



George Mason American Inn Of Court

Wednesday, February 19, 2014

AGENDA

OUT-OF-STATE PROCEDURES

Topics to be covered:

- I. Introduction
- II. Ethics Dilemma
- III. Issuing A Subpoena Duces Tecum Out-of-State
- IV. Issuing A Subpoena in NY For An Out-of-State Proceeding
- V. Appointment of An Out-of-State Estate Administrator in a Wrongful Death Case
- VI. Recording a D.C. Judgment in Alexandria
- VII. Questions / Comments / Conclusion

Presenters:

Carla Brown
Mike Chick
Brian Ebert
Lauren Fredericksen
Nina Ginsberg
Don Haddock
Monica Hansen

Issuing A Subpoena Duces Tecum Out-of-State

A. Overview of Virginia Procedure

The general procedure for issuing a subpoena duces tecum to a nonparty in Virginia is found in Virginia Supreme Court Rule 3A:12. The Rule specifically provides that:

Upon notice to the adverse party and on affidavit by the party applying for the subpoena that the requested writings or objects are material to the proceedings and are in the possession of a person not a party to the action, the judge or the clerk may issue a subpoena duces tecum for the production of writings or objects described in the subpoena. Such subpoena shall command either (1) that the person to whom it is addressed shall appear with the items described either before the court or the clerk or (2) that such person shall deliver the items described to the clerk. The subpoena may direct that the writing or object be produced at a time before the trial or before the time when it is to be offered in evidence.

Any subpoenaed writings and objects, regardless by whom requested, shall be available for examination and review by all parties and counsel. Subpoenaed writings or objects shall be received by the clerk and shall not be open for examination and review except by the parties and counsel unless otherwise directed by the court. The clerk shall adopt procedures to ensure compliance with this paragraph.

VA. SUP. CT. R. 3A:12.

Virginia Supreme Court Rule 4:9 specifically permits a party to a case to request from another party any documents believed to be relevant to the case that are within the custody, control, or possession of the other side. VA SUP. CT. R. 4:9(A). Any request for product of documents by a party must be done by a subpoena duces tecum, pursuant to Rule 3A: 12 and Virginia Code § 16.1-89. Virginia Code § 16.1-89 states that:

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9A of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party . . . A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court.

VA. CODE § 16.1-89.

These provisions apply to subpoenas issued within the Commonwealth of Virginia and served upon a party or nonparty with the Commonwealth. When a subpoena is issued within the Commonwealth to obtain records from a party or nonparty within another jurisdiction, the Uniform Interstate Depositions and Discovery Act applies.

B. The Uniform Interstate Depositions and Discovery Act

The Uniform Law Commission promulgated the Uniform Interstate Depositions and Discovery Act (the “Act”) in 2007. The Act sets forth an efficient and inexpensive procedure for litigants to depose out of state individuals and for the production of discoverable materials that may be located out of state. The term “subpoena” in the Act includes a subpoena duces tecum. The description of a subpoena in the Act is based on the language of Rule 45 of the Federal Rules of Civil Procedure. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The Act states that:

(a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the [county, district, circuit, or parish] in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court’s procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Uniform Interstate Depositions and Discovery Act Rule 3(a)-(c) (2007).

Under the Act, litigants can present a clerk of the court, located in the state where discoverable materials are sought, with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

Virginia has adopted the Act, along with thirty other states within the United States. Among the states which have adopted the Act are the District of Columbia, Maryland, and Pennsylvania. In each state, the provisions of the Act “apply to any civil action or proceeding in a foreign jurisdiction where discovery is sought” within the state. PA. CONS. STAT. § 5332. Each state has adopted substantially the same language as was promulgated by the Uniform Law Commission. How to subpoena documents from these three states under the Act will be explained in the sections below.

C. District of Columbia Out-of-State Subpoena Procedures

Since the District of Columbia has adopted the Act, it has become substantially easier to subpoena records from a party or nonparty within the District. The Act has been codified in §§ 13-441-13-448 of the District of Columbia Code. § 13-443 specifically provides that:

To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to the Clerk of the Superior Court .

. .

When a party submits a foreign subpoena to the Clerk of the Superior Court, the clerk, in accordance with the Rules of the Superior Court, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

D.C. CODE § 13-443(a), (b).

This provision goes on to require that the subpoena issued by the Clerk of the District of Columbia Superior Court must:

(A) Incorporate the terms used in the foreign subpoena; and

(B) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

D.C. CODE § 13-443(c).

It is important to note that the rules of the Superior Court which are applicable to compliance with subpoenas generally also apply to subpoenas issued under the Act. *See* D.C. CODE § 13-445.

D. Maryland Out-of-State Subpoena Procedures

The language adopted by Maryland is substantially the same as that adopted by the District of Columbia. Both Maryland and the District of Columbia have adhered substantially to the language of the Act as promulgated by the Uniform Law Commission. In Maryland, the Act has been codified in §§ 9-401-9-407 of the Maryland Code. § 9-402 specifically provides that:

To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to a clerk of the circuit court for the county in which discovery is sought to be conducted in this State . . .

When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

MD. CODE ANN. CTS. & JUD. PROC. § 9-402(a), (b).

Under this statute a Virginia subpoena issued to obtain documents within Maryland must be submitted to the clerk of the circuit court within the specific county where the documents are believed to be kept. The statute further states that the subpoena issued by the court of the circuit court in Maryland must:

- (1) Incorporate the terms used in the foreign subpoena; and
- (2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

MD. CODE ANN. CTS. & JUD. PROC. § 9-402(c).

It is important to note that while foreign subpoenas submitted to the clerk of the circuit court pursuant to the Act will be issued for service upon the person directed, such subpoenas are subject to the application Maryland rules governing all subpoenas within the state. *See* MD. CODE ANN. CTS. & JUD. PROC. § 9-404.

E. Pennsylvania Out-of-State Subpoena Procedures

Along with the District of Columbia and Maryland, Pennsylvania has also adopted the Act and codified substantially the same language as given above. This language was promulgated by the Uniform Law Commission. In Pennsylvania, the Act has been codified in §§ 5331-5337 of the Pennsylvania Consolidate Statutes. § 5335 specifically provides that:

To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a prothonotary in the jurisdiction in which the person who is the subject of the order

resides, is employed or regularly transacts business in person. A request for the issuance of a subpoena under this subchapter does not constitute an appearance in the courts of this Commonwealth . .

A prothonotary in receipt of a foreign subpoena shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

PA. CONS. STAT. § 5335(a), (b).

A subpoena issued in Pennsylvania pursuant to the provisions of the Act must:

- (1) Incorporate the terms used in the foreign subpoena.
- (2) Contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

PA. CONS. STAT. § 5335(c).

The prothonotary is an elected Constitutional office in the Commonwealth of Pennsylvania. The prothonotary is the Clerk of the Civil Division of the Court of Common Pleas who is elected to a four year term. This position is similar to the clerk of the court positions mentioned in the Virginia, District of Columbia, and Maryland codes.

The Pennsylvania statute adopts procedures similar to those adopted in Maryland. In Maryland, the foreign subpoena must be submitted to the clerk of the circuit court in the county in which discovery is sought. Similarly, in Pennsylvania, once a foreign subpoena has been issued, it must be submitted to a prothonotary in the jurisdiction in which the subject resides, is employed, or regularly transacts business. Also similar to the Maryland and District of Columbia statutes is the requirement that the Pennsylvania Rules of Civil Procedure and any statutes relating to service of subpoenas and compliance with subpoenas apply to all subpoenas issued under the Act.

Using This Revisable PDF Form

1. Prepared by party requesting subpoena duces tecum; Data Elements 14, 15, 16 and 17 are prepared by issuing official.
2. Attachment--none.
3. Preparation details
 - a. This form may be used in criminal, civil and juvenile cases.
 - b. A subpoena duces tecum in a criminal case may be issued only to obtain documents or tangible things from entities that are not parties in the case. A sworn application (Data Elements 14-15) is also required.
 - c. A subpoena duces tecum in a civil case may be issued to obtain documents or tangible things from any entity, whether or not the entity is a party to the case. An application is needed, but the requesting party does not have to make application under oath.
4. This form is prepared by the person requesting the subpoena **BUT** it must be issued by the Clerk, Judge or Magistrate. Attorneys who are active members of the Virginia Bar may issue the Subpoenas in certain civil and criminal matters. In those instances, refer to forms DC-326, DC-497 and DC-498.
5. This request should be filed at least fifteen (15) days prior to trial.
6. Special rules apply if medical records are being sought. Contact the court for further information.

SUBPOENA DUCES TECUM

Commonwealth of Virginia VA. CODE §§ 16.1-89, 16.1-131, 16.1.265, Rules 3A:12, 4:9(c)

1 2 ☐ General District Court
 2 ☐ Juvenile and Domestic Relations District Court
 CITY OR COUNTY
 3
 STREET ADDRESS OF COURT

REQUEST FOR SUBPOENA DUCES TECUM

A. I request that a subpoena duces tecum be issued to require the custodian named at right or someone acting on his or her behalf to produce the items ☐ described below ☐ on the attached request for issuance of a subpoena duces tecum.

4 5
 ITEMS TO BE PRODUCED

 1. To be delivered to:
 6 ☐ this Court at the above address on:
 7 ☐ the clerk's office of this court at the above address (documents only) on or before:
 7
 DATE AND TIME

2. (Civil cases only) To be made available to the requesting party at:
 8 for
 LOCATION TIME PERIOD
 to permit such party or someone acting in his or her behalf to inspect and copy, test or sample such tangible things in your possession, custody or control. See reverse.
 B. ☐ I further request that the custodian also appear in person before this Court at the date and time shown above in Paragraph A.1. with the items subpoenaed.
 9 C. I certify that a copy has been mailed or delivered to counsel of record and/or, if any, to parties not represented by a lawyer.
 D. (Criminal cases only) I certify under oath that the items to be produced are material to the proceedings and are in the possession of a person who is not a party to this case.

10 11
 DATE SIGNATURE ☐ PLAINTIFF ☐ DEFENDANT ☐ ATTORNEY FOR ☐ PLAINTIFF ☐ DEFENDANT
 12
 PRINT NAME

Sworn and subscribed before me on 13
 14 My Commission expires
☐ CLERK ☐ DEPUTY CLERK ☐ NOTARY PUBLIC

SUBPOENA DUCES TECUM

TO ANY AUTHORIZED OFFICER: You are commanded to serve this SUBPOENA DUCES TECUM on the Custodian.
 TO THE CUSTODIAN: You or someone acting in your behalf are commanded to produce the items described above, as requested above. If Paragraph B, above, is also checked, you are further commanded to appear in person before this court at the date and time shown above with the items subpoenaed by this subpoena duces tecum and to be ready to testify in response to questions concerning these items. Any objection to such production must be made promptly in writing to the Court.

WARNING: Failure to comply with the terms of this subpoena duces tecum may result in your being fined and/or jailed for contempt of court.

15 16
 DATE ☐ CLERK ☐ JUDGE ☐ MAGISTRATE

RETURN DATE CASE NO.
 17 18

SUBPOENA DUCES TECUM

19
☐ COMMONWEALTH OF VIRGINIA
☐ CITY ☐ COUNTY ☐ TOWN OF

20
☐
 PLAINTIFF(S)

21 v./In re
 22
 DEFENDANT(S)

CUSTODIAN
 23
 NAME
 ADDRESS/LOCATION

REQUESTED ON BEHALF OF:

24 ☐ COMMONWEALTH
☐ PLAINTIFF(S)
☐ CITY, COUNTY or TOWN
☐ DEFENDANT(S)
☐ JUVENILE

Data Elements, *front*

1. Court name.
2. Check the appropriate type of court.
3. Street address of court.
4. Check with appropriate box to show where to find description of items required to be produced by this subpoena duces tecum.
5. Description of items to be produced.
6. Check if items are to be produced in court at trial. Also insert date and time of trial.
7. Check if documents are to be delivered to the clerk's office for pre-trial examination. Also insert date by which items are to be delivered.
8. Check if items are to be inspected, copied, tested or sampled. Also insert location and time period for such activity.
9. Check if the custodian must appear at trial.
10. Date of signing request.
11. Signature of requesting party. Check the appropriate title box below the signature line.
12. Print name of requesting party.
19. Check the appropriate box (and the name of the jurisdiction in local criminal cases) in all juvenile and criminal cases and in civil cases if these parties are plaintiffs.
20. Check this box and insert names of private parties as plaintiffs in civil cases. (Do not insert addresses.)
21. Cross out whichever designation is not applicable in the style of the case.
22. Names of defendants or juveniles. (Do not insert addresses.)
23. Name and address of custodian.
24. Check the classification of the party requesting this document.

