

INTERNATIONAL PRACTICE

September 2013

When Can A Foreign Consulate Appear For A Foreign Citizen?

By Jennifer F. Hillman, Esq.



Jennifer F. Hillman

Estate litigation and probate proceedings are sometimes complicated when a beneficiary, close family member or other interested party is a citizen of a foreign nation. In an attempt to ease this burden, international treaties between some foreign countries and the United States exist allowing the consular representative of the foreign national to appear, through counsel, on its citizen's behalf in certain instances.

This idea is codified in New York Surrogate's Court Procedure Act ("SCPA") § 1120 which states that a consular representative may appear on behalf of its nation's citizen in any action or proceeding brought by or against the New York Public Administrator where the foreigner is a necessary or proper party to the proceeding. The Public Administrator administers the estates of decedents where no person who is entitled to act as executor or personal representative of the estate will accept the responsibility to act, or where the decedent dies without a will. In these proceedings, the consular representative can appear for its citizen, through counsel or on its own, even if the citizen defaults and fails to appear in the proceeding. No power of attorney or other specific authority by the foreign citizen is required prior to the appearance by the consular representative.

Regardless of this right to appear, if the foreign citizen is a person under a disability or a minor, the foreigner must appear by his or her guardian, or the court will appoint an attorney as guardian ad litem to protect their interests, even if a consular representative is appearing.

Further, SCPA § 307(f) permits service of process on the consular representative directly (and not upon the citizen) if the foreign citizen's interest in the estate or if the gross estate is below a certain threshold. If the interest exceeds this

ATTORNEYS

PRACTICES

PUBLICATIONS

CONTACT US

INTERNATIONAL BUSINESS LAW SERVICES:

- Real Estate Acquisitions & Leasing
- Real Estate Zoning
- Tax Advantaged Industrial Development Agency Matters
- Corporate Acquisitions and Mergers
- Intellectual Property Rights
- International Data Privacy Laws
- International Employment Laws
- Joint Venture, Distribution, Supply and Licensing Agreements

For additional information on this or any Trust and Estate related issue, please contact **Jennifer F. Hillman**, or any other member of the International Practice Group.

She can be reached at 516-663-6672.

MISS AN ISSUE?

threshold, service upon the consular representative is not appropriate, and the foreign citizen must be served as otherwise provided within SCPA § 307.

In this increasingly global world, estate practitioners and foreign consulates should be aware of these provisions which are meant to ease the burden and logistical complications when an estate includes foreign beneficiaries or family members.

Jennifer F. Hillman is an attorney at Ruskin, Moscou Faltischek, P.C., Uniondale, New York where her practice focuses in the area of trust and estate litigation. She can be reached at jhillman@rmfpc.com

You can access past RMF Alerts
whenever you need them.

[VIEW ARCHIVES](#)

FOLLOW US



Twitter



LinkedIn

[unsubscribe](#) | [manage profile](#)