the Wills that we draft for you. Please be assured that we will do everything possible to keep our time charges to a minimum, consistent with maintaining a high quality of work.

V.

Our fees are based on our hourly billing rates and the amount of time needed to complete your Wills and estate planning documents utilizing our most cost effective personnel we judge
appropriate to perform specific tasks as needed. Disbursements such as photocopies, postage, messenger charges, courier charges, telefax charges, and other monies advanced on your behalf, will be billed in addition to our time charges.

Our statements are generally rendered on a monthly basis. All of our Statements will set forth an itemized listing of the work performed. You agree to pay our bills within 30 days. My billing rate as a Partner is $____ per hour. Our Associates billing rates range from $____ to $____ per hour. The billing rates of our Trust and Estate paralegals range from $190 to $225 per hour. We will make every effort to have Associates and our paralegals handle as much of these matters as possible to keep our overall time charges within our projected estimates.

VI.

By executing this “Engagement Letter,” you authorize the Firm to perform the services described herein which in the Firm’s discretion and judgment are necessary. You have the right to terminate our representation at any time. While I certainly do not anticipate that the situation will arise, we likewise have the right to terminate our services and representation of you for any reason (including failure to pay our statements), in which case we would offer to refer you to other counsel. You are, however, responsible for payment of our services through the date of termination.

In the unlikely event that a dispute should ever arise regarding our representation in the matter, New York law shall govern, notwithstanding its conflict of law rules. In addition, please also be aware that Part 137 of the Rules of the Chief Administrator of the Unified Court System requires all attorneys to submit any fee dispute between $1,000 and $50,000 to arbitration.

VII.

Lastly, I wish to apprise you of the fact that it is common for a husband and wife to employ the same attorney to assist them in planning their estates. You have taken this approach by asking us to represent both of you in your estate planning. It is important that you understand that because we will be representing both of you, you are considered a client of this Firm, “collectively.” Accordingly, matters that one of you might discuss with us may be disclosed to the other. Ethical considerations prohibit us from agreeing with either of you to withhold information from the other. In this representation, we will not give legal advice to either of you or make changes in any of your estate planning documents without your mutual knowledge and consent. Of course, anything either of you discusses with us is privileged from disclosure to third parties.

If a conflict of interest should arise between you during the course of your estate planning or if the two of you should have a difference of opinion, we can point out the pros and cons of your respective positions or differing opinions. However, ethical considerations would prohibit us, as the attorneys for both of you, from advocating one of your positions over the other. Furthermore, we would not be able to advocate one of your positions versus the other if there is a dispute at any time as to your respective property rights or interests or as to other legal issues between you. If actual conflicts of interest should arise between the two of you of such a nature
that in our judgment it is impossible for us to perform our ethical obligations to both of you, it would become necessary for us to withdraw as your joint attorneys. By executing this engagement letter, you also consent to our representing both of you jointly.

Please call me if you would like me to clarify or expand upon any of the points discussed in this letter or if you have any questions regarding the issue of joint representation.

If you would like us to proceed on the foregoing basis, please sign and return to me (i) a copy of this letter signed by both of you at the bottom of this letter where indicated to indicate your understanding of our Firm’s professional relationship with you and your consent to our representing both of you jointly, and (ii) a signed copy of the enclosed “Statement of Client Rights and Responsibilities,” signifying that you have read and understand these rights.

Dunnington, Bartholow & Miller is proud of its representation of private clients, which it has enjoyed for 95 years. We look forward to assisting you with your estate planning as summarized herein if you engage our services.

Sincerely,

DUNNINGTON, BARTHOLOW & MILLER, LLP

By: ________________________________

CONSENT

We have read the foregoing engagement letter and understand its contents. We consent to having you and your firm represent both of us on the terms and conditions set forth above. We agree that you may, in your discretion, share with both of us, any information regarding the representation that you receive from either of us or from any other source.

Dated: ________________, 2018

______________________________
Donald Trump

Dated: ________________, 2018

______________________________
Melania Trump
STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.

2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).

3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.

4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.

5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.

6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.

7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).

8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.

9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.

10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

I hereby acknowledge that I have received a copy of this document.

Donald Trump, 2018

Melania Trump, 2018
Estate of Schneider v Finmann

2010 NY Slip Op 05281 [15 NY3d 306]

June 17, 2010

Jones, J.

Court of Appeals

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

As corrected through Wednesday, September 15, 2010

[*1]

Estate of Saul Schneider, Deceased, Appellant,
v
Victor M. Finmann et al., Respondents, et al., Defendant.

Argued May 4, 2010; decided June 17, 2010

Estate of Schneider v Finmann, 60 AD3d 892, reversed.

{**15 NY3d at 308} OPINION OF THE COURT

Jones, J.

At issue in this appeal is whether an attorney may be held liable for damages resulting from negligent representation in estate tax planning that causes enhanced estate tax liability. We hold that a personal representative of an estate may maintain a legal malpractice [*2]claim for such pecuniary losses to the estate.

The complaint alleges the following facts. Defendants represented decedent Saul Schneider from at least April 2000 to his death in October 2006. In April 2000, decedent purchased a $1 million life insurance policy. Over several years, he transferred ownership of that property from himself to an entity of which he was principal owner, then to another entity of which he was principal owner and then, in 2005, back to himself. At his death in October 2006, the proceeds of the insurance policy were included as part of his gross taxable estate. Decedent’s estate commenced this malpractice action in 2007, alleging that defendants negligently advised decedent to transfer, or failed to advise decedent not to transfer, the policy which resulted in an increased estate tax liability.
Supreme Court granted defendants' motion to dismiss the complaint for failure to state a cause of action. The Appellate Division affirmed (60 AD3d 892 [2009]), holding that, in the absence of privity, an estate may not maintain an action for legal malpractice. We now reverse and reinstate plaintiff's claim.

Strict privity, as applied in the context of estate planning malpractice actions, is a minority rule in the United States. In New York, a third party, without privity, cannot maintain a claim against an attorney in professional negligence, "absent fraud, collusion, malicious acts or other special circumstances" (Estate of Spivey v Pulley, 138 AD2d 563, 564 [2d Dept 1988]). Some Appellate Division decisions, on which the Appellate Division here relied, have applied strict privity to estate planning malpractice lawsuits commenced by the estate's personal representative and beneficiaries alike (Deeb v Johnson, 170 AD2d 865 [3d Dept 1991]; Spivey, 138 AD2d at 564; Viscardi v Lerner, 125 AD2d 662, 663-664 [2d Dept 1986]; Rossi v Boehner, 116 AD2d 636 [2d Dept 1986]). This rule effectively protects attorneys from legal malpractice suits by indeterminate classes of plaintiffs whose interests may be at odds with the interests of the client-decedent. However, it also leaves the estate with no recourse against an attorney who planned the estate negligently.

We now hold that privity, or a relationship sufficiently approaching privity, exists between the personal representative of an estate and the estate planning attorney. We agree with the Texas Supreme Court that the estate essentially "'stands in the shoes' of a decedent" and, therefore, "has the capacity to maintain the malpractice claim on the estate's behalf" (Beit v Oppenheimer, Blend, Harrison & Tate, Inc., 192 SW3d 780, 787 [Tex 2006]). The personal representative of an estate should not be prevented from raising a negligent estate planning claim against the attorney who caused harm to the estate. The attorney estate planner surely knows that minimizing the tax burden of the estate is one of the central tasks entrusted to the professional. Moreover, such a result comports with EPTL 11-3.2 (b), which generally permits the personal representative of a decedent to maintain an action for "injury to person or property" after that person's death.

Despite the holding in this case, strict privity remains a bar against beneficiaries' and other third-party individuals' estate planning malpractice claims absent fraud or other circumstances. Relaxing privity to permit third parties to commence professional negligence actions against estate planning attorneys would produce undesirable results—uncertainty and limitless liability. These concerns, however, are not present in the case of an estate planning malpractice action commenced by the estate's personal representative.
Accordingly, the order of the Appellate Division should be reversed, with costs, [*4] and defendants' motion to dismiss the complaint denied.

Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

Order reversed, etc.

Footnotes

**Footnote 1:** Now only a handful of jurisdictions apply strict privity to malpractice actions commenced by beneficiaries against estate planning attorneys (see Robinson v Benton, 842 So 2d 631, 637 [Ala 2002]; Nevin v Union Trust Co., 726 A2d 694, 701 [Me 1999]; Noble v Bruce, 349 Md 730, 752, 709 A2d 1264, 1275 [1998]; Simon v Zipperstein, 32 Ohio St 3d 74, 512 NE2d 636 [1987]; Lilyhorn v Dier, 214 Neb 728, 335 NW2d 554 [1983]). Numerous jurisdictions have either relaxed the principle of privity or have granted standing to beneficiaries or estates (see Stanley L. & Carolyn M. Watkins Trust v Lacosta, 321 Mont 432, 438, 92 P3d 620, 625-626 [2004] [an estate has standing to bring a legal malpractice action]; Blair v Ing, 95 Haw 247, 259, 21 P3d 452, 464 [2001] [nonclient may bring a legal malpractice suit]; Simpson v Calivas, 139 NH 1, 5, 650 A2d 318, 321 [1994] [named beneficiaries have standing to bring claims in negligence against an estate planning attorney]; Espinosa v Sparber, Shevin, Shapo, Rosen & Heilbronner, 612 So 2d 1378, 1380 [Fla 1993] [estate stands in the shoes of the testator and satisfies the privity requirement]; Schreiner v Scoville, 410 NW2d 679, 681 [Iowa 1987] [intended beneficiaries may maintain a malpractice action against the decedent's attorney despite the absence of privity]). The Schreiner court cited to numerous jurisdictions that had a similar rule in place (see id. at 681-682). Texas treats the malpractice claims brought by beneficiaries and personal representatives of decedent's estates differently (see Barcelo v Elliott, 923 SW2d 575, 579 [Tex 1996] [nonclient beneficiaries cannot maintain malpractice suits against estate planning attorneys because they lack privity]; cf. Belt v Oppenheimer, Blend, Harrison & Tate, Inc., 192 SW3d 780, 784-786 [Tex 2006] [departed from the Barcelo rule in suits brought by the personal representative of the decedent's estate and held that privity existed between the parties]).

**Footnote 2:** "No cause of action for injury to person or property is lost because of the death of the person in whose favor the cause of action existed. For any injury an action may be brought or continued by the personal representative of the decedent" (EPTL 11-3.2 [b]).
New York Consolidated Laws, Estates, Powers and Trusts Law (EPTL)

1-2.5 Definitions; Distributee
A distributee is a person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.

3-2.1 Execution and attestation of wills; formal requirements
(a) Except for nuncupative and holographic wills authorized by 3-2.2, every will must be in writing, and executed and attested in the following manner:
(1) It shall be signed at the end thereof by the testator or, in the name of the testator, by another person in his presence and by his direction, subject to the following:
   (A) The presence of any matter following the testator's signature, appearing on the will at the time of its execution, shall not invalidate such matter preceding the signature as appeared on the will at the time of its execution, except that such matter preceding the signature shall not be given effect, in the discretion of the surrogate, if it is so incomplete as not to be readily comprehensible without the aid of matter which follows the signature, or if to give effect to such matter preceding the signature would subvert the testator's general plan for the disposition and administration of his estate.
   (B) No effect shall be given to any matter, other than the attestation clause, which follows the signature of the testator, or to any matter preceding such signature which was added subsequently to the execution of the will.
   (C) Any person who signs the testator's name to the will, as provided in subparagraph (1), shall sign his own name and affix his residence address to the will but shall not be counted as one of the necessary attesting witnesses to the will. A will lacking the signature of the person signing the testator's name shall not be given effect; provided, however, the failure of the person signing the testator's name to affix his address shall not affect the validity of the will.
(2) The signature of the testator shall be affixed to the will in the presence of each of the attesting witnesses, or shall be acknowledged by the testator to each of them to have been affixed by him or by his direction. The testator may either sign in the presence of, or acknowledge his signature to each attesting witness separately.
(3) The testator shall, at some time during the ceremony or ceremonies of execution and attestation, declare to each of the attesting witnesses that the instrument to which his signature has been affixed is his will.
(4) There shall be at least two attesting witnesses, who shall, within one thirty day period, both attest the testator's signature, as affixed or acknowledged in their presence, and at the request of the testator, sign their names and affix their residence addresses at the end of the will. There shall be a rebuttable presumption that the thirty day requirement of the preceding sentence has been fulfilled. The failure of a witness to affix his address shall not affect the validity of the will.
(b) The procedure for the execution and attestation of wills need not be followed in the precise order set forth in paragraph (a) so long as all the requisite formalities are observed during a period of time in which, satisfactorily to the surrogate, the ceremony or ceremonies of execution and attestation continue.
Descent and distribution of a decedent's estate

The property of a decedent not disposed of by will shall be distributed as provided in this section. In computing said distribution, debts, administration expenses and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded, except that nothing contained herein relieves a distributee from contributing to all such taxes the amounts apportioned against him or her under 2-1.8. Distribution shall then be as follows:

(a) If a decedent is survived by:
   (1) A spouse and issue, fifty thousand dollars and one-half of the residue to the spouse, and the balance thereof to the issue by representation.
   (2) A spouse and no issue, the whole to the spouse.
   (3) Issue and no spouse, the whole to the issue, by representation.
   (4) One or both parents, and no spouse and no issue, the whole to the surviving parent or parents.
   (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, by representation.
   (6) One or more grandparents or the issue of grandparents (as hereinafter defined), and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation, and the other one-half to the surviving maternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation; provided that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or if neither of them survives the decedent, to their issue, by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.
   (7) Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita; provided that if the decedent was not survived by great-grandchildren of grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.

(b) For all purposes of this section, decedent's relatives of the half blood shall be treated as if they were relatives of the whole blood.

(c) Distributees of the decedent, conceived before his or her death but born alive thereafter, take as if they were born in his or her lifetime.

(d) The right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law.

(e) A distributive share passing to a surviving spouse under this section is in lieu of any right of dower to which such spouse may be entitled.
Location of Office Requesting: (locations listed on website)

Name of Decedent: ____________________________________________

Marital Status: (circle one) Single Married Widowed Divorced

Address of Decedent: ____________________________________________

Date of Birth: ________ Date of Death: ________ SS# ________________

Name and Address of Executor(s)/Administrator(s): ____________________________

Telephone Number of Executor(s)/Administrator(s): ____________________________

BENEFICIARIES/NEXT OF KIN RELATIONSHIP ADDRESS AGE OF MINOR(s)

(Note:) List all children of any deceased next of kin- Give age of Minors
(Add additional page, if necessary)

Date of Will: __________ # of Pages: __________

Date of Codicil: __________ # of Pages: __________

Witness Who is Appearing (If not Self-Proving): ____________________________

Names of Other Witness(es): ____________________________________________

Entire Estate Passes to Surviving Spouse, Civil Union Partner or Domestic Partner, Parent, Grandparent, Child, Stepchild, Legally Adopted Child, or the Issue of Any Child or Legally
Adopted Child: Yes_____ No____

List of Assets of Decedent (for Administration or Affidavit Only)

NJ Real Estate: Yes_____ No____

Is value of Estate (including IRA, 401K, Life Ins., etc.) more than $2,000,000? Yes____ No____

Total Number of Certificates Requested: __________

Name, Address, & Phone Number of Attorney (if being represented): ____________________________

FOR USE AS FACT SHEET TO BE MAILED OR FAXED TO OFFICE IN ADVANCE OF APPEARANCE
ALONG WITH A COPY OF THE DEATH CERTIFICATE, WILL AND CODICIL (if applicable).
ORIGINAL WILL AND CODICIL MUST BE PRESENTED AT TIME OF APPEARANCE

Tel. (732)745-3055 Fax (732)745-4125
Notice of Probate / Proof of Mailing

Instructions

As Executor/Executrix and/or Personal Representative of the Decedent you are responsible to notify in writing all Beneficiaries and all Next of Kin that a Will has been probated. (This "does" include all immediate Next of Kin even if they are not named as Beneficiaries in the Will.)

This action must be taken within 60 Days from the date of Probate.

Notice of Probate-

- Fill out the Notice of Probate form.
- Make sure to list all the names and addresses of the Beneficiaries and Next of Kin in the appropriate space.
- The Notice of Probate, attached hereto, contains a statement that a copy of the Last Will and Testament will be provided to all the Beneficiaries and all the Next of Kin upon request.
- Make a copy of the Notice of Probate for all the Beneficiaries and all the Next of Kin of the Decedent.
- Mail the copy of the Notice of Probate to all the Beneficiaries and all the Next of Kin of the Decedent. This does not need to be certified mail.

Proof of Mailing-

- Fill out the Proof of Mailing form after you have mailed all the Beneficiaries and all the Next of Kin of the Decedent a copy of the Notice of Probate.

Filing Notice of Probate/Proof of Mailing with Surrogate’s Office-

- Send the original Notice of Probate and the original Proof of Mailing to our office within 10 days of the mailing.
  Surrogate’s Office
  PO Box 177
  Woodbury, NJ 08096
- Include a check for $10.00 made payable to the “Gloucester County Surrogate” for our filing fee.

Note: If a Beneficiary or Next of Kin under the Will does not have a known address, the Notice of Probate described above must be published in a newspaper of general circulation in the county naming or identifying those persons as having a possible interest of the probate estate.

Note: Should a charity be mentioned in the Will you must also notify the Attorney General’s Office at:
  NJ Attorney General’s Office
  Attn: Charitable Trust Section
  Hughes Justice Complex – CN 112
  Trenton, NJ 08625

Warning: This memo is not intended as a comprehensive list of the rights, duties and obligations of an Executor/Executrix and/or Personal Representative of the Decedent whose Will is being probated and is only provided to you as a courtesy by the Gloucester County Surrogate’s office. A copy of the New Jersey Court Rule pertaining to the Notice of Probate is attached hereto for reference purposes.
State of New Jersey
Gloucester County Surrogate's Court

In the Matter of the Estate of

, Deceased  }  NOTICE OF PROBATE OF WILL

State of New Jersey

}  ss.

County of Gloucester

To: (List names and addresses of Next of Kin and Beneficiaries and mail a copy to each.)

PLEASE TAKE NOTICE that the Will of ________________________________

was probated by Helene M. Reed, Surrogate of Gloucester County, in Woodbury,

New Jersey on ____________________________, 20____.

The undersigned Executor/Executrix will furnish you with a copy of the said Will upon request.

____________________________________
Executor/Executrix

Dated:
State of New Jersey  
Gloucester County Surrogate’s Court

In the Matter of the Estate of  
______________________________, Deceased } \text{ PROOF OF MAILING}

State of New Jersey  
\{ ss.
County of Gloucester

I, ________________________________, do hereby certify the following;

1.) I am the Executor/Executrix under the Will of ________________________________, Deceased
(Or- I am the Administrator/Administrix with the Will annexed of the Estate of
______________________________, Deceased.)

2.) ________________________________, 20______ I mailed to all the Next of Kin and all the
beneficiaries a copy of the notice attached hereto, sending them to their last known addresses.

______________________________
Executor/Executrix

Dated:
Estate Administration checklist

**Decedent Information**

1. Decedent’s Name:
2. Domicile (home address, including county):
3. Date of Death:
4. Social Security Number:

**Retainer Information**

5. Fee Letter (date sent and received): ___________________________
6. Conflict Waiver Letter (date sent and received): _____________________

**Probate Information**

7. Will or Administration:
8. Probate Court and Date:
9. Notices of Probate sent:
10. Bond Required:

**Major Letters**

11. Route Map Letter (date): ______________________________
12. Cash Requirements Analysis (date): __________________________
13. Social Security Letter (date): ______________
14. US Postal Service Change of Address form (date): ________________
15. TIN (date obtained): ______________ TIN: __________
16. Form 56 Letter (date) _______________________
17. Investment Review within six months letter (date): ______________
18. Estate Completion Letter (date): _______________________
19. IRD / Retirement Account letter (date): _______________________

**Appraisals**

Bank Letters: List each account, date sent and date of response:
   a. 
   b. 
   c. 

Securities: List each account, date appraisal sent and received
   a. 
   b. 
   c.
Retirement Accounts: List each account, date appraisal sent and received, date beneficiary designation obtained and date account is transferred to beneficiary
   a.
   b.
   c.

Real estate: List each parcel, date appraisal requested and received
   a.
   b.

Tangibles: name of appraiser, date appraisal requested and received:

Motor Vehicles: List each vehicle, blue book value, secure title
   a.
   b.

Life Insurance: List each policy, date claim form requested and submitted Form 712 received.
   a.
   b.

Closely held business interests: name of appraiser, date appraisal requested and received:

Alternate Valuation: Set forth six month date, date valuation requested and date received:

**Income Tax Matters**

Decedent Year prior to death (date filed)(copies in file):
Decedent Year of death (date filed):
Establish estate’s fiscal year: date established and year chosen:
Distributions for tax planning considered: __________________

**Trusts**

List Trusts: for each trust, set forth name, date of letters and TIN:
   a. ____________ Trust
      Letters / Acceptance of Trusteeship (date received): ____________
      TIN (date obtained): ________________  TIN: ________________

**Estate tax returns**
Federal Release of lien

New Jersey Preliminary request for waivers

Federal Estate Tax Return:
   Date due:
   Extension filed:
   Returns filed:
   Audit Letter Received
   Closing letter received

New Jersey Estate Tax Return:
   Date due:
   Extension filed:
   Returns filed:
   Audit Letter Received
   Closing letter received

New Jersey Inheritance Tax Return:
   Date due:
   Extension filed:
   Returns filed:
   Audit Letter Received
   Closing letter received

Other:

**Distributions and Accounting**

General bequests: list each bequest, date made, date release received

Residuary bequests: list each interest, and partial distributions made, and date release received

Accounting
   Formal or informal:
   Preparer:
   Date filed or sent to beneficiaries:
   Date received:

**Personae Dramatis**

ADD NAMES ONLY AND DATE OTHER INFORMATION IS PLACED IN OUTLOOK; INCLUDE NAME OF ESTATE IN OUTLOOK ENTRY:
Executors: names, addresses, ssn’s, phone numbers, email addresses
Beneficiaries: names, addresses, ssn’s, dates of birth
Accountant: name, address, phone numbers, email
Banker / Financial Consultant: name, address, phone numbers, email
Others: name, address, phone numbers, email
AUTHORIZATION FORM

RE: Estate of __________, deceased
    Date of Death: __________
    Decedent’s Social Security No.: __________

The undersigned ____________________________________________________________________________, as Executor(s) Executrices of the above estate, hereby authorize the release of any and all information regarding vital records, assets and liabilities of the decedent, individually, jointly, or in whatever manner titled, which information may be requested by the law firm of Frankfurt Kurnit Klein & Selz PC, 488 Madison Avenue, New York, New York 10022.

The undersigned hereby agrees to indemnify and hold harmless any governmental agency, individual, bank, financial institution, insurance company, corporation, or any other entity or individual from any damage that may result by complying with these instructions.

Dated: ___________________________________________________________________________________
    ..., Executor of the Estate of __________, Deceased

Dated: ___________________________________________________________________________________
    ..., Executor of the Estate of __________, Deceased
OFFICE OF THE SURROGATE
MIDDLESEX COUNTY
KEVIN J. HOAGLAND
SURROGATE
Eileen Weber
DEPUTY SURROGATE

75 Bayard Street
P.O. Box 790
New Brunswick, NJ 08903-0790
www.middletowncountynj.com

IMPORTANT INFORMATION/INSTRUCTIONS FOR
REFUNDING BOND AND RELEASE

Attached is the Refunding Bond and Release. You may:

- Type or neatly print the information required.
- Photocopy and re-use the blank form, print out additional forms at our website, or receive additional forms by email, fax or mail by contacting the Surrogate’s Court at (732) 745-3055.

No sooner than nine months after the date of death, each beneficiary or heir of the estate, including the Administrator/Executor, will need to fill out and sign, in front of a witness as well as a notary or a New Jersey attorney, the Refunding Bond and Release. Please note that the Refunding Bond and Release should be signed prior to any distribution or checks being released to a beneficiary.

If the Beneficiary/Heir is a minor, trust or is incapacitated:

- If the beneficiary or heir is a minor, the Refunding Bond and Release must be signed by the guardian of the minor’s property that has been appointed by the Surrogate’s Court.

- If the beneficiary is a trust, the Refunding Bond and Release must be signed by the trustee.

- If the beneficiary or heir is an incapacitated person, the Refunding Bond and Release must be signed by the guardian of the person and property of the incapacitated person that has been appointed by the Superior Court.

Filing Instructions: (Fill in ALL blanks with the information required)

1. The value of cash and property received is the total value of all assets received from the estate and can include cash, bank accounts, stock, personal property and real estate. However, it does not include assets that do not pass through the estate, such as joint accounts or assets with designated beneficiaries other than the estate.

2. File the original signed, witnessed and notarized document along with the filing fee of $10.00.

3. The check should be made payable to “Middlesex County Surrogate.”

4. If you require "Filed" stamped copies (to send to the Bond Company), you must include copies of the Refunding Bond and Release along with your request and your own self-addressed envelope (we do not make/provide courtesy copies). Mail/deliver your originals, copies and request to our Court.
State of New Jersey  
Middlesex County Surrogate's Court  

In the matter of the Estate of:  
_________________________________________ , Deceased  

AKA: ____________________________________  

REFUNDING BOND  
AND RELEASE  

KNOW ALL MEN BY THESE PRESENTS,  
That I am __________________________ and I reside at  
_________________________________, in the city/town of _____________, State of ____________.  

I am a beneficiary (or heir) of this estate and receiving the sum of $___________ (Value of cash & property received) from Executor/Administrator ______________________________ (Name of Executor/Administrator).  

Upon my receipt of this distribution, I am hereby obligated to refund any portion of this distribution should such refund be required by the Executor/Administrator to discharge all proper debts and obligations of the estate as required under N.J.S.A. 3B:23-24 through N.J.S.A. 3B:23-27. Upon my death, my obligation extends to my heirs, Executor or Administrator.  