To be completed by person acknowledging signature:

13. (Criminal cases only) Date of attestation.
14. (Criminal cases only) Signature of person taking attestation. Check the appropriate box and, if done by notary, insert expiration date of commission.

To be completed by court personnel issuing subpoena:

15. Date of issuance.
16. Signature of issuing official. Check the appropriate title box below signature line.
17. Return date on this subpoena duces tecum, if known.
18. Court case number, if known.

RETURNS: Each respondent was served according to law, as indicated below, unless not found.

3	4	NAME 1	ADDRESS 2				
		<input type="checkbox"/> PERSONAL SERVICE		Tel. No.			
		<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:					
		<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.					
		..... 5					
		<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)					
		<input type="checkbox"/> Served on Secretary of the Commonwealth.					
6		<input type="checkbox"/> NOT FOUND		..... 7			
				SERVING OFFICER			
		..... 8		for 9			
		DATE					

3	4	NAME 1	ADDRESS 2				
		<input type="checkbox"/> PERSONAL SERVICE		Tel. No.			
		<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:					
		<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.					
		..... 5					
		<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)					
		<input type="checkbox"/> Served on Secretary of the Commonwealth.					
6		<input type="checkbox"/> NOT FOUND		..... 7			
				SERVING OFFICER			
		..... 8		for 9			
		DATE					

NOTICE:

Upon receipt of the subpoenaed documents, the requesting party must, if requested, provide true and full copies of those documents to any other party or to the attorney for any other party, provided the other party or attorney for the other party pays the reasonable cost of copying or reproducing those documents. This does not apply when the subpoenaed documents are returnable to and maintained by the clerk of the court in which the action is pending. Va. Code § 8.01-417

Data Elements, *reverse*

1. Name of person to be summoned. If person is a corporation's registered agent, show name of corporation on second line.
2. Address and telephone number of person to be summoned.
3. Check this box if personal service obtained.
4. Serving officer to check the appropriate box to designate type of substitute service.
5. If served by leaving the subpoena with a family member over age 16, check appropriate box and insert required information.
6. Check this box if unable to serve process.
7. Signature of serving officer.
8. Date of signature.
9. Name of sheriff if served by deputy sheriff.

SUBPOENA DUCES TECUM

Commonwealth of Virginia VA. CODE §§ 16.1-89, 16.1-131, 16.1-265, Rules 3A:12, 4:9(c)

[] General District Court
[] Juvenile and Domestic Relations District Court

CITY OR COUNTY

STREET ADDRESS OF COURT

REQUEST FOR SUBPOENA DUCES TECUM

- A. I request that a subpoena duces tecum be issued to require the custodian named at right or someone acting on his or her behalf to produce the items [] described below [] on the attached request for issuance of a subpoena duces tecum.

ITEMS TO BE PRODUCED

1. To be delivered to:

[] this Court at the above address on:
[] the clerk's office of this court at the above address (documents only) on or before:

DATE AND TIME

2. (Civil Cases only) To be made available to the requesting party at:

for

LOCATION

TIME PERIOD

to permit such party or someone acting in his or her behalf to inspect and copy, test or sample such tangible things in your possession, custody or control. See reverse.

- B. [] I further request that the custodian also appear in person before this Court at the date and time shown above in Paragraph A.1. with the items subpoenaed.
C. I certify that a copy has been mailed or delivered to counsel of record and/or, if any, to parties not represented by a lawyer.
D. (Criminal cases only) I certify under oath that the items to be produced are material to the proceedings and are in the possession of a person who is not a party to this case.

DATE

SIGNATURE [] PLAINTIFF [] DEFENDANT [] ATTORNEY FOR [] PLAINTIFF
[] DEFENDANT

PRINT NAME

Sworn and subscribed before me on

My Commission expires

[] CLERK [] DEPUTY CLERK [] NOTARY PUBLIC

SUBPOENA DUCES TECUM

TO ANY AUTHORIZED OFFICER: You are commanded to serve this SUBPOENA DUCES TECUM on the Custodian.

TO THE CUSTODIAN: You or someone acting in your behalf are commanded to produce the items described above, as requested above. If Paragraph B., above, is also checked, you are further commanded to appear in person before this court at the date and time shown above with the items subpoenaed by this subpoena duces tecum and to be ready to testify in response to questions concerning these items. Any objection to such production must be made promptly in writing to the Court.

WARNING: Failure to comply with the terms of this subpoena duces tecum may result in your being fined and/or jailed for contempt of court.

DATE

[] CLERK [] JUDGE [] MAGISTRATE

RETURN DATE

CASE NO.

SUBPOENA DUCES TECUM

[] COMMONWEALTH OF VIRGINIA
[] CITY [] COUNTY [] TOWN OF

[] PLAINTIFF(S)

In re/V.

DEFENDANT(S)

CUSTODIAN

NAME

ADDRESS/LOCATION

REQUESTED ON BEHALF OF:

[] COMMONWEALTH
[] PLAINTIFF(S)
[] CITY, COUNTY or TOWN
[] DEFENDANT(S)
[] JUVENILE

NOTICE:

Upon receipt of the subpoenaed documents, the requesting party must, if requested, provide true and full copies of those documents to any other party or to the attorney for any other party, provided the other party or attorney for the other party pays the reasonable cost of copying or reproducing those documents. This does not apply when the subpoenaed documents are returnable to and maintained by the clerk of the court in which the action is pending. Va. Code § 8.01-417

RETURNS: Each respondent was served according to law, as indicated below, unless not found.

NAME	
ADDRESS	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner: <input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.) <input type="checkbox"/> Served on Secretary of the Commonwealth.	
<input type="checkbox"/> NOT FOUND	..... SERVING OFFICER
..... DATE for	
NAME	
ADDRESS	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner: <input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.) <input type="checkbox"/> Served on Secretary of the Commonwealth.	
<input type="checkbox"/> NOT FOUND	..... SERVING OFFICER
..... DATE for	

Issuing A Subpoena in NY For An Out of State Proceeding

*Presented by
Brian Ebert, Nina Ginsberg, and Lauren Fredericksen*

Materials

1. Issuing Subpoena Memo
2. Foreign Actions in New York
3. NY CPLR § 3102
4. Subpoena Sample Form § 3102
5. NY CPLR § 3119
6. Subpoena Sample Form § 3119
7. Instructions for Service of a Subpoena
8. Procedures for Filing Cases in NY
9. Procedures for Electronically Filed Cases in NY

Issuing a Subpoena in NY for an Out of State Proceeding

Nathan C. Welch

The requirements for issuing a subpoena to a New York resident relating to an out of state proceeding are generally governed by the CPLR. CPLR § 3102(e) provides that:

“Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state.”

The italicized passage above points the reader to a new addition to the CPLR, which was added by the New York legislator in 2011 to bring the state more in line with the Uniform Interstate Depositions and Discovery Act. Without this exception, the process for issuing a subpoena in NY for an out of state proceeding involves several steps. First, the party seeking the subpoena must obtain a commission, letters rogatory, letter of request, or similar order or writ the out of state trial court. Second, the party must commence a special proceeding in New York based upon the commission. Third, the party must then establish the nature of, and the need for, the discovery sought. Lastly, the party must obtain an order in the special proceeding permitting issuance of the subpoena.¹ The order may be sought by ex parte application, however the application must be made by a New York attorney.²

¹ The order should provide for a place, date and time for the examination or for the production of documents and authorize a subpoena or subpoena *duces tecum* to be served on the witness. According to https://www.nycourts.gov/courts/1id/supctmanh/ex_parte_applications.shtml.

² The petition should be supported by an affidavit of New York counsel, a copy of the foreign commission or other process, a proposed order, and a New York subpoena to be served with a copy of the signed order. The attorney's affidavit must state that it is by a New York attorney with a New York address; set forth a basis for the application, including the nature of the action, the name and home or business address of the witness, the nature of the testimony sought and its materiality and neces-

Thus, to obtain the desired subpoena under CPLR § 3102(e), one would need to hire local counsel, commence a special proceedings, procure a commission by the out of state trial court, and file of a motion for an order permitting issuance of the subpoena. However, a notable exception to the CPLR § 3102(e) process is available. CPLR § 3119(b) provides:

(1) *To request issuance of a subpoena under this section, a party must submit an out-of-state subpoena to the county clerk in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute an appearance in the courts of this state.*

(2) *When a party submits an out-of-state subpoena to the county clerk, the clerk, in accordance with that court's procedure and subject to the provisions of article twenty-three of this chapter, shall promptly issue a subpoena for service upon the person to which the out-of-state subpoena is directed.*

(3) A subpoena under paragraph two of this subdivision must:

(i) incorporate the terms used in the out-of-state subpoena; and

(ii) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(4) *Notwithstanding paragraph one of this subdivision, if a party to an out-of-state proceeding retains an attorney licensed to practice in this state, and that attorney receives the original or a true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.*

Thus, CPLR § 3119 effectively provides two alternative means to serve a subpoena to a New York resident for an out of state proceeding: (1) submitting an out-of-state subpoena to the county clerk or (2) retaining a local attorney to serve the out of state subpoena. If the first alternative is chosen, the clerk must then issue a New York subpoena for service on the person subject to the out-of-state subpoena. The New York subpoena incorporates the terms of the out-of-state subpoena and provides the contact information of the parties or their counsel of record. If

sity; address CPLR 2217(b); and set forth any other information required by any special circumstances. According to https://www.nycourts.gov/courts/ljd/supctmanh/ex_parte_applications.shtml.

the second alternative is chosen, the out-of-state party simply need retain a New York attorney, provide said attorney with the out of state subpoena, and have the said attorney issue a New York state subpoena.

The issued subpoena must be served in the same manner as any other subpoena issued in a New York state court action, and the rules governing such subpoena after it is served are generally the same as those governing any New York state court-issued subpoena. Thus, the nonparty witness is afforded the same protections as any other nonparty witness in pretrial discovery in New York.

Things to Consider When Choosing Between CPLR § 3102 and § 3119

CPLR § 3119 allows one to avoid a formal proceeding and the necessity of a New York court order at least when serving the subpoena. However, the subpoenaed New York resident may apply to the New York court for a protective order or for an order quashing or modifying the subpoena. Likewise, if the subpoena need be enforced, the party seeking enforcement must apply to the New York courts. Such applications will require the commencement of a proceeding in the New York state court. While this is also true of subpoena's served under CPLR § 3102(e), the benefit of a CPLR § 3102(e) subpoena is that it has already been reviewed and approved by a New York judge. Thus, a CPLR § 3102(e) subpoena may be less likely to be quashed or modified when challenged, although this may not always be the case.

Examination Inside New York -- Foreign Action

From the N.Y. State Supreme Court Civil Branch: Ex Parte Proceedings

CPLR 3102 (e) governs the procedure for obtaining a deposition of a witness located in New York for use in an action pending in another jurisdiction. Chapter 29 of the Laws of 2010, effective on January 1, 2011, introduced CPLR 3119 which provides a simple mechanism by which a party to an action pending in another state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or U.S. territory or insular possession may obtain a deposition of a New York witness. CPLR 3102 (e) applies to depositions to be used in actions pending in other states and in foreign countries.

1) CPLR 3119 (Uniform Interstate Depositions and Discovery Act)

CPLR 3119 allows a party to an out-of-state action to obtain a deposition of a New York witness, the production, inspection and copying of designated records, or inspection of premises by submitting an out-of-state subpoena to the County Clerk of the county in which discovery is sought to be conducted. The Clerk will issue a New York subpoena for service on the witness.

To obtain a subpoena from the New York County Clerk, counsel should submit the proposed subpoena and the out-of-state subpoena to the County Clerk's Judgment Clerk in Room 141B in the basement at 60 Centre Street. There is no fee to obtain this subpoena.

If a party to the out-of-state action retains a New York attorney and that attorney receives the original or a true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.

