



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

TRUSTS AND ESTATES LAW SECTION

2014 Executive Committee

RONALD J. WEISS

Chair
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
29th Floor
New York, NY 10036
212/735-3524 FAX 917/777-3524
ronald.weiss@skadden.com

MARION HANCOCK FISH

Chair-Elect
Hancock Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, NY 13202
315/565-4500 FAX 315/565-4500
mfish@hancocklaw.com

MAGDALEN GAYNOR

Secretary
Law Offices of Magdalen Gaynor
10 Bank Street
Suite 650
White Plains, NY 10606-1978
914/949-3624 FAX 914/949-7199
mgaynor@mgaynortaw.com

SHARON L. WICK

Treasurer
Phillips Lyda LLP
One Canalside
125 Main Street
Buffalo, NY 14203-2887
716/847-7025 FAX 716/852-6100
swick@phillyslyda.com

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New York City

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Memorandum in Opposition of Electronic Filing of Death Certificate

To: Executive Committee of the Trusts and Estates Section of the New York State Bar Association

From: Estate and Trust Administration Committee of the New York State Bar Association

Dated: September 8, 2014

Re: Electronic Filing of Death Certificate

The Estate and Trust Administration Committee of the New York State Bar Association (the "Committee") was charged with the task of considering a proposal to allow the electronic filing of an original death certificate in lieu of filing an original hard copy (the "Proposal"). The intent of the Proposal is twofold. First, filing an electronic death certificate prevents the personal representative from having to purchase a hard copy of the death certificate at a cost of approximately \$30 solely for the purpose of providing the hard copy to the Surrogate's Court. Second, allowing the personal representative to file an electronic death certificate will eliminate the need to store the hard copy in the court files and, ultimately, reduce the court's storage costs.

The Committee has carefully considered the Proposal and acknowledges the need to eliminate unnecessary costs and paper files. In this instance, however, the Committee believes that it is necessary for the court to, at a minimum, receive and inspect the original death certificate to ensure its authenticity in connection with the filing of a probate petition. As a compromise, the Committee suggests that a procedure be put in place whereby the clerk at the Surrogate's Court would scan the original death certificate after inspection for electronic storage and return the original to the petitioner. The Committee agrees that there is no need for the court to retain and store an original death certificate.¹

This compromise would satisfy the intent of the Proposal to prevent unnecessary costs to the estate and eliminate the need for additional storage while preserving the court's ability to ensure the authenticity of the death certificate.

Conclusion

The Committee supports the intent of the Proposal but opposes a change in the rule to allow for the filing of an original death certificate solely by electronic means.

¹ Anecdotally, several members reported that when presenting the death certificate for other purposes, the recipient often will make a copy and return the original.



Faith Louise Carter, Esq.
Chair

Estates, Trusts and Surrogate's Court Practice Section
NYCLA
14 Vesey Street
New York, New York 10007

Sylvia E. Di Pietro, Esq.
Vice Chair

Estates, Trusts and Surrogate's Court Practice Section
NYCLA
14 Vesey Street
New York, New York 10007

**Statement Regarding Legislative Proposal by the Office of Court
Administration's Surrogate's Court Advisory Committee**

The New York County Lawyers' Association's Estates, Trusts and Surrogate's Court Practice Section (the "Section")¹ has considered a July 9, 2014 legislative proposal (the "Proposal", annexed hereto as Exhibit A) by the Surrogate's Court Advisory Committee of the Office of Court Administration of New York (the "Committee"). The Proposal recommends revising the rules regarding the filing of hard copy death certificates in e-filed proceedings in Surrogate's Court by providing that the "paper original certified death certificate" shall be filed with the will unless the court in its discretion accepts an electronically filed death certificate with no hard copy.

Following a thoughtful and reasoned dialogue on the Proposal, the Section has been unable to reach a consensus in support of the Proposal. Section members voiced concerns that the amendments advocated by the Proposal would unnecessarily introduce into the relevant statutes a new element of uncertainty regarding, *inter alia*, the circumstances in which a Surrogate's Court would exercise discretion to accept an e-filed death certificate in lieu of the original, as well as whether a paper copy of the death certificate would be required for filing in all cases. Section members also expressed concerns that the Proposal could lead to an increased risk of fraud. Due to these concerns, and the varying views of the Section's members on these issues, the Section declines to submit a comment on the Proposal.