THE CONDITION OF THIS OBLIGATION is that I receive from the Executor/Administrator the sum of $___________ representing distribution to me as an intestate heir of this estate or as a beneficiary under the Will if the decedent died testate.  

AND IN CONSIDERATION THEREOF, I release and forever discharge the Executor/Administrator from all claims and demands whatsoever in respect to the estate of the deceased and my interest therein.  

Signed, Sealed and Delivered in the Presence of:  

______________________________  
(Beneficiary's Signature)  

STATE OF NEW JERSEY, COUNTY OF MIDDLESEX  
ss.:  
Be it Remembered, that on ___________ 20____, before me, a/an ___________ of the State of ___________ personally appeared __________________________ who, I am satisfied, is the person named in and who executed the within Instrument in my presence, and thereupon acknowledged that he/she signed, sealed and delivered the same as his/her act and deed for the uses and purposes therein expressed.  

Notary Public / Attorney of the State of __________________________  
My commission expires on ___________ / ______/20____

REFUNDING BOND AND RELEASE
Agreement made as of the           day of                    , 2015, by and between … resided at, … and … having offices at …

WHEREAS:

A. On …, … died (herein the “decedent”), leaving a Last Will and Testament dated …, which was admitted to probate by the … County Surrogate’s Court on …, whereupon letters testamentary were issued to … as executor of the estate (herein the Executor”). [and letters of trusteeship were issued to … as trustees under the Will. A copy of the Will is attached hereto as Exhibit 1.

B. Under the terms of the decedent’s will, his/her estate passes as follows:

C. The decedent was survived by …, spouse, children, etc. (herein the “Beneficiaries”).

D. The Executor has proceeded to administer the estate of the decedent, has collected the assets of the decedent passing under the Will, has paid the liabilities of the decedent, including any outstanding income taxes and estate taxes. The Executor has published notice to creditors of the decedent to present any claims they may have against the decedent’s estate, and more than six months have passed since the publication of the notice. The Executor has completed the administration of the estate and is now ready to make a final distribution of the balance of the estate to the Beneficiaries.
E. The Executor has made available to the Beneficiaries financial information concerning the estate, including the following documents, Forms 706, IT-R, IT-E, 1040’s for years …, Statements for …, copies of which are attached hereto as Exhibit 2 (herein the “Account”).

F. The Beneficiaries have requested the Executor to render to them at this time the documents set forth at Exhibit 2 as an account of his proceedings as Executor in lieu of conducting a judicial proceeding for the settlement of a final account thereof, and to pay over and distribute the balance of the estate, subject to the retention or payment of executor’s commissions, legal fees and other proper charges of the administration of the estate and the settlement of the account.

G. The Executor is willing to settle his account out of court in order to avoid the expense and delay incident to the judicial settlement thereof in consideration for the execution of this Agreement.

H. Each of the Beneficiaries represents and warrants that he and she has not heretofore transferred, assigned or encumbered in any way, voluntarily or otherwise, his or her interest in the decedent’s estate, upon which representation the Executor is expressly relying in entering into this agreement.

NOW, THEREFORE:

1. The parties agree that the Account shall constitute an account stated between the parties hereto.

2. Each of the Beneficiaries does hereby ratify, confirm and approve the Account of the Executor and each and every one of the acts, proceedings, collections and disbursements of the Executor set forth in the Account, and hereby waives any right to enforce the judicial settlement of the Account or of any account of the Executor, it being the purpose and intent of the parties herein that the release and discharge hereinafter given and granted to the Executor by this Agreement shall be delivered to and accepted by the Executor as binding on each Beneficiary and on all other parties interested in the decedent’s estate in all respects as though the Account had been rendered in the course of a judicial proceeding and had thereupon been settled and allowed as presented by a filed judgment, decree or order of a Court of competent jurisdiction.

3. Each of the Beneficiaries directs and approves the following payments by the Executor out of the balance of the Trust remaining in his hands:

   The sum of $… from the principal of the estate as and for the balance of the commissions to which the Executor is entitled for having served as the executor of the decedent’s estate; and
The sum of $… from the principal of the estate to Frankfurt Kurnit Klein & Selz, P.C., for professional services rendered in the administration of the estate and the preparation and settlement of the Account and for their out-of-pocket disbursements (absent litigation or other controversy).

4. Each of the Beneficiaries acknowledges the distribution by the Executor and his or her receipt of his proportionate share of the decedent’s estate in the shares set forth in the proposed schedule of distribution attached hereto as Exhibit 3, subject to the retention of a reserve in the amount of $….. to satisfy unpaid debts and administration expenses, which amount will be distributed within six months of the date first set forth above (absent litigation or other controversy).

5. Each of the Beneficiaries does hereby release, remise and forever discharge the undersigned …, individually and as Executor of the decedent’s estate, of and from any and all manner of actions, damages, claims and demands which he or she has had, now has or hereafter can, shall or may have against the Executor, and of and from any and all obligation to account further to him or her with respect to the administration of the decedent’s estate for the period covered by the Account.

6. Each of the Beneficiaries agrees to indemnify and hold harmless from and against any and all claims, costs, damages, demands, expenses, losses, taxes and liabilities of any kind whatsoever, which the Trustee may sustain at any time or by reason or in consequence of any act or omission, collection or disbursement, cause, matter or thing whatsoever contained in the Account, or reasonably to be inferred from anything therein contained, or for or by reason of anything done or omitted to be done by the Executor in the administration of the decedent’s estate.

7. Each of the Beneficiaries agrees that, in the event the Executor or his successors shall at any time have insufficient funds or property of the decedent’s estate on hand with which to pay all debts, expenses, taxes or other claims chargeable against the decedent’s estate, he or she will promptly refund to the Executor or his successors such amount or amounts as at any time may be necessary to discharge such debts, expenses, taxes or other claims to the extent of his or her proportionate liability for the same.

8. Each of the Beneficiaries consents and agrees that the Executor may at any time record this Agreement and the Account, or either of them, in accordance with the provisions of any existing or future statute, law or court rule of the State of New Jersey or of any other state as an instrument settling the account of the Executor, and that the Executor may at any time institute and conduct legal proceedings to obtain a judicial settlement of the Account, and each of the Beneficiaries hereby waives the issuance and service of any citation or other process in any action or proceeding brought in any Court by the Executor or his successors for the judicial settlement of the Account, and does hereby consent to the entry of a decree, judgment or order of a Court of competent jurisdiction settling the Account and discharging the Executor of and from any and all liability, accountability or
responsibility whatsoever as to any and all matters contained therein without notice to him.

9. This agreement may be executed in counterparts, each of which shall be deemed to be an original.

10. This agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in this above described capacities as of the day and year first set forth above.

____________________________
…

____________________________
…

____________________________
…

____________________________
…

____________________________
…
STATE OF )
    : ss.:
COUNTY OF )

On this __________ day of __________, 2015, before me personally came Abc..., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

_______________________________
Notary Public

STATE OF )
    : ss.:
COUNTY OF )

On this __________ day of __________, 2015, before me personally came Xyz..., to me known and known to me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

_______________________________
Notary Public
On the _____ day of _____________, 2015, before me personally came ______________________________________, who, being duly sworn by me, did depose and say that he is a ______________________________________ of ______________________________________, the Corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation, that the seal affixed to the foregoing instrument is the seal of the Corporation, that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

____________________________________
Notary Public
## Application for Employer Identification Number

For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.

Go to www.irs.gov/FormSS4 for instructions and the latest information.

See separate instructions for each line. Keep a copy for your records.

### Form SS-4

#### Type or print clearly

1. **Legal name of entity (or individual) for whom the EIN is being requested**

2. **Trade name of business (if different from name on line 1)**

3. **Executor, administrator, trustee, "care of" name**

4a. **Mailing address (room, apt., suite no. and street, or P.O. box)**

5a. **Street address (if different) (Do not enter a P.O. box)**

4b. **City, state, and ZIP code (if foreign, see instructions)**

5b. **City, state, and ZIP code (if foreign, see instructions)**

6. **County and state where principal business is located**

7a. **Name of responsible party**

7b. **SSN, ITIN, or EIN**

8a. **Is this application for a limited liability company (LLC) (or a foreign equivalent)?**

 - [ ] Yes
 - [ ] No

8b. **If Yes, enter the number of LLC members**

8c. **If Yes, was the LLC organized in the United States?**

 - [ ] Yes
 - [ ] No

9a. **Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.**

   - [ ] Sole proprietor (SSN)
   - [ ] Partnership
   - [ ] Corporation (enter form number to be filed)
   - [ ] Personal service corporation
   - [ ] Church or church-controlled organization
   - [ ] Other nonprofit organization (specify)
   - [ ] Other (specify) →

9b. **If a corporation, name the state or foreign country (if applicable) where incorporated**

10. **Reason for applying (check only one box)**

   - [ ] Started new business (specify type)
   - [ ] Hired employees
   - [ ] Compliance with IRS withholding regulations
   - [ ] Purchased going business
   - [ ] Created a trust (specify type)
   - [ ] Created a pension plan (specify type)

11. **Date business started or acquired (month, day, year). See instructions.**

12. **Closing month of accounting year**

13. **Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.**

   - [ ] Agricultural
   - [ ] Household
   - [ ] Other

14. **If you expect your employment tax liability to be $1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. Your employment tax liability generally will be $1,000 or less if you expect to pay $4,000 or less in total wages.**

If you do not check this box, you must file Form 941 for every quarter.

15. **First date wages or annuities were paid (month, day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year).**

16. **Check one box that best describes the principal activity of your business.**

   - [ ] Health care & social assistance
   - [ ] Wholesale-agent/broker
   - [ ] Rental & leasing
   - [ ] Transportation & warehousing
   - [ ] Accommodation & food service
   - [ ] Wholesale-other
   - [ ] Construction
   - [ ] Real estate
   - [ ] Manufacturing
   - [ ] Finance & insurance
   - [ ] Other (specify)

17. **Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.**

18. **Has the applicant entity shown on line 1 ever applied for and received an EIN?**

   - [ ] Yes
   - [ ] No

If "Yes," write previous EIN here.→

---

#### Third Party

Designee's name

Address and ZIP code

**Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.**

Designee's telephone number (include area code)

Designee's fax number (include area code)

---

Applicant's telephone number (include area code)

Applicant's fax number (include area code)

---

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
**Do I Need an EIN?**

If the applicant does not already have an EIN but is required to show an EIN on any return, statement, or other document. See also the separate instructions for each line on Form SS-4.

<table>
<thead>
<tr>
<th>IF the applicant...</th>
<th>AND...</th>
<th>THEN...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Started a new business</td>
<td>Does not currently have (nor expect to have) employees</td>
<td>Complete lines 1, 2, 4a-8a, 8b-c (if applicable), 9a, 9b (if applicable), and 10-14 and 16-18.</td>
</tr>
<tr>
<td>Hired (or will hire) employees, including household employees</td>
<td>Does not already have an EIN</td>
<td>Complete lines 1, 2, 4a-6, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10-18.</td>
</tr>
<tr>
<td>Opened a bank account</td>
<td>Needs an EIN for banking purposes only</td>
<td>Complete lines 1-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.</td>
</tr>
<tr>
<td>Changed type of organization</td>
<td>Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership)</td>
<td>Complete lines 1-18 as applicable.</td>
</tr>
<tr>
<td>Purchased a going business</td>
<td>Does not already have an EIN</td>
<td>Complete lines 1-18 as applicable.</td>
</tr>
<tr>
<td>Created a trust</td>
<td>The trust is other than a grantor trust or an IRA trust</td>
<td>Complete lines 1-18 as applicable.</td>
</tr>
<tr>
<td>Created a pension plan as a plan administrator</td>
<td>Needs an EIN for reporting purposes</td>
<td>Complete lines 1, 3, 4a-5b, 9a, 10, and 18.</td>
</tr>
<tr>
<td>Is a foreign person needing an EIN to comply with IRS withholding regulations</td>
<td>Needs an EIN to complete a Form W-8 (other than Form W-8BECI), avoid withholding on portfolio assets, or claim tax treaty benefits</td>
<td>Complete lines 1-5b, 7a-b (SSN or ITIN optional), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.</td>
</tr>
<tr>
<td>Is administering an estate</td>
<td>Needs an EIN to report estate income on Form 1041</td>
<td>Complete lines 1-6, 9a, 10-12, 13-17 (if applicable), and 18.</td>
</tr>
<tr>
<td>Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)</td>
<td>Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons</td>
<td>Complete lines 1, 2, 3 (if applicable), 4a-5b, 7a-b (if applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.</td>
</tr>
<tr>
<td>Is a state or local agency</td>
<td>Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581</td>
<td>Complete lines 1, 2, 4a-5b, 9a, 10, and 18.</td>
</tr>
<tr>
<td>Is a single-member LLC (or similar single-member entity)</td>
<td>Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes, or is a foreign-owned U.S. disregarded entity and needs an EIN to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code)</td>
<td>Complete lines 1-18 as applicable.</td>
</tr>
<tr>
<td>Is an S corporation</td>
<td>Needs an EIN to file Form 2553, Election by a Small Business Corporation</td>
<td>Complete lines 1-18 as applicable.</td>
</tr>
</tbody>
</table>

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1. For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers’ cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

2. However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.8109-1(d)(2)(ii).

3. Do not use the EIN of the prior business unless you became the “owner” of a corporation by acquiring its stock.

4. However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 980-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

5. A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

6. Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

7. See also Household employer on page 4 of the instructions. Note: State or local agencies may need an EIN for other reasons, for example, hired employees.

8. See Disregarded entities on page 4 of the instructions for details on completing Form SS-4 for an LLC.

9. An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.
Part I  Identification

<table>
<thead>
<tr>
<th>Name of person for whom you are acting (as shown on the tax return)</th>
<th>Identifying number</th>
<th>Decedent’s social security no.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Address of person for whom you are acting (number, street, and room or suite no.)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>City or town, state, and ZIP code (If a foreign address, see instructions.)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fiduciary’s name</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Address of fiduciary (number, street, and room or suite no.)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>City or town, state, and ZIP code</th>
<th>Telephone number (optional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Optional)</td>
<td></td>
</tr>
</tbody>
</table>

Section A. Authority

1 Authority for fiduciary relationship. Check applicable box:

| a | Court appointment of testate estate (valid will exists) |
| b | Court appointment of intestate estate (no valid will exists) |
| c | Court appointment as guardian or conservator |
| d | Valid trust instrument and amendments |
| e | Bankruptcy or assignment for the benefit or creditors |
| f | Other. Describe ► |

2a If box 1a or 1b is checked, enter the date of death ►

2b If box 1c–1f is checked, enter the date of appointment, taking office, or assignment or transfer of assets ►

Section B. Nature of Liability and Tax Notices

3 Type of taxes (check all that apply): Income Gift Estate Generation-skipping transfer Employment Excise Other (describe) ►

4 Federal tax form number (check all that apply): 706 series 709 940 941, 943, 944 1040, 1040-A, or 1040-EZ 1041 1120 Other (list) ►

5 If your authority as a fiduciary does not cover all years or tax periods, check here and list the specific years or periods ►

For Paperwork Reduction Act and Privacy Act Notice, see separate instructions.
Part II  Revocation or Termination of Notice

Section A—Total Revocation or Termination

6  Check this box if you are revoking or terminating all prior notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship ▶ □

Reason for termination of fiduciary relationship. Check applicable box:

a  □ Court order revoking fiduciary authority
b  □ Certificate of dissolution or termination of a business entity
c  □ Other. Describe ▶ .................................................................

Section B—Partial Revocation

7a  Check this box if you are revoking earlier notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship ▶ □

b  Specify to whom granted, date, and address, including ZIP code.
   ▶ ..........................................................................................................................

Section C—Substitute Fiduciary

8  Check this box if a new fiduciary or fiduciaries have been or will be substituted for the revoking or terminating fiduciary and specify the name(s) and address(es), including ZIP code(s), of the new fiduciary(ies) ▶ □

   ..........................................................................................................................

Part III  Court and Administrative Proceedings

Name of court (if other than a court proceeding, identify the type of proceeding and name of agency) Date proceeding initiated

Address of court Docket number of proceeding

City or town, state, and ZIP code Date Time □ a.m. □ p.m. Place of other proceedings

Part IV  Signature

I certify that I have the authority to execute this notice concerning fiduciary relationship on behalf of the taxpayer.

Please Sign Here

Fiduciary’s signature Title, if applicable Date

Form 56 (Rev. 11-2017)
Power of Attorney
and Declaration of Representative

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address

Taxpayer identification number(s)

Daytime telephone number

Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

Check if to be sent copies of notices and communications □

Name and address

Check if to be sent copies of notices and communications □

Check if new: Address □ Telephone No. □ Fax No. □

Name and address

Check if new: Address □ Telephone No. □ Fax No. □

Check if to be sent copies of notices and communications □

Check if to be sent copies of notices and communications □

Check if new: Address □ Telephone No. □ Fax No. □

Check if new: Address □ Telephone No. □ Fax No. □

(Will send notices and communications to only two representatives.)

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for Line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)

Tax Form Number (1040, 941, 720, etc.) (if applicable)

Year(s) or Period(s) (if applicable)

(see instructions)

Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4, Specific Use Not Recorded on CAF □

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): □ Access my IRS records via an Intermediate Service Provider; □ Authorize disclosure to third parties; □ Substitute or add representative(s); □ Sign a return;

□ Other acts authorized:

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form 2848 (Rev.1-2018)
b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b):

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ________________________________________________

You must attach a copy of any power of attorney you want to remain in effect.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

► IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
<th>Title (if applicable)</th>
</tr>
</thead>
</table>

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

• I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
• I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
• I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and

• I am one of the following:

a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below,
b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
d Officer—a bona fide officer of the taxpayer organization.
e Full-Time Employee—a full-time employee of the taxpayer;
f Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund; (2) was entitled to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). For additional information, see Special Rules and Requirements for Unenrolled Return Preparers in the Instructions for Additional Information.

k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STPC. See instructions for Part II for additional information.
r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

<table>
<thead>
<tr>
<th>Designation—</th>
<th>Licensing jurisdiction (State) or other licensing authority (if applicable), Bar, license, certification, registration, or enrollment number (if applicable).</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert above letter (a-r).</td>
<td></td>
<td></td>
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</tbody>
</table>
Form 4768  
Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes  
OMB No. 1545-0181  

Part I Identification  
Decedent's first name and middle initial  
Decedent's last name  
Date of death  
Name of executor  
Name of application filer (if other than the executor)  
Decedent's social security number  
Address of executor  
(Number, street, and room or suite no.)  
Estate tax return due date  
City, state, and ZIP code  
Domicile of decedent (county, state, and ZIP code)  
Daytime telephone number  

Part II Extension of Time To File Form 706, 706-A, 706-D, 706-NA, or 706-QDT (Section 6081)  

Automatic Extension  
If you are applying for an automatic 6-month extension of time to file:  
* Form 706, check here  
* Form 706-A, 706-D, 706-NA, or 706-QDT, indicate the form by checking the appropriate box below.  
☐ Form 706-A  ☐ Form 706-D  ☐ Form 706-NA  ☐ Form 706-QDT  

Additional Extension  
If you are an executor out of the country applying for an extension of time to file in excess of 6 months, check here  
Also you must attach a statement explaining in detail why it is impossible or impractical to file Form 706 by the due date. See instructions.  
Enter extension date requested  

Part III Extension of Time To Pay (Section 6161)  
You must attach your written statement to explain in detail why it is impossible or impractical to pay the full amount of the estate (or GST) tax by the return due date. If the taxes cannot be determined because the size of the gross estate is unascertainable, check here and enter "0" or other appropriate amount on Part IV, line 3. You must attach an explanation.  

Also you must attach a statement explaining in detail why it is impossible or impractical to pay the full amount of the estate (or GST) tax by the return due date. If the taxes cannot be determined because the size of the gross estate is unascertainable, check here and enter "0" or other appropriate amount on Part IV, line 3. You must attach an explanation.  

Part IV Payment To Accompany Extension Request  

1  Amount of estate and GST taxes estimated to be due  
2  Amount of cash shortage (complete Part III)  
3  Balance due (subtract line 2 from line 1) (see instructions)  

Signature and Verification  
If filed by executor—Under penalties of perjury, I declare that I am an executor of the estate of the above-named decedent and that to the best of my knowledge and belief, the statements made herein and attached are true and correct.  

_________________________  
Executor's signature  
_________________________  
Title  
_________________________  
Date  

If filed by someone other than the executor—Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein and attached are true and correct, that I am authorized by an executor to file this application, and that I am (check box(es) that apply(es)):  

☐ A member in good standing of the bar of the highest court of (specify jurisdiction)  
☐ A certified public accountant duly qualified to practice in (specify jurisdiction)  
☐ A person enrolled to practice before the Internal Revenue Service.  
☐ A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)  

_________________________  
Filer's signature (other than the executor)  
_________________________  
Date  

For Paperwork Reduction Act Notice, see separate instructions.  
Cat. No. 41984P  
Form 4768 (Rev. 8-2012)
Part V Notice to Applicant—To be completed by the Internal Revenue Service

Note. If applying for an extension of time to pay, file this page in duplicate.

☐ The application for extension of time to pay (Part III) is:

☐ Approved ____________________________________________________________

☐ Not approved because (see instructions for your appeal rights) ________________________________

☐ Other ________________________________________________________________

Internal Revenue Service official

Name (print) ____________________________________________________________

Title (print) ____________________________________________________________

Signature: ____________________________________________________________________

Address

Date

Form 4768 (Rev. 8-2012)
## United States Estate (and Generation-Skipping Transfer) Tax Return

**Estate of a citizen or resident of the United States (see instructions), To be filed for decedents dying after December 31, 2016.**

Go to [www.irs.gov/Form706](http://www.irs.gov/Form706) for instructions and the latest information.

### Part 1—Decedent and Executor

1. **Decedent’s first name and middle initial (and maiden name, if any)**
2. **Decedent’s last name**
3. **City, town, or post office; county; state or province; country; and ZIP or foreign postal code.**
4. **Year domicile established**
5. **Date of birth**
6. **Date of death**
7. **Name of executor (see instructions)**
8. **Executor’s social security number (see instructions)**
9. **Phone no.**

#### If there are multiple executors, check here □ and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.

#### Name and location of court where will was probated or estate administered

#### Case number

### Part 2—Tax Computation

1. **Total gross estate less exclusion (from Part 5—Recapitulation, item 13)**
2. **Tentative total allowable deductions (from Part 5—Recapitulation, item 24)**
3a. **Tentative taxable estate (subtract line 2 from line 1)**
3b. **State death tax deduction**
3c. **Taxable estate (subtract line 3b from line 3a)**
4. **Adjusted taxable gifts (see instructions)**
5. **Add lines 3c and 4**
6. **Tentative tax on the amount on line 5 from Table A in the instructions**
7. **Total gift tax paid or payable (see instructions)**
8. **Gross estate tax (subtract line 7 from line 6)**

#### Basic exclusion amount

#### Deceased spousal unused exclusion (DSUE) amount from deceased spouse(s), if any (from Section D, Part 6—Portability of Deceased Spousal Unused Exclusion).

#### Restored exclusion amount (see instructions)

#### Applicable exclusion amount (add lines 9a, 9b, and 9c)

#### Applicable credit amount (tentative tax on the amount in 9d from table A in the instructions)

#### Adjustment to applicable credit amount (May not exceed $6,000. See instructions.)

#### Allowable applicable credit amount (subtract line 10 from line 9e)

#### Subtract line 11 from line 8 (but do not enter less than zero)

#### Credit for foreign death taxes (from Schedule P) (Attach Form(s) 706-CE)

#### Credit for tax on prior transfers (from Schedule Q)

#### Total credits (add lines 13 and 14)

#### Net estate tax (subtract line 15 from line 12)

#### Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)

#### Total transfer taxes (add lines 16 and 17)

#### Prior payments (explain in an attached statement)

#### Balance due (or overpayment) (subtract line 19 from line 18)

---

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than the executor is based on all information of which preparer has any knowledge.

**Sign Here**

**Signature of executor**

**Date**

**Signature of executor**

**Date**

**Paid Preparer Use Only**

**Print/Type preparer’s name**

**Preparer’s signature**

**Date**

**Check □ if self-employed**

**PTIN**

**Firm’s name ▶**

**Firm’s address ▶**

**Firm’s EIN ▶**

**Phone no.**

---

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Cat. No. 20549R

Form 706 (Rev. 8-2017)
**Estate of:**

**Part 3—Elections by the Executor**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you elect alternate valuation?</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Do you elect special-use valuation? If “Yes,” you must complete and attach Schedule A-1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you elect to pay the taxes in installments as described in section 6166?</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>If “Yes,” you must attach the additional information described in the instructions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Please elect section 6166 installment payments, you may be required to provide security for estate tax deferred under section 6166 and interest in the form of a surety bond or a section 6324A lien.</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Do you elect to postpone the part of the taxes due to a reversionary or remainder interest as described in section 6163?</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

**Part 4—General Information**

**Note:** Please attach the necessary supplemental documents. You must attach the death certificate. (See instructions)

Authorization to receive confidential tax information under Reg. section 601.504(b)(2)(i); to act as the estate’s representative before the IRS; and to make written or oral presentations on behalf of the estate:

<table>
<thead>
<tr>
<th>Name of representative (print or type)</th>
<th>State</th>
<th>Address (number, street, and room or suite no., city, state, and ZIP code)</th>
</tr>
</thead>
</table>

I declare that I am the attorney/ certified public accountant/ enrolled agent (check the applicable box) for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

<table>
<thead>
<tr>
<th>Signature</th>
<th>CAF number</th>
<th>Date</th>
<th>Telephone number</th>
</tr>
</thead>
</table>

1. Death certificate number and issuing authority (attach a copy of the death certificate to this return).

2. Decedent’s business or occupation. If retired, check here ☐ and state decedent’s former business or occupation.

3. Marital status of the decedent at time of death:
   - Married
   - Widow/widower
   - Single
   - Legally separated
   - Divorced

3b. For all prior marriages, list the name and SSN of the former spouse, the date the marriage ended, and whether the marriage ended by annulment, divorce, or death. Attach additional statements of the same size if necessary.