In the event that issues or objections arise regarding a subpoena issued under CPLR 3119, an application may be made to the court for a protective order or for an order enforcing, quashing, or modifying the subpoena. CPLR 3119 (e). Where the discovery is to be conducted in New York County, the application for an order may be made to the New York County Supreme Court. Such an application shall be made as a special proceeding using a caption appropriate thereto, e.g., "In the Matter of the Application of X to Enforce a Subpoena for the Testimony of Y." A proposed order to show cause supported by a petition or an affidavit or affirmation reciting the facts, attaching a copy of the New York subpoena and the out-of-state subpoena, shall be presented to the Ex Parte Office (Room 315). The application shall be made by a New York attorney with a New York address.

2. CPLR 3102 (e)

In response to a commission, letters rogatory or order from another state, a deposition may be taken of a witness in New York, or documents produced from such a witness, and an order of this court may be obtained to ensure this result. CPLR § 3102(e). The order may be sought by ex parte application, requiring the purchase of an index number and the filing of a no-fee RJI (the application will not be assigned to an IAS Justice). However, scholars state that there appears to be a conflict as to whether the application has to be on notice (David D. Siegel, *supra*, § 352, at 574), and that, though an ex parte application is authorized, the court may, and normally should,

require notice to the witness and all parties to the case (6 Jack B. Weinstein, Harold Korn & Arthur Miller, New York Civil Practice 3102.24, at 31-222 (2d ed. 2009)). The application must be made by an attorney admitted to practice in New York who has a New York address. The petition for this relief should not use the caption from the underlying case, but rather a caption in the form used in a special proceeding (e.g., "In the Matter of the Application of Washington, Jefferson & Lincoln, P.C., Attorneys at Law, Petitioners, to Take the Deposition on Oral Questions of John Smith, Respondent"). If the application is made on notice, it should take the form of a special proceeding. The petition should be supported by an affidavit of New York counsel, a copy of the foreign commission or other process, a proposed order, and a New York subpoena to be served with a copy of the signed order. If a notice of deposition was previously served, a copy should be included. The signing requirement of Section 130-1.1-a of Part 130 must be satisfied. The attorney's affidavit must state that it is by a New York attorney with a New York address; set forth a basis for the application, including the nature of the action, the name and home or business address of the witness, the nature of the testimony sought and its materiality and necessity; address CPLR 2217(b); and set forth any other information required by any special circumstances. Video taping is allowed only if the commission specifically provides for it. See Trial Court Rule § 202.15. The order should provide for a place, date and time for the examination or for the production of documents and authorize a subpoena or subpoena duces tecum to be served on the witness. The subpoena must be served together with a copy of the order at least 20 days prior to the examination unless the court orders otherwise. CPLR 3106(b). If medical records are sought from a medical provider, the movant must comply with CPLR 3122(a).

New York Consolidated Laws

Civil Practice Law and Rules

ARTICLE 31. DISCLOSURE (§§ 3101 to 3140)

◀ Prev

N.Y. CPLR § 3102

Next ▶

(a) Disclosure devices. Information is obtainable by one or more of the following disclosure devices: depositions upon oral questions or without the state upon written questions, interrogatories, demands for addresses, discovery and inspection of documents or property, physical and mental examinations of persons, and requests for admission.

(b) Stipulation or notice normal method. Unless otherwise provided by the civil practice law and rules or by the court, disclosure shall be obtained by stipulation or on notice without leave of the court.

(c) Before action commenced. Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

(d) After trial commenced. Except as provided in section 5223, during and after trial, disclosure may be obtained only by order of the trial court on notice.

(e) Action pending in another jurisdiction. Except as provided in section *three thousand one hundred nineteen* of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

(f) Action to which state is party. In an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person.

◀ Prev

N.Y. CPLR § 3102

Next ▶

Instructions for Filling out a Judicial Subpoena Duces Tecum with Sample Attached

Please Note: The Court does not provide subpoena forms. You may obtain the form (such as a Blumberg B69) from a legal stationery store. You will need an original to submit to the Court and one copy for each person to be served. Service is explained below. **A SUBPOENA MUST BE SIGNED BY A JUDGE BEFORE IT IS SERVED.**

Print or type and use black ink only.

- 1** Print or type the County where the action was filed.
- 2** Print or type the name of the Plaintiff(s). If the caption contains more than one Plaintiff, you may write the name of the first named Plaintiff, followed by the words "et al." which means "and others" (For example: **JOHN DOE**, et al., against **JOHN SMITH**, et al.).
- 3** Print or type the name of the Defendant(s). If the caption contains more than one Defendant, see instructions above in #2.
- 4** Print or type the Index Number that was assigned to the action (For example: 2004-5362).
- 5** Print or type the name and address of the person you wish to subpoena.
- 6** Print or type the name of the Justice (Judge) assigned to your case as follows: "the Hon. [put in name of Justice]" followed by the letters "J.S.C.", which means Justice of the Supreme Court.
- 7** Print or type the address of the court where the case is pending (For example: 92 Court Street, Binghamton, New York 13901).
- 8-10** Print or type the day, month, and year of the scheduled trial or hearing.
- 11-12** Print or type the time and whether the witness will appear in the morning or afternoon by putting "fore" (a.m.) or "after" (p.m.).
- 13** Print or type who the witness will be appearing on behalf of. If Plaintiff is preparing the subpoena, put "Plaintiff". If Defendant is preparing the subpoena, put "Defendant".

- 14** Describe any items you are requesting the witness to bring to Court, such as relevant documents or other items.
- 15** Print or type the name of the Judge assigned to your case again.
- 16** Print or type the word "Justices".
- 17** Print or type the address of the court again.
- 18-20** Leave the spaces blank for the date, month and year as it will be completed by the Court.
- 21** Leave this blank as this is where the Judge will sign.
- 22** Cross out the words "Attorney for" and indicate whether you are the Plaintiff or Defendant. Print or type your name, address, and telephone number underneath.

After you have filled out the subpoena, bring it to the Court Clerk's Office. The Clerk will forward it to the Judge and inform you when it is signed. DO NOT go directly to chambers. After it has been "So Ordered," a subpoena must be served in the same manner as a summons.

A subpoena fee must be paid when a subpoena is served (see, Civil Practice Law and Rules, "CPLR" for short, §2303). Effective January 1, 1989, the subpoena fee for attendance is \$15.00. You should check CPLR §8001(a) for information on fees and to confirm that the fee has not been changed. You may check the CPLR at any Public Access Law Library.

The person serving the subpoena must be 18 years of age or older and can not be a party to the case (CPLR §2103[a]). The papers may be delivered by a professional process server, a friend, or a non-party relative of the proper age. The proper manner of service is largely set out in Article 3 of the CPLR, which should be consulted before service is made.

Please note that there is information that must be completed on the reverse side of the subpoena as well.

SUPREME COURT
COUNTY OF 1

2,

Plaintiff,

-against-

3,

Defendant.

S A M P L E

Index No. 4

**JUDICIAL SUBPOENA
DUCES TECUM**

The People of the State of New York

TO: 5

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before 6 at 7 on the 8 day of 9, 20 10 at 11 o'clock, in the 12 noon, and at any recessed or adjourned date to give testimony in this action on the part of 13 and that you bring with you, and produce at the time and place aforesaid, a certain 14 now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable 15 one of the 16 of said Court,
at 17 the 18 day of 19, 20 20.

21

22 Attorney for

New York Consolidated Laws
Civil Practice Law and Rules
ARTICLE 31. DISCLOSURE (§§ 3101 to 3140)

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N.Y. CPLR § 3119

Next ▶

(a) Definitions. For purposes of this section:

- (1) "Out-of-state subpoena" means a subpoena issued under authority of a court of record of a state other than this state.
- (2) "Person" means an individual, 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.
- (3) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (4) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
 - (i) attend and give testimony at a deposition;
 - (ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody or control of the person; or
 - (iii) permit inspection of premises under the control of the person.

(b) Issuance of subpoena.

- (1) To request issuance of a subpoena under this section, a party must submit an out-of-state subpoena to the county clerk in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute an appearance in the courts of this state.
- (2) When a party submits an out-of-state subpoena to the county clerk, the clerk, in accordance with that court's procedure and subject to the provisions of article twenty-three of this chapter, shall promptly issue a subpoena for service upon the person to which the out-of-state subpoena is directed.
- (3) A subpoena under paragraph two of this subdivision must:
 - (i) incorporate the terms used in the out-of-state subpoena; and
 - (ii) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(4) Notwithstanding paragraph one of this subdivision, if a party to an out-of-state proceeding retains an attorney licensed to practice in this state, and that attorney receives the original or a true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.

(c) Service of subpoena. A subpoena issued under this section must be served in compliance with sections *two thousand three hundred two* and *two thousand three hundred three* of this chapter.

(d) Deposition, production and inspection. Sections two thousand three hundred three, two thousand three hundred five, two thousand three hundred six, two thousand three hundred seven, two thousand three hundred eight and this article apply to subpoenas issued under subdivision (b) of this section.

(e) Application to court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued under this section must comply with the rules or statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

(f) Uniformity of application and construction. In applying and constructing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

◀ Prev

N.Y. CPLR § 3119

Next ▶

**COMPOSITE EXEMPLAR OF NEW YORK SUBPOENA
PURSUANT TO THE UNIFORM INTERSTATE DEPOSITION AND
DISCOVERY ACT (L. 2010, c.29)**

State of New York Civil Practice Law and Rules § 3119

PLEASE NOTE:

**COUNTY CLERKS IN NEW YORK DO NOT PROVIDE SUBPOENA FORMS.
THIS EXAMPLAR IS NOT AN OFFICIAL FORM, AND IS PRESENTED FOR
ILLUSTRATIVE PURPOSES ONLY.**

STATE OF NEW YORK

COUNTY OF _____ COUNTY CLERK LOG NO. _____

<div style="text-align: right; margin-bottom: 10px;">_____, Plaintiff/Petitioner,</div> <div style="text-align: center; margin-bottom: 10px;">v.</div> <div style="text-align: left; margin-bottom: 10px;">_____, Defendant/Respondent.</div>

SUBPOENA
(pursuant to the Uniform Interstate
Deposition and Discovery Act and
CPLR §3119)

Originating State: _____

Originating County: _____

Originating Court: _____

Originating Case number: _____

SUBPOENA/ SUBPOENA DUCES TECUM
pursuant to the Uniform Interstate Discovery Act
(Personal Attendance Required/Not Required)

TO: [NAME]
[ADDRESS]

WE COMMAND YOU to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. and each of you appear and attend before _____ at _____, on the _____ day of _____, 20____, at _____ o'clock, in the _____ noon, and at any recessed or adjourned date to give testimony in this action on the part of _____ ;

and/or that you bring with you, and produce at the time and place aforesaid, the following documents, electronically stored information, or objects, and permit their inspection, copying, testing or sampling of the material:

_____;

and/or that you permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date and location set forth below, so that we may inspect, measure, survey,, photograph, test, or sample the property or any designated object or operation on it

_____.

FAILURE TO COMPLY with this SUBPOENA is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed one hundred fifty dollars and all damages sustained by reason of your failure to comply.

Additional Information:

[if any is contained in the Out-of-State subpoena]

**Contact Information of Counsel for all parties
(or contact information for parties pro se)
in the action:**

Name

Address

Telephone Number

Party(ies) Represented:

(Repeat as required.)

Dated: _____, _____ (state)

FIRM

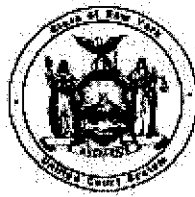
BY: _____

Attorney/Other

Address

Telephone

THE CIVIL COURT OF THE CITY OF NEW YORK



INSTRUCTIONS FOR SERVICE OF SUBPOENA

Subpoena available

There are three kinds of Subpoena,

- I. *Subpoena To Testify. (Ad Testificandum)*
Requires a **person** to come to the Court to testify as a witness.
- II. *Subpoena For Records. (Duces Tecum)*
Requires **documents, papers, writing, etc.** to be brought to the Court.
- III. *Information Subpoena.*
Requires the **information** be provided to the person requesting it.

Methods of Service

A *Subpoena to Testify* or a *Subpoena for Records* is **generally** served on an individual* by personal (in hand) delivery. [*For service on a corporation or on a partnership, see the Clerk.]

For service on an individual, under certain circumstances it may be appropriate to use an **alternate method** of service such as "Substituted Service" or "Conspicuous Service."

