

**REPORT AND RECOMMENDATIONS
RELATING TO SURROGATES**

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INTRODUCTION

In 1989, the New Jersey Law Revision Commission filed a Report and Recommendations on the Organization of the Courts. That Report was the beginning of a revision of the parts of Title 2A which concern the courts and administration of civil justice. This project on the law relating to Surrogates is a continuation of that effort.

The current chapter on Surrogates, with 27 sections, some dating back to 1882, includes anachronistic salaries, performance bond amounts and references to county courts. It mandates archaic procedures, such as hand-signing recorded documents, which Surrogates do not follow.

This proposal modernizes language and removes provisions duplicating those of Title 3B, Administration of Estates. The proposed 12 sections are compatible with current practice and with relevant New Jersey Court Rules which became effective September, 1990.

ARTICLE I. IN GENERAL

2B:14-1. Election of Surrogates

A Surrogate shall be elected to serve in each county for a 5-year term commencing January 1 after election. The Surrogate shall be both the Judge and Clerk of the Surrogate's Court.

Source: 2A:5-1, 2A:5-2.1

COMMENT

This section streamlines and combines the provisions of source sections 2A:5-1, 2A:5-2.1, and Art. 7, ^o2, ^o3 of the New Jersey Constitution.

2B:14-2. Bond of Surrogates

A county may require the Surrogate to enter into a faithful performance bond and may set the amount and terms of the bond. The bond, after approval by a judge of the Superior Court, shall be filed with the Secretary of State; a copy shall be filed with the Clerk of the County Board of Freeholders.

Source: 2A:5-2

COMMENT

This section allows each county to determine whether and by what means its Surrogate is bonded. The source statute, 2A:5-2, results in duplicate bonding in counties which already have county-wide faithful performance bond coverage. The proposed section eliminates that duplication. The Supreme Court has the power to set minimum standards for bonding of Surrogates in their role as deputy clerks of the Superior Court, Chancery Division (Probate Part). N.J. Const., Art. 11, ^o6(c) and N.J. Const., Art. 6, ^o2, ^o3. It may exercise that power if counties fail to provide for bonding or insurance of Surrogates.

2B:14-3. Salaries of Surrogates

Each county shall fix the Surrogate's salary which shall not be diminished during the term of office or during any consecutive terms served by the Surrogate.

Source: 2A:5-3.9

COMMENT

This section retains for the county the power to set its Surrogate's salary, but eliminates the four minimum salaries pegged to county populations. The highest minimum listed in the source statute, 2A:5-3.9, is \$24,000. A statewide survey of 1989 salaries shows that every Surrogate earns more than \$40,000.

2B:14-4. Disqualification; referral to Assignment Judge

a. Neither the Surrogate nor any employee of the Surrogate's office may perform duties respecting a matter if the Surrogate is a fiduciary or has an interest in a matter.

b. When the Surrogate and employees are disqualified from performing their duties, the matter shall be referred to the Assignment Judge of the county for appropriate disposition.

Source: 2A:5-4

COMMENT

This section broadens and makes more specific the contexts presenting possible conflicts of interest for Surrogates. The proposed section also provides that the Assignment Judge, rather than the defunct county court, act when a Surrogate is disqualified. In determining the appropriate disposition of a matter, the Assignment Judge is to decide whether any duties (for example, those of a ministerial nature) may be sent back to, and performed by, the Surrogate's office. Where necessary, the Assignment Judge has the option of sending the matter to another county. Currently any available Superior Court judge handles matters which the Surrogate is disqualified from handling.

2B:14-5. Filling vacancy in Surrogate's office

If a Surrogate does not take office within 30 days after the end of the preceding term or a vacancy occurs in the office of Surrogate, the Governor, with advice and consent of the Senate shall fill the vacancy from the political party of the person last elected to the office. The person appointed shall serve until election and qualification of a successor. Election of a successor for a 5-year term shall occur at the next general election unless the vacancy occurs within 37 days before the election, in which case it shall occur at the second succeeding general election.

Source: 2A:5-6, 2A:5-7

COMMENT

This section condenses and combines sections 2A:5-6 and 2A:5-7.

ARTICLE II. RECORDS OF SURROGATE

2B:14-6. Recorded documents

The Surrogate shall record:

- a. orders and judgments of the Superior Court, Chancery Division, Probate Part;
- b. fiduciary bonds required by law;
- c. accounts of fiduciaries, disclaimers, revocations, renunciations and requests;
- d. wills proved before the Surrogate or the Superior Court, together with proofs;
- e. letters testamentary, of administration, of guardianship or of trusteeship issued by the Surrogate and relevant documents;
- f. receipts and releases given to fiduciaries; and
- g. other documents which the Surrogate is required by law to record.

