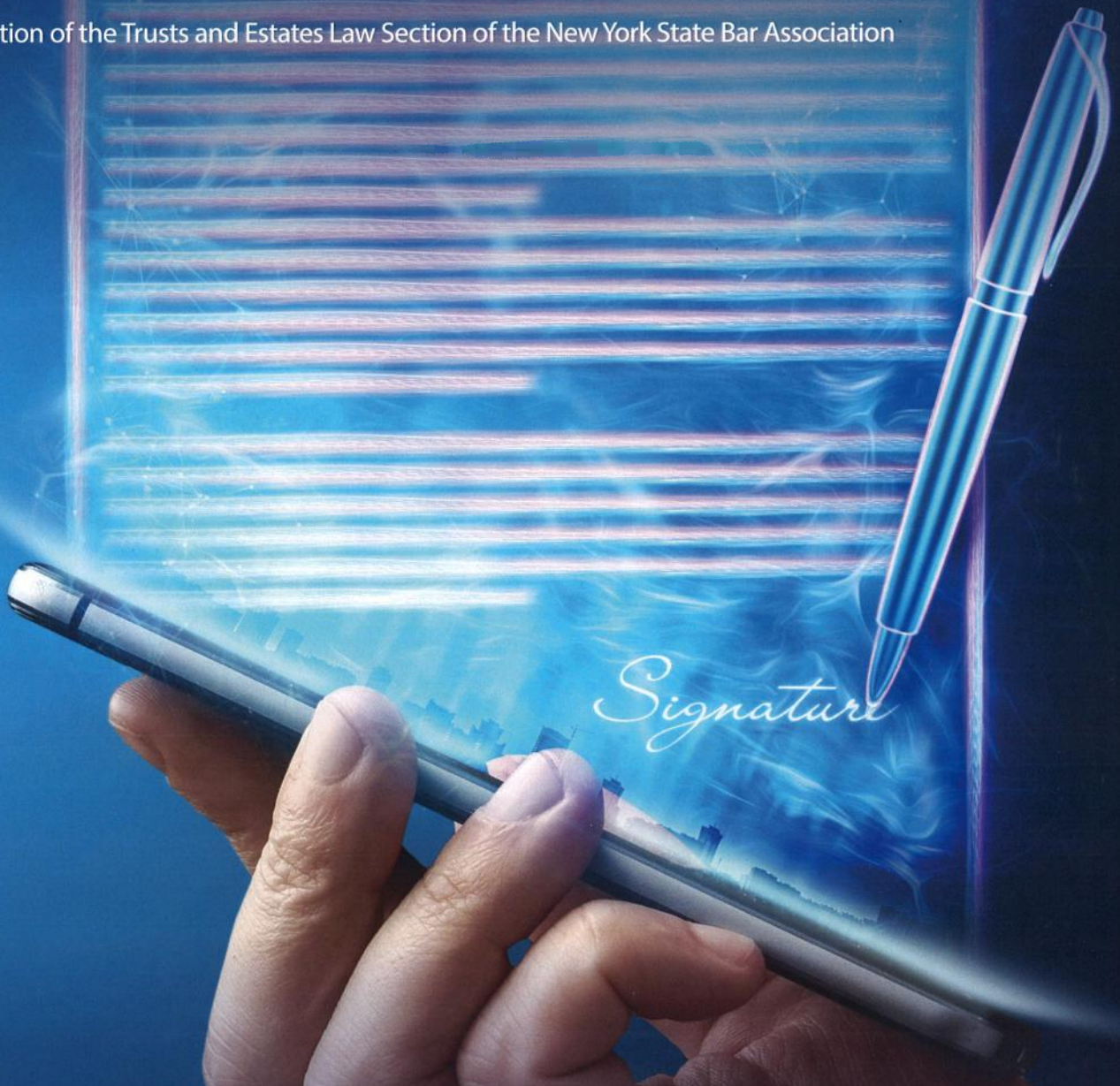




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Beyond 183 Days: Comparing Tax Residency in California and New York

Legislative Update: The New York Electronic Wills Act

Subject Matter Jurisdiction of the Surrogate's Courts Over Testamentary and Lifetime Trusts: Favored Alternatives to Estate Administration

Recent Efforts To Increase Access to Justice for Practitioners and Parties

By Claudia B. Pius

New York State Courts and our judicial system in general can be complex and difficult to navigate for unrepresented individuals and even practitioners at times. Several recent initiatives have made attempts to ease some of these burdens in the Surrogate's Court including service requirements, the use of affirmations and through Surrogate's Court help desks.