"Substituted Service" is the personal service of the Subpoena on someone other than the person who is being subpoenaed (the witness) at the actual place of business or place of residence of the witness. The server must then mail a copy of the Subpoena to the witness by first class mail to the actual place of business or place of residence of the witness. Mark the envelop "Personal and Confidential."

"Conspicuous Service" is the service of the Subpoena by leaving it at the residence or place of business of the witness. Prior to leaving the Subpoena, the server must make at least two attempts. If no one is found on either attempt, on the third try the Subpoena may be affixed to the door with adhesive tape, and a copy must be mailed to the residence of the witness by first class mail. Mark the envelope "Personal and Confidential."

An *Information Subpoena* is **generally** served by Certified or Registered Mail, Return Receipt Requested, or it may **alternatively** be served by personal delivery or by using the "Substituted Service" or "Conspicuous Service" method.

Who May Serve a Subpoena

Anyone NOT A PARTY to the action, who is over the age of 18, and not a Police Officer, may serve the Subpoena.

Proof of Service

The person who serves the *Subpoena to Testify* or the *Subpoena for Records* must fill out an Affidavit of Service and have it notarized.

Procedure

The person who is going to serve the Subpoena must:

- 1) Find the person to be served.
- 2) Show that person the *original* Subpoena.
- 3) Give that person a *copy* of the Subpoena.
- 4) Fill out the Affidavit of Service on back of the *original*.
- 5) Retain the Affidavit of Service for further procedures if the person fails to comply with the Subpoena.
- 6) A copy of a Subpoena for Records (*Duces Tecum*) must also be served either 'in hand' or by mail on each party who has appeared in the action so that it is received by them promptly after service on the witness.

For an *Information Subpoena* follow the above procedure, or

- 1) Place a copy of the Subpoena, together with an original and copy of the questions to be answered in an envelope addressed to the witness.
- 2) Include a self-addressed, stamped envelope for use by the witness returning the answered questions to you.
- 3) Mail the envelope to the witness by Certified or Registered Mail, Return Receipt Requested.

Fees for Service

When served with a *Subpoena to Testify* or a *Subpoena for Records*, the witness must be paid a witness fee of \$15.00 per day. If the witness is served outside the City of New York s/he shall also be paid 23 cents per mile to the place of attendance, from the place where s/he was served, and return. The fee must be paid a reasonable amount of time *before* the scheduled date. Nonpayment of the witness fee voids the duty to appear.

NOTE: A subpoena for records must also be served on all parties to the action following CPLR § 2303.

Location

A subpoena from the Civil Court of the City of New York may be served only within the City of New York or in Nassau County or Westchester County, Service anywhere else may only be done if permitted by a Judge.

Restrictions

General

A Subpoena may be served on a Sunday.

A City or State agency or a public library may be subpoenaed only by order of the court.

Time

Any witness must be served a "reasonable" amount of time prior to the date of appearance. It is suggested that service be *at least 5 days before* the date of the hearing.

A City or State agency or a public library *must* be served *at least 24 hours prior* to the time of appearance.

NYCOURTS.GOV

Supreme Court, Civil Branch, New York County

Commencement of Cases

Concerning: Initial Filings / Index Numbers / Filing Procedures and Fees / RJJ /

Assignment of Cases / Commercial Division Assignments / Differentiated Case Management Tracks / Related Cases / Commencing Cases Under Seal or with Anonymous Caption

A. STARTING A CASE

Effective Feb. 27, 2012, all commercial, contract, and tort actions, without regard to the amount in controversy, must be commenced electronically, and all subsequent filings in those cases must be made electronically, through the New York State Courts Electronic Filing System ("NYSCEF"). See the [E-Filing](#) page for more information.

To commence an action or special proceeding, a summons and complaint or summons with notice in an action, or a petition in a special proceeding shall be filed with the County Clerk through NYSCEF or, in authorized hard copy cases, in Room 141B, 60 Centre Street. CPLR 304. In a hard-copy case, the filing party obtains an index number by (i) completing an [index number purchase sheet](#); and (ii) paying to the County Clerk's cashier a fee of \$ 210 (absent a poor person order). All fees must be paid by cash, certified check (payable to the County Clerk), credit card (Visa, Mastercard, or American Express), or U.S. postal money order. In e-filed cases, an index number is obtained by filing commencement documents through NYSCEF, which will cause an index number to be transmitted back to the filer by e-mail. Filing fees must be paid through NYSCEF by Visa, Mastercard, or American Express credit or bank card. In hard-copy cases the checks of attorneys within New York State bearing "Attorney at Law" or "Esquire" and the attorney's address and phone number will be accepted. Checks from outside New York must be certified. The County Clerk will issue a receipt, which the applicant will need to show when proceeding to court.

To make a filing that commences an authorized hard-copy case, the attorney must deliver the summons and complaint, summons with notice or petition to the County Clerk in Room 141B together with the index number fee. At the time of filing, the original and a copy of these papers will be date stamped by the Clerk, who shall file the original and maintain a record of the date of filing and who shall immediately return the copy to the filing party. CPLR 304. In e-filed cases the documents are uploaded to NYSCEF and a notice will be sent electronically to the filer containing the index number.

When the matter commenced is an authorized hard-copy special proceeding or motion/action pursuant to CPLR 3213, the filing attorney should file original papers with the County Clerk and a duplicate original with the General Clerk's Office (Room 119). David D. Siegel, New York Practice 96 (4th ed. 2005).

B. INDEX NUMBERS

The party commencing a case purchases an index number, at which time the County Clerk will open a County Clerk's file and create a color-coded file jacket bearing the index number assigned to the case. Papers subsequently presented for filing will be filed in this jacket. In e-filed cases, the file is an electronic

one in the NYSCEF system. Index numbers take the form of six digits followed by a slash and the four digits of the year the case began, e.g., 340705/2008. The first or first two integers of the index number identify the type of case. If a general, tax certiorari, or commercial case is commenced electronically, the second integer will be a "5." The principal types of cases and their index number categories are as follows:

<u>Case Type</u>	<u>Index Number Series</u>
Supreme Court (General)	100,001 - 150,000
Supreme Court (E-Filing)	150,001 - 190,000
Supreme Court (Asbestos)	190,001 - 200,000
Tax Certiorari	200,001 - 250,000
Tax Certiorari (E-Filing)	250,001 - 300,000
Matrimonial (Uncontested)	300,001 - 350,000
Matrimonial (Contested)	350,001 - 400,000
No Fee	400,001 - 500,000
Article 81	500,001 - 510,000
Appellate Term	570,001 - 580,000
Third Party	590,001
Commercial	600,001 - 650,000
Commercial (E-Filing)	650,001 - 700,000

C. FILING AN RJI

The fee for filing a Request for Judicial Intervention (UCS 840, revised 2011) ("RJI") is paid in the County Clerk's cashier's office, Room 160 (cost \$ 95). [Click here](#) for access to a "fillable" form of the RJI on-line. The filer of an RJI may seek an assignment only (e.g., so that a Justice might be available for rulings if difficulties were to arise during an impending deposition) or judicial action, principally with regard to a request for a preliminary conference; a motion on notice or petition and notice of petition; an order to show cause; or a note of issue (cost \$ 30, \$ 125 with RJI). Rule 202.6 of the Uniform Rules for the Trial Courts.

The filer of an RJI must check off a box identifying the case type, which will bring about a random assignment of the case by computer to a Justice handling cases of that type.

Various addenda to the RJI were issued in 2011. These are also accessible at the link above. The addenda that have been promulgated consist of a general addendum, which is used to identify additional parties or related cases; a matrimonial addendum, which is used when there are children under the age of 18 who are subject to the matrimonial action; a foreclosure addendum, which is used in mortgage foreclosure actions where the property is a one-to-four family owner-occupied residential property or an owner-occupied condominium; and a Commercial Division Addendum, which is used when the filer seeks an assignment of a case to the Commercial Division.

D. ASSIGNMENTS TO THE COMMERCIAL DIVISION

Attorneys who seek assignment of an action to the Commercial Division must submit an RJI marked to reflect that the case involved is a commercial one, together with a completed Commercial Division RJI Addendum (UCS 840C) certifying that the case meets the requirements of the Division set forth in Uniform Rule 202.70 (a), (b), and (c). Uniform Rule 202.70 (d). In a hard-copy case a copy of the pleadings shall be submitted as well. If the Commercial Division Addendum is not submitted, the clerk will assign the case at random to a non-Division Part.

The monetary threshold in the New York County Commercial Division, which is generally applicable, is an amount in controversy of \$ 150,000 or more (exclusive of punitive damages, interest, costs, disbursements, and counsel fees). If the case is designated a commercial one and the Addendum is submitted, the clerk will review the pleadings to determine whether the amount in controversy in the case meets the monetary threshold or whether an exception to the threshold applies. There are two categories of exception. First, the threshold is not applicable and the case may be assigned to the Division if it seeks equitable or declaratory relief. Uniform Rule 202.70 (b). Second, the threshold is not applicable and the case may be assigned to the Division if the action is a shareholder derivative action or a commercial class action, seeks dissolution of a corporation or other business entity, or seeks to stay or compel arbitration or affirm or disaffirm an arbitration award or seeks related injunctive relief. Uniform Rule 202.70 (b) (4), (5), (11), (12). In this review the clerk will not consider whether the case is otherwise the type of matter eligible for assignment to the Division, as provided in Rule 202.70 (b) and (c), which shall be a question for the Division Justice. If the clerk's review determines that the threshold is not met and the matter does not fall within one of the exceptions, the clerk will assign the case at random to a General Assignment Part. If the threshold is met or if an exception applies, the clerk will assign the case at random to a Commercial Division Justice, who will review the case to ensure that it is one that properly belongs in the Division as provided by Rule 202.70 (b) and (c). See Subd. (f) (1).

The rules provide for application to the Administrative Judge to review certain assignment determinations. Any such application must be made in a timely manner. Uniform Rule 202.70 (e) and (f) (2). Rulings of the Administrative Judge have been posted on the Commercial Division website (under "Decisions Online" on the New York County home page).

E. DCM TRACK ASSIGNMENT

Previously, the filer was required also to designate on the RJI a Differentiated Case Management ("DCM") track ("expedite", "standard" or "complex") (Rule 202.19 of the Uniform Rules for the Trial Courts). Such a designation is no longer required. Upon the filing of the RJI, however, each case will be assigned to a DCM track. The assignment will be made by the clerk in accordance with a protocol issued by the court, as follows.

The main tracks are: eight months - expedited; 12 months - standard; and 15 months - complex. The following cases will be assigned to the following tracks:

Commercial (Commercial Division and non-Division) - - Complex
Medical/Dental/Podiatric Malpractice - - Complex
Mass Torts - - Ultra-Complex (20 months)
Tax Certiorari - - Special time frame (48 months)
Matrimonial - - Special time frame (six months)
Motor Vehicle - - Expedited
All Other Cases - - Standard

Counsel may raise at the preliminary conference the question of whether a different track assignment should be made. If persuaded that the circumstances of the particular case are such that the case belongs on a shorter or longer track than the one to which the case was assigned in accordance with the foregoing protocol, the Justice may direct that the case be assigned by the clerk to another track, which will be done.

The DCM time frames or tracks constitute goals set by the Unified Court System for the expeditious processing of cases pre-note. (There is also a separate post-note standard and goal, generally of 15 months (in matrimonial cases the period is six months).) The pre-note standards and goals commence to run from the filing of the RJI. A note of issue should be filed within the pre-note DCM time frame recorded for the case (the track designation made pursuant to Uniform Rule 202.19) or else the case will be deemed

out of compliance with standards and goals. The orders of the assigned Justice, however, will control when specific steps in the discovery process in any individual case must be completed. See Rule 202.19.

