



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend Rule 207.38 of the Uniform Rules for Surrogate's Court (22 NYCRR § 207.38) to include additional persons authorized to review *in camera* disclosures of agreements affecting settlement recoveries

Date: July 2, 2026

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The Administrative Board of the Courts is seeking public comment on a proposal recommended by the Surrogate's Court Advisory Committee (SCAC) to amend the Uniform Rules for Surrogate's Court (22 NYCRR § 207.38) to include additional persons authorized to review *in camera* disclosures of agreements affecting settlement recoveries.

In 2025, Rule 207.38 of the Uniform Rules for the Surrogate's Court and Rule 202.67 of the Uniform Rules of the Supreme Court and the County Court were amended to require disclosure of certain information relating to litigation financing agreements (LFAs). In particular, the new rules required such disclosures in applications for leave to compromise: (1) wrongful death actions; and (2) personal injury actions involving an infant or a judicially-declared incapacitated person.

The amendments required an *in camera* submission of the terms and documentation of the "interest or any other fees charged" to an infant or incapacitated person, the personal representative of an infant distributee, or to the personal representative of a decedent which affects the interests of an infant distributee. An exemption from this disclosure requirement was provided for attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee.

The Surrogate's Court Advisory Committee ("SCAC") is now recommending that Rule 207.38 of the Uniform Rules for Surrogate's Court be amended to authorize the court to share the *in camera* submissions with: (1) a guardian ad litem appointed to represent the infant's interests; and (2) any party "objecting to the proposed allocation and/or distribution of such proceeds."

The SCAC notes that guardians ad litem "perform an important function in the litigation process and are often called upon to investigate the particulars of a settlement and report to the

court as to whether the settlement is in the best interests of the ward.” Similarly, the SCAC notes that parties objecting to the proposal would need to review the disclosure information “in order to fully articulate their arguments . . . and to knowingly enter into settlement agreements.”

The proposed new rule is attached as Exhibit A, and attached as Exhibit B is a May 11, 2026 memorandum from the SCAC Co-Chairs providing background on this issue and the reasons for the proposal.



Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, August 14, 2026.

All public comments will be released and made available to the public on the Unified Court System website following finalization of the proposed rule. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System.

EXHIBIT A

Proposed Amendments

Paragraph 9 of subdivision (b) and paragraph 6 of subdivision (d) of Section 207.38 of the Uniform Rules for Surrogate's Court (22 NYCRR § 207.38) are amended to read as follows (deletions in ~~strikethrough~~ and additions underscored)

§ 207.38. Compromises

* * * * *

(b) The petition also shall show the following:

* * * * *

(9) an *in camera* submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interest of an infant distributee entitled to share in the proceeds of the settlement, any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee. In the event such documentation is submitted, the court is authorized to disclose its contents to a guardian ad litem appointed to represent the infant's interests; or to any party objecting to the proposed allocation and/or distribution of such proceeds.

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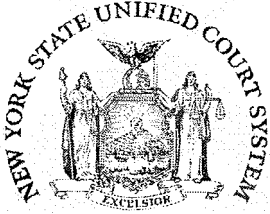
(d) A supporting affidavit by the attorney for petitioner must be filed with each petition for leave to compromise showing:

* * * * *

(6) an *in camera* submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interests of an infant distributee entitled to take or share in the proceeds of the settlement and any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee. In the event such documentation is submitted, the court is authorized to disclose its contents to a guardian ad litem appointed to represent the infant's interests; or to any party objecting to the proposed allocation and/or distribution of such proceeds.

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EXHIBIT B



Surrogate's Court Advisory Committee

Co-Chair: Hon. Peter J. Kelly

Co-Chair: Hon. Deborah S. Kearns

TO: Hon. Joseph A. Zayas

FROM: Hon. Peter J. Kelly
Hon. Deborah S. Kearns

DATE: May 11, 2026

SUBJECT: Proposed Amendment to 22 NYCRR 207.38

The Surrogate's Court Advisory Committee has requested that Surrogate's Court Rule 207.38 (22 NYCRR 207.38) be amended to incorporate additional persons who may be authorized to review the requisite in camera disclosure of agreements affecting the settlement recovery of wrongful death and personal injury compromises.

Surrogate's Court Rule 207.38 sets forth the required contents of the petition and supporting affidavit in a personal injury and/or wrongful death compromise. On May 6, 2025, Surrogate's Court Rule 207.38 sections (b) and (d) were amended to provide for disclosure of agreements affecting settlement recovery of wrongful death and personal injury compromises. Surrogate's Court Rule 207.38 (b) was amended to add a new subsection 9 as follows:

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

Surrogate's Court Rule 207.38 (d) was amended to add a new subsection 6 as follows:

an in camera submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interests of an infant distributee entitled to take or share in the proceeds of

the settlement and any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee.

Upon review of the new rules, the Surrogate's Court Advisory Committee had concerns that the aforementioned provisions failed to include a guardian ad litem as well as an objectant as individuals who would be allowed to review financing agreements.