4a. Surviving spouse’s name

4b. Social security number

4c. Amount received (see instructions)

5. Individuals (other than the surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions).

<table>
<thead>
<tr>
<th>Name of individual, trust, or estate receiving $5,000 or more</th>
<th>Identifying number</th>
<th>Relationship to decedent</th>
<th>Amount (see instructions)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

All unascertainable beneficiaries and those who receive less than $5,000

Total

If you answer “Yes” to any of the following questions, you must attach additional information as described.

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the estate filing a protective claim for refund?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If “Yes,” complete and attach two copies of Schedule PC for each claim.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(see instructions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have federal gift tax returns ever been filed?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If “Yes,” attach copies of the returns, if available, and furnish the following information.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Period(s) covered</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Internal Revenue office(s) where filed</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9a. Was there any insurance on the decedent’s life that is not included on the return as part of the gross estate?

9b. Did the decedent own any insurance on the life of another that is not included in the gross estate?

38
Part 4—General Information (continued)

If you answer "Yes" to any of the following questions, you must attach additional information as described.

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent’s spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If &quot;Yes,&quot; you must complete and attach Schedule E.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11a</td>
<td>Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership), an unincorporated business, or a limited liability company; or own any stock in an inactive or closely held corporation? If &quot;Yes,&quot; was the value of any interest owned (from above) discounted on this estate tax return? If &quot;Yes,&quot; see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11b</td>
<td>Were there in existence at the time of the decedent’s death any trusts created by the decedent during his or her lifetime? If &quot;Yes,&quot; provide the EIN for this transferred/sold item.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11c</td>
<td>Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11d</td>
<td>If &quot;Yes,&quot; was there a GST taxable termination (under section 2612) on the death of the decedent?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Did the decedent make any transfer described in sections 2035, 2036, 2037, or 2038? (see instructions) If &quot;Yes,&quot; you must complete and attach Schedule G.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13a</td>
<td>Were there in existence at the time of the decedent’s death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13b</td>
<td>Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in lines 13a or 13b?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Did the decedent ever possess, exercise, or release any general power of appointment? If &quot;Yes,&quot; you must complete and attach Schedule H.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Was the decedent, immediately before death, receiving an annuity described in the &quot;General&quot; paragraph of the instructions for Schedule I or a private annuity? If &quot;Yes,&quot; you must complete and attach Schedule I.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a predeceased spouse under section 2056(b)(7) and which is not reported on this return? If &quot;Yes,&quot; attach an explanation.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 5—Recapitulation. Note: If estimating the value of one or more assets pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), enter on both lines 10 and 23 the amount noted in the instructions for the corresponding range of values. (See instructions for details.)

<table>
<thead>
<tr>
<th>Item no.</th>
<th>Gross estate</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Schedule A—Real Estate</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Schedule B—Stocks and Bonds</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Schedule C—Mortgages, Notes, and Cash</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Schedule D—Insurance on the Decedent’s Life (attach Form(s) 712)</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Schedule E—Jointly Owned Property (attach Form(s) 712 for life insurance)</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Schedule F—Other Miscellaneous Property (attach Form(s) 712 for life insurance)</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Schedule G—Transfers During Decedent’s Life (att. Form(s) 712 for life insurance)</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Schedule H—Powers of Appointment</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Schedule I—Annuities</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Estimated value of assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Total gross estate (add items 1 through 10)</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Schedule U—Qualified Conservation Easement Exclusion</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Total gross estate less exclusion (subtract item 12 from item 11). Enter here and on line 1 of Part 2—Tax Computation</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item no.</th>
<th>Deductions</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>Schedule K—Debts of the Decedent</td>
<td>15</td>
</tr>
<tr>
<td>16</td>
<td>Schedule K—Mortgages and Liens</td>
<td>16</td>
</tr>
<tr>
<td>17</td>
<td>Total of items 14 through 16</td>
<td>17</td>
</tr>
<tr>
<td>18</td>
<td>Allowable amount of deductions from item 17 (see the instructions for item 18 of the Recapitulation)</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>Schedule L—Net Losses During Administration</td>
<td>19</td>
</tr>
<tr>
<td>20</td>
<td>Schedule L—Expenses Incurred in Administering Property Not Subject to Claims</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>Schedule M—Bequests, etc., to Surviving Spouse</td>
<td>21</td>
</tr>
<tr>
<td>22</td>
<td>Schedule O—Charitable, Public, and Similar Gifts and Bequests</td>
<td>22</td>
</tr>
<tr>
<td>23</td>
<td>Estimated value of deductible assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)</td>
<td>23</td>
</tr>
<tr>
<td>24</td>
<td>Tentative total allowable deductions (add items 18 through 23). Enter here and on line 2 of the Tax Computation</td>
<td>24</td>
</tr>
</tbody>
</table>
Estate of:  

Part 6—Portability of Deceased Spousal Unused Exclusion (DSUE)

Portability Election
A decedent with a surviving spouse elects portability of the deceased spousal unused exclusion (DSUE) amount, if any, by completing and timely-filing this return. No further action is required to elect portability of the DSUE amount to allow the surviving spouse to use the decedent’s DSUE amount.

Section A. Opting Out of Portability
The estate of a decedent with a surviving spouse may opt out of electing portability of the DSUE amount. Check here and do not complete Sections B and C of Part 6 only if the estate opts NOT to elect portability of the DSUE amount.

Section B. QDOT
Are any assets of the estate being transferred to a qualified domestic trust (QDOT)?
If “Yes,” the DSUE amount portable to a surviving spouse (calculated in Section C, below) is preliminary and shall be redetermined at the time of the final distribution or other taxable event imposing estate tax under section 2056A. See instructions for more details.

Section C. DSUE Amount Portable to the Surviving Spouse (To be completed by the estate of a decedent making a portability election)

Complete the following calculation to determine the DSUE amount that can be transferred to the surviving spouse.

1. Enter the amount from line 9d, Part 2—Tax Computation
2. Reserved
3. Enter the value of the cumulative lifetime gifts on which tax was paid or payable (see instructions)
4. Add lines 1 and 3
5. Enter amount from line 10, Part 2—Tax Computation
6. Divide amount on line 5 by 40% (0.40) (do not enter less than zero)
7. Subtract line 6 from line 4
8. Enter the amount from line 5, Part 2—Tax Computation
9. Subtract line 8 from line 7 (do not enter less than zero)
10. DSUE amount portable to surviving spouse (Enter lesser of line 9 or line 9a, Part 2—Tax Computation)

Section D. DSUE Amount Received from Predeceased Spouse(s) (To be completed by the estate of a deceased surviving spouse with DSUE amount from predeceased spouse(s))

Provide the following information to determine the DSUE amount received from deceased spouses.

<table>
<thead>
<tr>
<th>Name of Deceased Spouse (dates of death after December 31, 2010, only)</th>
<th>Date of Death (enter as mm/dd/yy)</th>
<th>Portability Election Made?</th>
<th>If “Yes,” DSUE Amount Received from Spouse</th>
<th>DSUE AmountApplied by Decedent to Lifetime Gifts</th>
<th>Year of Form 709 Reporting Use of DSUE Amount Listed in col E</th>
<th>Remaining DSUE Amount, if any (subtract col. E from col. D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 1 - DSUE RECEIVED FROM LAST DECEASED SPOUSE

Part 2 - DSUE RECEIVED FROM OTHER PREDECEASED SPOUSE(S) AND USED BY DECEDENT

Total (for all DSUE amounts from predeceased spouse(s) applied)

Add the amount from Part 1, column D and the total from Part 2, column E. Enter the result on line 9b, Part 2—Tax Computation.
SCHEDULE A—Real Estate

- For jointly owned property that must be disclosed on Schedule E, see instructions.
- Real estate that is part of a sole proprietorship should be shown on Schedule F.
- Real estate that is included in the gross estate under sections 2035, 2036, 2037, or 2038 should be shown on Schedule G.
- Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.
- If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules or additional statements attached to this schedule . . .

**TOTAL.** (Also enter on Part 5—Recapitulation, page 3, at item 1.) . . . . . . . . . . . .

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
### SCHEDULE A-1—Section 2032A Valuation

#### Part 1. Type of election (Before making an election, see the checklist in the instructions):
- [ ] Protective election (Regulations section 20.2032A-8(b)). Complete Part 2, line 1, and column A of lines 3 and 4. (see instructions)
- [ ] Regular election. Complete all of Part 2 (including line 11, if applicable) and Part 3. (see instructions)

Before completing Schedule A-1, see the instructions for the information and documents that must be included to make a valid election.

The election is not valid unless the agreement (that is, Part 3. Agreement to Special Valuation Under Section 2032A):
- Is signed by each qualified heir with an interest in the specially valued property, and
- Is attached to this return when it is filed.

#### Part 2. Notice of election (Regulations section 20.2032A-8(a)(3))

**Note:** All real property entered on lines 2 and 3 must also be entered on Schedules A, E, F, G, or H, as applicable.

1. **Qualified use—check one**
   - [ ] Farm used for farming, or
   - [ ] Trade or business other than farming

2. Real property used in a qualified use, passing to qualified heirs, and to be specially valued on this Form 706.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule and item number from Form 706</td>
<td>Full value (without section 2032A(b)(3)(B) adjustment)</td>
<td>Adjusted value (with section 2032A(b)(3)(B) adjustment)</td>
<td>Value based on qualified use (without section 2032A(b)(3)(B) adjustment)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attach a legal description of all property listed on line 2.

Attach copies of appraisals showing the column B values for all property listed on line 2.

3. Real property used in a qualified use, passing to qualified heirs, but not specially valued on this Form 706.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule and item number from Form 706</td>
<td>Full value (without section 2032A(b)(3)(B) adjustment)</td>
<td>Adjusted value (with section 2032A(b)(3)(B) adjustment)</td>
<td>Value based on qualified use (without section 2032A(b)(3)(B) adjustment)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If you checked “Regular election,” you must attach copies of appraisals showing the column B values for all property listed on line 3.

(continued on next page)
4 Personal property used in a qualified use and passing to qualified heirs.

<table>
<thead>
<tr>
<th>A</th>
<th>Adjusted value (with section 2032A (b)(3)(B) adjustment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule and item number from Form 706</td>
<td>B</td>
</tr>
</tbody>
</table>

| A (continued) | Adjusted value (with section 2032A (b)(3)(B) adjustment) |
| Schedule and item number from Form 706 |

<table>
<thead>
<tr>
<th>A (continued)</th>
</tr>
</thead>
</table>

Subtotal . . . . . . .

Total adjusted value . . .

5 Enter the value of the total gross estate as adjusted under section 2032A(b)(3)(A).

6 Attach a description of the method used to determine the special value based on qualified use.

7 Did the decedent and/or a member of his or her family own all property listed on line 2 for at least 5 of the 8 years immediately preceding the date of the decedent’s death? □ Yes □ No

8 Were there any periods during the 8-year period preceding the date of the decedent’s death during which the decedent or a member of his or her family:

a Did not own the property listed on line 2?

b Did not use the property listed on line 2 in a qualified use?

c Did not materially participate in the operation of the farm or other business within the meaning of section 2032A(e)(6)?

If you answered “Yes” to any of the above, attach a statement listing the periods. If applicable, describe whether the exceptions of sections 2032A(b)(4) or (5) are met.

9 Attach affidavits describing the activities constituting material participation and the identity and relationship to the decedent of the material participants.

10 Persons holding interests. Enter the requested information for each party who received any interest in the specially valued property. (Each of the qualified heirs receiving an interest in the property must sign the agreement, to be found on Part 3 of this Schedule A-1, and the agreement must be filed with this return.)

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td></td>
</tr>
<tr>
<td>H</td>
<td></td>
</tr>
</tbody>
</table>

Identifying number

Relationship to decedent

Fair market value

Special-use value

11 Woodlands election. Check here ▷ □ if you wish to make a Woodlands election as described in section 2032A(e)(13). Enter the schedule and item numbers from Form 706 of the property for which you are making this election ▷ . Attach a statement explaining why you are entitled to make this election. The IRS may issue regulations that require more information to substantiate this election. You will be notified by the IRS if you must supply further information.
Part 3. Agreement to Special Valuation Under Section 2032A

<table>
<thead>
<tr>
<th>Estate of:</th>
<th>Decedent's social security number</th>
</tr>
</thead>
<tbody>
<tr>
<td>There cannot be a valid election unless:</td>
<td></td>
</tr>
<tr>
<td>• The agreement is executed by each one of the qualified heirs, and</td>
<td></td>
</tr>
<tr>
<td>• The agreement is included with the estate tax return when the estate tax return is filed.</td>
<td></td>
</tr>
<tr>
<td>We (list all qualified heirs)</td>
<td></td>
</tr>
<tr>
<td>being all the qualified heirs and (list all other persons having an interest in the property required to sign this agreement)</td>
<td></td>
</tr>
<tr>
<td>being all other parties having interests in the property which is qualified real property and which is valued under section 2032A of the Internal Revenue Code, do hereby approve of the election made by ____________________________, Executor/Administrator of the estate of ____________________________, pursuant to section 2032A to value said property on the basis of the qualified use to which the property is devoted and do hereby enter into this agreement pursuant to section 2032A(d).</td>
<td></td>
</tr>
<tr>
<td>The undersigned agree and consent to the application of subsection (c) of section 2032A with respect to all the property described on Form 706, Schedule A-1, Part 2, line 2, attached to this agreement. More specifically, the undersigned heirs expressly agree and consent to personal liability under subsection (c) of 2032A for the additional estate and GST taxes imposed by that subsection with respect to their respective interests in the above-described property in the event of certain early dispositions of the property or early cessation of the qualified use of the property. It is understood that if a qualified heir disposes of any interest in qualified real property to any member of his or her family, such member may thereafter be treated as the qualified heir with respect to such interest upon filing a Form 706-A, United States Additional Estate Tax Return, and a new agreement.</td>
<td></td>
</tr>
<tr>
<td>The undersigned interested parties who are not qualified heirs consent to the collection of any additional estate and GST taxes imposed under section 2032A(c) from the specially valued property.</td>
<td></td>
</tr>
<tr>
<td>If there is a disposition of any interest which passes, or has passed to him or her, or if there is a cessation of the qualified use of any specially valued property which passes or passed to him or her, each of the undersigned heirs agrees to file a Form 706-A, and pay any additional estate and GST taxes due within 6 months of the disposition or cessation.</td>
<td></td>
</tr>
<tr>
<td>It is understood by all interested parties that this agreement is a condition precedent to the election of special-use valuation under section 2032A and must be executed by every interested party even though that person may not have received the estate (or GST) tax benefits or be in possession of such property.</td>
<td></td>
</tr>
<tr>
<td>Each of the undersigned understands that by making this election, a lien will be created and recorded pursuant to section 6324B of the Code on the property referred to in this agreement for the adjusted tax differences with respect to the estate as defined in section 2032A(c)(2)(C).</td>
<td></td>
</tr>
<tr>
<td>As the interested parties, the undersigned designate the following individual as their agent for all dealings with the Internal Revenue Service concerning the continued qualification of the specially valued property under section 2032A and on all issues regarding the special lien under section 6324B. The agent is authorized to act for the parties with respect to all dealings with the Internal Revenue Service on matters affecting the qualified real property described earlier. This includes the authorization:</td>
<td></td>
</tr>
<tr>
<td>• To receive confidential information on all matters relating to continued qualification under section 2032A of the specially valued real property and on all matters relating to the special lien arising under section 6324B;</td>
<td></td>
</tr>
<tr>
<td>• To furnish the Internal Revenue Service with any requested information concerning the property;</td>
<td></td>
</tr>
<tr>
<td>• To notify the Internal Revenue Service of any disposition or cessation of qualified use of any part of the property;</td>
<td></td>
</tr>
<tr>
<td>• To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest;</td>
<td></td>
</tr>
<tr>
<td>• To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund; and</td>
<td></td>
</tr>
<tr>
<td>• To execute closing agreements under section 7121.</td>
<td></td>
</tr>
</tbody>
</table>

(continued on next page)
Part 3. Agreement to Special Valuation Under Section 2032A (continued)

Estate of: | Decedent’s social security number
---|---

• Other acts (specify) ▶

By signing this agreement, the agent agrees to provide the Internal Revenue Service with any requested information concerning this property and to notify the Internal Revenue Service of any disposition or cessation of the qualified use of any part of this property.

<table>
<thead>
<tr>
<th>Name of Agent</th>
<th>Signature</th>
<th>Address</th>
</tr>
</thead>
</table>

The property to which this agreement relates is listed in Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and in the Notice of Election, along with its fair market value according to section 2031 of the Code and its special-use value according to section 2032A. The name, address, social security number, and interest (including the value) of each of the undersigned in this property are as set forth in the attached Notice of Election.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands at ____________________________ , this __________ day of __________ .

SIGNATURES OF EACH OF THE QUALIFIED HEIRS:

Signature of qualified heir | Signature of qualified heir
---|---
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir
Signature of qualified heir | Signature of qualified heir

Signatures of other interested parties

Signatures of other interested parties
## SCHEDULE B—Stocks and Bonds

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last four columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description, including face amount of bonds or number of shares and par value for identification. Give CUSIP number. If trust, partnership, or closely held entity, give EIN.</th>
<th>Unit value</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CUSIP number or EIN, where applicable</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule.

**TOTAL:** (Also enter on Part 5—Recapitulation, page 3, at item 2.)
**SCHEDULE C—Mortgages, Notes, and Cash**

*(For jointly owned property that must be disclosed on Schedule E, see instructions.)*

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule . . .

**TOTAL.** (Also enter on Part 5—Recapitulation, page 3, at item 3.) . . . . . . . . . . .

*(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)*
SCHEDULE D—Insurance on the Decedent’s Life

You must list all policies on the life of the decedent and attach a Form 712 for each policy.

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule.

**TOTAL.** (Also enter on Part 5—Recapitulation, page 3, at item 4.)

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
SCHEDULE E—Jointly Owned Property

(If you elect section 2032A valuation, you must complete Schedule E and Schedule A-1.)

PART 1. Qualified Joint Interests—Interests Held by the Decedent and His or Her Spouse as the Only Joint Tenants (Section 2040(b)(2))

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN.</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CUSIP number or EIN, where applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule

1a Totals

1b Amounts included in gross estate (one-half of line 1a)

PART 2. All Other Joint Interests

2a State the name and address of each surviving co-tenant. If there are more than three surviving co-tenants, list the additional co-tenants on an attached statement.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address (number and street, city, state, and ZIP code)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A.

B.

C.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Enter letter for co-tenant</th>
<th>Description (including alternate valuation date if any). For securities, give CUSIP number, if trust, partnership, or closely held entity, give EIN</th>
<th>Percentage includible</th>
<th>Includible alternate value</th>
<th>Includible value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>CUSIP number or EIN, where applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule

2b Total other joint interests

3 Total includible joint interests (add lines 1b and 2b). Also enter on Part 5—Recapitulation, page 3, at item 5

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
**Estate of:**

**Decedent’s social security number**

---

**SCHEDULE F—Other Miscellaneous Property Not Reportable Under Any Other Schedule**

*(For jointly owned property that must be disclosed on Schedule E, see instructions.)*

*(If you elect section 2032A valuation, you must complete Schedule F and Schedule A-1.)*

---

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

---

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number; if trust, partnership, or closely held entity, give EIN</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Did the decedent own any works of art, items, or any collections whose artistic or collectible value at date of death exceeded $3,000?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

If “Yes,” submit full details on this schedule and attach appraisals.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number; if trust, partnership, or closely held entity, give EIN</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Has the decedent’s estate, spouse, or any other person received (or will receive) any bonus or award as a result of the decedent’s employment or death?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

If “Yes,” submit full details on this schedule.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number; if trust, partnership, or closely held entity, give EIN</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Did the decedent at the time of death have, or have access to, a safe deposit box?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

If “Yes,” state location, and if held jointly by decedent and another, state name and relationship of joint depositor.

---

If any of the contents of the safe deposit box are omitted from the schedules in this return, explain fully why omitted.

---

Total from continuation schedules (or additional statements) attached to this schedule . .

TOTAL. *(Also enter on Part 5—Recapitulation, page 3, at item 6)* . . . . . . . .

*(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)*
**SCHEDULE G—Transfers During Decedent’s Life**

(If you elect section 2032A valuation, you must complete Schedule G and Schedule A-1.)

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Gift tax paid or payable by the decedent or the estate for all gifts made by the decedent or his or her spouse within 3 years before the decedent’s death (section 2035(b))</td>
<td>X X X X X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.</td>
<td>Transfers includible under sections 2035(a), 2036, 2037, or 2038:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule...

**TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 7.)**...

**SCHEDULE H—Powers of Appointment**

(Include “5 and 5 lapsing” powers (section 2041(b)(2)) held by the decedent.)

(If you elect section 2032A valuation, you must complete Schedule H and Schedule A-1.)

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule...

**TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 8.)**...

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
SCHEDULE I—Annuities

**Note:** Generally, no exclusion is allowed for the estates of decedents dying after December 31, 1984 (see instructions).

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

A Are you excluding from the decedent’s gross estate the value of a lump-sum distribution described in section 2039(f)(2) (as in effect before its repeal by the Deficit Reduction Act of 1984)?

If “Yes,” you must attach the information required by the instructions.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. Show the entire value of the annuity before any exclusions</th>
<th>Alternate valuation date</th>
<th>Includible alternate value</th>
<th>Includible value at date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule. . . .

**TOTAL.** (Also enter on Part 5—Recapitulation, page 3, at item 9.) . . . . . . . . . . . . . .

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
**Estate of:**

**SCHEDULE J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims**

Use Schedule PC to make a protective claim for refund due to an expense not currently deductible. For such a claim, report the expense on Schedule J but without a value in the last column.

**Note:** Do not list expenses of administering property not subject to claims on this schedule. To report those expenses, see instructions.

If executors’ commissions, attorney fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for federal income tax purposes. They are allowable as an income tax deduction on Form 1041, U.S. Income Tax Return for Estates and Trusts, if a waiver is filed to forgo the deduction on Form 706 (see Instructions for Form 1041).

Are you aware of any actual or potential reimbursement to the estate for any expense claimed as a deduction on this schedule? Yes □ No □

If “Yes,” attach a statement describing the expense(s) subject to potential reimbursement. (see instructions)

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Expense amount</th>
<th>Total amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Funeral expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total funeral expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **B. Administration expenses:** | | |
| 1 Executors’ commissions—amount estimated/agreed upon/paid. (Strike out the words that do not apply.) | | |
| 2 Attorney fees—amount estimated/agreed upon/paid. (Strike out the words that do not apply.) | | |
| 3 Accountant fees—amount estimated/agreed upon/paid. (Strike out the words that do not apply.) | | |
| 4 Miscellaneous expenses: | | |
| | Expense amount | |
| Total miscellaneous expenses from continuation schedules (or additional statements) attached to this schedule | | |
| Total miscellaneous expenses | | |
| TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 14.) | | |

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
Estate of: 

SCHEDULE K—Debts of the Decedent, and Mortgages and Liens

Use Schedule PC to make a protective claim for refund due to a claim not currently deductible.

For such a claim, report the expense on Schedule K but without a value in the last column.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Debts of the Decedent—Creditor and nature of debt, and allowable death taxes</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule . . . . . . .

TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 15.) . . . . . . . . . . . . . .

<table>
<thead>
<tr>
<th>Item number</th>
<th>Mortgages and Liens—Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule . . . . . . .

TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 16.) . . . . . . . . . . . . . .

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
SCHEDULE L—Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims

Use Schedule PC to make a protective claim for refund due to an expense not currently deductible.
For such expenses, report the expense on Schedule L but without a value in the last column.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Net losses during administration</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule.

TOTAL: (Also enter on Part 5—Recapitulation, page 3, at item 19.)

<table>
<thead>
<tr>
<th>Item number</th>
<th>Expenses incurred in administering property not subject to claims. (Indicate whether estimated, agreed upon, or paid.)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule.

TOTAL: (Also enter on Part 5—Recapitulation, page 3, at item 20.)

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
**SCHEDULE M—Bequests, etc., to Surviving Spouse**

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entry in the last column.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2a</td>
<td>Did any property pass to the surviving spouse as a result of a qualified disclaimer?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If “Yes,” attach a copy of the written disclaimer required by section 2518(b).</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2b</td>
<td>In what country was the surviving spouse born?</td>
<td></td>
</tr>
<tr>
<td>2c</td>
<td>What is the surviving spouse’s date of birth?</td>
<td></td>
</tr>
<tr>
<td>2d</td>
<td>Is the surviving spouse a U.S. citizen?</td>
<td></td>
</tr>
<tr>
<td>2e</td>
<td>If the surviving spouse is a U.S. citizen, when did the surviving spouse acquire citizenship?</td>
<td></td>
</tr>
<tr>
<td>2f</td>
<td>If the surviving spouse is not a U.S. citizen, of what country is the surviving spouse a citizen?</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td><strong>Election Out of QTIP Treatment of Annuities.</strong> Do you elect under section 2056(b)(7)(C)(ii) not to treat as qualified terminable interest property any joint and survivor annuities that are included in the gross estate and would otherwise be treated as qualified terminable interest property under section 2056(b)(7)(C)? (see instructions)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of property interests passing to surviving spouse.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN</td>
</tr>
<tr>
<td></td>
<td>Amount</td>
</tr>
</tbody>
</table>

**QTIP property:**

**All other property:**

<table>
<thead>
<tr>
<th>Item</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td><strong>Total</strong> amount of property interests listed on Schedule M</td>
<td></td>
</tr>
<tr>
<td>5a</td>
<td>Federal estate taxes payable out of property interests listed on Schedule M</td>
<td></td>
</tr>
<tr>
<td>5b</td>
<td>Other death taxes payable out of property interests listed on Schedule M</td>
<td></td>
</tr>
<tr>
<td>5c</td>
<td>Federal and state GST taxes payable out of property interests listed on Schedule M</td>
<td></td>
</tr>
<tr>
<td>5d</td>
<td>Add items 5a, 5b, and 5c</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Net amount of property interests listed on Schedule M (subtract 5d from 4). Also enter on Part 5—Recapitulation, page 3, at item 21</td>
<td></td>
</tr>
</tbody>
</table>

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
**SCHEDULE O—Charitable, Public, and Similar Gifts and Bequests**

**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entry in the last column.

1a  If the transfer was made by will, has any action been instituted to contest or have interpreted any of its provisions affecting the charitable deductions claimed in this schedule?  ..................................................