F. FILING REQUIREMENT FOR NEW RJI FORM

In 2011 the Unified Court System changed the procedures regarding the obligation to file an RJI. These are reflected in the new form of RJI. See also Uniform Rule 202.6 (b) (modified effective May 25, 2011 and Jan. 10, 2012). In sum, an RJI is now required to be filed with regard to most applications; in some instances, an RJI fee (\$ 95) is required and in others the filing is to be without fee. Generally, an RJI must be filed and a fee must be paid whenever the nature of the application is such as to require that there be supervision and case management of a pending case by a Justice that will extend beyond addressing the papers submitted by the applicant and therefore that there be an ongoing assignment of the case to an IAS Justice made via the court's computer system. Examples of instances of documents that will initiate continuing judicial involvement are notices of motion or petition, proposed orders to show cause, notes of issue, notices of medical, dental and podiatric malpractice action, statements of net worth, and requests for a preliminary conference. Where, on the other hand, the application being submitted is a discrete and self-contained one that will not require continuing involvement by an IAS Justice, the RJI shall be filed without fee and the matter shall not be assigned to a Justice, but rather shall generally be referred to an Ex Parte Justice. Any application not filed in an action or proceeding, a name change application, and an application for discovery in an out-of-state case are examples of discrete applications that now are to be filed accompanied by an RJI but for which no fee need be paid. Included in this group are uncontested matrimonial matters.

Other ex parte applications not requiring ongoing judicial assignment

New RJI Required (No Fee Payable) (No Ongoing Assignment of Justice)
Uncontested matrimonial application
Application not filed in an action or proceeding
Application for an order authorizing emergency surgery
Petition for sale or finance of religious/not-for-profit property
Name change application
Habeas corpus application
Application for discovery in out-of-state action (CPLR 3102 (e))
Other ex parte applications not requiring ongoing judicial assignment

New RJI Required with \$ 95 Fee (Ongoing Assignment of IAS Justice)
Notice of motion or petition
Order to show cause
Note of issue
Notice of medical, dental or podiatric malpractice action
Statement of net worth
Request for preliminary conference
Other applications in a case to be assigned to an IAS Justice
Infant's, incompetent's, and wrongful death compromise orders (no action commenced)

G. RELATED CASES

In an effort to conserve judicial resources and avoid inconsistent rulings, the filing counsel must check off on the RJI whether a related case exists. If the new case is designated as related, it will automatically be assigned to the Justice who was assigned the earlier case provided that the latter has not already been disposed of. If the earlier case has been disposed of, the Clerk will assign the case at random; the filing attorney is, however, free to argue to the Justice to whom the case is assigned that the matter ought to be assigned to the Justice who had handled the earlier case due to considerations of judicial efficiency and the like. If a party believes that such a related-case designation and resulting assignment were made in error, or that the filing party incorrectly failed to designate the case as related, the issue should be raised before the assigned Justice, who may send the matter to the back office for a random reassignment or a transfer if the complaint is justified. If further review is required, it occurs before the Administrative Judge. The policy of the court is that one Justice may not order the transfer of a case directly to another particular Justice except (i) pursuant to procedures governing related cases or (ii) in the case of motions to reargue or renew (CPLR 2221) or (iii) with the permission of the Administrative Judge.

H. ASSIGNMENT OF CASES

It may happen that an RJI has been filed but has not yet been processed and another party to the case may wish to bring on an order to show cause immediately. In most instances the County Clerk's computer will show whether an RJI has been purchased. So will the Supreme Court Records On-Line Library ("Scroll"), the case data and document repository available on this website (under [Case Information](#)). The office that receives the proposed order to show cause will try to locate the pending RJI in the other back office and cause it immediately to be processed by that other office so that the case can be assigned to a Justice to whom the order to show cause may be referred; or the receiving office will seek from the party presenting the order to show cause a copy of the RJI, which should have been served upon that party. This will permit the back office handling the proposed order to show cause to ascertain that an RJI has indeed been filed (though not yet processed) and to assign the case in accordance with the designations on the RJI. The party who first filed the RJI has the right to have the case processed in accordance with the designation made on the RJI by that party. If, in the view of another party, the RJI has not properly been completed, that party may raise this issue with the assigned Justice. Clerks cannot alter the RJI as filed nor can they direct another attorney to do so.

I. ANONYMOUS CAPTIONS/FILING UNDER SEAL

A party may sometimes wish to obtain an order permitting a case to proceed under an anonymous caption, or to file initiating papers under seal pending a ruling by a Justice. For information, [click here](#)

June 2013

SUPREME COURT, CIVIL BRANCH NEW YORK COUNTY

PROTOCOL ON COURTHOUSE PROCEDURES FOR ELECTRONICALLY FILED CASES (REVISED APRIL 24, 2013)

This Protocol explains how traditional courthouse requirements for the processing of cases are applied in e-filed matters. For information about the New York State Courts Electronic Filing System ("NYSCEF"), see the NYSCEF website (www.nycourts.gov/efile).

A. E-Filed Cases Generally

1) **Cases Commenced via NYSCEF:** Cases commenced by filing of the initiating papers with NYSCEF are identified as e-filed cases by a special index number (i.e., cases beginning with 650,000 (commercial matters), 250,000 (tax certiorari matters), and 150,000 (contract, tort and other cases)). E-filed cases will be further identified by the addition of a suffix "E" to the index number in the court's case history computer program, the Civil Case Information System ("CCIS"); the index number with suffix should be used on all documents filed with the court in e-filed matters.

2) **Mandatory E-Filing:** E-filing is mandatory in all types of cases (other than election law, matrimonial, Art. 78, and Mental Hygiene Law matters) that are commenced in this court on or after February 19, 2013.¹ All such cases must be commenced by filing with the County Clerk electronically through NYSCEF and all subsequent documents in such cases must be e-filed, except in the limited circumstances set forth in the relevant rules (Uniform Rule 202.5-bb). Hard copy filing is permitted in a defined emergency. Further, an attorney who certifies in good faith that he or she lacks the equipment or knowledge needed to e-file and who has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of participation in e-filing in a mandatory case by filing a form (posted on the NYSCEF website) with the Clerk. An unrepresented party may choose to opt out by filing the same form. The executed form shall be delivered to the New York County E-Filing Department (60 Centre Street, Room 119 A; newyorkef@courts.state.ny.us; 646-386-3610). An attorney may also seek an exemption from the Justice assigned upon a showing of good cause. Unless the court otherwise directs, in *qui tam* actions, papers shall not be e-filed until the issue of election has been resolved and the complaint has been served.

3) **Consensual E-Filing:** Consensual e-filing has also been in place for some years, now largely overtaken in this county by the mandatory program. See Uniform Rule 202.5-b (Consensual E-Filing Rules).

4) **Cases E-Filed in Part:** If in a mandatory e-filed case an attorney or unrepresented party obtains an exemption from participating in e-filing, the case shall remain an e-filed matter and each participating attorney or party shall e-file all documents to be filed with the court and shall serve one another electronically as provided in the E-Filing Rules. Non-participating parties shall file and serve and be served in hard copy format. Pursuant to the E-Filing Rules, non-participating parties shall submit to the court the original hard copy documents in normal format and, in addition, an unbound hard copy thereof.

¹ Between Feb. 27, 2012 and February 18, 2013, newly-filed cases must have been e-filed if they fell in the categories of commercial, contract, or tort cases (without regard to the sum in controversy). Certain commercial cases that were commenced on or after May 24, 2010 but prior to Feb. 27, 2012 were subject to mandatory e-filing. For additional information, see Administrative Orders 245/12 and 527/11 of the Chief Administrative Judge, dated January 12, 2012 and May 18, 2011, respectively, posted on the NYSCEF website at the following address: <https://iapps.courts.state.ny.us/nyscef/RulesAndLegislation>.

B. Filing of Papers Generally

1) **Documents Must Be E-Filed:** Unless otherwise provided in the Rules or herein or where a special exemption is granted (e.g., oversized maps), all documents to be filed with the court in a NYSCEF case, including all documents on motions and all letters, must be filed with the NYSCEF system. Documents that attorneys would not ordinarily file with the court in a hard-copy case need not be e-filed. Unless otherwise provided by the E-Filing Rules or this Protocol, in e-filed cases the County Clerk and the court will not accept documents filed in paper form.

2) **Commencement Under Seal or Anonymous Caption:** See Section K (3) hereof.

3) **Notice of Hard-Copy Submission:** Where in accordance with the E-Filing Rules a party submits a document in hard copy in an e-filed case, the document must bear, as the back page facing out, a Notice of Hard-Copy Submission - E-Filed Case (accessible on the NYSCEF website). Under the Rules, an emergency filer must e-file documents that initially were filed in hard copy form within three business days of the emergency filing; the originals will be discarded after the documents have been processed and the failure to e-file as required will therefore lead to an incomplete record.

4) **Index Numbers; When Issued:** In cases commenced electronically, the County Clerk will issue an index number as soon as possible. In the event that counsel faces exigent circumstances that require accelerated assignment, counsel may send a request for such assignment by e-mail to the County Clerk at cc-nyef@nycourts.gov (put in the subject line "Request to Expedite").

5) **Fees:** Court fees in NYSCEF cases must be paid via NYSCEF by a credit or bank card (Mastercard, Visa, or American Express). Fees are not accepted in person in the County Clerk's Office. NYSCEF itself imposes no user fees.

6) (a) **Working Copies of Documents for Judicial Review:** Various Justices require that, in all NYSCEF cases assigned to them, unless otherwise directed, counsel submit working copies of e-filed documents that are intended for judicial review. Working copies are not required of documents that are only processed by a back office (e.g., preliminary conference request, note of issue). Generally, in these Parts, documents intended for judicial review must be filed with the NYSCEF system first and any required working copy must be delivered to the court thereafter. Working copies shall include exhibit tabs and backs and, for motion papers, the Motion Sequence Number. In addition, the filer of a working copy must firmly bind thereto, as the back page facing out, a copy of the Confirmation Notice that was generated by NYSCEF when that document was e-filed. Working copies that are submitted without the related Confirmation Notice will not be accepted. The official record of a document in an e-filed case is the electronic record of the document stored by the Clerk (Uniform Rule 202.5-b (d) (4)). Working copies are intended only for the use of the Justice and will be discarded after the Justice has finished with them. Thus, in the event that counsel fails to e-file a document, it will not be part of the court record.

(b) **Parts Not Requiring Working Copies:** Notwithstanding any references herein to required working copies, such copies shall not be submitted in e-filed cases in the following Parts unless specifically requested by the Part in a particular case; Part 5 (Freed, J.); Part 6 (Lobis, J.); Part 12 (Jaffe, J.); Part 15 (Rakower, J.); Part 19 (Scarpulla, J.); Part 35 (Edmead, J.); Part 37 (Engoron, J.); Part 52 (Chan, J.); and Part 62 (Wright, J.).

7) **Authorization Form - Filing Agent:** A person or entity acting as filing agent for an attorney or party to a case must file an authorization form (accessible on the NYSCEF website) prior to or together with the first e-filing by that attorney or party in that action. Uniform Rule 202.5-b (d) (1) (i).

8) **Correction of E-Filed Documents:** Generally speaking, documents that have been e-filed will not thereafter be deleted by the County Clerk from NYSCEF because the filer asserts that the filing contains an error or requires the addition of certain matter. When the filer wishes to correct a perceived error or omission in a filed document, he or she should file an amended version of the document, with the original remaining on file. The County Clerk will only delete a document upon request of the filer or on the County Clerk's own initiative when it is obvious that

the filer never intended to file the document that was filed (e.g., where a filer who seeks to file a summons and complaint inadvertently uploads a completely unrelated, non-litigation document) or filed it in the file for a different case or in the wrong county. The County Clerk will advise the filer when any such fundamental errors are detected. To request a deletion, send an e-mail message to the County Clerk at cc-nyef@nycourts.gov (put in the subject line "Request to Delete Document").

C. Requests for Judicial Intervention: An RJI (2012 version) in a NYSCEF case shall be submitted via NYSCEF. A fillable version is available on-line at <http://www.nycourts.gov/forms/rji/index.shtml>, although at this point the document once completed must be printed out and scanned. Once e-filed, the RJI and any accompanying document will be forwarded to the relevant back office for random assignment of the case and processing of the document. Counsel need not appear (as to proposed orders to show cause, see below). A filer who seeks assignment to the Commercial Division must submit with the RJI a Commercial Division RJI Addendum (Uniform Rule 202.70 (d)); a copy of the pleadings need be submitted only if the document has not previously been e-filed. If the RJI seeks intervention with regard to a document, such as a motion, that is intended for review by a Justice who requires working copies, a working copy of the RJI must be submitted with the working copy of the motion and the NYSCEF Confirmation Notice.

