



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
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MEMORANDUM

September 30, 2013

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed adoption of 22 NYCRR § 207.64 of the Uniform Rules for Surrogate's Court, relating to secure filing of certain documents in Surrogate's Court.

The Surrogate's Court Advisory Committee has proposed the adoption of a new rule limiting public access to certain documents containing personal identifying and financial data: (1) all papers and documents in proceedings under Surrogate's Court Procedure Act Articles 17 (guardians and custodians) or 17-A (guardians of mentally retarded and developmentally disabled persons); (2) death certificates; (3) tax returns; (4) documents containing social security numbers; (5) inventories of firearms; and (6) inventories of assets (Exhibit A). Under the proposal, such documents could be viewed only by persons interested in the estate or their counsel, the Public Administrator or counsel thereto, counsel for any federal, state or local governmental agency, or court personnel. Other persons could view the records upon written permission of the Surrogate or Chief Clerk, which "shall not be unreasonably withheld."

Many Surrogate's Court documents contain large amounts of personal identifying and financial information, creating a significant risk of misuse for illegal purposes. The Advisory Committee believes a statewide rule is necessary to address varying procedures that have arisen in Surrogate's Courts around the state in an effort to balance the public's right of access with the court's obligation to safeguard confidential personal information.

Persons wishing to comment on this proposal should e-mail their submissions to OCArule207-64@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than December 4, 2013.**

All public comments will be treated as available for disclosure under the Freedom of Information Law, and are subject to publication by the Office of Court Administration. The issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the court system.

EXHIBIT A

Recommendation for Certain Regulation

1. Secure filing of certain documents in Surrogate's Court
(22 NYCRR § 207.64) (new)

The Committee has examined the issue of public access to the Surrogate Court records containing personal and financial information. It is uncontroverted that the records of the Surrogate's Court are public and access should be afforded to all persons interested. However, it is also clear that, given the vast amount of personal identifying information contained in these files, the risk for misuse of the court's records for illegal purposes is significant.

Recognizing the potential for misuse of this information, many Surrogate's Courts have initiated various procedures in an attempt to balance the public's right of access with the court's obligation to safeguard the personal identifying information it must collect. The Committee has concluded therefore that there is a need for a statewide rule in order to remedy the current practice of informal, piecemeal application of different procedures, especially in light of the concern that the informal procedures currently utilized also may lack express guidelines.

Therefore, the Committee recommends enactment of the following proposed rule. The rule would be in accordance with existing statutory parameters on public access to information and allow access on a limited scope to a specified list of documents. These documents are death certificates, tax returns, documents containing social security numbers, firearms inventories and the inventory of assets, as well as guardianship proceedings instituted pursuant to SCPA Articles 17 and 17A.

With respect to these documents the proposed rule would allow access without the need for court permission to persons interested in the estate of the decedent, as defined by SCPA §103(39), or their counsel; the Public Administrator or counsel thereto; counsel for any Federal, State or local governmental agency; or court personnel. Importantly, a person not listed in paragraph 39 of section 103 may seek written permission from the Court to view the documents and the rule states expressly that such permission shall not be unreasonably withheld.

Proposal

207.64 Public Access to Certain Filings

The following documents may be viewed only by persons interested in the estate of the decedent, as defined by SCPA §103(39), or their counsel; the Public Administrator or counsel thereto; counsel for any Federal, State or local governmental agency; or court personnel; except upon written permission of the Surrogate or Chief Clerk of the court which shall not be unreasonably withheld:

- (1) All papers and documents in proceedings instituted pursuant to Articles 17 or 17-A of the SCPA;
- (2) Death certificates;
- (3) Tax returns;
- (4) Documents containing social security numbers;
- (5) Firearms Inventory; and
- (6) Inventory of Assets.

Adopted 6/7/2013
Surrogate's Court Advisory
Committee