



**CITIZENS UNION CANDIDATE QUESTIONNAIRE  
SURROGATE'S COURT  
PRIMARY ELECTION 2012**

Citizens Union would appreciate your response to the following questions related to the structure, function and role of the Surrogate's Court. Responses to these questions will be one of several factors Citizens Union will use to evaluate candidates running for the office in order to determine our "Preferred Candidate" for the 2012 Primary Election in the Manhattan Surrogate's Court race.

If you seek our support, we would also need to schedule an interview with you as part of the evaluation process.

We plan to make responses to this questionnaire public on our website, Voters Directory and other appropriate venues. We thank you very much for your response.

Candidate Name: Rita Mella Age: 50

Campaign Address: c/o Mella, 523 East 14<sup>th</sup> Street, New York, New York 10009

Campaign Telephone Number: (212) 995-9492 Fax: ( ) \_\_\_\_\_

Campaign Manager Name: David Suarez Party Affiliation(s): Democratic

Website & Email: www.mellaforsurrogate.org; rita@mellaforsurrogate.org

Education: J.D. – CUNY Law School; Masters program – no degree obtained - University of Florida; B.A. – Universidad Nacional Pedro Henriquez Ureña

Occupation/Employer (or years in currently held elected office): Judge of the Civil Court  
5 ½ years

Previous Offices and Campaigns: In 2006, I ran in a a contested primary election and a contested general election for the judicial office I hold now. I won those two elections.

Are you willing to be interviewed by CU's Local Candidates Committee? YES X NO \_\_\_\_\_  
(Please note: Citizens Union can grant its "Preferred Candidate" rating only to candidates we have interviewed.)

Have you completed requisite campaign finance filings? YES X NO \_\_\_\_\_

Signature of Candidate: Rita Mella F. Date of Response: July 15, 2012

1. What qualifications and qualities do you possess that make you particularly well suited to handle the responsibilities of Surrogate?

I worked in the Surrogate's Court as principal court attorney for Brooklyn Surrogate Margarita López Torres, immediately after the former Surrogate had been removed for improprieties. The court's credibility had to be reestablished, from the ground up. I participated in that process and that experience provided me with the unique opportunity to learn the inner workings of the court and understand the court – what it was intended to be, what it must be, and what it can be. It was challenging and exciting work. And it gave me a grounding in the Surrogate's Court to which few have been exposed.

My experience in the Surrogate's Court, as well as my discussions with many lawyers who practice there have revealed that a good Surrogate should be a knowledgeable judge, a good administrator, and have the energy and commitment needed to improve the court – as every court can be improved. I have all three of those characteristics.

First, I am knowledgeable of the law of the Surrogate's Court – trusts, estates, guardianships, and adoptions. Researching and writing about that law was my job as the principal law clerk there. I also know this area of the law because I have continued to study it. I have never stopped reading the new decisions handed down by the Court of Appeals in this area. My membership to the New York State Bar Association Trusts and Estates Section has never lapsed, and I continue to keep myself informed of the developments in this field.

Second, I have experience in court administration. In addition to my work with the substantive law, my responsibilities in the Surrogate's Court encompassed assisting the Surrogate in the management of the courthouse – including oversight of personnel from the clerical staff through the law department, and the Public Administrator. That experience was particularly meaningful as new systems of accountability and oversight had to be established to make the court more efficient and more accountable to the public. My courthouse management experience also includes four years as the Principal Court Attorney to Judge Richard Rivera, the Supervising Judge of the Kings County Civil Court. My duties there touched on everything from overseeing the operation of the metal detectors at the entrance, through scheduling personnel, monitoring performance, and addressing complaints from the public. All of that managerial experience is invaluable because the Surrogate is the Administrative Judge of the court and is responsible for managing the courthouse.

Third, I know the court and its challenges, and I have the energy and vision to improve the court. In particular, I plan to work hard to make the court more accessible to a broader section of the population of the city – both lawyers and the public. As much as any other,

the Surrogate's Court is a "people's court," that must serve all of the residents of Manhattan. With several changes in key areas, we can increase access to the court and the services it provides. I will expand on this in answers that follow.

2. What are the biggest problems, if any, confronting New York County Surrogate's Court, and how would you address them? What are your views as to the adequacy of the resources the Surrogate's Court has to handle its caseload?

The two primary challenges for the New York County Surrogate's Court are: 1) delays in the processing of cases and proceedings; and 2) the perception of the court as an elitist institution to which not many people have access.