D. Motions on Notice

1) **Motions/Petitions Returnable in Room 130:** A motion on notice or a notice of petition in a NYSCEF case, as in others, shall be e-filed and made returnable in the Motion Support Office Courtroom (Room 130). The moving documents must be e-filed no later than eight days prior to the return date.

2) **Calendaring of Motion/Petition by Court Staff:** After a motion/petition and notice are e-filed, the Motion Support Office will automatically place the application on the calendar of the Motion Support Office Courtroom (Room 130) for the date fixed; no appearance or other action by the filing attorney is required in order for the motion to be calendared. Motions in e-filed cases appear on a separate calendar in the Courtroom.

3) **Adjournments on Motions/Petitions in Room 130:** E-filed applications may be adjourned in Room 130 if an adjournment complies with the procedures of the Motion Support Office Courtroom (see the summary of those procedures at www.nycourts.gov/courts/ljd/supctmanh/Motions_and_Applications.shtml). An adjournment that so complies may be obtained by filing with NYSCEF a stipulation of all parties (designated in the filing menu as a "Stipulation to Adjourn Motion"); upon e-filing of the stipulation, the place of return (Room 130), the motion number and the current return date of the motion being adjourned shall be set forth in the "Description" area. The Office will effectuate the adjournment without need for an appearance or any other action by the parties, nor should counsel file a copy of the e-filed stipulation with the Room 130 e-mail adjournment address (NYMOTCAL@nycourts.gov), which is for use in hard copy cases only.

4) (a) **Working Copies on Motions in Room 130:** After documents on motions have been e-filed, working copies thereof, with Confirmation Notice firmly attached as the back page facing out, must be submitted in Parts that require such copies. Copies lacking the Notice will not be accepted. (Each document or group of documents that is separately bound shall bear a Confirmation Notice.) On the final return date (but not before), working copies, including copies of the moving papers, shall be handed up at or before the "call" of the E-Filed Calendar in the Motion Support Office Courtroom (Room 130). Working copies must not be delivered to the Part or Chambers as doing so will cause administrative confusion and possible misplacement of papers. If the Clerk becomes aware that an attorney has failed to submit required working copies on the final return date, the motion may be placed, for one time only, on the three-day calendar to permit submission of those copies. The court will not provide direct notice to the attorney that this has occurred; attorneys should use *e-Track* to receive e-mail notifications (see <http://iapps.courts.state.ny.us/webcivil/etrackLogin>) or consult the listing in the Law Journal regarding disposition of the Room 130 calendar. If the working copies are not submitted on the three-day calendar, the motion file will be transmitted as is to the Justice for such action as the Justice finds appropriate. Attorneys who maintain their office outside the County of New York may submit working copies on motions by mail or overnight delivery. Any such submission shall be sent in a timely manner to the Motion Support Office (Room 119) and be conspicuously

marked on the outside “NYSCEF Matter;” lack of such marking may delay processing.

(b) **Working Copies in the Part:** On orders to show cause returnable in a working copy Part, working copies of e-filed opposition and (if allowed) reply papers (with backs and tabs) must be delivered to the Part. As to all such documents, and any document the court may allow a party to hand up in the courtroom on a motion/petition on notice beyond those previously submitted in Room 130, the attorney must file each document with NYSCEF and thereafter submit a working copy bearing, firmly affixed thereto as the back page facing out, a copy of the related NYSCEF Confirmation Notice. Documents lacking a copy of the Notice will not be accepted.

5) **Exhibits:** Whenever possible, attorneys submitting exhibits in NYSCEF cases should make each exhibit a separate attachment to an affidavit/affirmation in the system; i.e., they should not be filed as a single PDF because that format makes it difficult for the Justice to locate particular exhibits as needed.

6) **Notification of Decisions and Orders:** After issuance of a decision and order on a motion/petition in a NYSCEF case, the document will be processed into the NYSCEF system, which constitutes entry (Uniform Rule 202.5-b (h)), as will be reflected in a legend on the document. NYSCEF will immediately transmit notice of this event via e-mail, including a link to the entered document, to all participating attorneys and unrepresented parties. Such transmittal does not constitute notice of entry by any party. See Section L.

E. Long Form Orders/Judgments on Motions: If the court directs that an order or judgment be settled or submitted on a motion in a NYSCEF case, the proposed order/judgment, with notice of settlement where required, and any proposed counter-order/judgment shall be filed with the court via NYSCEF. The relevant back office (the Motion Support Office Order Section or the Commercial Division Support Office (Room 119A)) will process the documents in the customary manner. The Clerk of the back office will print out a copy of the proposed order/counter-order or judgment and, as appropriate, may make changes thereon by hand or may contact the submitting attorney by e-mail or telephone. Once a proposed order/counter-order or judgment in final form has been arrived at, the Clerk will forward it in hard copy to the Justice. Unless otherwise required by the court, no working copy of a proposed order/counter-order or judgment need be submitted, and no appearance by counsel is required. After an order/counter-order has been signed by the court, it will be scanned, with County Clerk entry stamp, into the NYSCEF system, which will immediately transmit notice of this event via e-mail, including a link to the entered document, to all participating users in the case, which shall not constitute notice of entry by any party. See Section L. As to judgments, see Section M. If the court’s decision directs that an order be presented to a working copy Part or Chambers, the attorney should file the proposed order with NYSCEF and deliver a working copy to the Justice as directed, including the Confirmation Notice.

F. Orders to Show Cause

1) **Proposed Orders to Show Cause and Supporting Documents to be Filed On-Line; Review On-Line; Working Copy:** Proposed orders to show cause and supporting documents in all NYSCEF cases must be submitted first by filing with NYSCEF; original (hard copy) documents will not be accepted by the Clerk. Counsel must comply with Uniform Rule 202.7 (f) regarding notice of the application. See also Commercial Division Rule 20 (Uniform Rule 202.70). The Clerk of the Commercial Division Support Office or the Ex Parte Office will review on-line the proposed order filed with NYSCEF and will, as needed, communicate with the submitting attorney about any issues by e-mail or phone. Once a final version of the submission has been arrived at in this way, it shall be e-filed and, in a case in a working copy Part, a working copy of the proposed order and supporting documents with Confirmation Notice(s) must be presented to the relevant office for delivery to the assigned Justice. If the filer prefers, he or she may present the working copy of the proposed documents to the Clerk immediately after the filing with NYSCEF and before review by the Clerk, in which case the Clerk will review the working copy, but proceeding in this way may result in the attorney’s having to submit a second, revised working copy if the Clerk requests that changes be made to the version originally transmitted to NYSCEF.

2) **Exceptions: Permissible Submissions in Hard Copy:** Notwithstanding the foregoing, if a party seeking a TRO submits an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Rules 202.7 (f)

and Commercial Division Rule 20) or if in accordance with the Rules a party to a mandatory e-filed case is exempt from participation or seeks to submit documents in a defined emergency, the proposed order to show cause and supporting documents may be presented to the Commercial Division Support Office or the Ex Parte Office in hard copy form rather than filed on-line in the first instance. A completed Notice of Hard Copy Submission - E-Filed Case (form accessible on the NYSCEF site) indicating why the documents are being filed in hard copy form must be firmly attached to the papers as the back page facing out. A proposed order to show cause and supporting documents that must be presented to a Justice outside normal court hours (see the court's website at www.nycourts.gov/courts/ljd/suptctmanh/Motions_and_Applications.shtml) shall also be presented in hard copy. In all situations described in this paragraph (other than that of an exempt party), documents submitted in hard copy form must thereafter be e-filed, as set forth below.

3) **Hard Copy Service:** When hard copy service is made of documents that were submitted in hard copy form pursuant to Par. 2 of this section and where no party is served via NYSCEF, the filer (except one who is exempt from mandatory e-filing) shall, no later than three business days after service, e-file the supporting papers (designating them in the NYSCEF document-type drop-down menu on the filing screen as "Supporting Papers to OSC (After Service)), together with proof of hard copy service. Failure to do so will cause the County Clerk file to be incomplete. The Clerk will e-file the signed order to show cause after the deadline for service has passed.

4) **Declination:** If the Justice declines to sign a proposed order to show cause, the Clerk will electronically file the declined order. If the proposed order to show cause and supporting documents were filed with the court in hard copy form pursuant to Par. 2 of this section, the filing attorney or party (other than an exempt party) shall file the supporting documents with NYSCEF (select the "Fee Previously Paid" option) no later than three business days after the filing by the Clerk. Failure to do so will cause the County Clerk file to be incomplete.

5) **E-Service of Signed OSC and Supporting Documents:** If the court directs that the signed order to show cause and supporting documents be served electronically, a conformed copy of the signed order should be designated as "Conformed Copy of OSC" in the NYSCEF document type drop-down menu on the filing screen.

G. Ex Parte Applications (Other than Orders to Show Cause): Proposed ex parte applications shall be e-filed and a working copy shall thereafter be submitted if the Part in question is a working copy Part. If, however, the circumstances underlying a proposed ex parte application make it necessary that advance notice to the other side be avoided (e.g., ex parte order of attachment), the application may be submitted in hard copy form with a completed Notice of Hard Copy Submission - E-Filed Case firmly appended thereto as a back page facing out. The filer shall e-file the application within three business days after service.

H. Requests for So-Ordering of Stipulations: If an attorney wishes to submit a stipulation to be "so ordered," he or she should file the document with NYSCEF, designating it on the filing menu as a "Proposed Stipulation to be So Ordered." If the Justice requires working copies, counsel shall also submit a working copy of the document, together with a Confirmation Notice, to the Part.

I. Service on Parties: Pursuant to the E-Filing Rules, service of interlocutory documents is made by posting a document to the NYSCEF site, which automatically and immediately transmits an e-mail notice of the filing, including a link to the document, to all participating counsel and unrepresented parties on the case. The Rules also authorize service by other methods permitted by the CPLR. If service by such a method is made, proof of service must be filed with NYSCEF.

J. Service of Orders on the County Clerk and Back Offices: If an order in a NYSCEF case directs that the County Clerk or a back office of the court take action, a copy of the order must be served on the County Clerk or the back office. This may be done by transmitting a copy of the order by e-mail to the appropriate e-mail box (put in the subject line "Service of Order"). The e-mail addresses are as follows:

County Clerk: cc-nyef@nycourts.gov

Motion Support Office: mso-nyef@nycourts.gov

Trial Support Office: trialsupport-nyef@nycourts.gov

Special Referee: spref-nyef@nycourts.gov

K. Secure Documents and Sealing of Documents

1) **Social Security Numbers:** “No person may file any document available for public inspection ... in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule.” GBL 399-ddd (6).

2) **Secure Documents:** In the past, e-filed documents could be designated “secure” by the filing user. The relevant portion of the rules that so provided (Uniform Rule 202.5-b (d) (3) (iii)) has been deleted by Administrative Order effective April 15, 2013. Documents previously filed in secure status will retain that status unless otherwise directed by the court. It is the responsibility of counsel and parties to comply with legislation restricting disclosure of confidential personal information.

3) **Sealing; Compliance with Part 216; Procedures:** Commencement documents or documents filed in a pending case that have not been designated “secure” will, upon filing with NYSCEF, become available to the public and those that have been designated “secure” will be publicly accessible at the courthouse. If counsel for a party seeks to have such documents sealed, specific steps must be taken and an order pursuant to Part 216 of the Uniform Rules obtained. Counsel may file the documents in hard copy form without filing to NYSCEF until the court has resolved the sealing issue. Any such document must bear, as the back page facing out, a Notice of Hard Copy Submission - E-Filed Case.