   If “Yes,” full details must be submitted with this schedule.

b  According to the information and belief of the person or persons filing this return, is any such action planned?  ..................................................

   If “Yes,” full details must be submitted with this schedule.

2  Did any property pass to charity as the result of a qualified disclaimer?  ..................................................

   If “Yes,” attach a copy of the written disclaimer required by section 2518(b).

<table>
<thead>
<tr>
<th>Item number</th>
<th>Name and address of beneficiary</th>
<th>Character of institution</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total from continuation schedules (or additional statements) attached to this schedule ..........................................

3  Total ....................................................................................................................................................... 3

4a  Federal estate tax payable out of property interests listed above ......................................................... 4a

4b  Other death taxes payable out of property interests listed above ............................................................... 4b

4c  Federal and state GST taxes payable out of property interests listed above .................................................. 4c

4d  Add items 4a, 4b, and 4c ................................................................................................................................ 4d

5  Net value of property interests listed above (subtract 4d from 3). Also enter on Part 5—Recapitulation, page 3, at item 22 ........................................................................................................ 5

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)
SCHEDULE P—Credit for Foreign Death Taxes

List all foreign countries to which death taxes have been paid and for which a credit is claimed on this return.

If a credit is claimed for death taxes paid to more than one foreign country, compute the credit for taxes paid to one country on this sheet and attach a separate copy of Schedule P for each of the other countries.

The credit computed on this sheet is for the ____________________________ imposed in ____________________________

(Name of death tax or taxes)

(Name of country)

Credit is computed under the ____________________________

(Inset title of treaty or statute)

Citizenship (nationality) of decedent at time of death

(All amounts and values must be entered in United States money.)

1 Total of estate, inheritance, legacy, and succession taxes imposed in the country named above attributable to property situated in that country, subjected to these taxes, and included in the gross estate (as defined by statute).

2 Value of the gross estate (adjusted, if necessary, according to the instructions).

3 Value of property situated in that country, subjected to death taxes imposed in that country, and included in the gross estate (adjusted, if necessary, according to the instructions).

4 Tax imposed by section 2001 reduced by the total credits claimed under sections 2010 and 2012 (see instructions).

5 Amount of federal estate tax attributable to property specified at item 3. (Divide item 3 by item 2 and multiply the result by item 4.)

6 Credit for death taxes imposed in the country named above (the smaller of item 1 or item 5). Also enter on line 13 of Part 2—Tax Computation.

SCHEDULE Q—Credit for Tax on Prior Transfers

Part 1. Transferor Information

<table>
<thead>
<tr>
<th>Name of transferor</th>
<th>Social security number</th>
<th>IRS office where estate tax return was filed</th>
<th>Date of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Check here □ if section 2013(f) (special valuation of farm, etc., real property) adjustments to the computation of the credit were made (see instructions).

Part 2. Computation of Credit (see instructions)

<table>
<thead>
<tr>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Transferee’s tax as apportioned (from worksheet, (line 7 ÷ line 8) x line 35 for each column)</td>
</tr>
<tr>
<td>2 Transferor’s tax (from each column of worksheet, line 20)</td>
</tr>
<tr>
<td>3 Maximum amount before percentage requirement (for each column, enter amount from line 1 or 2, whichever is smaller)</td>
</tr>
<tr>
<td>4 Percentage allowed (each column) (see instructions)</td>
</tr>
<tr>
<td>5 Credit allowable (line 3 x line 4 for each column)</td>
</tr>
<tr>
<td>6 TOTAL credit allowable (add columns A, B, and C of line 5). Enter here and on line 14 of Part 2—Tax Computation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Transferer</th>
<th>Total A, B, &amp; C</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedules P and Q—Page 22
SCHEDULE R—Generation-Skipping Transfer Tax

Note: To avoid application of the deemed allocation rules, Form 706 and Schedule R should be filed to allocate the GST exemption to trusts that may later have taxable terminations or distributions under section 2612 even if the form is not required to be filed to report estate or GST tax.

The GST tax is imposed on taxable transfers of interests in property located outside the United States as well as property located inside the United States. (see instructions)

Part 1. GST Exemption Reconciliation (Section 2631) and Special QTIP Election (Section 2652(a)(3))

You no longer need to check a box to make a section 2652(a)(3) (special QTIP) election. If you list qualifying property in Part 1, line 9 below, you will be considered to have made this election. See instructions for details.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maximum allowable GST exemption</td>
</tr>
<tr>
<td>2</td>
<td>Total GST exemption allocated by the decedent against decedent’s lifetime transfers</td>
</tr>
<tr>
<td>3</td>
<td>Total GST exemption allocated by the executor, using Form 709, against decedent’s lifetime transfers</td>
</tr>
<tr>
<td>4</td>
<td>GST exemption allocated on line 6 of Schedule R, Part 2</td>
</tr>
<tr>
<td>5</td>
<td>GST exemption allocated on line 6 of Schedule R, Part 3</td>
</tr>
<tr>
<td>6</td>
<td>Total GST exemption allocated on line 4 of Schedule(s) R-1</td>
</tr>
<tr>
<td>7</td>
<td>Total GST exemption allocated to <em>inter vivos</em> transfers and direct skips (add lines 2–6)</td>
</tr>
<tr>
<td>8</td>
<td>GST exemption available to allocate to trusts and section 2032A interests (subtract line 7 from line 1)</td>
</tr>
<tr>
<td>9</td>
<td>Allocation of GST exemption to trusts (as defined for GST tax purposes):</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of trust</td>
<td>Trust’s EIN (if any)</td>
<td>GST exemption allocated on lines 2–6, above (see instructions)</td>
<td>Additional GST exemption allocated (see instructions)</td>
<td>Trust’s inclusion ratio (optional—see instructions)</td>
</tr>
</tbody>
</table>

9D Total. May not exceed line 8, above

10 GST exemption available to allocate to section 2032A interests received by individual beneficiaries (subtract line 9D from line 8). You must attach special-use allocation statement (see instructions).
Part 2. Direct Skips Where the Property Interests Transferred Bear the GST Tax on the Direct Skips

<table>
<thead>
<tr>
<th>Name of skip person</th>
<th>Description of property interest transferred</th>
<th>Estate tax value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Total estate tax values of all property interests listed above
2. Estate taxes, state death taxes, and other charges borne by the property interests listed above
3. GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 2 (see instructions)
4. Total fixed taxes and other charges (add lines 2 and 3)
5. Total tentative maximum direct skips (subtract line 4 from line 1)
6. GST exemption allocated
7. Subtract line 6 from line 5
8. GST tax due (divide line 7 by 3.5)
9. Enter the amount from line 8 of Schedule R, Part 3
10. Total GST taxes payable by the estate (add lines 8 and 9). Enter here and on line 17 of Part 2—Tax Computation

---

Schedule R—Page 24
### Part 3. Direct Skips Where the Property Interests Transferred Do Not Bear the GST Tax on the Direct Skips

<table>
<thead>
<tr>
<th>Name of skip person</th>
<th>Description of property interest transferred</th>
<th>Estate tax value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Total estate tax values of all property interests listed above
2. Estate taxes, state death taxes, and other charges borne by the property interests listed above
3. GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 3 (see instructions)
4. Total fixed taxes and other charges (add lines 2 and 3)
5. Total tentative maximum direct skips (subtract line 4 from line 1)
6. GST exemption allocated
7. Subtract line 6 from line 5
8. GST tax due (multiply line 7 by .40). Enter here and on Schedule R, Part 2, line 9

---

Schedule R—Page 25
Executor: File one copy with Form 706 and send two copies to the fiduciary. Do not pay the tax shown. See instructions for details.

Fiduciary: See instructions for details. Pay the tax shown on line 6.

Name of trust

Name and title of fiduciary

Name of decedent

Trust’s EIN

Address of fiduciary (number and street)

Decedent’s SSN

Service Center where Form 706 was filed

City, state, and ZIP or postal code

Name of executor

Address of executor (number and street)

City, state, and ZIP or postal code

Date of decedent’s death

Filing due date of Schedule R, Form 706 (with extensions)

Part 1. Computation of the GST Tax on the Direct Skip

Description of property interests subject to the direct skip

Estate tax value

1 Total estate tax value of all property interests listed above

2 Estate taxes, state death taxes, and other charges borne by the property interests listed above

3 Tentative maximum direct skip from trust (subtract line 2 from line 1)

4 GST exemption allocated

5 Subtract line 4 from line 3

6 GST tax due from fiduciary (divide line 5 by 3.5). (See instructions if property will not bear the GST tax.)

Under penalties of perjury, I declare that I have examined this document, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature(s) of executor(s)

Date

Signature of fiduciary or officer representing fiduciary

Date
Instructions for the Trustee

**Introduction**
Schedule R-1 (Form 706) serves as a payment voucher for the Generation-Skipping Transfer (GST) tax imposed on a direct skip from a trust, which you, the trustee of the trust, must pay. The executor completes the Schedule R-1 (Form 706) and gives you two copies. File one copy and keep one for your records.

---

**How to pay**
You can pay by check or money order or by electronic funds transfer.

To pay by check or money order:
- Make it payable to “United States Treasury.”
- The amount of the check or money order should be the amount on line 6 of Schedule R-1.
- Write “GST Tax” and the trust’s EIN on the check or money order.

To pay by electronic funds transfer:
- Funds must be submitted through the Electronic Federal Tax Payment System (EFTPS).
- Establish an EFTPS account by visiting www.eftps.gov or calling 1-800-555-4477.
- To be considered timely, payments made through EFTPS must be completed no later than 8 p.m. Eastern time the day before the due date.

---

**Signature**
You must sign the Schedule R-1 in the space provided.

---

**What to mail**
Mail your check or money order, if applicable, and the copy of Schedule R-1 that you signed.

---

**Where to mail**
Mail to the Department of the Treasury, Internal Revenue Service Center, Cincinnati, OH 45999.

---

**When to pay**
The GST tax is due and payable 9 months after the decedent’s date of death (shown on the Schedule R-1). You will owe interest on any GST tax not paid by that date.

---

**Automatic extension**
You have an automatic extension of time to file Schedule R-1 and pay the GST tax. The automatic extension allows you to file and pay by 2 months after the due date (with extensions) for filing the decedent’s Schedule R (shown on the Schedule R-1).

If you pay the GST tax under the automatic extension, you will be charged interest (but no penalties).

---

**Additional information**
For more information, see section 2603(a)(2) and the Instructions for Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.
SCHEDULE U—Qualified Conservation Easement Exclusion

Part 1. Election

Note: The executor is deemed to have made the election under section 2031(c)(6) if he or she files Schedule U and excludes any qualifying conservation easements from the gross estate.

Part 2. General Qualifications

1. Describe the land subject to the qualified conservation easement (see instructions)

2. Did the decedent or a member of the decedent’s family own the land described above during the 3-year period ending on the date of the decedent’s death? □ Yes □ No

3. Describe the conservation easement with regard to which the exclusion is being claimed (see instructions).

Part 3. Computation of Exclusion

4. Estate tax value of the land subject to the qualified conservation easement (see instructions) .

5. Date of death value of any easements granted prior to decedent’s death and included on line 10 below (see instructions).

6. Add lines 4 and 5.

7. Value of retained development rights on the land (see instructions).

8. Subtract line 7 from line 6.

9. Multiply line 8 by 30% (.30).

10. Value of qualified conservation easement for which the exclusion is being claimed (see instructions).

Note: If line 10 is less than line 9, continue with line 11. If line 10 is equal to or more than line 9, skip lines 11 through 13, enter “.40” on line 14, and complete the schedule.

11. Divide line 10 by line 8. Figure to 3 decimal places (for example, “.123”).

Note: If line 11 is equal to or less than .100, stop here; the estate does not qualify for the conservation easement exclusion.

12. Subtract line 11 from 300. Enter the answer in hundredths by rounding any thousandths up to the next higher hundredth (that is, .030 = .03, but .031 = .04).


15. Deduction under section 2055(f) for the conservation easement (see instructions).

16. Amount of indebtedness on the land (see instructions).

17. Total reductions in value (add lines 7, 15, and 16).

18. Net value of land (subtract line 17 from line 4).

19. Multiply line 18 by line 14.

20. Enter the smaller of line 19 or the exclusion limitation (see instructions). Also enter this amount on item 12, Part 5—Recapitulation, page 3.
Protective Claim for Refund

To be used for decedents dying after December 31, 2011. File 2 copies of this schedule with Form 706 for each pending claim or expense under section 2053.

- Timely filing a protective claim for refund preserves the estate’s right to claim a refund based on the amount of an unresolved claim or expense that may not become deductible under section 2053 until after the limitation period ends.
- Schedule PC can be used to file a protective claim for refund and, once the claim or expense becomes deductible, Schedule PC can be used to notify the IRS that a refund is being claimed.
- Schedule PC can be used by the estate of a decedent dying after 2011.
- Schedule PC must be filed with Form 706 and cannot be filed separately. (To file a protective claim for refund or notify the IRS that a refund is being claimed in a form separate from the Form 706, instead use Form 843, Claim for Refund and Request for Abatement.)
- Each separate claim or expense requires a separate Schedule PC (or Form 843, if not filed with Form 706).
- Schedule PC must be filed in duplicate (two copies) for each separate claim or expense.

Part 1. General Information

1. Name of decedent
2. Decedent’s social security number

3. Name of fiduciary
4. Date of death

5a. Address (number, street, and room or suite no.)
5b. Room or suite no.

5c. City or town, state, and ZIP or postal code
6. Daytime telephone number

7. Number of Claims. Enter number of Schedules PC being filed with Form 706. __________

If the number is greater than one OR if another Schedule PC or Form 843 was previously filed by or on behalf of the estate, complete Part 3 of this Schedule PC.

8. Fiduciary □ Check here if this Schedule PC is being filed with the original Form 706 or is being filed by the same fiduciary who filed the original Form 706 for decedent’s estate. If a different fiduciary is filing this Schedule PC, see instructions for establishing the legal authority to pursue the claim for refund on behalf of the estate.

Part 2. Claim Information

Check the box that applies to this claim for refund.

a. □ Protective claim for refund made for unresolved claim or expense.
   Amount in contest: ____________________________

b. □ Partial refund claimed: partial resolution and/or satisfaction of claim or expense for which a protective claim for refund has been filed previously.
   Date protective claim for refund filed for this claim or expense: ____________________________
   Amount of claim or expense partially resolved and/or satisfied and presently claimed as a deduction under section 2053 (do not include amounts previously deducted): ____________________________

c. □ Full and final refund claimed for this claim or expense: resolution and/or satisfaction of claim or expense for which a protective claim for refund has been filed previously.
   Date protective claim for refund filed for this claim or expense: ____________________________
   Amount of claim or expense finally resolved and/or satisfied and presently claimed as a deduction under section 2053 (do not include amounts previously deducted): ____________________________
### Part 3. Other Schedules PC and Forms 843 Filed by Estate

If a Schedule PC or Form 843 was previously filed by the estate, complete Part 3 to identify each claim for refund reported.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of death</td>
<td>Internal Revenue office where filed</td>
<td>Date filed</td>
<td>Indicate whether</td>
<td>Amount in Contest</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>(1) Protective Claim for Refund; (2) Partial Claim for Refund; or (3) Final and Final Claim for Refund</td>
<td></td>
</tr>
</tbody>
</table>

To inquire about the receipt and/or processing of the protective claim for refund, please call (866) 699-4083.
## CONTINUATION SCHEDULE

### Continuation of Schedule

(Enter letter of schedule you are continuing.)

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN.</th>
<th>Unit value (Sch. B, E, or G only)</th>
<th>Alternate valuation date</th>
<th>Alternate value</th>
<th>Value at date of death or amount deductible</th>
</tr>
</thead>
</table>

**TOTAL.** (Carry forward to main schedule.)
Inheritance and Estate Tax Forms

The following forms can be viewed in Adobe Acrobat PDF format. PDF formatted documents contain the same text as the original printed documents. To view PDF formatted documents, you must have Acrobat Reader, which is available free from Adobe. Click the link to download the newest version of Adobe Acrobat Reader now!

Inheritance and Estate Tax Payments can also be made online.

**New Jersey Resident Decedent**

<table>
<thead>
<tr>
<th>Form</th>
<th>Inheritance Tax Forms</th>
<th>PDF Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT-R</td>
<td>Inheritance Tax Resident Return - Includes Instructions and Payment Voucher</td>
<td>186K</td>
</tr>
<tr>
<td>IT-L-8</td>
<td>Self-Executing Waiver Affidavit - For all dates of death prior to January 1, 2018.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(File this waiver with the bank, financial institution or stock transfer agent.)</td>
<td>106K</td>
</tr>
<tr>
<td>IT-L-9</td>
<td>Resident Decedent Affidavit Requesting Real Property Tax Waiver</td>
<td>138K</td>
</tr>
<tr>
<td>IT-L-4</td>
<td>Preliminary Report to Secure Consents to Transfer (Waivers)</td>
<td>153K</td>
</tr>
</tbody>
</table>

**Estate Tax Forms**

<table>
<thead>
<tr>
<th>Form</th>
<th>Inheritance Tax Form</th>
<th>PDF Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT-Estate</td>
<td>Estate Tax Return - For dates of death prior to January 1, 2017 - Includes Instructions and Payment Voucher</td>
<td>91K</td>
</tr>
</tbody>
</table>

http://www.state.nj.us/treasury/taxation/prmtinh.shtml
# Payment Voucher

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
<th>PDF Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT-ESTATE 2017</td>
<td><strong>IT-Estate 2017</strong> - For dates of death on or after January 1, 2017, but before January 1, 2018 - Includes Instructions and Payment Voucher</td>
<td>657K</td>
</tr>
<tr>
<td>2017 Estate Tax Calculator</td>
<td>Use this calculator to compute the New Jersey Estate Tax for estates with dates of death in 2017 ONLY.</td>
<td></td>
</tr>
<tr>
<td>Form 706 (rev. August 2013)</td>
<td><strong>Federal Estate Tax Return</strong> to be completed and filed with 2017 Estate Tax Return.</td>
<td>1.47MB</td>
</tr>
<tr>
<td></td>
<td><strong>Federal Estate Tax Return Instructions</strong></td>
<td>657K</td>
</tr>
<tr>
<td>706</td>
<td><strong>2001 Federal Estate Tax Return</strong></td>
<td>158K</td>
</tr>
<tr>
<td></td>
<td><strong>2001 Federal Estate Tax Return Instructions</strong></td>
<td>193K</td>
</tr>
</tbody>
</table>

## New Jersey Non-Resident Decedent

### Inheritance Tax Forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
<th>PDF Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT-NR</td>
<td><strong>Inheritance Tax Non-Resident Return</strong> - Includes Instructions and Payment Voucher</td>
<td>231K</td>
</tr>
<tr>
<td>IT-L-9-NR</td>
<td><strong>Non-Resident Decedent Affidavit Requesting Real Property Tax Waiver</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Payment and Administrative Forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
<th>PDF Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT-EP</td>
<td><strong>Payment on Account (Estimated Payment) Voucher</strong></td>
<td>46K</td>
</tr>
<tr>
<td>IT-EXT</td>
<td><strong>Application For Extension of Time to File a Tax Return</strong></td>
<td>87K</td>
</tr>
<tr>
<td>IT-PRC</td>
<td><strong>Inheritance and Estate Tax Protective Claim for Refund</strong></td>
<td>16K</td>
</tr>
<tr>
<td>M-5008-R</td>
<td><strong>Appointment of Taxpayer Representative</strong></td>
<td>132K</td>
</tr>
<tr>
<td></td>
<td><strong>Consent Fixing Period of Limitation Upon Assessment of New Jersey Inheritance Taxes</strong></td>
<td>72K</td>
</tr>
<tr>
<td></td>
<td><strong>Consent Fixing Period of Limitation Upon Assessment of New Jersey Estate Taxes</strong></td>
<td>47K</td>
</tr>
</tbody>
</table>

### Insurance and Surrogates Forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
<th>PDF Size</th>
</tr>
</thead>
</table>

---

http://www.state.nj.us/treasury/taxation/pmtinh.shtml
| O-71 | For Reporting Insurance Proceeds (Insurance Companies use only) | 65K |
| O-14 | Resident Decedent - Notification from County Surrogate (Surrogates use only) | 69K |
| O-14-F | Non-Resident Decedent - Notification from County Surrogate (Surrogates use only) | 18K |

**Last Updated:** Thursday, 07/20/17
New Jersey Tax Guide

A Guide to Being an Executor
What if you are an Executor or Administrator of an estate?
You are most likely looking to obtain waivers to release the decedent’s assets, such as NJ bank accounts, NJ stock, and NJ real estate. There are several steps to follow, and a few things you need to know before this can happen.

What are the different types of waivers?
A self-executing waiver (do-it-yourself) and the 0-1 waiver (issued by the Division of Taxation) are the different types of waivers. New Jersey banks are prohibited from closing a decedent’s bank accounts without one of these forms:

- **Form L-8 Self-Executing Waiver Affidavit** can only be used when there is no Inheritance or Estate Taxes due (see below).
  - L-8s are to be filled out by you, as the estate representative. Then they can be sent or brought directly to the bank, transfer agent, or other financial institutions holding the funds.
  - Many banks have these forms on hand, but they can also be obtained on our website.
  - You do not file anything with the Inheritance and Estate Tax Branch if you qualify to use this form.

- **Form 0-1** is a “waiver” that can only be issued by the Division of Taxation.
  - To get this form, you must file a return with the Division.
  - Real Estate transfers always require Form 0-1.
  - Note: 0-1 is not a form that you will be able to find on our website. This form can only be issued by the Division of Taxation.

Are there any Inheritance or Estate Taxes Due?
Your next job as Executor/Administrator is to figure out if any Inheritance or Estate taxes will be due. This will determine what forms or returns you will need to file.

Besides the Federal estate tax, there are two separate State taxes related to a person’s death: the Inheritance Tax and the Estate Tax. You may owe one, but not the other. You will never pay more than the higher of the two taxes:

- **Inheritance Tax** mainly depends on the relationship between the deceased person and the beneficiary. Estate proceeds payable to:
  - Surviving spouses, parents, children, grandchildren, etc. are exempt from Inheritance Tax. These are Class A beneficiaries.
  - Brothers and sisters and children-in-law are subject to tax after built-in exemptions. These are Class C beneficiaries.
  - Nieces, nephews, aunts, uncles, friends, and non-relatives are subject to Inheritance Tax. These are Class D beneficiaries.
  - Charitable institutions are exempt from Inheritance Tax. These are Class E beneficiaries.

If it turns out that Inheritance Tax may be due, the Inheritance Tax Resident Return (Form IT-R) needs to be filed. Any tax must be paid within eight months after the date of death or you will incur a 10% annual interest charge on unpaid tax.

Sometimes, a return needs to be filed even if there might not be any tax due. If there are any Class C, D, or E beneficiaries, you will need to file a full return.
- **Estate Tax** depends on the size of the decedent’s gross estate and the decedent’s date of death. You will have to file an Estate Tax return if the estate value is higher than the exemption level for that year:

<table>
<thead>
<tr>
<th>YEAR OF DEATH</th>
<th>EXEMPTION LEVEL</th>
<th>RETURN REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 or earlier</td>
<td><strong>$675,000</strong> including adjusted taxable gifts</td>
<td>IT-Estate</td>
</tr>
<tr>
<td>2017</td>
<td><strong>$2 million</strong></td>
<td>IT-Estate 2017</td>
</tr>
<tr>
<td>2018 or after</td>
<td>All exempt</td>
<td>No Estate Tax return</td>
</tr>
</tbody>
</table>

*If you determine that all of the beneficiaries and the estate are exempt from tax, you may use the following form to obtain a real estate waiver:*

- **Form L-9:** Resident Decedent Affidavit Requesting Real Property Tax Waiver. This Form needs to be filed with the Inheritance & Estate Tax Branch to receive a Form 0-1 Waiver for real estate.

**Non-Resident Decedents** (someone who died as a legal resident of another state or a foreign country): People who did not live in New Jersey, but owned certain types of property in New Jersey (usually real estate) may need to pay NJ Non-Resident Inheritance Tax. See New Jersey Non-Resident Inheritance Tax [Frequently Asked Questions](#) for more information. There is no Estate Tax on non-resident decedents.

**Other Important information for executors/administrators to know:**
- Banks and financial institutions may release up to 50% of the entire amount of funds on hand before a waiver is received. These funds may only go to the executor or administrator or joint owner of the account(s).
- Banks also must pay (without a waiver) any checks for Inheritance/Estate Taxes written to *New Jersey Inheritance and Estate Tax* from a decedent’s account (if there are sufficient funds in the account, of course.)
- When filing any return for Inheritance Tax, the fair market value of decedent’s assets should be reported as of the date of death, not as of the filing date.

**How long does processing take?**
Once you have filed a return with the Division, please plan for processing to take at least several months. If a return must be audited, it may take several months longer. About 40 to 50% of returns require additional attention in the form of an audit. Returns are processed and audited in the order they are received.

Inheritance and Estate Tax payments are usually posted within two weeks from the time they are received, but the processing of a return and issuing of waivers will take longer.

Full details regarding the above information are available on our website or by calling the Inheritance and Estate Tax Hotline at 609-292-5033 M-F 8:30 a.m.- 4:30 p.m. EST.

*As executor, you may be required to file income tax returns on behalf of the decedent. For more information on New Jersey Gross Income Tax, please call 609-292-6400, or visit the Division’s website.*
Take or send the completed form directly to the bank or other financial institution holding the funds.

This form cannot be used for real estate.