1) Delays

Practitioners and litigants continue to express concern and frustration about the length of time that takes the different clerks' offices or departments to process and review submissions and filings. This review typically occurs prior to the issuance of citations and prior to sending the file to the Surrogates' chambers for their consideration. It is understood that these delays are caused by a shortage in clerical staff which is the result largely of layoffs and early retirements brought about by state budget cuts. The reduction in personnel has created a drain on the court's resources that is unlikely to ease in the foreseeable future.

The primary concern of the court must always be that cases are handled properly, that the law and procedures are followed, and that, in the process, litigants are treated fairly. Part of this fair treatment in the context of Surrogate's Court proceedings is that matters be decided efficiently to ensure that surviving family members and beneficiaries do not have to wait for years to receive what they are entitled to, or that those seeking to adopt or obtain guardianship of a child or incapacitated person are able to finalize their affairs in an expeditious manner so that they can resume their lives. With that goal in mind, priority should be given to making the operations of the court more efficient, expediting the review process, and better serving the public.

Efficiency can be found in process. For example, some matters are submitted to the court with consents and waivers. That is, they are uncontested. Other matters, such as will contests, come to the court certain to prompt litigation. A triage system could classify types of cases as they come in and direct each to the resources necessary to resolve the particular matter, rather than have every case travel a common, and thus inefficient path. Uncontested matters should move more efficiently towards disposition. Contested matters would be immediately routed to the appropriate resolution step. The process of issuance of citations, especially in accounting cases, is one that would particularly benefit from

this triage system. The result would be a decrease in delays, but also an opportunity for court personnel and the Surrogates to spend more time on the substance of each case.

## 2) Perception

The Surrogate's Court is perceived by many as an elitist institution, serving an exclusive community. That perception is incorrect. Indeed, the Surrogate's Court is a "people's court" that serves all of those with matters within its jurisdiction. The misperception is counter to the public interest for several reasons. First, there are matters that are within the jurisdiction of the Surrogate's Court, such as adoptions and guardianships, but for which people unfamiliar with the court go elsewhere. If the reason for this choice is that the court is perceived as unwelcoming, the result is an underutilization of the court's services for mere lack of knowledge of the opportunities it provides.

The misperception of the court also appears to discourage participation by the legal community outside of those who have traditionally practiced there. The result is that the court and the public do not benefit from the fullest creativity and talent that comes from a truly diverse bar.

Changes in reality will bring changes in perception. First, I propose working with a broad array of bar associations, and specifically minority and non-traditional ones, to organize training programs to encourage participation in the trust and estates practice, and to qualify a more diverse group of attorneys for guardian ad litem appointments. I would also reach to the law schools, through internships (similar to the internship program I currently run in my chambers) and work with clinical programs to entice law students into this extremely interesting and challenging field of law.

Another way to dispel misconceptions, is to actually reach out to the public. A branch can be opened in Upper Manhattan, to make the court literally more accessible. There is a functioning community court in Harlem, and Surrogate's Court personnel could be assigned there a few hours or days a week, making a branch location possible without the allocation of additional funds. The court can also be a proactive institution, working together with community-based organizations and groups to engage in education and outreach campaigns to inform communities of the services the court provides and the need to plan for the future. The Surrogate's Court must adjudicate legal matters that are brought to Chambers Street, but because of the nature of its caseload which not always implicates adversarial proceedings, it should also play a proactive role in community education and outreach.

3. Do you have recommendations for improving the operation of New York County Surrogate's Court? How would you make the Surrogate's Court more "user friendly" to members of the community, particularly those without legal representation?

A significant number of matters that come before the Surrogate's Court are handled administratively and not through adversarial litigation, involve small or moderately-sized estates, or request an order of the court in order to finalize adoptions or guardianships of children or incapacitated individuals. Making the court more accessible to individuals who are not represented by counsel or who have not traditionally used the court because of lack of awareness of the services it provides should be a priority.

The creation of a website which, in basic terms, provides comprehensive information about each of the types of cases and proceedings handled by the court would immediately make the court more accessible to a significantly larger section of the population. The information provided would be translated into several languages and would be directed to the diverse classes of individuals who need the court's services: the families of deceased individuals, those seeking guardianship or to adopt a child, service providers and creditors of deceased individuals and those who were harmed in any way by a deceased person's actions, among others. Members of the public would be able to access the website from their own computers, but in addition, terminals would be available in the courthouse. The site should contain links to the Court's forms, which would enable users to fill out and print their petitions and, if accessed in the courthouse terminals, the printed forms and petitions could be immediately submitted to the clerk for filing.