(a) **Commencing a New Case Under Seal; Anonymous Caption:** Where counsel seeks to obtain a sealing order for a case file at the outset of the case, the attorney should, before filing, consult the Chief Clerk of Law and Equity (Room 141B) in the County Clerk’s Office or the Chief Deputy County Clerk (Room 161) and present the commencement papers in hard copy form, with Notice of Hard Copy Submission - E-Filed Case. Before processing the papers, which will make them publicly available, the County Clerk will allow the party time to file an RJ1 and a proposed order to show cause, which should be filed in hard copy with Notice of Hard Copy Submission, seeking a sealing order and a TRO temporarily sealing the file. If the TRO is signed, counsel must immediately inform the Chief Deputy County Clerk, the Chief Clerk of Law and Equity, or the Judgment Clerk. The attorney should then e-file the documents as directed by the County Clerk, who will seal the e-file. For more information, see www.nycourts.gov/courts/1jd/supctmanh/litigation_functions.shtml. Counsel should likewise consult the Chief Deputy County Clerk or Chief Clerk of Law and Equity prior to filing if seeking to proceed under an anonymous caption. See the cited address. If the court directs temporarily the filing under an anonymous caption and the sealing of the file, the Chief Deputy County Clerk, Chief Clerk of Law and Equity, or Judgment Clerk must be promptly informed. The attorney should then e-file the documents as directed by the County Clerk staff, who will issue an anonymous caption and seal the e-file. If on the return of the order to show cause the court denies the request for sealing/anonymous caption and vacates the TRO, counsel must promptly inform the Chief Deputy County Clerk, the Chief Clerk of Law and Equity, or the Judgment Clerk. If upon presentation of the proposed order to show cause and TRO the court refuses to issue the TRO, counsel must promptly inform the County Clerk staff. If the relief sought is denied, the applying counsel must, within three business days after the sealing issue is determined, e-file all documents not yet e-filed.

(b) **Application for Sealing Order in a Pending E-Filed Case:** If counsel seeks to seal a document or the case file in a pending e-filed case, counsel must move for a sealing order. Counsel may file a motion to seal in hard copy form, with Notice of Hard Copy Submission annexed. If necessary, counsel should consult the Chief Deputy County Clerk or the Chief Clerk of Law and Equity. Any opposition or reply papers shall likewise be submitted in hard copy form, with said Notice attached. If the court issues an order directing the sealing of a complete existing NYSCEF case file or a document or documents previously filed with NYSCEF, the applicant shall file with the NYSCEF system a Notification for Sealing in Electronically-Filed Case (form available on the NYSCEF website), together with a copy of the court’s order. The County Clerk will, during regular business hours, seal the file or the document(s) in question as directed by the court, both in the NYSCEF system and, if any covered documents are found therein, in a hard copy file. If the court issues an order directing the sealing of a document that has not yet been e-filed, the document should be presented (unless the court directs otherwise) to the Chief

Deputy County Clerk, the Chief Clerk of Law and Equity, or the Judgment Clerk in hard copy form with a copy of the court's sealing order. The Clerk will e-file the document under seal. All documents presented in connection with the sealing issue that have not yet been e-filed must be e-filed within three business days after the County Clerk seals the file or the document in question or after the sealing issue is determined.

5) Previously Sealed File; Hard Copy Case: If a hard copy case in which a sealing order was previously issued is converted to NYSCEF status, counsel for the parties should promptly inform the Chief Deputy County Clerk, the Chief Clerk of Law and Equity, or the Judgment Clerk of the existence of the sealing order.

L. Entry and Notice of Entry: The County Clerk shall file orders electronically, which shall constitute entry of the order (Uniform Rule 202.5-b (h)(1)). An e-mail message will be transmitted to all filing users on the case notifying that the order has been entered. Such notice does not constitute service of notice of entry by any party. Notice of entry shall be served by a party by serving a copy of the order and written notice of its entry in the manner set forth in Uniform Rule 202.5-b (h) (3).

M. Judgments and the Judgment Roll

1) Application to the County Clerk for Entry of Judgment; Procedures: If the court in an order directs entry of judgment by the County Clerk, the party seeking entry shall submit to the County Clerk via NYSCEF a proposed judgment with bill of costs, interest calculations and supporting information. The proposed judgment (select the document type "Judgment - To County Clerk (Proposed)") and bill of costs should be in one PDF and any other, related submissions should be submitted as related documents but in separate PDFs so as to facilitate communication in the event the Clerk should request modifications to any document. It is further requested that a legal back be included with these documents since the County Clerk uses space on the back to affix stamps upon entry. The Judgment Clerk will promptly communicate with counsel by e-mail or phone in the event of any difficulties with the submission. Once the judgment is in final form, it will be submitted by the Judgment Clerk to the County Clerk for signature.

2) Default Judgment; Entry by Clerk: If the plaintiff in an e-filed case seeks entry of a default judgment by the Clerk pursuant to CPLR 3215, the attorney shall transmit to the NYSCEF system (select the document type "Clerk Default Judgment (Proposed)") a proposed Clerk's default judgment with supporting affirmations/affidavits, together with a bill of costs, interest calculations, and supporting information. A motion fee must be paid for entry of such a judgment. The Clerk will communicate with counsel if any questions or issues arise. Once the proposed judgment is found to be in proper form, the Judgment Clerk will cause the County Clerk to sign it.

3) Judgments Signed by Court: Where the court is to sign the judgment, counsel should e-file the proposed judgment (select document type "Judgment - To Court (Proposed)"). Calculation of disbursements, costs and interest will be left to the County Clerk after the court has signed the judgment. Papers supporting such calculation shall be filed with NYSCEF.

4) Judgment Roll: Through NYSCEF an attorney seeking entry of judgment designates the documents previously filed with NYSCEF that are to be included in the judgment roll (CPLR 5017).

5) Signature and Entry of Judgment: Once the County Clerk has taxed costs and disbursements and calculated interest and signed a judgment and a judgment roll has been prepared, the Clerk will stamp the judgment with the County Clerk file stamp and post the judgment to NYSCEF. This constitutes entry. The Clerk will transmit an e-mail message to all filing users notifying that the judgment has been entered. Such notice does not constitute service of notice of entry by any party, which shall be made as set forth in Section L.

N. Notices of Appeal and Appeal Papers

1) Notice of Appeal; Procedures: A notice of appeal shall be filed with NYSCEF in an e-filed case, together with a pre-argument statement and a copy of the judgment or order appealed from. No hard copy should be delivered

to the County Clerk's Office. The other participating parties to the case will be served via NYSCEF.

2) **NYSCEF; Appellate Division:** The Appellate Division, First Department does yet not handle appeals in NYSCEF cases by electronic means, although the Court has announced its intention to move toward that goal in the near future. Counsel are advised to consult the rules of that court and to confer with the County Clerk.

ANY ATTORNEY WHO REQUIRES ASSISTANCE IN A NYSCEF CASE IN THIS COURT IS ENCOURAGED TO CONTACT THE NEW YORK COUNTY E-FILING OFFICE. COMPUTER EQUIPMENT IS AVAILABLE AT THE COURTHOUSE FOR THE USE OF ATTORNEYS WHO MAY NEED TO MAKE FILINGS IN NYSCEF CASES AND WHO FROM TIME TO TIME ARE UNABLE TO MAKE THE FILINGS FROM THEIR OWN OFFICES.

Dated: April 24, 2013

**ELECTRONIC FILING OFFICE
SUPREME COURT, CIVIL BRANCH
NEW YORK COUNTY
60 Centre Street, Room 119
New York, New York 10007
Phone: 646-386-3610
E-Mail: newyorkef@nycourts.gov**

**NY COUNTY E-FILING STAFF
KEVIN DUFFY
J.T. LYDON
WILLIAM DIETZ**

**NEW YORK STATE COURTS
ELECTRONIC FILING
RESOURCE CENTER
60 Centre Street, Room 119 M
New York, New York 10007
646-386-3033
E-Mail: efile@nycourts.gov**

**JEFFREY CARUCCI
STATEWIDE COORDINATOR
OF ELECTRONIC FILING**

**CHRISTOPHER GIBSON
DEPUTY COORDINATOR**

Appointment of An Out-of-State Estate Administrator in a Wrongful Death Case

An administrator may be appointed for the prosecution of action for personal injury or wrongful death against or on behalf of estate of deceased resident or nonresident pursuant to § 64.2-454 of the Code of Virginia. According to the statute:

An administrator may be appointed in any case in which it is represented that a civil action for personal injury or death by wrongful act arising within the Commonwealth is contemplated against or on behalf of the estate or the beneficiaries of the estate of a resident or nonresident of the Commonwealth who has died within or outside the Commonwealth if an executor of the estate has not been appointed, solely for the purpose of prosecution of such action, by the clerk of the circuit court in the county or city in which jurisdiction and venue would have been properly laid for such action if the person for whom the appointment is sought had survived.

VA. CODE § 64.2-454. In this situation the administrator is appointed for the sole purpose of defending against or prosecuting a wrongful death action on behalf of the estate. If no one can be found to serve as administrator, however, the clerk of the circuit court within the jurisdiction where the estate is located will be appointed to serve as administrator. *See* VA. CODE § 64.2-426.

The probate process refers, in part, to the process of qualifying a personal representative, i.e., as an executor named in a will, or as an administrator if there is no will, to carry out the terms of the will and otherwise administer the decedent's estate. *See* VA. CODE § 64.2-443, *et seq.* When the decedent left a will, the person who intends to qualify as personal representative of the estate takes the decedent's original will and a certified death certificate to the Clerk's Office of the Circuit Court that has jurisdiction over the will. *See* VA. CODE § 64.2-444. Jurisdiction is determined by the decedent's residency at the time of his or her death. *See* VA. CODE § 64.2-443.

When a personal representative qualifies, he or she is required to take an oath to carry out the duties of that office, and to post a bond promising to be responsible for paying the amount of any loss to the estate that result from improper acts or actions of the personal representative. The amount of the bond will at least equal the value of the personal estate and in most cases is double that amount.

It is not difficult to appoint a non-Virginia resident as personal representative of a decedent's estate. The appointment of a nonresident as personal representative is governed by § 64.2-1426 of the Code of Virginia. According to the statute, "[a] natural person who is not a resident of the Commonwealth may be appointed or allowed to qualify or act as the personal representative, or trustee under a will, of any decedent" The statute also provides that:

At the time of qualification or appointment, each such nonresident shall file with the clerk of the circuit court of the

jurisdiction wherein the qualification is had or appointment is made his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, conservator, or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in the Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of the Commonwealth and at such address as the nonresident may appoint in the written instrument.

VA. CODE § 64.2-1426. When a nonresident seeks to be appointed as a personal representative surety will be required if they are serving without a resident personal representative, unless the value of the estate does not exceed \$15,000.

**CONSENT OF NONRESIDENT FIDUCIARY FOR
SERVICE OF PROCESS**

COMMONWEALTH OF VIRGINIA VA. CODE §§ 64.2-1426, 64.2-426, 64.2-427

Court File No.

ESTATE OF

I,, who qualified on the
..... day of, as

☐ Personal Representative (defined in Virginia Code § 1-234)

☐ Trustee under a Will or Inter Vivos Trust

☐ Guardian

☐ Conservator of an Incapacitated Person

of the Estate of,

hereby consent to and appoint,

whose home address and home telephone number is

.....,

and whose work address and work telephone number is

.....

and who is a resident of the Commonwealth of Virginia to accept service of process in any action
against me in my fiduciary capacity, or any other notice with respect to administration of the estate in
my charge.

NOTE: The Clerk may require evidence of consent.

This day of, 20

PERSONAL REPRESENTATIVE/TRUSTEE/GUARDIAN/CONSERVATOR

State/Commonwealth of ☐ City ☐ County of

The foregoing instrument was subscribed and sworn to/affirmed before me this

..... day of, 20

by

PRINT NAME OF SIGNATORY

NOTARY PUBLIC (My Commission expires:)

Registration No.

Witness:

CLERK/DEPUTY CLERK

CHAPTER 5 - ADMINISTRATION FOR OTHER PURPOSES

I. APPOINTMENT OF ADMINISTRATOR TO SUE OR BE SUED – PERSONAL INJURY OR WRONGFUL DEATH

A. The Purpose of Administration

- Administration is solely for the purpose of prosecuting a personal injury or wrongful death action on behalf of an estate or the beneficiaries of the estate when there has been no such appointment or qualification.

NOTE: A person seeking administration for wrongful death purposes can qualify for the purposes of filing both a wrongful death action and a personal injury survival action. *See Antidel v Ashby* 279 Va. 42, 68 S.E. 2d 163 (2010).