SELF-EXECUTING WAIVER AFFIDAVIT FOR RESIDENT DECEDENT

For release of NJ Bank Accounts, Stock, Brokerage Accounts and Investment Bonds.

STATE OF NEW JERSEY
THE DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
TRANSFER INHERITANCE & ESTATE TAX
PO BOX 249
TRENTON, NJ 08695-0249

(609) 292-5033

www.njtaxation.org
L-8 INSTRUCTIONS

(Note: You cannot use this form to release ANY asset passing to a beneficiary other than the Class A beneficiaries specifically listed in PART I.)

This form can be completed by the executor, administrator, the surviving Class A joint tenant (often a spouse or civil union partner), or Class A Payable On Death (POD) beneficiary of the assets for which release is sought.

PART I – ELIGIBLE BENEFICIARIES: Check the box or boxes corresponding to the type of beneficiary who is receiving the assets that will be listed in Part V. If at least one of the boxes does not apply, the L-8 can’t be used to release these assets. Qualified civil union partners and domestic partners must provide a legal certificate to document their status.

For example, the following people CANNOT use this form: Sisters and brothers of the decedent, nieces and nephews, aunts and uncles, ex-spouses, mutually acknowledged children, step-grandchildren and charities.

PART II – SUCCESSION: Check the box that shows how the assets pass to the beneficiary.

- Check Box 1 if the assets on the form pass directly to the beneficiary by operation of law. This means they were jointly held, POD, or Transfer On Death (TOD) (a copy of the will is not needed).
- Check Box 2 if the will states that these specific assets reported on the L-8 form pass to a particular named beneficiary. (attach a copy of the will)
- Check Box 3 If there was no will (intestate) and all the beneficiaries in the entire estate are one of the Class A beneficiaries checked in Part I, or
- Check Box 3 If there was a will (testate), but there were no specific bequests and all the beneficiaries in the entire estate are one of the Class A beneficiaries checked in Part I (Attach a copy of the will).

If at least one of the boxes does not apply, the L-8 can’t be used to release these assets.

PART III – TRUSTS/DISCLAIMERS: If any of the assets you wish to release pass into or through a trust, where the trust decides how the assets are distributed, you can’t use the L-8. Trusts can be set up by the decedent either in their will, or separately from the will. For the purposes of the L-8, it is not generally considered a “trust” when there is a bequest in the will to a minor (who is a Class “A”) to be held “in trust” until they reach a specific age. In all other cases, a full return must be filed with the Inheritance Tax Branch, even if the assets all appear to be passing to Class A beneficiaries. NOTE: Assets which are owned by or in the name of a trust do not require a waiver or L-8 but must still be reported on any return filed.

PART IV – ESTATE TAX: This section determines whether the estate may be required to pay New Jersey Estate Tax. You must be able to answer “YES” to either a) or b) in order to qualify to use this form. If the decedent died on or after January 1, 2017 his/her entire taxable estate must be under $2 million. If the date of death was before January 1, 2017, the entire taxable estate must be under $675,000. For additional information of what constitutes the “taxable” estate, visit the Division’s website under “Estate Tax - Filing Requirements.”

PART V – PROPERTY: List all the assets in this institution for which you are requesting a release. If this is a bank, list each account in this bank separately. Follow the column headings for each asset. Under “How held/Registered,” you can put “NOD” (Name of Decedent) if the account was in the name of the decedent alone. If it was Paid on Death (POD) to a person, enter “POD to” and the person’s or persons’ names (e.g. POD Jane Doe and John Doe). If it was jointly held, put “NOD and/or” the beneficiary’s name.

PART VI – BENEFICIARIES: List the name of each beneficiary and his/her relationship to the decedent. The relationship must be one of the Class A beneficiaries listed in Part I of the L-8. NOTE: “Executor,” “Estate,” and “Beneficiary” are NOT correct relations to the decedent in this column. You must list something like “Child,” “Spouse,” or “Grandchild.”

SIGNATURE: This form is an AFFIDAVIT and must be signed by the executor, administrator, or beneficiary, and the signature must be notarized.

PART VII – RELEASING INSTITUTION: A representative of the institution releasing the funds must verify that all questions have been answered and that the beneficiaries reported are allowed per Part I, BEFORE signing the form and releasing any assets. If you have any question as to whether you are permitted to release assets, please call the Inheritance Tax general information number at (609) 292-5033 and ask to speak to an Information Section representative.

Take or send the completed form directly to the bank or other financial institution holding the funds.

Taxpayer: Do not mail this form to the Division of Taxation. You will not receive a waiver.
Decedent’s Name ___________________________ Decedent’s S.S. No. ________________ Date of Death (mm/dd/yy) __________/________/________ County of Residence ___________________________ Testate☐ Intestate☐

ELIGIBILITY – THE FOLLOWING QUESTIONS MUST BE ANSWERED

I. ELIGIBLE BENEFICIARIES: Who is receiving the assets listed on the reverse side? (Check all that apply):

☐ 1. Surviving spouse,
☐ 2. Surviving civil union partner where a decedent’s death is on or after February 19, 2007,
☐ 3. Surviving domestic partner where a decedent’s death is on or after July 10, 2004,
☐ 4. Child, stepchild, legally adopted child, or issue of any child or legally adopted child (includes a grandchild and a great grandchild but not a step-grandchild or a step great-grandchild),
☐ 5. Parent and /or grandparent.

Were you able to check at least one of the boxes above?

☐ Yes ☐ No If “NO” this form may not be used and an Inheritance Tax return must be filed. If “Yes” continue to part II.

II. SUCCESSION: How were the assets received? (Check any that apply):

☐ 1. The beneficiary succeeded to the assets by survivorship or contract or,
☐ 2. The property was specifically devised to the beneficiary or,
☐ 3. The property was not specifically devised but ALL beneficiaries under the decedent’s will or intestate heirs-at-law are described in numbers 1 thru 5 in part I above.

Were you able to check at least one of the boxes above?

☐ Yes ☐ No If “NO” this form may not be used.

NOTE: If there are ANY assets passing to ANY beneficiary other than a member of the groups listed above, a complete Transfer Inheritance Tax Return must be filed in the normal manner. It must list all assets in the estate including any which were acquired by means of this form.

III. TRUSTS/DISCLAIMERS: Do any portion of the assets listed on the reverse side pass into a trust or pass to a beneficiary as a result of a disclaimer?

☐ Yes ☐ No If “YES,” this form may not be used.

IV. ESTATE TAX: a) Was the decedent’s date of death before January 1, 2017 and his/her taxable estate plus adjusted taxable gifts $675,000 or less as determined pursuant to the provisions of the Internal Revenue Code in effect on December 31, 2001 (Line 3 plus Line 4 on 2001 Federal Estate Tax Form 706)?

OR

b) Was the decedent’s date of death on or after January 1, 2017 but before January 1, 2018 and his/her taxable estate less than $2 million as determined pursuant to Section 2051 of the Internal Revenue Code (I.R.C. § 2051)?

Check Yes or No based on whether “a” or “b” applies.

☐ Yes ☐ No If “NO,” this form may not be used.

Although this form may be used if the decedent died before January 1, 2017, and his/her taxable estate plus adjusted taxable gifts does not exceed $675,000, a New Jersey Estate Tax Return must be filed if the gross estate plus adjusted taxable gifts exceeds $675,000 as determined pursuant to the provisions of the Internal Revenue Code in effect on December 31, 2001 (Line 1 plus Line 4 on 2001 Federal Estate Tax Form 706).

Likewise, this form may be used if the decedent died on or after January 1, 2017 but before January 1, 2018, if the decedent’s taxable estate is under $2 million pursuant to Section 2051 of the Internal Revenue Code. However, a return must be filed if the gross estate is over $2 million.

TO BE VALID THIS FORM MUST BE FULLY COMPLETED ON BOTH SIDES
V. PROPERTY: requested to be released (Bank accounts, Brokerage accounts, Stock, Investment Bonds)

A separate affidavit is required for each institution releasing assets.

<table>
<thead>
<tr>
<th>Description of Asset (Checking, Savings, CD, IRA, # of Shares, etc.)</th>
<th>How held/Registered (Joint, POD, TOD, Individual, etc.)</th>
<th>Date of Death Value* (Full Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*BANK ACCOUNTS/BROKERAGE ACCOUNTS: Must list the full BALANCE as of the DATE OF DEATH.

STOCK: List the name of the company and number of shares held under “Description of Asset.”

BONDS: Include the name of the issuer, face value under “Description of Asset.”

VI. BENEFICIARIES of Property Listed in V Above

<table>
<thead>
<tr>
<th>Name(s) of Beneficiary</th>
<th>Relation to Decedent (Must be checked in Part I)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the decedent died with a will, and the assets listed above pass to the beneficiaries through the will, a complete copy of the last will and testament, separate, writings and all codicils thereto must be submitted with this form.

I hereby request the release of the property listed in Part V above. I certify that the beneficiaries of said property are listed in Part VI above and that this form is completed in accordance with its filing requirements.

State of New Jersey
County of ___________ ss.

being duly sworn, deposes and says that the foregoing statements are true to the best of his/her information or belief.

Subscribed and sworn before me this _______________ day of _______________ , _______________.

________________________________________
Notary Public

Signature: ____________________________

Deponent: Executor / Administrator / Joint Tenant / Heir-at-Law

Deponent’s Social Security or Federal Identification Number

Street Address

Town/City ______________________________________ State __________________ Zip _______________

THIS FORM MUST BE SIGNED BY THE RELEASING INSTITUTION BELOW BEFORE MAILING TO THE DIVISION OF TAXATION

VII. To Be Completed by Releasing Institution

A bank, trust company, association, other depository, transfer agent, or organization may release the assets herein set forth only if the first, second and fourth boxes (Parts I, II and IV) on the front of this form are checked YES, the third box (Part III) is checked NO and Part VI includes only those relationships permitted in Part I, items 1 through 5. Also, if the decedent died testate and the assets do not pass by contract or survivorship, a complete copy of the will, separate writing, and all codicils must be attached.

The original of this affidavit must be filed by the releasing institution within five business days of execution with the Division of Taxation, Transfer Inheritance and Estate Tax Branch, 50 Barrack Street, PO Box 249, Trenton, NJ 08695-0249. The affiant (person who made affidavit) should be given a copy.

__________________________ ____________________________
Name of Institution Accepting Affidavit Address

By ____________________________

Phone Number

Riders May be Attached – This Form May Be Reproduced

TO BE VALID, THIS FORM MUST BE FULLY COMPLETED ON BOTH SIDES.
ONLY PAGES 3 & 4 NEED TO BE SUBMITTED TO THE DIVISION OF TAXATION.
Transfer Inheritance
And Estate Tax

New Jersey Division of Taxation
PO Box 249
Trenton, New Jersey 08695-0249

(609) 292-5033
INTRODUCTION
NEW JERSEY TRANSFER INHERITANCE TAX - ESTATE TAX

GENERAL

New Jersey has had a Transfer Inheritance Tax since 1892 when a 5% tax was imposed on property transferred from a decedent to a beneficiary. Currently, the law imposes a graduated Transfer Inheritance Tax ranging from 11% to 16% on the transfer of real and personal property with a value of $300.00 or more to certain beneficiaries.

The Transfer Inheritance Tax recognizes five beneficiary classes, as follows:

**Class “A”** - Father, mother, grandparents, spouse/civil union partner (after 2/19/07), domestic partner (after 7/10/04), child or children of the decedent, adopted child or children of the decedent, issue of any child or legally adopted child of the decedent, and step-child of the decedent.

**Class “B”** - Eliminated by statute effective July 1, 1963.

**Class “C”** - Brother or sister of the decedent, including half brother and half sister, wife/civil union partner (after 2/19/07) or widow/surviving civil union partner (after 2/19/07) of a son of the decedent, or husband/civil union partner (after 2/19/07) or widower/surviving civil union partner (after 2/19/07) of a daughter of the decedent.

**Class “D”** - Every other transferee, distributee or beneficiary who is not included in Classes “A”, “C” or “E”.

**Class “E”** - The State of New Jersey or any political subdivision thereof, or any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation; provided, that the exemption does not extend to transfers of property to such educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal, and like exemption on transfers of property for the benefit of such institutions and organizations of this State.

**NOTES:** If any beneficiary is claimed to be the mutually acknowledged child of the decedent, said claim should be set forth in the detailed manner prescribed under N.J.A.C. 18:26-2.6.

For the purposes of the New Jersey Transfer Inheritance Tax an adopted child is accorded the same status as a natural child and, therefore, his relations are treated in the same manner as those of a natural child. (i.e. if the decedent’s adopted son marries/enters into a civil union, his spouse/civil union partner is “the wife/civil union partner of a son of the decedent” and therefore a class “C” beneficiary).

The offspring of a biological parent conceived by the artificial insemination of that parent who is a partner in a civil union is presumed to be the child of the non-biological partner. In the Matter of the Parentage of the Child of Kimberly Robinson, 383 N.J. Super. 165; 890 A.2d 1036 (Ch. Div. 2005) (Non-biological parent of New York registered domestic partnership recognized in New Jersey, presumed to be the biological parent of child conceived by the other partner through artificial insemination where the non-biological partner has “show[n] indicia of commitment to be a spouse and to be a parent to the child.”).

A devise of real property to a husband and wife/civil union partner as “tenants by the entirety” provides each with a vested life estate, the remainder being contingent. See N.J.A.C. 18:26-8.12.

The issue of stepchildren ARE Class “D” (NOT Class “A”) beneficiaries.

The following ARE Class “D” (NOT Class “C”) beneficiaries: stepbrother or stepsister of the decedent, husband/wife/civil union partner/domestic partner or widow/widower/surviving civil union partner/surviving domestic partner of a stepchild or mutually acknowledged child of the decedent.

The fact that a beneficiary may be considered “nonprofit” by the Internal Revenue Service does not necessarily mean that it qualifies for exemption as a Class “E” beneficiary since the criteria are different.

**TAX RATES**

Each class of beneficiary has its own separate tax rate. See the Rate Schedule on Page 4.

**EXEMPTIONS**

1. The transfer of real and personal property in this State held by a husband and wife/civil union couple as “tenants by the entirety” to the surviving spouse/civil union partner is not taxable for New Jersey Inheritance Tax purposes.

2. The transfer of intangible personal property such as stocks, bonds, corporate securities, bank deposits and mortgages owned by a nonresident decedent is not subject to the New Jersey Inheritance Tax.

3. Any sum recovered under the New Jersey Death Act as compensation for wrongful death of a decedent is not subject to the New Jersey Inheritance Tax except as provided below:

   a. Any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of death, such as the expenses of care, nursing, medical attendance, hospital and other charges incident to the injury, including loss of earnings and pain and suffering are to be included in the decedent’s estate.

   b. Where an action is instituted under the New Jersey Death Act and terminates through the settlement by a compromise payment without designating the amount to be paid under each count, the amount which must be included in the inheritance tax return is an amount, to the extent recovered, which is equal to specific expenses related to the injury. These expenses are similar to those mentioned in sections a. above and include funeral expenses, hospitalization and medical expenses, and other expenses incident to the injury. Any amount which is recovered in excess of these expenses is considered to be exempt from the tax.

4. The proceeds of any contract of insurance insuring the life of a resident or nonresident decedent paid or payable, by reason of the death of such decedent, to one or more named beneficiaries other than the estate, executrix or administrator of such decedent are exempt for New Jersey Inheritance Tax purposes.
5. The transfer of property to a beneficiary or beneficiaries of a trust created during the lifetime of a resident or nonresident decedent, to the extent such property results from the proceeds of any contract of insurance, insuring the life of such decedent and paid or payable to a trustee or trustees of such decedent by reason of the death of such decedent, is exempt from the New Jersey Inheritance Tax irrespective of whether such beneficiary or beneficiaries have a present, future, vested, contingent or defeasible interest in such trust.

6. The transfer of life insurance proceeds insuring the life of a resident or nonresident decedent, paid or payable by reason of the death of such decedent to a trustee or trustees of a trust created by such decedent during his lifetime for the benefit of one or more beneficiaries irrespective of whether such beneficiaries have a present, future, vested, contingent or defeasible interest in such trust, is exempt from the New Jersey Inheritance Tax.

7. The transfer, relinquishment, surrender or exercise at any time or times by a resident or nonresident of this State, of any right to nominate or change the beneficiary or beneficiaries of any contract of insurance insuring the life of such resident or nonresident, regardless of when such transfer, relinquishment, surrender or exercise of such right occurred, is exempt from the tax.

8. Any amount recovered (under the Federal Liability for Injuries to Employees Act) for injuries to a decedent by the personal representative for the benefit of the classes of beneficiaries designated in that Statute, whether for the pecuniary loss sustained by such beneficiaries as a result of the wrongful death of the decedent or for the loss and suffering by the decedent while he lived, or both is not subject to the Inheritance Tax.

Any amount recovered by the legal representatives of any decedent by reason of any war risk insurance certificate or policy, either term or converted, or any adjusted service certificate issued by the United States, whether received directly from the United States or through any intervening estate or estates, is exempt from the New Jersey Inheritance Tax.

This exemption does not entitle any person to a refund of any tax heretofore paid on the transfer of property of the nature aforementioned; and does not extend to that part of the estate of any decedent composed of property, when such property was received by the decedent before death.

9. The proceeds of any pension, annuity, retirement allowance, return of contributions or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act, Retired Serviceman’s Family Protection Plan and the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent are exempt.

10. All payments at death under the Teachers Pension and Annuity Fund, the Public Employees’ Retirement System for New Jersey, and the Police and Firemen’s Retirement System of New Jersey, and such other State, county and municipal systems as may have a tax exemption clause as broad as that of the three major State systems aforementioned, whether such payments either before or after retirement are made on death to the employee’s estate or to his specifically designated beneficiary, are exempt from the New Jersey Inheritance Tax.

The benefit payable under the supplementary annuity plan of the State of New Jersey is not considered a benefit of the Public Employee’s Retirement System and is taxable whether paid to a designated beneficiary or to the estate.

The death benefits paid by the Social Security Administration or railroad Retirement Board to the spouse of a decedent are also exempt. For purposes of filing a return these amounts need not be reported nor are they to be deducted from the amount claimed as a deduction for funeral expenses.

In all other cases the death benefit involved should either be reported as an asset of the estate or deducted from the amount claimed for funeral expenses.

11. Other pensions. An exemption is provided for payments from any pension, annuity, retirement allowance or return of contributions, which is a direct result of the decedent’s employment under a qualified plan as defined by section 401(a), (b), and (c) or 2039(c) of the Internal Revenue Code, which is payable to a surviving spouse or domestic partner.

12. No Fault Insurance. The amount payable by reason of medical expenses incurred as a result of personal injury to the decedent should be reflected by reducing the amount claimed for medical expenses as a result of the accident.

The amount payable at the death of an income producer as a result of injuries sustained in an accident, which are paid to the estate of the income producer, is reportable for taxation. In all other instances this amount is exempt.

The amount paid at death to any person under the essential services benefits section is exempt from taxation.

The claim for funeral expense is to be reduced by the amount paid under the funeral expenses benefits section of the law.

SAFE DEPOSIT BOXES

Safe deposit boxes are no longer inventoried by the New Jersey Division of Taxation. On September 30, 1992, the Division issued a blanket release in the form of a letter from the Director, Division of Taxation, to all banking institutions, safe deposit companies, trust companies, and other institutions which serve as custodians of safe deposit boxes. The contents of the boxes may be released without inspection by the Division.

WHERE TO FILE

All returns except the L-8 are to be filed with the New Jersey Division of Taxation, Individual Tax Audit Branch, Transfer Inheritance and Estate Tax, 50 Barrack Street, PO Box 249, Trenton, New Jersey 08695-0249.

WHEN TAX RETURNS ARE DUE

A Transfer Inheritance Tax Return must be filed and the tax paid on the transfer of real and personal property within eight months after the death of either:

A RESIDENT decedent for the transfer of real or tangible personal property located in New Jersey or intangible personal property wherever situated, or

A NONRESIDENT decedent for the transfer of real or tangible personal property located in New Jersey. No tax is imposed on nonresident decedents for real property located outside of New Jersey and intangible personal property wherever situated.
The return must be filed whenever any tax is due or a waiver is needed. The tax is a lien on all property for fifteen years unless paid sooner or secured by an acceptable bond. Interest accrues on unpaid taxes at the rate of 10% per annum.

For EXEMPTIONS see the heading “EXCEPTIONS” below.

AMENDMENTS TO AN ORIGINAL RETURN

In the case of both resident and non-resident estates, any assets and/or liabilities not disclosed in the original return and all supplemental data requested by the Division is to be filed in affidavit form and attested to by the duly authorized statutory representative of the estate, next of kin, or beneficiary certifying in detail a description of the asset, real or personal and/or the liability and the reasons for failure to disclose same in the original return and filed directly with the NJ Transfer Inheritance.

ESTATE TAX

In addition to the inheritance tax, the State of New Jersey imposes an estate tax on the estate of certain resident decedents. Even estates that are partially or fully exempt from the inheritance tax may be subject to the New Jersey Estate Tax.

A New Jersey Estate Tax Return must be filed when the gross estate plus adjusted taxable gifts as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001, exceeds $675,000.

The law requires that a copy of the Federal Estate Tax return be filed with the Division within thirty days after the filing of the original with the Federal Government. Also, the Division must be supplied with copies of all communications from the Federal Government making final changes or confirming, increasing or decreasing the tax shown to be due. Instructions are contained in form IT-Estate.

WAIVERS

Bank accounts, certificates of deposit etc., in the name of, or belonging to a RESIDENT decedent, in financial institutions located in this state, cannot be transferred without the written consent of the Division of Taxation. This consent is referred to as a WAIVER.

Stocks and bonds etc., in the name of, or belonging to a RESIDENT decedent, of corporations organized under the laws of this state are subject to the same waiver requirements.

Real property, located in New Jersey, in the name of, or belonging to a RESIDENT or a NON-RESIDENT decedent is subject to the same waiver requirements, however, real property held by a husband and wife/civil union couple as “tenants by the entirety” in the estate of the spouse/civil union partner dying first need not be reported, regardless of the date of death and waivers are not required.

A membership certificate or stock in a cooperative housing corporation held in the name of the decedent and a surviving spouse/civil union partner or domestic partner as joint tenants with the right of survivorship is exempt, if it entitled them to use it as their principal residence. However a waiver is required for this transfer in the estate of a RESIDENT decedent.

Waivers are not required for automobiles, household goods, personal effects, accrued wages or mortgages, but these items must be reported in the return filed.

EXCEPTIONS

Notwithstanding the waiver provisions above any financial institution may release up to 50% of any bank account, certificate of deposit etc. to the survivor, in the case of a joint account, the executor, administrator or other legal representative of a RESIDENT decedent’s estate. This procedure is referred to as a BLANKET WAIVER. This procedure is not available for the transfer of stocks and bonds. For a detailed explanation see N.J.A.C. 18:26-11.16.

A SELF EXECUTING WAIVER, FORM L-8, has been created for Class “A” beneficiaries in the estates of RESIDENT decedents.

Use of this form MAY eliminate the need to file a formal Inheritance Tax return. Your attention is directed to the instructions contained in the body of the L-8, a copy of which is included in this booklet. (Not included in IT-R Schedule Booklet.)

This form is to be filed with the financial institution which will then be authorized to release the subject asset without the necessity of receiving a waiver from the Division. DO NOT file this form with the Division.

A REQUEST FOR A REAL PROPERTY TAX WAIVER, FORM L-9, has been created for Class “A” beneficiaries in the estates of RESIDENT decedents. This form may be used in two instances where property passes to class “A” beneficiaries.

Use of this form MAY eliminate the need to file a formal Inheritance Tax Return. Your attention is directed to the instructions contained in the body of the L-9.

This form is to be filed directly with the Branch. If the form is in order the necessary waiver waivers will be promptly issued.

NEITHER THE L-8 NOR THE L-9 may be used where it is claimed that a relationship of mutually acknowledged child exists.

IMPORTANT REMINDERS

• If the decedent died TESTATE you must supply a legible copy of the LAST WILL AND TESTAMENT, all CODICILS thereto and any SEPARATE WRITINGS.

• A copy of the decedent’s last full year’s FEDERAL INCOME TAX RETURN is required.

• All returns, forms and correspondence must contain the decedent’s SOCIAL SECURITY NUMBER.

• PAYMENTS ON ACCOUNT may be made to avoid the accrual of interest. (Form IT-EP)

• If PAYMENTS are not made by CERTIFIED CHECK the issuance of waivers may be delayed.

• All CHECKS should be made payable to NJ INHERITANCE AND ESTATE TAX and sent to the New Jersey Division of Taxation, Individual Tax Audit Branch, Transfer Inheritance and Estate Tax, 50 Barrack Street, PO Box 249, Trenton, NJ 08695-0249.

Page 3
SCHEDULES

Transfer Inheritance
And Estate Tax

New Jersey Division of Taxation
PO Box 249
Trenton, New Jersey 08695-0249

(609) 292-5033
CLASS “A” TRANSFEREES ARE ENTIRELY EXEMPT
IN ESTATES OF DECEDE NTS DYING ON OR AFTER JULY 1, 1988

Class “C” TRANSFEREES IN ESTATES OF DECEDE NTS
DYING ON OR AFTER 7/1/88

<table>
<thead>
<tr>
<th>First</th>
<th>$25,000</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Next</td>
<td>1,075,000</td>
<td>11%</td>
</tr>
<tr>
<td>Next</td>
<td>300,000</td>
<td>13%</td>
</tr>
<tr>
<td>Next</td>
<td>300,000</td>
<td>14%</td>
</tr>
<tr>
<td>Over</td>
<td>1,700,000</td>
<td>16%</td>
</tr>
</tbody>
</table>

CLASS “D” TRANSFEREES IN ESTATES OF DECEDE NTS
DYING ON OR AFTER 3-29-62

If less than $500: no tax
If $500 or more: no exemption

<table>
<thead>
<tr>
<th>First</th>
<th>$700,000</th>
<th>15%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>$700,000</td>
<td>16%</td>
</tr>
</tbody>
</table>
NEW JERSEY INHERITANCE AND ESTATE TAX: RETURN PROCESSING INSTRUCTIONS

Follow these procedures to avoid delays in processing returns, waivers, and refunds:

- DO NOT enclose returns in any kind of BINDER, SEALED FOLDER or NOTEBOOK.
- DO NOT use STAPLES (especially extra-long staples) on the return.
  - It is OK to use rubber bands or clips to keep the file together.
  - Two-hole ATCO fasteners, along the TOP of the return, are also acceptable.
- DO NOT enclose DUPLICATE COPIES of returns or duplicates of other documents.
  - When filing both Inheritance and Estate Tax, include only ONE copy of the will, trusts, income tax return, 706, appraisals, and any other attachments.

