



**NEW YORK LAWYERS'
PRACTICAL SKILLS SERIES**

2023–2024

Probate and Administration of Decedents' Estates

Jessica R. Amelar, Esq.
Arlene Harris, Esq.

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207 or publications@nysba.org.

Copyright 2023
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-286-5
Product Number: 419624

In Memoriam
Arlene Harris, Esq.

CONTENTS

§ 1.1	Introduction.....	1
§ 1.2	Overview.....	1
§ 1.3	Relevant Statutes.....	1
§ 1.4	Jurisdiction of the Surrogate’s Court.....	2
§ 1.5	Voluntary Administration.....	2
§ 1.6	E-Filing.....	2
§ 1.7	Funeral Arrangements and Other Pre-Probate or Pre-Administration Activity.....	4
§ 1.8	Probate Proceedings.....	5
	[A] Definitions.....	5
	[B] Locating the Will.....	6
	[C] Preliminary Review of Will.....	7
	[D] Probate Overview.....	8
	[E] Forms to Be Filed in a Probate Proceeding.....	9
	[F] How to Complete Probate Forms.....	9
	[1] Petition (Form P-1).....	9
	[a] Persons Who May Petition for Probate.....	9
	[b] Analysis of Petition.....	9
	[2] Citation (Form P-5).....	12
	[a] Persons to Be Served.....	12
	[b] Service of the Citation.....	14
	[c] Return Day of Citation.....	16
	[3] Waiver and Consent (Form P-4).....	16
	[4] Notice of Probate and Affidavit of Mailing (Form P-6).....	16
	[5] Proof of Attesting Witnesses and Examination of the Person Who Prepared the Will.....	17
	[6] Decree and Letters Testamentary.....	18
	[7] Preliminary Letters Testamentary (Form P-2).....	18
§ 1.9	Administration Proceedings.....	18
	[A] Persons to Whom Letters of Administration May Issue.....	18
	[B] Forms to Be Filed in an Administration Proceeding.....	19
	[C] Analysis of Completed Administration Forms.....	20
	[1] Petition.....	20
	[a] Persons Who May Petition for Letters of Administration.....	20
	[b] How to Complete the Petition.....	20
	[2] Renunciation of Letters of Administration and Waiver of Process (Form A-8).....	22
	[3] Citation (Form A-2).....	22
	[4] Notice of Application for Letters of Administration (Form A-3).....	22
	[5] Requirement of a Bond.....	23
	[6] Decree Appointing Administrator (Form A-6).....	23
§ 1.10	Record Keeping.....	24
§ 1.11	Marshaling Assets of Decedent's Estate.....	24
	[A] Overview.....	24
	[B] Tax Forms.....	25

	[1] Taxpayer Identification Number.....	25
	[2] Notice Concerning Fiduciary Relationship—IRS Form 56.....	25
	[3] Federal and State Releases of Estate Tax Lien.....	25
§ 1.12	Preparation of Inventory.....	25
§ 1.13	Tax Returns.....	26
	[A] Overview.....	26
	[B] Federal Estate Tax.....	26
	[C] New York State Estate Tax.....	26
	[D] Fiduciary Income Tax Returns.....	27
§ 1.14	Payment of Debts and Expenses.....	27
§ 1.15	Distribution of Estate Assets.....	27
	[A] Timing of Distributions.....	27
	[B] Exemption for Benefit of Family.....	28
	[C] Abatement, Tax Apportionment and Distributions in Kind.....	28
	[D] Distributions to Infants and Other Persons Under a Disability.....	29
	[E] Legacy Receipts, Receipts for Distributions on Account, and Final Distributions.....	29
§ 1.16	Commissions and Attorney Fees.....	30
§ 1.17	Fiduciary’s Account of Acts and Proceedings.....	31
	Suggested References.....	32
	Appendix: Uniform Rules for the Surrogate’s Court.....	33
	Probate and Administration Forms Index.....	67
	Table of Authorities.....	189
	About the Authors.....	195

JESSICA R. AMELAR, ESQ.

Jessica R. Amelar, Esq., was a longtime member of the Law Department of the New York County Surrogate's Court. She was the 2018 recipient of the Law Secretaries & Law Assistants Collegium, Inc., Distinguished Service Award.

Among her contributions to the New York Bar Association are her past chairmanship of the Continuing Legal Education Committee of the Trusts and Estates Law Section and her 2015 presentation at the Annual Meeting of the Trusts and Estates Law Section.

ARLENE HARRIS, ESQ.

Ms. Harris was Special Counsel and Co-Chair of the Trusts and Estates Department of the New York City firm of Arnold & Porter Kaye Scholer LLP. Previously, she was a member of Shea & Gould, the chief law assistant for the New York County Surrogate's Court and served as Assistant Attorney General, New York State Department of Law. Ms. Harris was the former Chair of the OCA Advisory Committee on the Surrogate's Courts. She was a Fellow of The American College of Trust and Estate Counsel, where she was the former Chair of its Subcommittee on Construction and Instruction Law. She was a former member of the Surrogate's Court Committee of the Association of the Bar of the City of New York. Ms. Harris was a former Chair of the Executive Committee of the Trusts and Estates Law Section. She was a former First District Representative and a former Chairperson of the Legislation and Estate and Trust Administration Committees. In addition to being a former Adjunct Professor of Law at St. John's University School of Law, she was a frequent lecturer at continuing legal education programs and panels. Ms. Harris authored numerous articles on estates and estate planning.