Source: 2A:5-20

COMMENT

This section retains subsections (a) through (e) of source section 2A:5-20 and combines source subsections (f) and (g) into one subsection, (f). The reference to recordation of inventories has been deleted since inventories are not filed in cases in Surrogate's Court. Five sections of Title 3B, Administration of Estates, refer to other kinds of documents recorded by the Surrogate not within the categories in this section. Law regarding duties of Surrogates other than recordation exists in Titles 2A and 3B and in the New Jersey Court Rules.

2B:14-7. Acknowledgment, proof

Receipts and releases shall be acknowledged or proved prior to recording. The acknowledgment or proof shall be recorded with the receipt or discharge by the Surrogate of the county:

- a. which is issuing the relevant letters;
- b. where the seller of real estate resides; or
- c. where the trust-related property is located.

Source: 2A:5-21

COMMENT

This section substantially reenacts the first paragraph of the source statute 2A:5-21 but substitutes the terms receipts and releases for receipts or discharges. The proposed section eliminates the second paragraph of the source statute because Surrogates now stamp rather than sign documents.

2B:14-8. Recording

The Surrogate shall determine the means of recording instruments and the county shall furnish equipment and supplies for recording.

Source: 2A:5-22

COMMENT

This section condenses the major provisions of 2A:5-22.

2B:14-9. Filing

On the first Monday in February, May, August and November annually, the Surrogate shall file with the Clerk of the Superior Court indexes of all wills proved before the Surrogate or the Superior Court and a report of all letters of administration granted in the previous three months.

Source: 2A:5-18

COMMENT

This provision replaces the source statute 2A:5-18 which requires every Surrogate to file all wills and inventories with the Clerk of the Superior Court. Currently, all Surrogates microfilm wills proved in their counties then send the original wills to Trenton where the Clerk of the Superior Court numbers and remicrofilms them and retains the original documents. The Clerk of the Superior Court has microfilms of wills dated from 1901, and original wills from 1980 which are still waiting to be filmed. The proposed statute frees the counties from their burden of shipping documents in large quantities, and obviates duplicate microfilming and its attendant expense in Trenton. The reference to "inventories" in the source statute is deleted since inventories are not filed in cases in Surrogate's Court.

The Superior Court Clerk's office receives one or two queries weekly from persons seeking the name of the county where a will was probated. Presently, that office maintains a central index based upon the original wills submitted by the twenty-one Surrogates. Using the counties' indexes will enable the Clerk to answer queries with less effort than it now expends in maintaining the central index. The Superior Court Clerk's office should encourage all the counties to use a uniform indexing system.

ARTICLE III. EMPLOYEES

2B:14-10. Deputy Surrogate; Special Deputy Surrogate

a. A Surrogate may appoint a Deputy Surrogate who shall serve at the pleasure of the Surrogate.

b. During the Surrogate's absence or disability, the Deputy Surrogate shall exercise all powers and duties of the Surrogate's office. The Deputy Surrogate shall not receive additional compensation as acting Surrogate unless provided by law.

c. A county may require that the Deputy Surrogate enter into a faithful performance bond and may set the amount and terms of the bond.

d. A Surrogate may appoint an employee to be Special Deputy Surrogate. The Special Deputy Surrogate shall serve at the pleasure of the Surrogate and, during absence or disability of the Surrogate and Deputy Surrogate, the Special Deputy Surrogate shall exercise all the powers and duties of the Surrogate.

Source: 2A:5-5, 2A:5-9, 2A:5-11, 2A:5-12, 2A:5-13

COMMENT

This section brings together the provisions of the three source sections pertaining to Deputy Surrogate (2A:5-5, 2A:5-9, 2A:5-11) and the two source sections regarding Special Deputy Surrogate (2A:5-12, 2A:5-13). Subsection (c) of this section parallels the proposed section 2B:14-2 regarding bond of Surrogates. The proposed section deletes tenure which the source section 2A:5-9 specifies for Deputy Surrogates of first class counties who have served continuously for 10 years or more. The Commission considers that a better policy is to eliminate tenure and enable newly elected Surrogates to choose their own deputies.

2B:14-11. Special probate clerk

A Surrogate may designate one or more employees to serve as special probate clerk. A special probate clerk shall serve at the pleasure of the Surrogate and may exercise the same powers as the Surrogate in taking depositions of witnesses to wills, qualifications of executors and administrators, acceptance of trusteeships and guardianships, and oaths and affirmances.

Source: 2A:5-14

COMMENT

This section contains the substance of its source section 2A:5-14.

2B:14-12. Executive secretary, chief clerk and other employees; compensation

A Surrogate may appoint an executive secretary, chief clerk and other employees for the Surrogate's office. Compensation of employees in the Surrogate's office may be recommended by the Surrogate and approved by the county board of chosen freeholders.

Source: 2A:5-16

COMMENT

This section derives from source section 2A:5-16. Executive clerk is renamed executive secretary. It deletes the restrictions on compensation for certain employees. The Commissioners consider it appropriate that the Surrogates' and county governments' discretion in regard to compensation not be restricted.