A second proposal to make the court more "user friendly" is the placement of posters and laminated cards containing line by line instructions on how to complete the court's forms. These types of visual aids and written instructions are being used in the Brooklyn Surrogate's Court and are widely utilized by members of the public. Having this information readily available would provide assistance and information to individuals without legal representation and, at the same time, would significantly decrease the time the clerks spend explaining these forms thus allowing them to use the time to help those who need further assistance.

The establishment of a *pro bono* panel to assist litigants who come to the court without legal representation would also improve the operation of the court. Borrowing from the Brooklyn experience once again, a program could be established in conjunction with bar associations through which attorneys receive free CLE credits on Surrogate's Court practice and, in exchange, are required to volunteer to work in the courthouse for a number of hours providing assistance to the public with the completion and filing of petitions. That program has been remarkably successful.

Finally, I would propose the establishment of regular meetings with practitioners and members of the bar in order to promote an open avenue of communication. Those meetings would foster conversations about the court's practices and procedures and would allow the Surrogates to hear the concerns of court users.

4. Do you favor a more open, transparent, and less party leadership driven process for party nomination of judicial candidates, including a qualified screening panel? Do you support a merit-based commission appointment system for judges?

The authority of the judiciary is in large part dependent on the respect and consent of the governed. That respect must be earned by guarding the dignity of those who come before us, and by consistently, fairly, and respectfully applying the laws we are bound to uphold. More fundamentally, the public must have confidence that judges are independent, impartial, and blind to partisan or parochial concerns. Without that confidence, judges cannot truly do their jobs. The judicial selection process bears tremendously on whether that confidence is earned, or deserved.

There are benefits and problems with both direct election of judges and a representative appointment system. Election may encourage a broader spectrum of candidates, though ultimate selections might be based on party affiliation, rather than qualifications. Selection by a commission may better identify substantive qualifications, but commissions and their selections might be guided by the party or ideology of those who constitute them.

The New York State judiciary is selected both through appointments by the governor and mayor, and through elections. It remains the case that Surrogate's Court Judges are elected by the voters. For elective judicial seats in Manhattan, the selection process includes a merit-based panel that recommends up to three qualified candidates per vacancy, thus adding the advantage of the expert analysis of the merit-based commission process to direct elections.

New York's two systems operating at once seem to strike a balance between the potential for popular selection based solely on party affiliation, and selection potentially influenced by political or ideological concerns. A hybrid of two imperfect systems, however, is unlikely to constitute an impartial ideal. Thus, the challenge is in creating an overarching system for the selection process to ensure a diverse, qualified judiciary that is free from both political pressures in the selection as well as the reappointment of such judges at the end of their terms.

5. What are your views on the current system for how judges finance their campaigns?  
Would you support public financing of judicial campaigns?

I would very much support public financing of judicial campaigns. Judicial races can be expensive. Dependence on contributions in any political race raises the potential for at least appearances of impropriety. Those appearances are more pronounced in the context of the judiciary than in the legislative or executive branches in which candidates are expected to advocate for particular positions, and raise money from like-minded contributors. Confidence in the judicial branch, on the other hand, is based on trust that judges are unbiased by outside influence – be it money or other forces.

Public financing would not eliminate suspicion of judicial fundraising – absent a system that would eliminate all fundraising. But a public financing system could reduce the amount of money that a particular judicial candidate must raise, and by some measure, reduce public suspicion. By capping the amount of spending that is permitted, a public finance system would also encourage contests based on merits, rather than fundraising ability.

The experience in New York City of matching funds and capping spending for those who accept those funds has helped ensure that less emphasis is placed on fundraising ability and personal wealth among potential qualified candidates for legislative and executive offices. There is no reason why judicial races would not similarly benefit or why a public financing system should not be extended to judicial races.

6. What is your position on simplifying and modernizing the state's court system by consolidating the nine trial courts into a two-tiered system?

Ever since I was in law school, I have been aware of the concerns of academics, practitioners, court administrators, litigants, and good government groups about New York's fragmented trial level court system. Confusion in the system (it is not always clear which courts hear particular matters), inefficiency, duplication and inconsistency caused by decisions of different courts that have concurrent jurisdiction, and the failure to communicate between courts in matters in which individuals have related proceedings are among the concerns cited.