A few things to DO:
- STAPLE checks to the completed payment voucher, and put voucher on TOP.
  - Make sure checks are signed, and made payable to “New Jersey Inheritance and Estate Tax”
  - Include the Decedent’s name and SS# on the check.
- Place the return and schedules on top (if no payment), with the will and other supporting documents beneath.
- Check that returns are SIGNED by the legal representative of the estate and NOTARIZED.
  - The representative’s name should be printed clearly beneath the signature
- VERIFY the decedent’s social security number and date of death.
- Make sure the MAILING ADDRESS on the return is correct – and indicates the person who you want to receive ALL correspondence (letters, bills, waivers, etc).
  - The Division cannot correspond with your attorney or CPA unless they are listed on the front page of the return.
- Clearly mark amended returns as “Amended” along the BOTTOM of the return.
- File Inheritance Tax and Estate Tax returns together when possible.
  - Keep the two returns separate within the same envelope or box.
  - Keep in mind the two taxes have separate due dates for payment of the tax.
  - Include separate checks and vouchers for each tax.
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STATE OF NEW JERSEY
Inheritance Tax Return

RESIDENT DECEDED
(Instructions on reverse side)

Decedent’s Name ________________________________
(Last) ____________________ (First) ____________________ (Middle) ____________________
Decedent’s S.S. No. ____________________ ____________________ ____________________

Date of Death (mm/dd/yy) ____________________ ____________________ ____________________ County of Residence ____________________
Testate __ Intestate __

Authorized Representative to receive all correspondence
Name ____________________ Daytime Phone ( ) ____________________
Street ____________________ ____________________ ____________________ ____________________
City ____________________ State ______ Zip Code ____________________

1. Real Property . Total carried forward from - Schedule A . 1.
2. Closely Held “Businesses” . Total carried forward from - Schedule B . 2.
3. All Other Personal Property . Total carried forward from - Schedule B(1) Recapitulation . 3.
4. Transfers . Total carried forward from - Schedule C . 4.
5. Gross Estate . Total Lines 1 thru 4 . 5.
7. Net Estate . Total - Line 5, minus Line 6 (If less than zero enter “0”) . 7.
8. Contingent Amount Included in Line 7 (See explanation on reverse side) . 8.


10. Class受益者

<table>
<thead>
<tr>
<th>Class</th>
<th>Number of Beneficiaries</th>
<th>Total</th>
<th>Exempt</th>
<th>Taxable</th>
<th>TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>A (Spouse/Civil Union Partner)</td>
<td>$</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>10.</td>
</tr>
<tr>
<td>A (Other)</td>
<td>$</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>11.</td>
</tr>
<tr>
<td>C</td>
<td>$</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>12.</td>
</tr>
<tr>
<td>D</td>
<td>$</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>13.</td>
</tr>
<tr>
<td>E</td>
<td>$</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>14.</td>
</tr>
</tbody>
</table>

15. Compromise Tax Due on Line 8 Amount (See explanation on reverse side) . 15.

16. Contingent Tax (See explanation on reverse side) . 16.

17. Total Tax Due (Total - Line 10 thru Line 16) . 17.

18. Interest Due (If applicable) (See explanation on reverse side) . 18.

19. Total Amount Due (Line 17, Plus Line 18) . 19.

20. Payment on Account (If applicable) . 20.

21. If Line 20 (Payments) is LESS THAN Line 19, Enter BALANCE DUE - PAY THIS AMOUNT WITH FORM IT-PMT . 21.

22. If Line 20 (Payments) is MORE THAN Line 19, Enter REFUND AMOUNT . 22.

23. Are any questions in Schedule “C” answered yes? . Yes No ____________________

24. Have or will you file or are you required to file a Federal Estate Tax Return? . Yes No ____________________

25. Has or will any disclaimer been filed? If so, attach copy . Yes No ____________________

26. If the decedent died after December 31, 2001, did the decedent’s taxable estate plus adjusted taxable gifts for Federal estate tax purposes under the provision of the Internal Revenue Code in effect on December 31, 2001 exceed $675,000? . Yes No ____________________

If yes, by how much $ ____________________

Indicate which letters were issued and where issued:
Letters of Administration ______ Letters Testamentary ______ State of ______ County of ______

SUBMIT A FULL COPY OF THE DECEDED’S WILL, CODICILS, TRUSTS, AND A COPY OF THE LAST FULL YEAR’S FEDERAL INCOME TAX RETURN.

Affiant says, under penalty of perjury, “I declare that I have examined this return and all accompanying schedules and to the best of my knowledge and belief, it is true, correct and complete.” I hereby authorize the party(ies) set forth above to act as the estate’s representative, to receive confidential information, and to make presentations on behalf of the estate.

Subscribed and sworn before me ____________________
this __________ day of ________, 20__ . ____________________

Signature: ____________________
(Executor - Administrator - Heir-at-law) ____________________

Print Name: ____________________
Address ____________________

Official Title (Notarized) ____________________

This form may be reproduced
**INSTRUCTIONS FOR RECITAL PAGE**

**Lines 8, 15 and 16**

In the case of a transfer or transfers made subject to a contingency or condition which renders a definite determination of the Transfer Inheritance Tax due impossible, the Division will suggest a compromise of the tax based upon immediate payment and final disposition of the tax. N.J.A.C. 18:26-2.14, N.J.S.A. 54:36-5 and 54:36-6.

Therefore, enter on Line 8, the amount of the estate that is "Contingent."

In the event you wish to compute a compromise for the Division's review, you should include a rider setting forth full computations and details and enter the proposed amount on Line 15. Following this procedure may speed the auditing of the decedent's return.

Be advised that where all or any portion of the contingent amount has vested in a beneficiary by reason of the happening of any contingency event, full details should be set forth on a rider; the tax computed on a rider and entered on Line 16.

**Line 18**

Interest accrues at the rate of 10% per annum on any direct tax or portion thereof not paid within eight months of the decedent's death.

With respect to the payment of the tax due on an executory devise, or a transfer subject to a contingency or power of appointment, any payment on such a transfer after the expiration of two months from the date the contingency occurs or the property vests, shall bear interest at the rate of 10% per annum from the date the contingency occurs or the property vests, until the date of actual payment.

In any case where a contingent remainder vests in beneficial possession and enjoyment subsequent to the death of the original decedent, but prior to the expiration of the statutory interest period, interest on the contingent tax does not start to accrue until eight months from the date of death of the original decedent.

**Line 20**

Payments on account may be made at any time to avoid further accrual of interest on the amount paid. In any case where the amount paid on account for New Jersey inheritance taxes exceeds the amount of such tax due after final assessment has been made, the amount so overpaid shall be refunded by the State Treasurer in the due course of business, provided, however, that all applications for a full or partial refund of the payment of the transfer inheritance tax shall be made within three years from the date of such payment. Make checks payable to: NJ Inheritance and Estate Tax, P.O. Box 249, Trenton, New Jersey 08695-0249.

**Line 21**

When making a payment with the return, complete form IT-PMT and attach check.

### Examples of Interest Computations

<table>
<thead>
<tr>
<th>Date of Death</th>
<th>5-28-90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Date (eight months)</td>
<td>1-28-91</td>
</tr>
<tr>
<td>Tax Assessed</td>
<td>$7,120.48</td>
</tr>
<tr>
<td>Interest @ 10% per annum from 1-28-91 to 9-19-91 ($7,120.48 x 10% x 234/365)</td>
<td>456.49</td>
</tr>
<tr>
<td>Total</td>
<td>7,576.97</td>
</tr>
<tr>
<td>Payment on Account (9-19-91)</td>
<td>7,120.48</td>
</tr>
<tr>
<td>Balance Due (plus interest @ 10% per annum from 9-19-91 to date of final payment)</td>
<td>456.49</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Death</th>
<th>8-29-90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Date (eight months)</td>
<td>4-29-91</td>
</tr>
<tr>
<td>Tax Assessed</td>
<td>$68,389.70</td>
</tr>
<tr>
<td>Payment of Account (4-19-91)</td>
<td>(16,974.56)</td>
</tr>
<tr>
<td>Balance</td>
<td>51,415.14</td>
</tr>
<tr>
<td>Payment on Account (4-28-91)</td>
<td>(31,927.02)</td>
</tr>
<tr>
<td>Balance</td>
<td>19,488.12</td>
</tr>
<tr>
<td>Interest @ 10% per annum from 4-29-91 to 5-10-91 ($19,488.12 x 10% x 11/365)</td>
<td>58.73</td>
</tr>
<tr>
<td>Total</td>
<td>19,546.85</td>
</tr>
<tr>
<td>Payment on Account (5-10-91)</td>
<td>(27,048.67)</td>
</tr>
<tr>
<td>Overpayment (to be refunded)</td>
<td>7,501.82</td>
</tr>
</tbody>
</table>
Inheritance Tax Payment

FOR USE ONLY WHEN FILING IT-R RETURN. FOR OTHER PAYMENTS, USE FORM IT-EP.

Decedent's Name ________________________ (Last) ________________________ (First) ________________________ (Middle)

Decedent's S.S. No. ___________ / _______ / ___________

Date of Death (mm/dd/yy) _________ / _______ / ___________ County of Residence ________________________________

AMOUNT PAID WITH RETURN (From IT-R Line 21)

(Code 67) 1. Inheritance Tax (total of checks remitted with this form) ___________ $________________________

Payments on account may be made at any time to avoid further accrual of interest on the amount so paid. All applications for the refund of an overpayment must be made in writing within the three year statutory period in accordance with and in the manner set forth in N.J.A.C. 18:26-3A.12 (Estate Tax) and N.J.A.C. 18:26-10.12 (Inheritance Tax).

Make checks payable to “NJ Inheritance and Estate Tax”, PO Box 249, Trenton, NJ 08695-0249
(include decedent’s name and social security number on check)

If remitting more than one check, list each check individually below:

$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________
$ ______________________________

TOTAL of all checks (Enter on Line 1 above) $________________________
<table>
<thead>
<tr>
<th>Description of New Jersey Real Estate</th>
<th>Full Assessed Value for Year of Death</th>
<th>Full Market Value at Date of Death</th>
<th>Value of Decedent’s Interest and (How Determined)</th>
<th>This Column for Division Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Street and Number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipality:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot:</td>
<td>Block:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title/Owner of Record:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Street and Number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipality:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot:</td>
<td>Block:</td>
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</tr>
<tr>
<td>County:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Title/Owner of Record:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Street and Number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipality:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot:</td>
<td>Block:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County:</td>
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<td></td>
</tr>
<tr>
<td>Title/Owner of Record:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Street and Number</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipality:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot:</td>
<td>Block:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title/Owner of Record:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Insert this total on page 1, line 1

(If additional space is required, attach riders of the same size)
DESCRIPTION: The real property should, wherever possible, be described by lot and block number, or street and street number, or by a general description, with a reference to a record of the deed by which title was conveyed.

MORTGAGES: List as deduction(s) in Schedule D.

FRACTIONAL INTEREST: If the decedent owned a fractional interest, state the names in which the realty was held, whether as joint tenants with right of survivorship or as tenants in common, and set forth in detail how the interest was acquired. Submit a copy of the deed.

TENANTS BY THE ENTIRETY: Real property held by husband and wife/civil union partners, as “tenants by the entirety” in the estate of the spouse/civil union partner dying first need not be reported.

OTHER LIENS: Taxes, assessments, accrued interest on mortgages, etc. must not be claimed in this schedule but are to be listed on Schedule “D” of this return.

WAIVERS: Unpaid inheritance taxes constitute a lien on real property and waivers are therefore required to transfer said real property, with the exception of real property held by husband and wife/civil union partners as “tenants by the entirety” in the estate of the spouse/civil union partner dying first.

CO-OPs: A membership certificate or stock in a New Jersey cooperative housing corporation held in the name of the decedent and a surviving spouse/civil union partner or domestic partner as joint tenants with the right of survivorship is exempt, if it entitled them to use it as their principal residence. However a waiver is required for this transfer in the estate of a resident decedent. (This should be reported on Schedule “B(1)-Stock”).

CONDOMINIUMS: An interest in a condominium is an interest in Real Property and therefore reportable on Schedule “A”.

APPRAISALS: Submit a copy of any appraisal, contract of sale and/or closing statement. Only recital or valuation page of appraisals are initially required. Additional supporting documentation will be requested if needed.
## SCHEDULE “B” CLOSELY HELD “BUSINESSES”
### RESIDENT DECEDE NT

*(See Instructions on reverse side)*

<table>
<thead>
<tr>
<th>Decedent’s Name</th>
<th>Decedent’s Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Federal Identification Number of Any Sole Proprietorship, Partnership, Joint Venture and/or Closely Held Corporation in Which the Decedent Held Any Interest</td>
<td>Market Value at Date of Death</td>
</tr>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
</tr>
</tbody>
</table>

*Insert this total on page 1, line 2 ________________________________*

*(If additional space is required, attach riders of the same size)*
INSTRUCTIONS FOR SCHEDULE “B”

If the taxpayer had any interest in a closely held corporation, partnership, joint venture or sole proprietorship, the following information is required (in each instance):

1. A detailed balance sheet and profit and loss statement, revised to reflect the market value of the assets thereof as distinguished from the net book value, as of the decedent’s date of death, or as near thereto as the Director may deem acceptable.
2. For the five year period preceding the decedent’s date of death;
   A. Detailed balance sheets.
   B. Detailed profit and loss statements.
3. The nature of the business.
4. Describe and state the assessed and market value of any real property.
5. Set forth your basis for determining the clear market value as reported.

CLOSETLY HELD CORPORATIONS

If the decedent had any interest in a closely held corporation, submit (in addition to the general information required above):

1. For the five year period preceding the decedent’s date of death:
   A. A listing of salaries paid to officers.
   B. A listing of dividends paid, together with the name(s) of the payees.
2. Copy/copies of any stock purchase or option agreement to which the decedent was a party as of the date of death.
3. Copy/copies of any insurance policy/policies on the decedent’s life payable to the corporation as beneficiary together with a statement of the benefits payable thereunder.
4. The number of shares of stock of all classes issued and outstanding and the par value thereof.
5. List of stockholders setting forth the number of shares held by each.

PARTNERSHIPS OR JOINT VENTURES

If the decedent had any interest in a partnership or joint venture, submit (in addition to the general information required above):

1. Copy of the partnership agreement.
2. Copy/copies of any mutual purchase agreement(s) to which the decedent was a party at the date of death.
3. Copy/copies of any insurance policy/policies on the decedent’s life payable to the surviving partners as beneficiary together with a statement of the benefits payable thereunder.

SOLE PROPRIETORSHIPS

If the decedent had any interest in a sole proprietorship, submit (in addition to the general information required above):

1. If any of the sole proprietorship’s assets are listed elsewhere on this return, (i.e. Schedule “A”), make full disclosure.
**GENERAL INSTRUCTIONS FOR SCHEDULE “B (1)”**

List all other personal property (excluding that on Schedule B) including all tangible personal property located permanently in New Jersey.

These schedules must disclose not only all other personal property owned individually by the decedent but also all other personal property standing in joint names (such as United States Savings Bonds, bank accounts, shares of stock, etc.) which may be claimed by another or others as survivors.

Unless the surviving joint tenant is also a Class A beneficiary (see General Instructions), the transfer of ownership to a surviving joint tenant or tenants pursuant to a joint tenancy with the right of survivorship is a transfer subject to tax. The deceased joint tenant is deemed to have been the absolute owner of the property and the survivor/survivors are presumed to have received a devise or bequest of the whole and not a part of the property. This presumption can be rebutted to the extent that the survivor can prove contributions out of funds separate and apart from those that originated in the decedent. All joint assets including those passing to exempt beneficiaries and those claimed not to have belonged to the decedent must be listed, with full market value as of date of death.

These schedules must list all other intangible personal property such as, but not limited to, United States Savings Bonds; treasury certificates; cash on hand; cash in the bank; deposits in Federal or State Credit Unions; mutual funds; bonds and mortgages; promissory notes; claims; accounts receivables; corporate bonds; corporate stocks; accrued interest; dividends; salaries or wages; insurance payable to the estate or its representatives; interest in any undistributed estate or income from any property held in trust under the will or agreement of another, even though physically located outside the state at the time of death.

Waivers are not required for automobiles, household goods, accrued wages or mortgages, but these items must be reported on Schedule B-1 “All Other Property”.

A membership certificate or stock in a New Jersey housing corporation held in the name of the decedent and a surviving spouse/civil union partner or domestic partner as joint tenants with the right of survivorship is exempt, if it entitled them to use it as their principal residence; however, a waiver is required for this transfer in the estate of a resident decedent.
This schedule may include checking accounts, savings accounts, money markets, credit unions, CD’s, brokerage accounts, mutual funds, and IRA’s.

(A) **Include the name of each bank or institution** on which decedent’s name appears.
   1) State all names registered on each account, along with account number of each.
   2) *Multiple accounts in one bank may be grouped together, but each account must be listed separately.*

(B) Report the **full date of death balance** of each account in “Date of Death Value” column.
   1) **BROKERAGE ACCOUNTS** require **account totals only** on this schedule.
   2) Brokerage statements must be included with the return.

(C) List decedent’s equity in account (If 100% , amount will be the same as (B).)
   1) **Claims for partial ownership must be supported in supplemental affidavits.**

<table>
<thead>
<tr>
<th>(A) Bank Accounts - Individually or Jointly Owned</th>
<th>(B) Date of Death Value</th>
<th>(C) Decedent’s Equity</th>
<th>Division Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Insert this total on SCHEDULE B-1 Recapitulation, Line 1 ..........................

(If additional space is required, attach riders of the same size. All forms may be reproduced)
# SCHEDULE B (1) - STOCK
RESIDENT DECEDEENT

**DO NOT INCLUDE STOCK HELD IN A BROKERAGE ACCOUNT ON THIS SCHEDULE**

<table>
<thead>
<tr>
<th>Decedent’s Name</th>
<th>Decedent’s Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(A) Report the number of shares owned of each stock.
(B) List the name of the company and all names registered on each stock.
(C) List the state of registration for each corporation (ie., NJ, DE, MD, etc.), if known.
(D) Report the per-share market value of each stock as of the date of death.
(E) Full market value of all shares (number of shares x per share value).
(F) Total value of decedent’s equity (*Claims for partial ownership must be supported in supplemental affidavits*).

(List accrued dividends as of date of death along with each item.)

<table>
<thead>
<tr>
<th>(A) Number of Shares</th>
<th>(B) Name of Stock - Registered Owner(s)</th>
<th>(C) State of Inc.</th>
<th>(D) Date of Death Per Share Value</th>
<th>(E) Total Market Value</th>
<th>(F) Decedent’s Equity</th>
<th>Division Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Insert this total on SCHEDULE B-1 Recapitulation, Line 2 .................................................................

(If additional space is required, attach riders of the same size. All forms may be reproduced)
SCHEDULE B (1) - MUNICIPAL & CORPORATE BONDS
RESIDENT DECEDENT

DO NOT INCLUDE BONDS HELD IN A BROKERAGE ACCOUNT ON THIS SCHEDULE

<table>
<thead>
<tr>
<th>Decedent’s Name</th>
<th>Decedent’s Social Security Number</th>
</tr>
</thead>
</table>

(A) Provide name of company or entity holding bond and all terms of bond.
1) List all names registered on each bond.

(B) Report full date of death value of bonds.
1) Include accrued dividends as of date of death.

(C) List decedent’s equity in bond (If 100%, amount will be the same as (B)).

Note: U.S. Savings Bonds should be listed on Schedule B-1 “All Other Property”.

<table>
<thead>
<tr>
<th>(A) Bonds - Individually or Jointly Owned</th>
<th>(B) Date of Death Value</th>
<th>(C) Decedent’s Equity</th>
<th>Division Use Only</th>
</tr>
</thead>
</table>

Insert this total on SCHEDULE B-1 Recapitulation, Line 3 .................

(If additional space is required, attach riders of the same size. All forms may be reproduced)
List all other property owned by the decedent, including (but not limited to):

- U.S. Obligations (Savings Bonds or Treasury Certificates)
- Automobiles or other vehicles
- Personal property, collections, furniture, etc.
- Mortgages and notes owned by decedent
- Cash and uncashed checks
- Interest in a prior estate
- Accounts receivable

<table>
<thead>
<tr>
<th>Other Property - Individually or Jointly Owned</th>
<th>Date of Death Value</th>
<th>Division Use Only</th>
</tr>
</thead>
</table>

Insert this total on SCHEDULE B-1 Recapitulation, Line 4 ........................

(If additional space is required, attach riders of the same size. All forms may be reproduced)
SCHEDULE “C” TRANSFERS
RESIDENT DECEDENT

(ALL QUESTIONS MUST BE ANSWERED)

1. Did decedent, within three years of death, transfer property, valued at $500.00 or more, without receiving full financial consideration therefor? □ Yes □ No

2. Did decedent, at any time, transfer property, reserving (in whole or in part) the use, possession, income, or enjoyment of such property? □ Yes □ No

3. Did decedent, at any time, transfer property on terms requiring payment of income to decedent from a source other than such property? □ Yes □ No

   If answer to any of the above questions is “Yes”, set forth a description of property transferred, the fair market value at date of death, dates of transfers, and to whom transferred. Submit copy of trust deed or, agreement, if any. (If transfers are claimed to be untaxable, also submit detailed statement of facts on which such claim is based, proof as to decedent’s physical condition and copy of death certificate.)

4. Did decedent, at any time, transfer property, the beneficial enjoyment of which was subject to change because of a reserved power to alter, amend, or revoke, or which could revert to decedent under terms of transfer or by operation of law? □ Yes □ No

5. Was decedent a participant in any pension plan that provided for payment of an annuity or lump sum on or after death to another? □ Yes □ No

6. Did decedent purchase or in any manner participate in any contract or plan providing for payment of an annuity or lump sum on or after death to another, except life insurance contracts payable to a designated beneficiary? □ Yes □ No

   (Matured endowment policies, claim settlement certificates, supplementary contracts, annuity contracts and refunds thereunder and interest income certificates even though issued by an insurance company are not considered life insurance contracts.)

7. Was a single premium life insurance policy issued on decedent’s life in conjunction with an annuity contract? □ Yes □ No

   If answer to questions 5, 6 or 7 is “Yes”, attach photostatic copies of all such contracts, plans, and policies.

8. Were any accumulated dividends due on any contract of insurance? (If yes, list below) □ Yes □ No

Date of Transfer; Description of Property, Both Real and Personal:
Actual Consideration if Any; Names and Relationship to Decedent of Donees, Assignees, Transferees, etc.

<table>
<thead>
<tr>
<th>Date of Transfer</th>
<th>Description of Property</th>
<th>Market Value at Date of Death</th>
<th>This Column for Division Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Insert this total on page 1, line 4

(If additional space is required, attach riders of the same size)
### SCHEDULE “D” DEDUCTIONS CLAIMED
#### RESIDENT DECEDENT
(See Instructions on reverse side)

<table>
<thead>
<tr>
<th>Decedent’s Name</th>
<th>Decedent’s Social Security Number</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Debt or Claim of</th>
<th>Nature of Same</th>
<th>Amount</th>
<th>This Column for Division Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>Estimated Expenses for:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Funeral</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td>Counsel Fees:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Agreed Upon</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>□ Estimated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Names:</td>
<td>Executor’s or Administrator’s Commissions</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Must not be claimed unless reported for Income Tax purposes.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SS#</td>
<td></td>
<td></td>
<td></td>
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<td>SS#</td>
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<td></td>
</tr>
</tbody>
</table>

List Mortgages Here:

Other Deductions (list individually)

Insert this total on page 1, line 6
INSTRUCTIONS FOR SCHEDULE “D”

If any notes, brokerage accounts or other claims are secured by collateral, describe the collateral pledged, with its value as of the date of death of the decedent and state whether or not said collateral is included among the assets disclosed in Schedule B or B(1). If collateral is not pledged, state after each loan “No collateral pledged”.

NOTE: No debt or claim is to be listed in this schedule unless still owing and unpaid at the time of death and unless such debt or claim is to be paid out of the assets of the estate.

(EXAMPLE: That portion of medical bills paid or reimbursed by Medicare or other medical insurance should not be claimed on this schedule).

Contested claims must be explained in detail. Do not list any taxes, either real, personal or income, chargeable for any period subsequent to date of death; nor any claim against property located outside of New Jersey, unless such property is subject to tax in this state.

The estate agrees to advise the Division if the amount actually paid in settlement of any fee, commission or debt is greater or less than the estimated amount allowed and further agrees to the correction of the assessment, if necessary.

For mortgages list the balance on the decedent’s date of death and the property in Schedule A on which the mortgage is an encumbrance. Each mortgage must be listed separately. State whether there was any mortgage insurance and, if so, submit verification as to the amount of same. Note: In the case of realty held by a decedent and a surviving spouse/civil union partner as tenants by the entirety, the amount of any mortgage owing on such realty at the decedent’s death is not allowable as a deduction since such property is exempt from the Inheritance Tax.

