



Memorandum in Support
TRUSTS AND ESTATES SECTION

T&E #4

May 27, 2025

S. 8175

A. 8408

By: Senator Sepulveda

By: M. of A. Dias

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: Immediately

AN ACT to amend the surrogate's court procedure act, in relation to allowing certain methods
for service of process

LAW AND SECTIONS REFERRED TO: §§307, 308 & 309 of the Surrogate's Court
Procedure Act

TRUST AND ESTATES SECTION SUPPORTS THIS LEGISLATION

The New York State Bar Association's Trusts and Estates Section ("T&E") supports this legislation as it would simplify and modernize the service of process requirements for Surrogates Court proceedings, thus facilitating an easier process for all parties involved.

Currently, the Surrogate's Court Procedure Act requires personal delivery of process on all New York State residents to commence a proceeding. But the experiences of courts, legal practitioners, and self-represented litigants have demonstrated that alternative means of process are just as effective as, and at times superior to, service by personal delivery. Additionally, the removal of the need to obtain a court order to permit such alternate service would increase the efficiency of the courts and enable most self-represented parties an easier means of obtaining jurisdiction over necessary parties. Accordingly, this measure is proposed to simplify and modernize service requirements.

During the pandemic, the courts, practitioners and self-represented litigants had to find ways to operate in an environment where personal delivery of citations and other documents was impossible. Consequently, other means of service of process had to be permitted for the courts to function, which allowed these new modes of service to be tested.

SCPA § 307 has long prohibited service of process upon New York residents by means other than personal delivery without a court order. However, during the pandemic and for a period thereafter

most Surrogate's Courts permitted service upon New York domiciliary by special mail service (Federal Express, UPS, etc.). There was no increase in demand for traverse hearings due to lack of proper service, nor was there an increase in applications to vacate defaults due to allegations of lack of service.

Additionally, some Surrogate's Courts utilized their discretion and permitted service upon respondents by e-mail pursuant to SCPA § 307(3). However, the statute does not explicitly permit the use of such service of process. Given that law firms and most of society communicate electronically, and electronic filing is now mandatory in most courts, such a statutorily endorsed option is long overdue. Thus, the proposal contains a specific provision permitting service by electronic means with a court order.

As was noted in NYSBA's 2023 *Report on Modernization of the Criminal Practice*, a critical benefit from a single, universal e-filing system would be a statewide standardization of the rules governing e-filing and the service of papers. Many New York lawyers practice in more than one location within the state. Permitting counsel and self-represented litigants the option to serve other New York respondents by certified or special mail service in the first instance, without the necessity of a court order, more closely resembles the service provisions of the CPLR and satisfies the goal of uniformity. Standardizing process of service requirements across the board will improve access to justice for New Yorkers.¹

Finally, because the New York State Attorney General may be served by mail at any office, the bill provides, at the Attorney General's request, that this office be provided 30 days' notice of a proceeding unless otherwise modified by court order.

For the above reasons, NYSBA's Trusts and Estates Section **SUPPORTS** this legislation and urges its passage.

¹ Report and recommendations of the New York State Bar Association Task Force on Modernization of Criminal Practice, June 2023. <https://nysba.org/wp-content/uploads/2023/06/final-report-Task-Force-on-Modernization-of-Criminal-Practice-June-2023.pdf> pg 61