There is little debate that simplification, clarity, and efficiency is needed. Achieving that goal is a difficult task, however. Tradition is a heavy weight. There are interests – bar associations, unions, court administrators – who are sure to have competing visions of a unified system, and each likely to contain meritorious components. A constitutional amendment would also be necessary, a complex and onerous process in itself. In the process of restructuring, the importance of specialization and expertise, such as in Surrogate's Court matters, and the differences and needs of courts in different parts of the state must not be sacrificed. Best practices that have been developed by some courts

should also be protected so that they are not lost to a more blended system. Thus, the difficulty with restructuring lies not so much on whether it is needed, but rather on the details of how it is implemented.

7. What is your view on the guidelines approved earlier this year by the Administrative Board of the Offices of the Public Administrators regarding office procedures, record keeping, cash and property management, as well as the compensation and selection of outside vendors for the public administrators? Do you believe that additional controls or oversight is necessary? What mechanisms do you plan to use if elected to oversee the operations of the public administrator?

In all aspects of the work of the Public Administrator's Office, a primary goal must be transparency, accountability, and efficiency. The recent guidelines, promulgated by the Administrative Board of the Office of the Public Administrators advance those goals. They establish specific procedures to be followed by the Public Administrator's Office that include internal controls, better handling of the affairs of decedents who die without wills, and more efficient management of the offices. All of that results in greater public accountability. Thus, on their face, the guidelines serve that greater goal. They have been in effect only since May 1, 2012, however, and it would be presumptuous to try to offer additional measures without first knowing their full impact and the extent of their success.

It is important to note, that there are significant concerns raised by the relationship between the Surrogate and the Public Administrator's Office. The Surrogate is responsible for appointing and exercising oversight of the Public Administrator<sup>1</sup> – who regularly appears before the same Surrogate as a party. Putting aside the advisability of this structure, and recognizing that the statutory scheme requires the Surrogate to perform some kind of oversight over this office, I would suggest that additional controls and oversight might be accomplished by establishing a system to encourage anonymous feedback from the bar concerning the performance of the Public Administrator and Counsel to the Public Administrator. I would also suggest that the Public Administrator's Office create a website and that the office's reports and audits be published there on a regular basis in order to foster transparency and accountability. Finally, I would also establish regular meetings with the Public Administrator and Counsel to the Public Administrator to review monthly reports of closed estates, as well as biannual meetings with them to review the semi-annual reports the Public Administrator's Office must file on the progress of open estates.

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<sup>1</sup> For instance, the statute requires the Surrogate to receive monthly and biannual reports and annual audits from the Public Administrator, as well as comments to the audit by the Attorney General and Office of the State Comptroller.

8. What is your view regarding the current appointment process for guardians? How, if at all, would you change the process?

Part 36 of the Rules of the Chief Judge governs the procedures for the appointment of guardians ad litem in the Surrogate's Court, among others. These rules were adopted to ensure that appointments are based on merit and not favoritism or politics. The system set by these rules is a good one. Individuals must apply to be appointed and must complete training courses in order to earn placement on a list established by the Chief Administrator of the Court. Only individuals who are on that list may be appointed. Moreover, the list of all individuals appointed by each judge and the level of compensation to each is published on a regular basis by the Chief Administrator. Finally, mandatory disqualification of officials of political parties, judges and their relatives, employees of the court system, and individuals participating in political campaigns of judicial candidates is mandated by the rules.

The practice established by former Surrogate Eve Preminger and continued by Surrogate Kristin Booth Glen is to contact individuals on the Chief Administrator's list concerning their interest in appointments and requiring additional information about qualifications and competence – such as language skills and special expertise. Once that information is provided, individuals are appointed from the list in alphabetical order.

If I become the Surrogate, I plan to continue that practice. I would also have regular meetings with guardians ad litem to hear concerns and maintain workable avenues of communication with them.

9. What are your views on the electronic filing of court documents and the effects of this on the Surrogate's Court system?

Electronic filing of court documents would be a welcome addition to the Surrogate's Court's operational tools, for several reasons. For example, currently, clerks manually scan into the computer system every submission. Electronic filing would eliminate that task, thus enabling staff to address substantive matters – and likely have a favorable impact on the reduction of delays. Concerns for space for storing records would be eased by an electronic system that does not require paper. And, retrieval of submissions would be more efficient from a computer database than from physical files. Electronic filing programs also serve to make the pleadings more uniform which also makes processing and routing the submissions more efficient.