¹ The views expressed are those of the Section only, have not been approved by the New York County Lawyers' Association Board of Directors, and do not necessarily represent the views of the Board.

I am in favor of allowing the Surrogate's Court to accept an electronic copy of a death certificate so long as the electronic copy includes the front and back of the certificate. In a court system which is going increasingly paperless, there is just no reason to force the Estate to pay \$30 for a Death Certificate to be sent to the Surrogate's Court to sit in a file. I see enough other safeguards on the probate process and the "validation" of a paper death certificate is just not warranted.

George H. Gray

George H. Gray
Gray & Feldman LLP
625 Panorama Trail
Suite 1240
Rochester, New York 14625

Ladies and Gentlemen:

This is to comment in favor of electronically filing death certificates rather than filing hard copies. If the concern is authenticity of the death certificate, require attorney certifications under CPLR 2105, where an attorney is e-filing. Where there's no attorney, require the petitioner to produce a hard copy to the court to scan.

Eileen E. Buholtz, Esq.

45 Exchange Blvd. Suite 250. Rochester NY

Ladies and Gentlemen:

This is to comment in favor of electronically filing death certificates rather than filing hard copies.

James R. Boehler, Esq.

To Whom it May Concern:

I support the rule change that allows the Surrogate Court to take an image or the hard copy of the Death Certificate in an e filed probate.

Thank you,

Louis C. Noto, Esq.

16 East Main Street

Suite 200

Rochester, New York 14614

The current Rule requires that a hard copy of the death certificate be filed in every e-filed probate; administration or small estate proceeding. On behalf of my clients, I submit this comment in support of getting rid of the requirement that a hard copy be required in addition to the e-filed copy of the death certificate. I know of no good reason to require the hard copy, which costs \$30, to be given to the court, which then has to store it in a file, etc. Please amend this Rule concerning death certificates to allow courts the discretion to accept just the e-filed copy. Thank you.

Judy M. Overholt, Esq.
Overholt Law Office
160 Linden Oaks Drive
Rochester, New York 14625

Sir/Madam:

I write today concerning the requirement by the Office of Court Administration that an original certified death certificate be filed with every probate or administration filing. In Monroe County, since 2010, the court has accepted an e-filed copy only without hard copy. I am told by court personnel that this has resulted in no problem with the Court which was a "Pilot" Court. The cost of \$30.00 for a death certificate in Monroe County to be filed with the court is an unnecessary cost especially to a small estate.

I would request that the local custom of accepting an e-filed death certificate be allowed to continue and be implemented in other county Surrogate's Courts.

Richard O'Connor, Esq.

Gentlemen/Ladies:

As a trusts and estates practitioner for more than 30 years, I would like to comment on the rule that requires an original death certificate to be filed with every probate estate. Most of the western NY counties have adopted e-filing, and providing an e-filed copy of the death certificate would save the Court the time and expense of reviewing and storing the original death certificates. With original death certificates now costing our clients \$30 each, accepting an e-filed copy would also would save our clients the expense of providing a hard copy for no apparent reason. I just spoke with a surviving widow this morning, and she was reluctant to provide me with an original death certificate because of the cost (and many of our clients have the same reaction). If the cost for a death certificate was reduced to \$5 each, as it was many years ago when I first started in practice, the clients may not object as much but the Court still incurs the expense for storing the original death certificates. E-filing was intended to streamline the estate administration process, and having the Court keep a hard copy file separate from an electronic copy file certainly does not do anything for this intention.

I would urge that the rule be changed so that Surrogate's Courts for those counties that have already adopted e-filing are permitted to accept death certificates that are e-filed without the added requirement

of also filing a hard copy of the death certificate.

Don H. Twietmeyer, Esq.

I support the rule change involving the filing of an original death certificate in a Surrogate's Court proceeding.

