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## When Can A Foreign Consulate Appear For A Foreign Citizen?

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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

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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.

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