An electronic filing system has been implemented in the Queens Surrogate's Court, without major concerns of which I am aware. The same is true for Surrogate's Courts in several upstate counties. The Supreme Court electronic filing system is based on a very friendly user interface and has worked very well. As with everything new, training is

required, and resistance would be met. But the overarching benefit of this program outweighs those temporary concerns.

10. What other legislative and administrative changes would you recommend, if any, to improve the functioning of the state's court system?

I have three recommendations: 1) the creation of a Fifth Department of the Appellate Division in order to better distribute the caseload of that appellate court statewide, and alleviate the backlog of the Second Department, which currently handles cases from areas covering virtually half of the population of the state; 2) a change in the mandatory retirement age for judges so that they can serve until they are 76 years old; and 3) the reestablishment at full capacity of the Judicial Hearing Officer program. This is yet another area that fell victim to the state budget cuts. The expertise and experience of former judges is an invaluable asset to the courts given the courts' increasing caseloads.

11. What is your opinion as to the Surrogate's relationship with the public administrator, and the counsel to the public administrator? Do you believe that it is a conflict of interest for Surrogate Judges to appoint public administrators and their counsel, as they will have matters before you? Do you believe that the public administrator should be appointed by the mayor or that the public administrator function should otherwise be managed by the city rather than the Surrogate, such as the Law Department serving as counsel to the public administrators?

As I wrote in earlier answers, a primary concern of the Surrogate's Court is to be transparent, accountable to the public and avoid appearances of impropriety.

The Public Administrator is appointed by the Surrogate. The Public Administrator appears before the Surrogate as a party, represented by his or her Counsel, also appointed by the Surrogate. This relationship between the Surrogate and the Public Administrator and his or her counsel raises an appearance of impropriety and inherent conflict of interest – as would any relationship in which a judge hires and oversees a party or attorney that regularly appears before her. That perception cannot be left unattended.

Further, though appointed and overseen by the court, the Public Administrator is a Commissioner of the City of New York, and thus a member of the executive branch. The convergence of two branches, the judiciary appointing and overseeing a member of the executive branch, brings an additional layer of complexity and constitutional question to this matter. The Judiciary, particularly the Surrogate's Court, cannot afford to be so compromised in the public esteem. Something must be done to separate the judicial from the executive branches and functions.

In the past, government entities, such as the Attorney General's Office and State Comptroller, after finding this arrangement problematic, offered alternatives to the current system – essentially that the power to appoint should be transferred to the city or municipal government. In that case, the mayor would appoint the Public Administrator as with any other agency appointment. Recently, three sitting Surrogates have made a similar proposal and have recommended the amendment of the Surrogate's Court Procedures Act to allow municipalities, including New York City, to appoint the Public Administrator. With respect to the appointment of counsel for the Public Administrator, those Surrogates propose that the legislative amendment provide that either Corporation Counsel represent the office or that the Public Administrator's Office be allowed to hire its own counsel, as is done in counties outside of New York City.

The relationship between the Public Administrator, his or her counsel and the Surrogate creates too strong an appearance of impropriety and conflict of interest to be left untouched. As stated above, this issue requires attention and further analysis. Not to address these concerns would further erode confidence in the Surrogate's Court, a confidence that has already been damaged in the not too distant past.

12. Many lawyers with matters before the court make campaign contributions to candidates for Surrogate or the current presiding judge. What would be a responsible and effective way to limit appearances of conflict, if not outright conflicts, of lawyers making and judges accepting such contributions?

In the first place, the rules of judicial conduct prohibit judges from accepting contributions to their campaign. Contributions may only be accepted by campaign committees, and judicial candidates are not permitted to know the identities of contributors to their campaign committees. I have scrupulously adhered to this rule, both in my prior successful campaign for Civil Court and in the current campaign for Surrogate's Court. Outright conflicts based on contributions can be avoided by faithfully adhering to these rules.

Notwithstanding strict compliance with the rules and my values, it is a fact that there is a public perception that lawyers influence the legal process through contributions. Short of the establishment of public financing of judicial elections that forbids any fundraising, that perception will undoubtedly continue. Recognizing that perception, the Chief Judge of the State of New York recently promulgated rules requiring that the Office of Court Administration reassign cases from a judge for a period of two years when a lawyer or law firm has contributed a certain amount of money to that judge's campaign committee. This is the first election cycle in which those rules are in effect. Thus, it is too early to know how effective this new measure will be in mitigating any adverse public perception.