### Examples of Allowable Deductions

<table>
<thead>
<tr>
<th>FUNERAL EXPENSES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cemetery Plot (immediate family)</td>
</tr>
<tr>
<td>Funeral Luncheon</td>
</tr>
<tr>
<td>Flowers</td>
</tr>
<tr>
<td>Minister/Rabbi/Priest/Imam</td>
</tr>
<tr>
<td>Monument/Lettering</td>
</tr>
<tr>
<td>Funeral Costs</td>
</tr>
<tr>
<td>Acknowledgments</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADMINISTRATION EXPENSES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal of real estate</td>
</tr>
<tr>
<td>Appraisal of personal effects</td>
</tr>
<tr>
<td>Surrogate’s fees</td>
</tr>
<tr>
<td>Probate expenses</td>
</tr>
<tr>
<td>Fee to notify creditors</td>
</tr>
<tr>
<td>Death certificates</td>
</tr>
<tr>
<td>Telephone tolls</td>
</tr>
<tr>
<td>Cost of Executor’s or Administrator’s Bond</td>
</tr>
<tr>
<td>Collection costs</td>
</tr>
<tr>
<td>Court costs</td>
</tr>
<tr>
<td>Cost on recovery and/or discovery of assets</td>
</tr>
<tr>
<td>Realty commissions in accordance with N.J.A.C. 18:26-7.12</td>
</tr>
<tr>
<td>Storage of property if delivery to legatee not possible within reasonable time</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEBTS OF DECEDED OWING and UNPAID AT TIME OF DEATH:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal accounts</td>
</tr>
<tr>
<td>Judgments</td>
</tr>
<tr>
<td>Federal income and gift taxes generally</td>
</tr>
<tr>
<td>Unpaid mortgage principal and interest on the decedent’s date of death:</td>
</tr>
<tr>
<td>Charitable pledges</td>
</tr>
<tr>
<td>State, county and local taxes accrued before death</td>
</tr>
<tr>
<td>Unpaid Inheritance Tax on interrelated estate</td>
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### Examples of Non-Allowable Deductions

<table>
<thead>
<tr>
<th>Contingent liabilities</th>
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<tbody>
<tr>
<td>State, county and local taxes accruing after date of death</td>
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<tr>
<td>Transfer Inheritance Tax</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Debts paid by insurance</th>
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<tbody>
<tr>
<td>Real estate brokers commissions, except if real property sold during administration of estate</td>
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<tr>
<td>Debts on property located outside of New Jersey</td>
</tr>
<tr>
<td>Federal Estate Tax</td>
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<table>
<thead>
<tr>
<th>Medical expenses paid prior to death</th>
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<tbody>
<tr>
<td>Liabilities of corporation of which decedent was a shareholder</td>
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<tr>
<td>Real estate and property maintenance costs</td>
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<tr>
<td>Storage expense</td>
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SCHEDULE “E” BENEFICIARIES
RESIDENT DECEDEENT
ATTACH COPY OF WILL AND CODICILS HERE

<table>
<thead>
<tr>
<th>Decedent’s Name</th>
<th>Decedent’s Social Security Number</th>
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In case of Intestacy, the parentage of all collateral heirs (such as nieces, nephews, cousins, etc.) must be set forth. The relationship of step-parent, step-child, step-brother or step-sister must be so stated.

<table>
<thead>
<tr>
<th>BENEFICIARIES AND ADDRESSES (State full names and addresses of all who have an interest, vested, contingent or otherwise, in estate)</th>
<th>Relationship</th>
<th>Class</th>
<th>Survived Decedent</th>
<th>State</th>
<th>Yes or No</th>
<th>Age At Death of Decedent</th>
<th>Interest of Beneficiary In Estate</th>
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Deponent further says the following schedule contains the names of all beneficiaries who died before or after decedent’s death:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE OF DEATH</th>
<th>DOMICILE AT DEATH</th>
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Under authority of Federal law, the Division of Taxation of the Department of the Treasury of the State of New Jersey and the Internal Revenue Service have entered into a Federal/State Agreement for the mutual exchange of tax information for purpose of tax administration.
DID YOU REMEMBER TO:

1. Attach a copy of the decedent’s will, codicils, trusts, and last full year’s Federal Income Tax Return.

2. Fill-in the decedent’s social security number.

3. Sign the return and have it notarized.

FAILURE TO DO ANY OF THE ABOVE MAY RESULT IN PROCESSING DELAYS

All checks should be made payable to N.J. Inheritance and Estate Tax and mailed to:

N.J. Division of Taxation
Individual Tax Audit Branch
Transfer Inheritance and Estate Tax
PO Box 249
Trenton, New Jersey 08695-0249

For information regarding the N.J. Transfer Inheritance and Estate Taxes call:
(609) 292-5033
This Session will describe the large transaction of an estate administration, why it is necessary, and what its benefits are. After a brief discussion of applicable ethical issues, including the engagement letter, the client and conflicts of interest, the session will lead you through six phases of estate administration, from probate and information gathering, through setting the timetable, collecting assets, paying debts and expenses, and filing the tax returns, to settlement and distribution. As appropriate, New Jersey practice will be compared to and contrasted with New York practice, to provide insight into the differences and similarities between the two jurisdictions.
I. Introduction: Administration of an estate is a large transaction where you 1) identify the heirs; 2) identify assets to be transferred; 3) pay creditors, taxes and administration expenses; and 4) distribute the balance to the heirs.

A. The Nature of the Problem

Imagine that your sweet aunt has died. You were her nearest-and-dearest. In her night table you locate a folder containing her Will and her bank books. You are sad but pleased to find that her Will names you “executor” and purports to leave you her entire estate. After the funeral, you go to her bank. You actually know the Banker who took care of your aunt’s accounts for all those years, and you seek her out. You explain what happened. You ask, respectfully, for the money.

The Banker says, “I am very sorry for your loss. Could you please prove that your aunt died?” And you say, “I just came from the funeral.” And the banker says, “Do you have a death certificate?” Apologizing, you explain that you left it at the funeral home but will go and get it.

When you return half an hour later with the death certificate, the Banker says, “I really am very sorry for your loss.” And you say, “Thank you, could I please have the money now?” And the Banker says, “We can only give that to the executor.” And you say, “But I am the executor. It says it right here in the Will.” And the banker says, “How do we know that is your aunt’s last Will and testament? This is just a piece of paper. We need a document from the Court certifying that you are the executor. Do you have letters testamentary from the Surrogate’s Court?”

And you are slightly embarrassed and frustrated and say “No, but I will be getting them next week.”

So the next week, you return to the bank, with an original death certificate with a nice raised seal, and with letters testamentary issued by the Surrogate with the Surrogate’s raised seal on it, and you ask again for the money.

And the Banker says, “Do you have a tax waiver?” And you say, “What? What’s a tax waiver?”

And the Banker says, “We can only give you half the funds in the bank account, until you provide us with a waiver issued by the Division of Taxation of the State of New Jersey proving that you paid your New Jersey estate and inheritance taxes.”

And you say, “How do I get a tax waiver?”

And the Banker says, “Talk to your lawyer.”

By now, you should see the problem. The owner of the assets has died. The owner was the person who could deal with the assets without question. The assets are held by a bank or other financial institution, which are some of the most conservative institutions in the world when it comes to returning money to clients. The bank is requesting all of these documents. In fact, the banks live and die by all of these pieces of paper that prove they did the right thing in paying the money out to you.

The estate administration transaction has litigation and tax aspects to it. The purpose of the estate administration transaction is to assemble all of the documents and other information necessary to collect the assets, pay the creditors, taxes and administration expenses, and to distribute the money to the heirs.

What we are doing is collecting pieces of paper that establish 1) who has authority to deal with the property; 2) who gets the property; 3) what the assets are; 4) what debts, taxes and expenses are due; and 5) that the assets have been properly invested, disbursements properly paid, and the balance properly distributed to the heirs. All of these documents make up the file for the administration of the estate.
The FDIC Trust Examination Manual provides the following practical description of the estate administration transaction.

FDIC Trust Examination Manual, Section 4 - Compliance/Account Administration - Personal and Charitable Accounts

The primary duties of an executor, or administrator cum testamento annexo (c.t.a.), include the following:

- assembling of decedent's assets;
- preparation of an inventory of all assets of the deceased;
- taking control or custody of such assets;
- orderly conversion of certain assets "in kind";
- payment of administration costs, taxes (including Federal estate and/or state inheritance taxes), and all other legal claims against the estate;
- distribution of the net estate in accordance with the terms of the will; and
- filing of a final accounting with the court of competent jurisdiction, if required.

3B:17-8. Effect of judgment allowing account:

A judgment allowing an account, including a guardian's intermediate account, after due notice, shall be res adjudicata as to all exceptions which could or might have been taken to the account, and shall constitute an approval of the correctness and propriety of the account, the legality and propriety of the investments and other assets, the legality and propriety of the changes in investments or other assets, and the legality and propriety of other matters, and also shall exonerate and discharge the fiduciary from all claims of all interested parties and of those in privity with or represented by interested parties except:

a. For the investments and other assets in the fiduciary's hands at the close of the period covered by the account, and assets which may come into his hands after the close of the account;

b. Insofar as exceptions to the account shall be taken and sustained; and

c. As relief may be had from a judgment in any civil action.
Where to Find the Law

Statutes:
- Title 3B, Administration of Estates, Decedents and Others (Gann single volume available)
- Title 54, Taxation, Subtitle 5, Transfer Inheritance and Estate Taxes
- IRC, Subtitle B, Estate and Gift Taxes, Sec. 2001 et seq.

Rules:
- Generally, Part IV of the New Jersey Court Rules, and specifically Chapter IX, Probate Matters, R. 4:80 to R. 4:96 (Gann single volume available)

Treatises
- New Jersey Practice Series, Estate Planning and Probate (Clapp)
- New Jersey Inheritance and Estate Taxes (Gann single volume available)

Practical Advice

As the transaction proceeds, three principles will be very beneficial to follow:
- take what you have and make it work;
- avoid or minimize controversy; and
- avoid liability of the Executor or Administrator to heirs, creditors and tax authorities
II. Ethical Aspects of Estate Administration:

A. Who is your client? For what purpose? Typically the fiduciary is the client, and each and every beneficiary is either an adverse party or a potentially adverse party. But, the duty of care of counsel for the fiduciary may nonetheless run to the beneficiaries, with potentially unhappy consequences for the lawyer. Case Law Examples:

1. Barner v. Sheldon, 292 N.J. Super. 258 (Law Div. 1995). In a legal malpractice case, the Court found that the duty of care of legal counsel for the executor may run to the beneficiaries, but that those duties do not include advising the beneficiaries to disclaim their interests in their inheritance to save or avoid estate taxes.

2. Fitzgerald v. Linnus, 336 N.J. Super. 458 (App. Div. 2001). Also a legal malpractice case, where the children of the decedent’s widow claimed that the lawyer breached his duty to them by failing to advise their mother to disclaim insurance so that it would pass to them. The Court found that the duties of the lawyer administering the estate only ran to the widow as the executor and sole beneficiary of the estate.

3. Estate of Albanese v. Lolio, 393 N.J. Super. 355 (App. Div. 2007). Three sisters, one the executor and all three beneficiaries of illiquid estate brought malpractice claim against lawyer for failing to advise of income taxes that became due upon withdrawal of funds from IRA to pay estate taxes. Claims dismissed as to the two beneficiaries but not the Executor. The Court found the determination of a duty of care in the absence of privity to be fact based and analyzed the retainer letter running just to the Executor as creating a reasonable expectation of representation in her but not the other two beneficiaries. In dicta, the Court stated:

   In trusts and estates practice a lawyer may have to clarify with those involved whether a trust, a trustee, its beneficiaries or groupings of some or all of them are clients and similarly whether the client is an executor, an estate, or its beneficiaries. In the absence of clarification the inference to be drawn may depend on the circumstances and the law of the jurisdiction.

B. Documenting the Client-Attorney relationship:

1. Retainer Letter Rule:

   - R.P.C. 1.5(b): “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.”

   - As a business practice, always best to have a separate fee letter for each estate administration which identifies the client and the scope of representation.

2. Conflicts of Interest:

   R.P.C. 1.7 provides:

   (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

   (1) the representation of one client will be directly adverse to another client; or

   (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

3. Conflict Waiver letter:

- if you represent two or more co-fiduciaries, advise of potential conflicts, confirm that information that becomes available in the representation becomes equally available to each client, and request in advance consent to continue to represent one if the other wishes to withdraw as a client

- if you are asked to represent a fiduciary when you already represent a beneficiary, which will happen when you represent several members of the same family, obtain a conflict waiver in the first instance

4. Conflict Checks:

- Identify fiduciary or fiduciaries as client or clients

- Identify beneficiaries as either related or potentially adverse parties if no actual controversy exists; and as adverse parties if controversy does exist or is expected to exist, so that they appear in your database for future conflict checks

C. Legal Fees:

- Usual practice is to charge for time and disbursements, which clients generally prefer.

- Subject to Court supervision:
  - Standards are set forth at R.P.C. 1.5(a): time and labor, novelty and difficulty, skill requisite, preclusion of other employment, fee customarily charged in locality, amount involved and results obtained, time limitations imposed, nature and length of relationship with client, experience, reputation and ability of lawyers, whether fee is fixed or contingent.

  - Attorney who acts as fiduciary may receive “a just counsel fee” in addition to commissions. N.J.S.A. 3B:18-6.

  - Fiduciary is authorized to retain legal counsel and to pay fees by statute at N.J.S.A. 3B:14-23 (l) and by Court rule at R. 4:42-9(a)(2).

  - But, fees are subject to allowance by the Court upon the judicial settlement of an account (but not if account is settled informally by agreement), R. 4:42-9(a)(2), and are required to be supported by an affidavit of legal services. R.
4:88-4, which usually incorporates the standards of R.P.C. 1.5(a) and the billing records.

- General rule of thumb: fees should be proportional to the subject matter. For administration services, the executor’s commission provides a guideline, even though clients and Courts expect hourly billing and understand that unusual administration issues result in higher billing.
III. Starting the Administration: Collecting Basic Information - Two Primary Sources.

A. Estate Planning File:

- Original Documents
  - Wills
  - Trust Agreements
  - Beneficiary Designations
  - Business Agreements

- Information about Heirs
  - Named Beneficiaries
  - Intestate Takers

- Information about Assets

B. Meeting with Executor:

- Information about Heirs and Intestate Takers
  - Names
  - Addresses
  - Birthdates
  - Social Security Numbers

- Financial records
  - Bank Statements
  - Securities Statements

- Retirement Account Statements

- Life Insurance Policies

- Deeds to Real Estate

- Homeowners Insurance with Personal Property Riders

- Business Agreements

- Income Tax Returns

C. Identify Probate and Non-Probate Assets. Generally speaking, a decedent’s assets may be separated into two broad categories: “non-probate assets” and “probate assets.”

Non-probate assets pass directly to the beneficiaries without becoming a part of the estate.

Non-probate assets generally include: i) joint property, such as real estate and bank accounts in joint names, ii) life insurance, annuities, retirement accounts or securities accounts payable to beneficiaries named in beneficiary designations or registered as “payable on death” or POD. Assets held in a living trust are also non-probate assets.

Probate assets are the property which the decedent held in his own name or caused to be payable to his estate. These assets are subject to administration by the Executor.

Both the probate and the non-probate assets are required to be valued and reported on the estate and inheritance tax returns.
IV. Probate Process: Goal is to obtain authority over decedent’s assets and records, and to establish who the heirs are.

A. Uncontested Probate. Application for letters testamentary, letters of administration, and letters of trusteeship (under a Will) are made to the Surrogate’s Court, which is a quasi-judicial administrative office in New Jersey. It probates Wills, issues letters testamentary, letters of administration, and letters of trusteeship in the ordinary cases. It is also the office where filings are made for matters concerning estates and guardianships, in that it acts as the clerk for the Probate Part of the Superior Court.

N.J.S.A. § 3B:3-17. Probate of will and grant of letters. The Surrogates of the several counties or the Superior Court may take depositions to wills, admit the same to probate, and grant thereon letters testamentary, with the will annexed, or letters of administration.

The Surrogate is an elected official for each County, who is not required to be a lawyer. The Surrogate positions are usually contested, and the Surrogates compete on the basis of constituent service. The Surrogates offices are very user friendly. They are typically located in the County Seat. Several Surrogates have satellite offices in the municipalities in their County, where they hold evening hours one day per week.

Every Surrogate has a deputy Surrogate, who plays a significant role. The deputy Surrogate is a lawyer who typically is very knowledgeable about trust and estates law, and acts as the law clerk to the Judge for the Probate Part.

The rules governing proceedings in Surrogate’s Court are set forth at Ct. R. 4:80 et seq.


Most Surrogates will provide an information sheet to obtain the relevant information, including the dates of the will and codicils, names and addresses of the witnesses, executor(s) and next of kin. The Surrogate will then prepare the necessary papers, including the petition, the qualification and the appointment of the Surrogate as the agent for service of process (except in Atlantic and Warren County). The Surrogate will then issue letters testamentary or letters of administration. The process is user friendly. It does not require a lawyer. I often go with the client to Surrogate’s Court to spend time with the client and review a variety of other estate matters that do require my attention. If the client is not in New Jersey, the Surrogates will issue a commission with the original documents to be executed to an out of state notary public.

The probate papers include 1) a complaint or petition; 2) oath of office; 3) designation of Surrogate as agent for service of process; 4) Judgment; 5) Letters Testamentary; and 6) Surrogate’s Certificates.

The Surrogate may not admit the Will to probate until 10 days after the date of death. N.J.S.A. 3B:3-22.

Notice of Probate is required to be sent to each next of kin and beneficiary 60 days after the Will is admitted to probate, with proof of mailing to be filed with the Surrogate within 10 days. R. 4:80-6.

C. Intestate Administration: The issuance of letters of administration is basically the same, with the obvious omission of a Will, and with the following differences:

- Next of kin either qualify as administrator or provide a renunciation of administration rights.
- No Notice of Probate.
- Fiduciary bond required.
- If no application is made within 40 days by next of kin, then Surrogate may issue letters to “any fit person applying” for them. N.J.S.A. 3B:10-2.
- Receipt and refunding bond executed by each of the heirs will be required to be filed in order to discharge the fiduciary and release the fiduciary bond. The refunding bond is statutorily defined and standard in form. N.J.S.A. 3B:23-24 et seq.
- A less formal option also exists for a small estate proceeding, which is less than $50,000 if the decedent leaves a spouse or domestic partner, and $20,000 if the decedent leaves other survivors. N.J.S.A. 3B:10-3 and 4.

D. How To Obtain Letters. In every county other than Atlantic County and Warren County, the Surrogate’s Court prepares the probate papers on the basis of an information sheet submitted by the Executor, the Administrator, or Legal Counsel. The Surrogate’s Office will prepare a Petition, an Oath of Office, a Designation of the Clerk for Service of Process, and Letters Testamentary, Letters of Administration, or Letters of Trusteeship, and Surrogate’s Certificates certifying to the issuance of the Letters Testamentary or of Administration or of Trusteeship. The original Will and an original death certificate need to be filed with the Court, and probate fees needs to be paid, usually in the range of $100 to $250, depending upon the number of pages in the Will and the number of surrogate’s certificates requested.

Attachments: Probate Information Sheet; Notice of Probate

E. Subsequent Proceedings in Surrogate’s Court: In the typical estate, further proceedings in Surrogate’s Court are very limited.

- Disclaimers may be filed in Surrogate’s Court.
- Receipt and refunding bonds will be required to be filed in Surrogate’s Court in order to discharge a fiduciary bond.
- Fiduciaries may be released by beneficiaries without an accounting, N.J.S.A. 3B:17-1, and accountings may be settled by agreement. R. 4:87-9.

F. Contested Proceedings: Jurisdiction of the Surrogate is limited:

R. 4:82. Matters in Which the Surrogate’s Court May Not Act.

Unless specifically authorized by order or judgment of the Superior Court, and then only in accordance with such order or judgment, the Surrogate’s Court shall not act in any matter in which (1) a caveat has been filed with it before the entry of its judgment; (2) a doubt arises on the face of a will or a will has been lost or destroyed; (3) the application is to admit to probate a writing intended as a will as defined by N.J.S.A. 3B:3-2(b) or N.J.S.A. 3B:3-3; (4) the application is to appoint an administrator pendente lite or other limited administrator; (5) a dispute arises before the Surrogate’s Court as to any matter; or (6) the Surrogate certifies the case to be of doubt or difficulty.

N.J.S.A. § 3B:2-5. Disputes or doubts in proceedings before the surrogate. In the event of any dispute or doubt arising before the surrogate or in the surrogate’s court, neither the surrogate nor the court shall take any further action therein, except in accordance with the order of the Superior Court.
G. **Contesting the Probate of a Will.**

**Caveat.** The easiest way to contest the probate of a Will is to file a caveat against probate. Because probate is so readily available 10 days after the date of death, the caveat is required to be filed promptly to be effective. The filing of the caveat forces the proponents of the Will to bring a proceeding in Superior Court.

**Will Contest.** If letters testamentary are issued before the caveat is filed, then a limited period of time exists to file a complaint to bring a Will contest: Four months for residents of New Jersey and six months for non-residents.

R. 4:85-1. **Complaint; Time for Filing.** If a will has been probated by the Surrogate's Court or letters testamentary or of administration, guardianship or trusteeship have been issued, any person aggrieved by that action may, upon the filing of a complaint setting forth the basis for the relief sought, obtain an order requiring the personal representative, guardian or trustee to show cause why the probate should not be set aside or modified or the grant of letters of appointment vacated; provided, however, the complaint is filed within **four months** after probate or of the grant of letters of appointment, as the case may be, or if the aggrieved person resided outside this State at the time of the grant of probate or grant of letters, within **six months** thereafter. If relief, however, is sought based upon R. 4:50-1(d), (e) or (f) or R. 4:50-3 (fraud upon the court), the complaint shall be filed within a reasonable time under the circumstances. The complaint and order to show cause shall be served as provided by R. 4:67-3. Other persons in interest may, on their own motion, apply to intervene in the action. (Emphasis added).


**Summary Proceedings.** Probate Proceedings are brought in summary manner by the filing of a verified complaint, upon which the Judge will issue an Order to Show Cause returnable about 40 days out. Service of the Order to Show Cause and supporting papers takes the place of the service of process or a citation.

R. 4:83-1. **Method of Proceeding.** Unless otherwise specified, all actions in the Superior Court, Chancery Division, Probate Part, shall be brought in a summary manner by the filing of a complaint and issuance of an Order to Show Cause pursuant to R. 4:67. The Surrogate, as Deputy Clerk, may fix the return date of the Order to Show Cause and execute the same unless the procedure in a particular case raises doubt or difficulty. Service shall be made and the action shall proceed thereafter in accordance with that rule.

See also N.J.S.A. 3B:2-4. **Proceedings in Superior Court on order to show cause.** The Superior Court, in any proceeding by or against fiduciaries or other persons, may proceed in a summary manner.
V. Establishing a Timetable. Every estate administration goes through a cycle of events that can be projected for the benefit of the executor and the heirs. The administration process includes many time sensitive events.

Attachment: Estate Administration Checklist

A. Probate Dates:
   - Will cannot be admitted to probate until ten days after death. N.J.S.A. 3B:3-22.
   - Intestate Administration: next of kin may lose right to administer estate if they delay application more than 40 days after death. N.J.S.A. 3B:10-2.
   - Notice of Probate to be provided within 60 days of probate. R. 4:80-6.
   - Time for contesting Will is within four months of probate for residents and six months for non-residents. R. 4:85-1
   - Complaint for Elective Share required to be filed within six months of appointment of personal representative. N.J.S.A. 3B:8-12.
   - Creditors have nine months from death to present claims to executor or administrator. N.J.S.A. § 3B:22-4
   - Disclaimers are due to be made within nine months of death to be effective for Federal gift tax purposes. IRC 2518. Disclaimers under NJ law may be made at any time. N.J.S.A. 3B:9-1.
   - General bequests bear interest after twelve months after appointment of personal representative. N.J.S.A. § 3B:23-11.

B. Lifetime Income and Gift Tax Dates:
   - Decedent’s final lifetime income tax returns will be due April 15 of year after death; can be filed jointly with surviving spouse.
   - Decedent’s income tax returns for year before death not due until April 15 of year of death, and may be extended until October 15 of year of death.
   - Gift tax returns are typically due the same time.

C. Retirement Account Dates:
   - Decedent’s Minimum Required Distribution (MRD) from IRA will be due before December 31 of year of death.
   - Designated Beneficiary for an inherited retirement account is required to be established by the end of the year after the year of death.

D. Estate and Inheritance Tax Dates:
   - NJ inheritance tax and return is due 8 months after date of death, and the due date may be extended 6 months.
   - Federal estate taxes and returns are due 9 months after death, and the due date may be extended six months.
- Tax authorities have three years from the filing of the estate tax returns to assess any additional tax.

E. Conclusions:

- Administration of an estate may last from one to four years. More typically, an estate on which no tax is due may take 18 months, and an estate on which tax is due may take 24 months.

- The events of the first six to twelve months are usually the most intense, because that is when the following occur: probate, collecting assets, paying debts, filing estate tax returns, and making interim distributions.
VI. Collecting and Managing Probate Assets: Practical Concerns

Attachments: Authorization to Release Information; IRS Form SS-4, Application for EIN; IRS Form 56, Notice of Fiduciary Relationship; IRS Form 2848, Power of Attorney; NJ Form L-8, Self-Executing Waiver; NJ Form L-9, Affidavit Requesting Real Property Tax Waiver

A. Managing the Residence:
   - Clean out refrigerator
   - Secure premises
   - Secure property and casualty insurance
   - Consider distribution of tangibles and cleaning out property
   - Terminate lease

B. Collect Mail:
   - Bank and securities statements and Forms 1099.
   - Bills and creditor claims.
   - Arrange for post office to forward mail.
   - N.J. has adopted the Uniform Fiduciary Access to Digital Assets Act, N.J.S.A. 3B:14-60.1 et seq.

C. Social Security:
   - Send a death certificate to the local social security office so that they will stop paying the benefits.

D. Obtain Taxpayer Identification Number (TIN):
   - Complete Form SS-4 and have executor sign; or
   - Apply online.

E. File Form 56, Notice of Fiduciary Relationship:
   - File with IRS and similar state forms to notify of death so that tax authorities send correspondence to executor.