Service of Process

Establishing jurisdiction in Surrogate's Court is a critical step that must be complete for any Surrogate's Court proceeding to progress. The development of more practical and cost-effective methods to effectuate service of process could assist litigants and lead to less frustration from respondents playing "hide-and-seek."

The personal delivery service requirement for New York State residents under Surrogate's Court Procedure Act (SCPA) 307 can be very challenging and costly. In doorman buildings in New York City, process servers often have difficulty accessing apartments to personally serve individuals. An application for substituted service can only be made after the process server has made several costly attempts. Recent court decisions have allowed for more practical methods to serve process, including by email¹ and even service via token airdrop in a case regarding allegedly stolen cryptocurrency assets.² Because of necessity, the Surrogate's Courts allowed for service of process by alternative means during the COVID-19 pandemic. However, these alternative methods of service are no longer available.

It is time to update the personal delivery requirement for service of process upon New York State individuals under the SCPA. There are proposed revisions to SCPA 307(2) which would allow service by registered or certified mail with return receipt requested, or by special mail service upon individuals both within or outside of New York State. The proposal also seeks to amend SCPA 307(3)(b) to allow the court pursuant to an order to direct service via "electronic means" as that term is defined in Civil Practice Rules and Procedure (CPLR) 2103(f)(2), where good cause is shown.

CPLR 2106 Affirmations

As of January 1, 2024, an amendment to CPLR 2106 expanded the use of affirmations (as opposed to notarized affidavits) to all individuals. Pursuant to the amendment,

CPLR 2106 allows "any person," regardless of where they are located, to use an affirmation in lieu of an affidavit. Before the amendment, only an attorney, physician, osteopath, or dentist admitted to practice in New York State who is not a party to an action and any person who is physically located outside the geographic boundaries of the United States, or any territory or insular possession subject to the jurisdiction of the United States could submit such affirmation in lieu of a traditional affidavit. Attorney affirmations must also adapt the amended CPLR 2106 language below:

I affirm this ___ day of ___, ___, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

While helpful, it is still unclear if the statute was limited to just affidavits, or if it extended to other documents such as pleadings or even authorized notices of appearance. In *Sweet v. Fonvil*,³ the Second Department recently determined that a petition verified using the language from the amended CPLR 2106 was validly verified and complied with the statutory requirement that a validating petition under Election Law § 16-116 be made pursuant to a verified pleading. This indicates that in the Second Department a verification may be affirmed, rather than sworn to in front of a notary.

It is important to note that the language of CPLR 2106 should be used verbatim in any affirmation, even an attorney affirmation. In *Grandsard v. Hutchinson*,⁴ the First Department ruled an attorney affirmation absent the "possibility of fines or imprisonment" language was an inadequate verification and thus insufficient. Nonetheless, this amendment may assist unrepresented individuals and practitioners alike.

Increased Resources for Unrepresented Individuals

In the trusts and estates practice, it is not uncommon to come across unrepresented litigants as both petitioners and respondents. Several counties have Surrogate's Court Help Centers including Queens County, Erie County, Kings County, New York County, Richmond County and Bronx

County, where unrepresented individuals can seek assistance from court staff in completing petitions or answering other practical questions. This is a valuable resource for the public, practitioners and the courts. We hope to see additional counties receive funding for help desks in the future.



Claudia B. Pius is an attorney in Rivkin Radler's Personal, Family & Business Planning Practice Group. Claudia's practice focuses on various aspects of contested and uncontested Surrogate's Court matters, including accounting, probate, administration and miscellaneous proceedings. She advises clients on estate planning, and estate administration and also advises fiduciaries on navigating the Surrogate's Court

system and fulfilling their duties. In her planning practice, Claudia assists clients with the preparation of wills, powers of attorney, healthcare proxies and revocable and irrevocable trusts. In her administration practice, she advises clients in the estate administration process, from petitioning the Surrogate's Court through the collection and distribution of assets.

Endnotes

- 1 *Jun Gao v. Coconut Beach, Haw., LLC*, 2024 N.Y. Slip Op. 50504(U) (Sup. Ct., N.Y. County 2024).
- 2 *LCX Ag. v. 1.274m United States Dollar Coin*, N.Y.L.J., Sep. 8, 2022 at 17, col. 2, 2022 NYLJ LEXIS 961 (Sup. Ct., N.Y. County 2022).
- 3 2024 N.Y. Slip Op. 02654 (2d Dep't 2024).
- 4 2024 N.Y. Slip Op. 02613 (1st Dep't 2024).



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