Guardians ad litem are attorneys appointed by the court to represent the interests of certain parties who are designated as individuals under a disability by statute, such as infants, or individuals who have been adjudicated incompetent. Guardians ad litem perform an important function in the litigation process and are often called upon to investigate the particulars of a settlement and report to the court as to whether the settlement is in the best interests of their ward. The role of the guardian ad litem is essential in the court's deliberative process, and access to the complete court file is required for the proper performance of their duties. This is especially true for documents such as these that directly effect the recovery of their ward.

Likewise, an objectant would need to review such documents in order to fully articulate their arguments concerning the proposed allocation and distribution being requested in the petition, and to knowingly enter into settlement agreements.

Accordingly, the Surrogate's Court Advisory Committee has proposed further amendments to Surrogate's Court Rule 207.38 (b) and (d) to include a guardian ad litem and objectant as individuals permitted access to these in camera submissions as follows:

Section 207.38 Compromises.

(a) Upon any application for leave to compromise a claim for wrongful death or personal injuries, or both, the petition and the supporting affidavits shall set forth the time, place and manner in which the decedent sustained the injuries, and a complete statement of all such facts as would justify the granting of the application. If the cause of action did not arise under the laws of the State of New York, the laws of the jurisdiction under which said cause of action arose must be established to the satisfaction of the court.

(b) The petition also shall show the following:

- (1) the age, residence, occupation and earnings of the decedent at time of death;
- (2) the names, addresses, dates of birth and ages of all the persons entitled to take or share in the proceeds of the settlement or judgment, as provided by EPTL 5-4.4, or by the applicable law of the jurisdiction under which the claim arose, and a statement whether or not there are any children born out of wedlock;

(3) a complete statement of the nature and extent of the disability, other than infancy, of any person set forth in paragraph (2) of this subdivision;

(4) the gross amount of the proceeds of settlement, the amount to be paid as attorneys' fees, and the net amount to be received by petitioner as a result of the settlement;

(5) any obligations incurred for funeral expenses, or for hospital, medical or nursing services, the name and address of each such creditor, the respective amounts of the obligations so incurred, whether such obligations have been paid in full and/or the amount of the unpaid balance due on each of said claims as evidenced by proper bills filed with the clerk;

(6) whether any hospital notice of lien has been filed under section 189 of the Lien Law, and if so, the particulars relating thereto;

(7) on the basis of the applicable law, a tabulation showing the proposed distribution, including the names of the persons entitled to share in the proceeds and the percentage or fraction representing their respective shares, including a reference to the mortality table, if any, employed in the proceeding which resulted in the settlement or judgment, and the mortality table employed in the proposed distribution of the proceeds;

(8) the cost of any annuities in compromises based upon structured settlements in wrongful death actions; and

(9) an in camera submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interest of an infant distributee entitled to share in the proceeds of the settlement, any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee. *In the event such documentation is submitted, the court is authorized to disclose its contents to a guardian ad litem appointed to represent the infant's interests; or to any party objecting to the proposed allocation and/or distribution of such proceeds.*

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

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

(1) whether the attorney has become concerned in the application or its subject matter at the instance of the party with whom the compromise is proposed or at the instance of any representative of such party;

(2) whether the attorney's fee is to be paid by the administrator, and whether any payment has been or is to be made to the attorney by any other person or corporation interested in the subject matter of the compromise;

- (3) if the attorney's compensation is to be paid by any other person, the name of such person;
- (4) the services rendered by the attorney in detail;
- (5) the amount to be paid as compensation to the attorney, including an itemization of disbursements on the case, and whether the compensation was fixed by prior agreement or based on reasonable value, and if by agreement, the person with whom such agreement was made and the terms thereof; and
- (6) an in camera submission of the terms and documentation of any interest or any other fees charged to the personal representative of the decedent which affects the interests of an infant distributee entitled to take or share in the proceeds of the settlement and any contingency or deferred payments agreement, and any money borrowed against anticipated settlement proceeds. The disclosure requirement does not pertain to attorney financing agreements which impact only the attorney and have no impact on the funds or obligations of an infant distributee. *In the event such documentation is submitted, the court is authorized to disclose its contents to a guardian ad litem appointed to represent the infant's interests; or to any party objecting to the proposed allocation and/or distribution of such proceeds.*
- (e) In an application for the compromise of a claim solely for personal injuries, the petition shall contain all the facts in relation to such claim and comply with as much of the provisions of this rule as are applicable, and in addition, the petition shall recite the date letters were issued, whether more than seven months have elapsed from such date, the names and post-office addresses of all creditors, or those claiming to be creditors, and the distributees of the decedent, specifying such as are infants or alleged incompetents.
- (f) Whenever papers are filed for the compromise of a cause of action in which the original action alleged conscious pain and suffering and wrongful death, and the action is subsequently settled for wrongful death only, the waivers and consents of any adult distributees who will not share in the recovery must recite that they are aware that, by consenting that the entire settlement be considered as a settlement of the cause of action for wrongful death, they are waiving the right to receive any distributive share out of the settlement.

cc: David Nocenti, Esq.