F. Establish Estate Bank and Securities Accounts:
   - Letters Testamentary
   - TIN
   - Copy of Will

G. Collect Bank and Securities Accounts in Decedent’s Name. Typically requires:
   - Death Certificate
   - Letters Testamentary or Letters of Administration
   - Letter of instruction
   - New Jersey Tax Waiver
   - IRS Form W-9

Waivers. New Jersey imposes an estate and inheritance tax lien, which is released by the issuance of Waivers by the Division of Taxation. N.J.A.C. 18:26-11.1 et seq. Under the blanket waiver regulation, banks may release 50% of the date of death balances. N.J.A.C. 18:26-11.16. The contents of safe deposit boxes are also subject to a blanket waiver. N.J.A.C. 18:26-11.20. Self-executing waivers may be presented to collect bank accounts
and securities passing to Class A beneficiaries on a Form L-8. An application may also be made to obtain a waiver for real estate being sold on a Form L-9. N.J.A.C. 18:26-9.4.

While a Federal lien also exists to secure the payment of Federal estate taxes, as a practical matter it is only released for the sale of real estate.

H. Collect and Transfer Non-Probate Assets.

Similar to probate assets, a death certificate, tax waiver and W-9 will be required to collect most non-probate assets. Beneficiary will have to contact the financial institution or insurance company holding financial assets, and provide instructions to close or transfer accounts, or provide claim forms, or open new accounts for retirement assets. Jointly held real property typically transfers by operation of law based on public record of death.

I. Establish Cash Requirements.

In this large transaction called an estate administration, the executor or administrator is responsible for paying not just the heirs, but also the creditors, including the tax authorities. The fiduciary duties of an executor and administrator include protecting assets against risk of loss. One of the simplest ways of doing so is to create an estimate of all of the items that are required to be paid in cash, and to sell assets to raise the cash required. This process is called establishing and raising the cash requirements. Once assets are sold, the proceeds should be held in very safe, very liquid investments. Any required cash in excess of the FDIC insurance cap should be invested in Treasury securities.

Items required to be paid in cash include:

- Debts (but real estate passes subject to mortgage unless specifically exonerated, N.J.S.A. 3B:25-1);
- Administration expenses, including legal fees and executors’ commissions;
- Estate and inheritance taxes; and
- General bequests.


Throughout the administration of the estate, a fiduciary has an obligation to keep the estate assets invested in accordance with the statutory “prudent investor” standard. N.J.S.A. 3B:20-11.1.

In making investment decisions, a fiduciary is required to act in the same manner as a prudent investor would act considering the purposes, terms and distribution requirements of the Will. The fiduciary has an obligation to manage assets as a total portfolio, having risk and return objectives reasonably suited to the estate or trust, taking into account general economic conditions, inflation and deflation, tax consequences, the role of each asset or class of assets in achieving investment goals, the other resources of the beneficiaries, the need for liquidity, the need to provide income, the need to preserve capital, and any special role that a particular asset has in achieving the purposes of the estate plan. N.J.S.A. 3B:20-11.3.

Diversification of investments is typically required, unless special circumstances indicate that the purposes of the Will are better served without diversification. N.J.S.A. 3B:20-11.4.

Within six months of appointment, a fiduciary is required to review the assets of the estate to begin to implement an investment program designed to comply with the prudent investor standard. N.J.S.A. 3B:20-11.7.
Costs of investment may be incurred that are appropriate and reasonable in relation to the assets, the purposes of the estate or trust, and the skills of the fiduciary. A fiduciary who delegates investment discretion is to control the overall costs of the delegation, including making a reduction in the amount of corpus commissions otherwise allowable. N.J.S.A. 3B:20-11.8.

Delegation of investment discretion is permissible, within certain parameters. N.J.S.A. 3B:20-11.10.

Practical considerations: Estate will only continue in existence for two to four years. How large is the estate? To whom does it pass? What are the investment interests of the beneficiaries? General rules of thumb:

- The larger the number of beneficiaries, and the smaller the amount passing to each, the more practical it will be to reduce assets to cash for distribution;

- The fewer the beneficiaries, and the larger the amounts that pass to each, the greater the need for sophisticated investment management, particularly when the assets pass subject to trusts.

J. Pay Income Taxes:

- Decedent’s year of death income taxes (and possibly year prior to death)
- Decedent’s final return may be filed jointly with surviving spouse
- Death excuses estimated tax payments
- Estate’s income taxes: Estate is a separate income taxpayer required to file Forms 1041.
- Fiscal year may be chosen, deferring tax into a later year
- Distributions carry out income to beneficiaries
- Deductions may offset income to be carried out to beneficiaries
- Excess deductions in final year may be carried out to beneficiaries

K. Maintaining Records:

- Correspondence
- Bound Volumes / PDF files for Probate Proceedings, Tax Proceedings, and Accountings
- Signed and Certified: Death Certificates, Letters Testamentary
- Client’s Papers – deeds, bank and securities statements, insurance policies, income tax returns
- Estate bank and securities statements
- Appraisals
- Estate tax returns
- Income tax returns
- Attorneys’ notes, work papers, legal research
VII. Estate and Inheritance Taxes

A. Benefits of Tax Reporting

- Fix estate and inheritance tax liability, if any
- Establish basis for income tax purposes
- Claim tax benefits – timely filed returns required
  o Transfer of unused Federal estate and gift tax exemption amount to surviving spouse (DSUE)
  o Claim marital deduction for QTIP property
  o Allocate GST exemption to specific property
- Start statute of limitations running for assessment of additional estate tax
- Avoid imposition of penalties and interest

B. Two Separate Taxes, imposed on two different premises

a. Estate Tax: a tax on the privilege of transferring wealth: add up the assets, allow some deductions, and impose a tax on the decedent’s net estate.

   i. In 2018, Federal Estate tax applies to estate in excess of $11,200,000 at a top rate of 40%.

   ii. Federal Deceased Spousal Unused Exclusion (DSUE) amount is portable between spouses, which requires timely filing of Federal estate tax return. IRC 2010(c)(4) and (5).

   New Jersey Estate Tax Repealed as of 2018

   iii. Prior to 2017, the New Jersey estate tax applied to decedents leaving net estate in excess of $675,000, at rates beginning at 5.6% and increasing to 16% on assets in excess of $10,100,000. When an estate exceeded the $675,000 threshold, the tax on the first $675,000 was collected at a rate of 37% on assets in excess of $615,000 until fully paid.

   iv. In 2017, the New Jersey estate tax applies to decedents leaving net estate in excess of $2,000,000, at rates beginning at 7.2% and increasing to 16% on assets in excess of $10,100,000. Once the $2,000,000 threshold is crossed, the initial exemption of $2,000,000 is lost.

   v. The New Jersey taxable estate is defined by the Federal taxable estate under the Internal Revenue Code as in effect in 2001. The New Jersey Estate tax does not apply to non-residents of New Jersey.

b. Inheritance Tax: a tax on the privilege of receiving wealth: identify the recipient, total how much that recipient inherits, and impose a tax based upon the relationship between the recipient and the decedent.

   i. New Jersey inheritance tax allocates heirs to different classes:

      - Class A: spouse, ancestors and descendants - exempt
      - Class C: siblings, sons-in-law and daughters-in-law – first $25,000 exempt, then 11% up to $1,100,000, 13% up to $1,400,000, 14% up to $1,700,000 and 16% over $1,700,000
      - Class D: all other individuals – no exemption - 15% up to $700,000 and 16% over $700,000
      - Class E: charities – exempt
ii. New Jersey Inheritance Tax benefits:

- Definition of who is Class A, which includes:
  - step-children, but not step-grandchildren N.J.A.C. 18:26-1.1
  - a person who stands in the relationship of a mutually acknowledged child: ten year relationship that began before age 15. N.J.S.A. 54:34-2.1

- Definition of Property Subject to Inheritance Tax

  - Gifts other than transfers in Contemplation of Death are not subject to the inheritance tax. N.J.S.A. 54:34-1. New Jersey does not have a gift tax.
  - Life Insurance payable to a beneficiary and not the estate is not subject to the inheritance tax. N.J.S.A. 54:34-4.f. N.J.A.C. 18:26-6.8.

C. Estate Tax Payments and Return Due Dates

a. Federal due date: nine months from date of death

  i. Non-payment results in a .5% penalty per month, plus interest
  ii. May be extended for hardship
  iii. May be extended if tax is attributable to closely held business interest
  iv. Automatic 6 month extension available upon application, IRS Form 4768

b. New Jersey inheritance tax due date: eight months after date of death

  i. No automatic extensions are granted.
  ii. Separate NJ extension application required: often given for only 4 months, and then extended for another 2 months
  iii. Late payments bear interest at rate of 10%, which may be reduced to 6% if the cause of delay was unavoidable, such as litigation.

D. Federal Estate Tax Return: a snapshot reporting the value of property at a specific time, namely the date of death, owned by the decedent at that specific time.

Attachments: IRS Form 4768; IRS Form 706 (August 2017) (Instructions updated also in August 2017)

a. Starting Point: Federal Gross Estate: IRC 2033. The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death. Includes both probate and non-probate property.

b. As broad as this definition is, the Code then proceeds to further define what is subject to the Federal estate tax, primarily in response to the planning vehicles defined by estate planning lawyers over the decades since the tax was enacted, including gift in contemplation of death at IRC 2035, lifetime transfers at IRC 2036 to 2038, jointly owned property at IRC 2040, powers of appointment at IRC 2041 and life insurance at IRC 2042.

c. Once assets are identified, they must be valued as of the date of death. The classic definition of value for Federal estate tax purposes is “fair market value” as set forth at Treas. Reg. 20.2031-1(b): The fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.
d. Alternate valuation: Executor may elect to value assets as of date six months after
date of death, if the election results in a reduction of the estate tax due. IRC 2032.

e. Assets need to be inventoried, with the Schedules for the Federal estate tax return
providing a very practical outline for the inventory:

   Schedule A: Real Estate
   Schedule B: Stocks and Bonds
   Schedule C: Mortgages, Notes and Cash
   Schedule D: Insurance on Decedent’s Life
   Schedule E: Jointly Owned Property
   Schedule F: Other Miscellaneous Property
   Schedule G: Transfers During Decedent’s Life
   Schedule H: Powers of Appointment
   Schedule I: Annuities

f. Appraisals need to be obtained.
   i. Real estate valued by qualified appraiser
   ii. Publicly traded securities: mean of the highest and lowest quoted prices for
       the date of death, Treas. Reg. 20.2031-2(b)
   iii. Closely held corporations and other businesses are valued in accordance with
       Rev. Rul. 59-60, based upon five year financial history and current
       conditions, by a qualified appraiser
   iv. Bank statements need to be analyzed to determine date of death balance
   v. Insurance companies issue a Form 712 for each life insurance policy, stating
       the proceeds paid, owner of the policy and the payee.
   vi. Tangibles, jewelry, collections need to be valued by qualified appraisers

g. Deductions need to be claimed.
   i. Schedule J: Funeral and Administration Expenses
      1. Caveat: Administration expenses may only be deducted for estate tax
         purposes or income tax purposes, and may not be claimed for both.
         IRC 642(g)
   ii. Schedule K: Debts
   iii. Schedule L: Net Losses and Expenses of Administering Assets not Subject to
        Claims
   iv. Schedule M: Bequests to Spouses
   v. Schedule N: Charitable and Public Gifts and Bequests
   vi. Schedule PC: Protective Claim for Refund

h. Attachments to the Estate Tax Return.
   i. Death Certificate
   ii. Will
   iii. Letters Testamentary
   iv. Appraisals
   v. Forms 712
   vi. Copies of trusts created by decedent, or of which decedent was a trustee or a
       beneficiary
   vii. Computation of Commissions
   viii. Proof of payment of State Death Taxes
   ix. Gift Tax returns

E. New Jersey Inheritance Tax Return: Residents and Non-Residents

Attachment: NJ Form IT-R; NJ Form IT-NR

a. Schedules are different:
i. Schedule A, real estate
ii. Schedule B, closely held businesses
iii. Schedule C, transfers (during lifetime)
iv. Schedule D, deductions
v. Schedule E, identifying each beneficiary, assets received, and the class for rate purposes

b. Value is defined as “clear market value,” not fair market value. N.J.A.C. 18:26-8.10. et seq. Discounts for family limited partnerships are not permitted unless Director determines that they are warranted based on the nature and risk associated with underlying assets. N.J.A.C. 18:26-8.14 (b)(2).

c. Requires copy of income tax return for last full year of life, in addition to the other attachments.

d. On face page of return, the net taxable assets are allocated to the different classes of beneficiaries, so that the tax can be computed. Settlement Agreements do not override the provisions of the Will for purposes of determining the inheritance tax. N.J.A.C. 18:26-2.11. The allocation of estate taxes do not affect the computation of the inheritance tax. N.J.A.C. 18:26-2.17.

e. Compromise Tax: Lines 8, 15 and 16 of face page. Trusts are not allocated to a beneficiary class for inheritance tax purposes. Rather, the income and remainder interests are allocated to individual beneficiaries to be taxed at each beneficiary’s rate. When the interests are subject to contingencies, such as one person surviving another, or the exercise of powers of withdrawal or powers of appointment, the value of the interests is subject to debate.

f. Example: trust for spouse for life, to pay income, invade principal for health and support, and subject to a power of withdrawal of 5% per year, with the remainder payable to nieces and nephews. How much passes to the nieces and nephews depends upon how long the spouse lives, and how much principal is invaded. The amount subject to the contingency is set forth on Line 8.

g. The tax is established by the Compromise method. The compromise is determined by projecting different scenarios and their likelihood, and imposing a tax based upon the probabilities. The Division of Taxation published a “Guide for Computation of the Compromise Tax” in 1998, which may be available by contacting the Division. If the taxpayer wishes to propose a compromise, it can be done on line 15. If not, the Division will propose a compromise.

h. Non-Residents: NJ inheritance tax only applies to real property and tangibles located in New Jersey. Very complicated system, which provides a choice of four different ways to compute the tax. NJ has published 6 pages of FAQs to address the application of the inheritance to non-residents.

F. Estate Tax Refunds

a. Federal claims for refund are due within the later of three years of when the return was filed or two years of when the tax was paid. IRC 6511.

b. New Jersey claims for refund are required to be made within three years of the date of payment. N.J.A.C. 18:26-3A.12(e) and 18:26-10.12(d). See also Estate of Ehringer v. Dir., Div. of Taxation, App. Div. Docket #35-2-7164 (Yannotti, J.A.D.).

G. Audits and Closing Letters

a. Each of the IRS and the State of New Jersey may audit the returns.
b. The IRS traditionally conducted compliance audits. A letter would be sent out requesting fairly standard information, including three years of securities statements, the agent would visit your office and review the back-up materials, and then propose changes. With increased exemption amounts and reduced staffing, the patterns have changed. Letter audits are more common. The auditors tend to address specific issues, such as discounts on family limited partnerships.

c. Eventually, either without or with an audit, the IRS will issue a closing letter, either accepting the return as filed (most common) or with an audit report setting forth changes agreed to by the taxpayer. IRS recently adopted practice of not issuing audit letters, but instead issuing a transcript showing payment and audit status, which transcript has to be requested.

d. New Jersey traditionally required the Federal closing letter and any audit changes to be filed with the Division of Taxation, so that it may make any appropriate adjustments to the NJ estate tax due. Whether New Jersey will continue to do so for inheritance tax purposes is not clear.

e. When New Jersey concludes its audit, it will issue a Notice of Assessment, showing the tax paid and the amount due, if any. Once the tax is fully paid, it will then issue tax waivers for all of the assets for which they are requested, which can then be used to collect any assets that are being held subject to the New Jersey tax lien.

H. Allocation of Estate Taxes

a. What does Will provide? Broad or narrow? Residue?

b. Estate taxes are apportioned proportionately to the assets received by statute in absence of a direction in the Will. N.J.S.A. 3B:24-1 et seq. Inheritance Taxes are paid by the parties upon whom they are imposed, N.J.S.A. 54:35-6, unless the Will contains a direction concerning the payments of the tax.

c. Depending upon the terms of the Will, executor may be required to pay estate taxes from the probate assets and then to collect a contribution from the non-probate assets.

VIII. Termination of the Estate Administration

A. Interim Distributions: timing, reasonableness and documentation.

i. Once cash requirements are determined, the necessary cash raised, and estate or inheritance tax payments made, consideration may be given to making interim distributions. This usually happens nine to twelve months after the date of death.

ii. Order of abatement controls the priority of distributions. Distributions are made in the following order: specific bequests (specifically identified property), general bequests (sum certain), residuary bequests, and then assets passing by intestacy. See N.J.S.A. 3B:23-12.

iii. Specific bequests carry the income they earn, and real estate passes subject to mortgage unless specifically exonerated.

iv. General bequests bear interest after one year.
v. Pursuant to N.J.S.A. 2A:17-56.23b an executor or administrator shall initiate a child support judgment search for ANY beneficiary who is receiving $2,000 net proceeds (after court costs, attorney’s fees, medical costs, etc.) or more from an estate:

b. Before distributing any net proceeds of a settlement, judgment, inheritance or award to the prevailing party or beneficiary:

(1) the prevailing party or beneficiary shall provide the attorney, insurance company or agent responsible for the final distribution of such funds with a certification that includes the prevailing party’s or beneficiary’s full name, mailing address, date of birth and Social Security number; and

(2) the attorney representing the prevailing party or beneficiary shall initiate a search of child support judgments, through a private judgment search company that maintains information on child support judgments, to determine if the prevailing party or beneficiary is a child support judgment debtor.

vi. Because the residue remains liable for unpaid debts, taxes and administration expenses, a reserve needs to be established to complete the administration of the estate. The residue in excess of the reserve is available for distribution.

vii. Receipt and Refunding Bond should be signed by the beneficiary.

Attachment: Receipt and Refunding Bond.

B. Final Administration Expenses: Executor Commissions

N.J.S.A. §3B:18-13 and 14. Executors receive 6% on income plus fees in accordance with the following schedule:

Commissions on all corpus received by the fiduciary may be taken as follows:
- 5% on the first $200,000 of all corpus received by the fiduciary;
- 3.5% on the excess over $200,000 up to $1,000,000;
- 2% on the excess over $1,000,000; and
- 1% of all corpus for each additional fiduciary provided that no one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

Such commissions may be reduced by the court having jurisdiction over the estate only upon application by a beneficiary adversely affected upon an affirmative showing that the services rendered were materially deficient or that the actual pains, trouble and risk of the fiduciary in settling the estate were substantially less than generally required for estates of comparable size.

N.J.S.A. 3B:18-16. Court may allow additional commissions for extraordinary or unusual services rendered.

N.J.S.A. § 3B:18-6. Legal fees for attorney also serving as fiduciary. If the fiduciary is a duly licensed attorney of this State and shall have performed professional services in addition to his fiduciary duties, the court shall, in addition to the commissions provided by this chapter, allow him a just counsel fee. If more than one fiduciary shall have performed the professional services, the court shall apportion the fee among them according to the services rendered by them respectively.

C. Final Account of Executors. Beneficiaries are entitled to require -- and fiduciaries are entitled to render -- an account of all of the transactions engaged in by the fiduciary during the period of the accounting. The account can be rendered formally, presented to the Court, beneficiaries joined as parties, exceptions, if any, heard and tried, and a
judgment entered either surcharging the fiduciary or approving and allowing the account and discharging the fiduciary. A judgment on an accounting is res adjudicata as to all exceptions which could have been taken. N.J.S.A. 3B:17-8.

Court accountings are expensive. In addition to the formal Court proceedings brought in summary form, the Surrogate is allowed an auditing fee of .4% of the value of an estate in excess of $200,000. On a $10 million estate, the Surrogate’s auditing fee is $40,000.

Alternatively, if all parties interested in any separable part of an account are of full age and competent, and so agree in writing, there need be no accounting as to the same. Ct. R. 4:87-9. See also N.J.S.A. 3B:17-1, Filing of Release, and N.J.S.A. 3B:17-13, Effect of Nonjudicial Settlement or Waiver of Account.

Attachment: Agreement Settling Account of Executor

4:87-3. Form of Account; Statement of Assets to Be Annexed to Account

(a) Form of Account. The charges and allowances as to principal and income and the statements required to be annexed to the account may be typed or in the form of computer or machine printouts; and, where appropriate, the accountant may use a single schedule for the presentation of portions of the account, but charges and allowances as to corpus and income shall be stated separately.

(b) Statement to Be Annexed to Account. To all accounts shall be annexed:

(1) a full statement or list of the investments and assets composing the balance of the estate in the accountant’s hands, setting forth the inventory value or the value when the accountant acquired them and the value as of the day the account is drawn, and also stating with particularity where the investments and assets are deposited or kept and in what name;

(2) a statement of all changes made in the investments and assets since they were acquired or since the day of the last account, together with the date the changes were made;

(3) a statement as to items apportioned between principal and income, showing the apportionments made;

(4) a statement as to apportionments made with respect to transfer inheritance or estate taxes;

(5) a statement of allocation if counsel fees, commissions and other administration expenses have been paid out of corpus, but the benefits of the deductions from corpus have been allocated in part or in whole to income beneficiaries for tax purposes; and

(6) a statement showing how the commissions requested, with respect to corpus, are computed, and in summary form the assets or property, if any, not appearing in the account on which said commissions are in part based.

R. 4:88-1. Affidavit of Accountant’s Services. If the allowance of such commissions is within the discretion of the court, the applicant therefor shall, upon every application for commissions on corpus, at least 20 days prior to the day on which the account is settled, file an affidavit stating in detail the nature of the services rendered in administering the estate and specifying the amount of the commissions requested.

R. 4:88-2. Commission Payments Before Settlement. Whether or not annual commissions are taken pursuant to N.J.S.A. 3B:18-17, a fiduciary may apply to the court to which he or she is accountable for an ex parte order supported by appropriate
affidavits for payment to the fiduciary on account of commissions on corpus for services to date. Such order shall not be binding on the beneficiaries, and the payment so ordered shall be subject to approval and allowance or to disallowance by the court upon the settlement of the fiduciary’s account.

R. 4:88-4. Affidavit of Attorney’s Services. On every application for attorney’s fees, the attorney shall file with the court at least 20 days prior to the day on which the account is settled an affidavit stating, in addition to the information required by R. 4:42-9(b), whether any part of the requested fee is to be paid to or shared with an attorney or firm of attorneys of another state or jurisdiction and if so, the amount to be paid or the manner in which the fee is to be shared shall be set forth and shall be supported by an accompanying affidavit of the foreign attorney or attorneys stating in detail the nature of the services rendered. The allowance shall be payable to the New Jersey attorney, and shall state what part, if any, of said allowance is to be paid to or shared with the foreign attorney or attorneys.

D. Virtual Representation: Who Needs to be a Party to the Agreement or the Proceeding.

R. 4:26-3. Virtual Representation of Future Interest

(a) Representation by Presumptive Taker. In an action affecting property in which any person in being or unborn has or may have a future interest other than a life or lesser estate, or where it is not known or is difficult to ascertain who is the person or class having such interest, it shall be necessary to join as parties to the action only the person or persons who would be entitled to such property if the event or contingency terminating all present estates and successive life or lesser estates therein had occurred on the date of the commencement of the action, and the judgment entered therein shall be binding upon all persons, whether in being or not, who may claim the future interest in the property, unless it shall affirmatively appear in the action that there exists a conflict of interest between the persons so joined and the persons not joined. Should such conflict exist, the court may, in its discretion, appoint from among the persons then next entitled upon the occurrence of the event or contingency, one person to represent all persons (whether in being or not) who may claim any future interest in the property.

(b) Representation by Donee of Power of Appointment. Where a party to an action is the donee of a power of appointment of any type, it shall not be necessary to join the potential or permissible appointees of the power or takers in default, and the judgment entered therein shall be binding upon the appointees, unless it shall affirmatively appear in the action that there exists a conflict of interest between the donee of the power and the appointees.

(c) Representation by Other Parties or Guardians. In an action in which the interests of a person not in being are or may be affected or in which it is not known or is difficult to ascertain who is the person or class affected thereby and as to which paragraphs (a) and (b) are inapplicable because of the lack of a representative as therein described or because of the nature of the interest involved, the court, in its discretion, may appoint a party to the action to represent such persons, and the judgment entered therein shall be binding upon the persons so represented. If, however, it shall appear that no party to the action adequately represents the interests of such persons, the court shall appoint a guardian ad litem to represent them.

(d) Joinder of Additional Parties. Notwithstanding paragraphs (a), (b) and (c) hereof, the court, in its discretion, may require the joinder of additional persons.

See also N.J.S.A. § 3B:11-4. Effect to be given consent by holders of general powers of appointment upon beneficiaries.

Infant Remaindermen were not represented by other remainderman of full age who resided with income beneficiary; failure to appoint guardian ad litem fails to bind remaindermen. In re Trust Under the Will of Maxwell, 306 N.J. Super. 563, 579-580 (App. Div. 1997).

New Jersey has adopted the Uniform Trust Code, on January 19, 2016, effective as of July 18, 2016. 2015 NJ Sess. Law Serv. Ch. 276. The new statute is set forth at N.J.S.A. 3B:31-1 et seq. It contains specific provisions regarding the virtual representation of persons having interests in Trusts, N.J.S.A. 3B:31-13 to 17,

E. Final Income Tax Returns. Once the accounting is signed, the administration expenses are paid, and the final distributions are made to the beneficiaries, the final income tax returns for the estate can be prepared and filed. For income tax purposes, the estate continues in existence for the period of time actually required by the executor to perform the ordinary duties of administration. It may not be unduly prolonged and will be treated as terminated after a reasonable period has passed to complete the administration, or the assets have actually been distributed except for a reasonable amount set aside for the payment of unascertained or contingent liabilities and expenses. Treas. Reg. 1.641(b)-3(a).

In making the final distribution of the estate, a reserve may be kept to pay the accountant preparing the final income tax returns, and any other professionals or other items still outstanding.

Excess deductions are not wasted on the final income tax return, but are carried out to the beneficiaries. IRC 642(h). Administration expenses claimed for income tax purposes may not be claimed for Federal estate tax purposes. IRC 642(g).