- [Virginia Code § 64.2-454](#) at one time only applied to actions against a deceased nonresident who had no Virginia fiduciary. It has been reworked over time to do many more things. This statute authorizes qualification of a Virginia administrator solely to prosecute (file) a Personal Injury or Wrongful Death suit:
 - Against the estate of deceased nonresident for whom no fiduciary has been appointed; or
 - Against the estate of deceased Virginia resident for whom no fiduciary has been appointed; or
 - On behalf of the estate or estate beneficiaries of a deceased nonresident for whom no fiduciary has been appointed; or
 - On behalf of the estate or estate beneficiaries of a deceased Virginia resident for whom no fiduciary has been appointed.
- Relative to Personal Injury actions, this statute seems to codify what we know about how actions may be continued after death ([Va. Code § 8.01-25](#)). [Virginia Code § 64.2-454](#) allows cases to be prosecuted BOTH by and against the estate of a nonresident/resident decedent.
- In a Personal Injury or Wrongful Death action, if the plaintiff recovers anything, the beneficiary estate may later receive assets that will require further bonding (many clerks initially set the bond between \$100 and \$1,000) and accounting. [Virginia Code § 64.2-1302](#) may apply to these cases, if the initial estate is less than \$15,000 in value and the other requirements are met, inventory and settlement are waived.

B. Who May Be Qualified

The administrator is being qualified for purposes of being sued or to sue. The Clerk will usually receive one nominee, who is promoted by the plaintiff. The procedure involves an ex parte hearing and appointment, and no notice is required to any party.

- **Wrongful Death Actions:**

“If the deceased person was an infant who was in the custody of a parent pursuant to an order of court or written agreement with the other parent, administration shall be granted first to the parent having custody; however, that parent may waive his right to qualify in favor of any other person designated by him. If no such parent or his designee applies for administration within thirty days from the death of the infant, administration shall be granted as in other cases.” [Va. Code § 8.01-50.](#)

- **Other Situations:**

Consult [Va. Code § 64.2-502](#) for preference of appointment of administrator.

(**COMMENT:** The Clerk should consider the fitness of any nominee who seeks qualification as administrator for purposes allowed in [Va. Code §§ 8.01-50](#) and [§ 64.2-454](#) by referring to applicable provisions in the “Administrator” subsection of the “Grant of Administration” chapter in this manual.)

C. Appointment and Qualification

- **MEMORANDUM OF COUNSEL.** Refer to the “Memorandum of Counsel” subsection in the “Grant of Administration” chapter in this manual.
- **OATH.** Refer to the “Oath” subsection of the “Grant of Administration” chapter in this manual.
- **BOND.** Refer to the “Bond” subsection of the “Grant of Administration” chapter in this manual.

(**COMMENT:** Bond is set in a minimum amount, without security, because the administrator is not qualified to receive or administer estate assets. The amount of bond set by the Clerk may vary between \$100 and \$15,000. These limits are historically based upon the smallest amount of bond which could be set, without requiring security.)

- **LIST OF HEIRS.** Required. See [Va. Code § 64.2-509.](#)
- **NOTICE OF PROBATE.** Not required; Affidavit is required stating that no notice is required.

- LETTERS TESTAMENTARY AND LETTERS OF ADMINISTRATION. Refer to the “Grant of Administration” chapter in this manual.
- PROBATE TAX RETURN. Not required. (There is no estate or estate is less than \$15,000.)

D. Administration Requirements

- The administrator has no duty to administer the estate. His sole responsibility is to receive process and notices in the action against the estate. Inventory and settlement are not required per [Va. Code § 64.2-1301](#), wrongful death, and waived under the proper circumstances in other types of actions per [Va. Code § 64.2-1302](#).
- Exception: An inventory under [Va. Code § 64.2-1300](#) or a settlement under [Va. Code § 64.2-1206](#), shall not be required of a personal representative who qualifies for the sole purpose of bringing an action under [Va. Code § 8.01-50](#). However, if there be no surviving relative designated as a beneficiary under [Va. Code § 8.01-53](#) and the court directs that the funds recovered in such action be paid to the personal representative for distribution according to law, such personal representative shall file the inventory required in [Va. Code § 64.2-1300](#) and the statement required under [Va. Code § 64.2-1206](#),. [Va. Code § 64.2-1301](#)
- Recovery under the action for wrongful death goes to the survivor beneficiaries within the classes set out in [Va. Code § 8.01-53](#), and are not considered to be estate assets requiring administration by the personal representative. In default of distribution to any class of beneficiary under [Va. Code § 8.01-53](#), the personal representative will then receive the assets, be required to post a new bond, file inventory and settlement, and distribute the assets according to the terms of the decedent's will or under the statute of distribution if the decedent died intestate.
- If the administrator, as plaintiff, recovers anything for the estate, new bonding, inventory and settlement may be required.

E. Actions Which Survive a Decedent

- By statute, all but a few personal actions survive the death of the decedent. For example, actions for damage to property or breach of contract survive; actions for defamation, malicious prosecution, assault and battery die at the decease of the party injured. Refer to Harrison, § 23.11.
- [Virginia Code § 8.01-25](#) states “Every cause of action whether legal or equitable, which is cognizable in the Commonwealth of Virginia, shall survive either the death of the person against whom the cause of action is or may be asserted, or the death of the person in whose favor the cause of action existed, or the death of both such persons.” The statute also provides that if the decedent dies from his injuries

during an action for personal injury, “the action” shall be amended in accordance with the provisions of [Va. Code § 8.01-56](#).

(COMMENT: If a Virginia circuit court has qualified a personal representative to administer the decedent's estate, no other qualification is necessary to continue, prosecute or defend an action.)

F. Death or Disability of Party

- [Virginia Code § 8.01-17](#) states “When the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; provided that a successor in interest may be substituted in accordance with the Rules of Court....”. See Rules of Supreme Court of Virginia 3:17, Substitution of Parties.
- [Virginia Code § 8.01-22](#) states “If a party plaintiff or defendant becomes incapable of prosecuting or defending because of death, insanity, conviction of felony, removal from office, or other reason and there are one or more co-plaintiffs or co-defendants, the court on motion may in its discretion either (i) suspend the case until a successor in interest is appointed in accordance with the Rules of Court, or (ii) sever the action or suit so that the case shall proceed against the remaining parties without delay, with the case as to the former party being continued and tried separately against the successor in interest when he is substituted as provided by the Rules of Court.”

II. ACTIONS BY/AGAINST PERSONAL REPRESENTATIVE

A. Suits upon Judgment and Contracts

“A personal representative may sue or be sued upon any judgment for or against or any contract of or with his decedent...”. See [Va. Code § 64.2-519](#).

B. Action For Goods Carried Away, Etc.

“Any action at law for damages for the taking or carrying away of any goods, or for the waste, destruction of, or damage to any estate of or by the decedent, whether such damage be direct or indirect, may be maintained by or against the decedent's personal representative. Any action pursuant to this section shall survive pursuant to § [8.01-25](#).” See [Va. Code § 64.2-519](#).

C. Actions Which Survive a Decedent

- By statute, all but a few personal actions survive the death of the decedent. For example, actions for damage to property or breach of contract survive; actions for defamation, malicious prosecution, and assault and battery die at the decease of the party injured. Refer to Harrison, § 23.11.

- [Virginia Code § 8.01-25](#) states “Every cause of action whether legal or equitable, which is cognizable in the Commonwealth of Virginia, shall survive either the death of the person against whom the cause of action is or may be asserted, or the death of the person in whose favor the cause of action existed, or the death of both such persons.”

(COMMENT: If a Virginia circuit court has qualified a personal representative to administer the decedent's estate, no other qualification is necessary to continue, prosecute or defend an action.)

D. Death or Disability of Party

- [Virginia Code § 8.01-17](#) states “When the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; provided that a successor in interest may be substituted in accordance with the Rules of Court....”. See Rules of Supreme Court of Virginia 3:17, Substitution of Parties.
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E. Who May Be Qualified

The Clerk will usually receive one nominee, who is promoted by the plaintiff or other interested party. The procedure involves an ex parte hearing and appointment. No notice is required to any party.

Consult [Va. Code § 64.2-502](#) for preference of appointment of administrator.

(COMMENT: The Clerk should consider the fitness of any nominee who seeks qualification as administrator for purposes allowed by referring to applicable provisions in the “Administrator” subsection in the “Grant of Administration” chapter in this manual.)

F. Appointment and Qualification

- MEMORANDUM OF COUNSEL. Refer to the “Memorandum of Counsel” subsection in the “Grant of Administration” chapter in this manual.

- OATH. Refer to the “Oath” subsection of the “Grant of Administration” chapter in this manual.
- BOND. Refer to the “Bond” subsection of the “Grant of Administration” chapter in this manual.

(**COMMENT:** Bond is set in a minimum amount, without security, because the administrator is not qualified to receive or administer estate assets. The amount of bond set by the Clerk may vary between \$100 and \$15,000. These limits are historically based upon the smallest amount of bond which could be set, without requiring security.)

- LIST OF HEIRS. Required. [Va. Code § 64.2-509](#).
- NOTICE OF PROBATE. Not required; Affidavit is required stating that no notice is required.
- LETTERS TESTAMENTARY AND LETTERS OF ADMINISTRATION. Refer to the “Letters Testamentary and Letters of Administration” subsection of the “Grant of Administration” chapter in this manual.
- PROBATE TAX RETURN. Not required.

G. Administration Requirements

The administrator qualified solely for the reasons set out in this section has no duty to administer the estate. His/her sole responsibility is to receive process and notices in the action against or on behalf of the estate. Inventory and settlement are waived under proper circumstances allowed in [Va. Code § 64.2-1302](#)

A personal representative who is qualified to administer the estate of the decedent must also prosecute and/or defend actions on behalf of/against the estate as stated above.

Inn of Court

February 19, 2014

Out-of-State Procedures:

You won a judgment in DC Superior Court and want to record it in Alexandria because you believe the judgment debtor owns real property there. How do you handle? What about recording an Alexandria judgment in DC?

Uniform Enforcement of Foreign Judgments Act (UEFJA)

- The purpose of UEFJA is to give the holder of a foreign judgment the same rights and remedies as holders of domestic judgments, and to make foreign judgments just as easy to enforce
- UEFJA implements the Full Faith and Credit Clause of the Federal Constitution and facilitates the interstate enforcement of judgments in any jurisdiction where the judgment debtor is found
- UEFJA is an enforcement statute, rather than a mere registration statute
- The primary purpose for filing a foreign judgment is enforcement, and an essential prerequisite to enforcement is compliance with the provisions of the Act.
30 Am. Jur. 2d Executions, Etc. §778

Recording the DC judgment in Alexandria

- Va. Code §§ 8.01-465 et. seq.
- Va. Code §8.01-465.1 – a “foreign judgment” means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.
- Va. Code §8.01-465.2. – Furthermore, a copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of the Commonwealth of Virginia may be filed in the office of the clerk of any circuit court of any city or county of the Commonwealth of Virginia upon payment of the fee prescribed.
 - The clerk is required to treat the foreign judgment in the same manner as a judgment of the circuit court of any city or county of the Commonwealth of Virginia.
 - A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court of any city or county of the Commonwealth of Virginia and may be enforced or satisfied in like manner.
- Va. Code §8.01-465.3 – Moreover, it is required that promptly upon the filing of the foreign judgment and the affidavit, the clerk is required to mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the court’s docket.
 - The notice is required to include the name and post office address of the judgment creditor and the judgment creditor’s lawyer, if any, in the Commonwealth of Virginia.
 - In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk.

- Lack of mailing notice of filing by the clerk will not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Judgment Debtor's property in Alexandria – writ of fieri facias

- A writ of fieri facias is a writ of execution after judgment obtained in a legal action for debt or damages
- Ordinarily docketed in the jurisdiction in which the judgment is rendered under the name of the defendant, but can also be docketed in any other jurisdiction where the debtor has assets
- Process:
 - Clerk issues the writ, which is a command to the sheriff to levy against the goods and chattels of the debtor in that jurisdiction (issuance of writ of fieri facias is what empowers the creditor to pursue any and all enforcement actions)

Recording the Alexandria judgment in DC:

- DC generally adopts the Uniform Enforcement of Foreign Judgments Act. (D.C. 15-351, et seq.). Any judgment, decree or order of a court in the United States or of any other court is entitled to full faith and credit in the District of Columbia. (D.C. 15-351(2).)
- A judgment creditor seeking to enforce a foreign judgment may file with the appropriate court an authenticated copy of the foreign judgment and an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. The clerk of the court and the creditor are required to mail a written notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice must include the name and post office of the judgment creditor and, if the judgment creditor has an attorney in this state, the attorney's name and address. Lack of mailing notice of filing by the clerk does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. (D.C. 15-353.)
- A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the Superior Court of the District of Columbia, and may be enforced or satisfied in like manner (D.C. 15-352.)