

# SCPA 502(7): Case Illustrates Limited Function of Trial Court

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## SURROGATE'S COURT PROCEDURE ACT

*SCPA 502(7): Case illustrates limited function of trial court.*

Section 502(7) of the Surrogate's Court Procedure Act (SCPA)<sup>173</sup> allows the surrogate's court to "direct that any jury trial be had before it or at a trial term of the supreme court . . . or . . . county court."<sup>174</sup> This provision does not contemplate the actual transfer of the action but rather the mere delegation of the jury trial function.<sup>175</sup> Indeed, the delegating court can enter no order other than one setting aside the verdict, its only function being to conduct the trial and certify the verdict rendered therein to the surrogate's court.<sup>176</sup>

An example of the operation of SCPA 502(7) is provided by the will contest case of *In re DeLano*.<sup>177</sup> There, a jury trial was held in the supreme court and the verdict was certified to the clerk of the surrogate's court. Subsequently, the contestants moved in the supreme court on the ground that the attorney general had not been notified as required by law<sup>178</sup> and that his absence was cause to set aside the verdict "in the interests of justice" under CPLR 4404(a). The Appellate Division, Third Department, in reversing the order granting a new trial, held that CPLR 4404(a) "is directed to the components of the trial, such as testimony, charge and conduct of the participants."<sup>179</sup> The objection regarding the attorney general did not refer to the trial itself but rather to "a defect . . . in existence in surrogate's court prior to the transfer to supreme court."<sup>180</sup> Accordingly, the motion was proper only in the surrogate's court. Conversely, an objection to the conduct of the trial can only be heard by the court wherein the verdict was rendered.<sup>181</sup>

<sup>173</sup> N.Y. Surr. Ct. Proc. Act § 502(7) (McKinney 1967).

<sup>174</sup> For a discussion of a possible constitutional conflict with this subdivision, see 58A MCKINNEY'S SCPA 502, commentary at 423-24 (1967).

<sup>175</sup> See 10 COX, ARENSEN & MEDINA, NEW YORK CIVIL PRACTICE ¶ 502.16 (1970); 58A MCKINNEY'S SCPA 2701, commentary at 566 (1967).

<sup>176</sup> SCPA 502(7) provides in pertinent part that "[t]he verdict if not set aside by the court before which the question is tried, shall be certified to the surrogate's court by the clerk of the court in which the trial took place and shall be conclusive except upon appeal."

<sup>177</sup> 34 App. Div. 2d 1031, 311 N.Y.S.2d 134 (3d Dep't 1970).

<sup>178</sup> Notice to the attorney general is prescribed by the Estates, Powers and Trusts Law, N.Y.E.P.T.L. § 8-1.4(e)(2) (McKinney 1967).

<sup>179</sup> 34 App. Div. 2d at —, 311 N.Y.S.2d at 136.

<sup>180</sup> *Id.*

<sup>181</sup> See 58A MCKINNEY'S SCPA 502, commentary at 424 (1967).