LOREN H. KROLL, LLC
Attorney at Law 950 Reynolds Arcade Building
16 East Main Street
Rochester, NY 14614

I understand that OCA is considering allowing the filing of death certificates by electronic means only in connection with probate proceedings, instead of requiring both the e-filing and filing of a hard copy. Please note that I support the rule change for reasons of both cost and convenience. Given the fact that death certificates now cost \$30, my clients would appreciate not paying for another certificate. In addition, attorneys would appreciate not having to send the hard copy to the Court after the e-filing has been completed. Thank you for your consideration.

Jill M. Cicero, Esq.
Jill M. Cicero & Associates
290 Linden Oaks
Rochester, NY 14625

Ladies & Gentlemen:

I am an estate and trust practitioner in Monroe County, where I have maintained my practice for over 40 years. I understand that there is presently under consideration a rule change which would allow Surrogate's Courts discretion to permit e-filed images of death certificates in lieu of requiring filing of hard copy of same with the Court. I am strongly in favor of permitting such discretion. The cost of certificates has multiplied in recent years, and most likely will continue on such path. Requiring filing of hard copies may present a financial burden on family members, and certainly would be an additional burden on the Court staff responsible for handling and storing of those documents.

Thank you for your kind consideration.

Frank A. Schwartzman, Esq.
Claus, Curry, Schuster & Schwartzman
19 W. Main Street, Suite 900
Rochester, New York 14614

Dear Sir or Madam,

Please accept this email as my strong support for the e-filing of death certificates without hard copy.
Kind Regards,

Michael A. Burger
SANTIAGO BURGER ANNECHINO LLP
The Strong-Todd House
693 East Avenue, Suite 101
Rochester, NY 14607

I am in favor of the rule allowing us to electronically file death certificates. It does not make any sense to pay \$30 for a death certificate to give a hard copy to the court which will then scan it.

Ron

Ronald J. Axelrod & Associates, P. C.
28 E. Main Street
Suite 600
Rochester, New York 14614

Hello-

Please let this e-mail serve as our firm's support of the rule change which would allow the filing of an electronic copy of the death certificate in estate proceedings.

It would greatly benefit my estate clients, and keep their costs down, if an original death certificate were not required to be filed. This would eliminate the need to order additional certificates and also facilitate quicker administration of estates.

Please consider the rule change so that e-copies may be accepted by the Surrogate's Courts. Thank you.

John B. Fitzsimmons, Esq.
Fitzsimmons, Nunn & Plukas, LLP
16 East Main Street, Suite 300
Rochester, NY 14614

I am writing to support the amendment to Court Rules which will allow Surrogates Court's to individually determine whether original Death Certificates are required to be filed in Estate administration proceedings. I support the current Monroe County practice of allowing e-filing only of such documents as it often expedites the process of any proceeding and eliminates the additional expense of requiring interested surviving parties to obtain another original for other required uses. I have found that clients are very appreciative if they are not required to acquire another original. Thank you for your consideration.

David G. Ross, Esq.
16 East Main Street, Suite 440
Rochester, NY 14614

Please note that I am in favor of NOT having to file a hard copy of the death certificate in an Estate proceeding. The cost, time to file and storage of an original death certificate does not make sense. Thank you for your consideration. Bob O'Connell

I am a paralegal with the firm of Underberg & Kessler LLP, a member of the Monroe County Bar Association at the paralegal level and have worked in the trusts and estates area for over 25 years. I am in support of amending the rule regarding the filing of the original Death Certificate to allow courts the discretion to accept just the e-filed copy. With the current costs of Death Certificates (\$30), it makes no sense to have to give one to the Court, which serves no purpose other than to be scanned and stored away. If there are concerns regarding the validity of the e-filed copy, perhaps a short form could be created to be filed with the Death Certificate, to be signed by the attorney, certifying that the filed copy has been compared to the original and found to be a true and complete copy. In the alternative, the original copy of the Death Certificate could be scanned or copied for the file and returned to the attorney of record when the original Certificates of Letters are issued.

Thank you for your consideration.

Judy A. Miller
PARALEGAL
Underberg & Kessler LLP
300 Bausch & Lomb Place
Rochester, NY 14604

I am writing in favor of the policy to permit Surrogate's Courts to accept e-filed copies of Death Certificates without the need to file hard copies with raised seals. Requiring hard copies creates an undue hardship on clients in light of the cost of Death Certificates.

Jeffrey M. Johnstone, Esq