

**Supreme Court of the State of New York  
County of Westchester – CPT ADR Part**

**Checklist for EPTL 5-4.6 “Wrongful Death” Compromise Motion**

The CPT-ADR Part of the Westchester County Supreme Court, pursuant to the Westchester County Civil Case Management Rules, requires the filing of the documents and information set forth in 22 NYCRR 207.38 (a), (b)(1)-(6), and (d) ONLY and certain additional documents set forth below. Note that the information required in subsections a and b must be in contained in an affidavit of the plaintiff(s) and/or a petition verified by plaintiff(s) and notarized. The information required by subsection d must be contained in an attorney affidavit pursuant to the Rule.

**NOTE:** Pursuant to the Westchester County Civil Case Management Rules, the CPT-ADR Part **will not** allocate the settlement proceeds between the cause of action of the decedent’s distributees (as defined in EPTL 5-4.4) for the decedent’s wrongful death and the decedent’s estate’s cause of action for decedent’s conscious pain and suffering. The CPT-ADR Part shall direct plaintiff(s) to file a petition for allocation and distribution of the net settlement proceeds in the Surrogate’s Court (after the payment of any liens on the estate, including funeral costs) (see EPTL 5-4.6 [a][1]-[2]).

**DOCUMENTS REQUIRED**

**YES NO**

<b>DOCUMENTS REQUIRED</b>	<b>YES</b>	<b>NO</b>
<b>Order to Show Cause</b>		
<b>Stipulation of Settlement</b> (settled subject to entry of a Wrongful Death Compromise Order)		
<b>Plaintiff(s) Affidavit/Petition</b> <ul style="list-style-type: none"> <li>- Name of plaintiff/fiduciary for decedent’s estate</li> <li>- Date and Court that issued Letters of Administration/Testamentary</li> </ul>		
<b>Plaintiff(s) Affidavit/Petition (22 NYCRR 207.38 [a])</b> <ul style="list-style-type: none"> <li>- Time</li> <li>- Place</li> <li>- Manner of wrongful death</li> </ul>		
<b>Plaintiff(s) Affidavit/Petition (22 NYCRR 207.38 [b][1])</b> <ul style="list-style-type: none"> <li>- Name of decedent</li> <li>- Age at time of death</li> <li>- Residence at time of death</li> <li>- Marital status</li> <li>- Occupation and Earnings at time of death</li> </ul>		
<b>Plaintiff(s) Affidavit/Petition (22 NYCRR 207.38 [b][3])</b> Information as to decedent’s Distributee(s)/Survivor(s) (as defined in EPTL 5-4.4): <ul style="list-style-type: none"> <li>- Name(s)</li> <li>- Address(es)</li> <li>- Year(s) of birth</li> <li>- Age(s)</li> <li>- Were any children born out of wedlock?</li> <li>- Are any distributees/survivors disabled, other than infancy?</li> <li>- If a distributee/survivor is disabled, state the disability.</li> </ul>		

<p><b>Plaintiff(s) Affidavit/Petition (22 NYCRR 207.38 [b][4])</b></p> <p>Settlement Information:</p> <ul style="list-style-type: none"> <li>- Settlement amount</li> <li>- Attorney's Fee</li> <li>- Disbursements</li> <li>- Net Settlement (to be allocated and/or distributed by Surrogate's Court)</li> </ul>	
<p><b>Plaintiff(s) Affidavit/Petition (22 NYCRR 207.38 [b][5]-[6])</b></p> <ul style="list-style-type: none"> <li>- Funeral Expenses, whether paid or the amount of any unpaid funeral expenses and the name and addresses to whom they are owed</li> <li>- Whether medical expenses of decedent incurred due to the alleged incident/accident are unpaid</li> <li>- If medical expenses are unpaid, the name and address to whom they are owed</li> <li>- Whether any hospital notice of lien has been filed</li> </ul>	
<p><b>Funeral Bill</b> – If paid, marked paid or with zero balance <b>OR</b> also file documentary proof of payment.</p>	
<p><b>Letters of Administration/Testamentary</b></p>	
<p><b>Attorney's Affidavit/Affirmation (22 NYCRR 207.38 [d])</b></p> <ul style="list-style-type: none"> <li>- Has attorney become concerned in the subject matter</li> <li>- Whether the attorneys fee is to be paid by the administrator</li> <li>- Whether any payment has been made or is to be made to the attorney by any other person or corporation</li> <li>- Services rendered</li> <li>- Attorney's fee requested</li> <li>- Disbursements requested and itemized [List of disbursements may be attached. Exclude office overhead such as postage, overnight delivery, in-office photocopying, local travel/parking, etc.]</li> <li>- OCA retainer number</li> </ul>	
<p><b>Final Lien Letters</b></p> <ul style="list-style-type: none"> <li>- <b>Medicaid letter(s)</b> [From Westchester County Attorney's Office, if decedent resided in Westchester at time of death, or County where decedent resided at time of death AND from HMS, contractor for the NYS Office of the Medicaid Inspector General, if County lien letter advises there may be a Medicaid Exchange lien through the New York State of Health insurance exchange.]</li> <li>- <b>Medicare letter</b> [If applicable, where decedent 65 years or older or otherwise eligible for Medicare]</li> <li>- <b>ERISA lien letter</b> [If applicable]</li> </ul>	
<p><b>Proposed Order including the following language:</b></p> <ul style="list-style-type: none"> <li>- Matter will be referred to the Surrogates Court for allocation and distribution</li> <li>- Settlement proceeds will be placed in an interest-bearing escrow account</li> <li>- Attorneys fee and disbursements will be payable from the escrow account</li> <li>- Attorney will continue representing the estate/petitioner without any charge</li> </ul> <p><b>See Sample Wrongful Death Compromise Order at</b>  <a href="https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFS/Sample_Wrongful_Death_Order.pdf">https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFS/Sample_Wrongful_Death_Order.pdf</a></p>	