§ 2307-a. Commissions of attorney-executor

1. Disclosure. When an attorney prepares a will to be proved in the courts of this state and such attorney, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney is therein an executor-designee, the testator shall be informed prior to the execution of the will that:

(a) subject to limited statutory exceptions, any person, including the testator's spouse, child, friend or associate, or an attorney, is eligible to serve as an executor;

(b) absent an agreement to the contrary, any person, including an attorney, who serves as an executor is entitled to receive an executor's statutory commissions;

(c) absent execution of a disclosure acknowledgment, the attorney who prepared the will, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney, who serves as an executor shall be entitled to one-half the commissions he or she would otherwise be entitled to receive; and

(d) if such attorney or an affiliated attorney renders legal services in connection with the executor's official duties, such attorney or a then affiliated attorney is entitled to receive just and reasonable compensation for such legal services, in addition to the executor's statutory commissions.

2. Testator's written acknowledgment of disclosure. An acknowledgment by the testator of the disclosure required by subdivision one of this section must be set forth in a writing executed by the testator in the presence of at least one witness other than the executor-designee. Such writing, which must be separate from the will, but which may be annexed to the will, and which may be executed prior to, concurrently with or subsequently to a will in which an attorney, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney is an executor-designee and must be filed in the proceeding for the issuance of letters testamentary to the executor-designee.

3. Models of acknowledgment of disclosure. The following are models of the testator's written acknowledgment of disclosure:

(a) When set forth in a writing executed prior to or concurrently with a will:

Prior to signing my will, I was informed that:

(i) subject to limited statutory exceptions, any person, including my spouse, my child, a friend or associate, or an attorney, is eligible to serve as my executor;

(ii) absent an agreement to the contrary, any person, including an attorney, who serves as an executor for me is entitled to receive statutory commissions for executorial services rendered to my estate;

(iii) absent execution of this disclosure acknowledgment, the attorney who prepared the will, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney, who serves as an executor shall be entitled to one-half the commissions he or she would otherwise be entitled to receive; and

(iv) if such attorney serves as my executor, and he or she or another attorney affiliated with such attorney renders legal services in connection with the executor's official duties, he or she is entitled to receive just and reasonable compensation for those legal services, in addition to the commissions to which an executor is entitled.

_____ _____

(Witness) (Testator)

Dated:_____ Dated:_____

(b) When set forth in a writing executed subsequently to the will:

I, , have designated {my attorney}, , {an attorney affiliated with my attorney} {an employee of my attorney or an affiliated attorney,} {a} {an} {executor} {alternate executor} {co-executor} (delete what is inapplicable) in my will dated _____.

Prior to signing my will, I was informed that:

(i) subject to limited statutory exceptions, any person, including my spouse, my child, a friend or associate, or an attorney, is eligible to serve as my executor;

(ii) absent an agreement to the contrary, any person, including an attorney, who serves as an executor for me is entitled to receive

statutory commissions for executorial services rendered to my estate;

(iii) absent execution of this disclosure acknowledgment, the attorney who prepared my will, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney, who serves as an executor shall be entitled to one-half the commissions he or she would otherwise be entitled to receive; and

(iv) if such attorney serves as my executor, and he or she or another attorney affiliated with such attorney renders legal services in connection with the executor's official duties, he or she is entitled to receive just and reasonable compensation for those legal services, in addition to the commissions to which an executor is entitled.

_____	_____
(Witness)	(Testator)
Dated:_____	Dated:_____

4. Compliance. (a) The testator's written acknowledgment of disclosure that conforms or substantially conforms to either model in subdivision 3 of this section shall be deemed compliance with subdivision 2 of this section.

(b) An attorney's compliance with subdivision 2 of this section creates neither the presumption nor the inference:

(i) that the testator's designation of such attorney, a then affiliated attorney, or an employee of such attorney or a then affiliated attorney, as executor, is proper;

(ii) that such attorney has complied with the disciplinary rules of the code of professional responsibility.

5. Effect of absence of acknowledgment. Absent compliance with the requirements of subdivision 2 of this section, the commissions of an attorney, or an employee of the attorney who prepared the will or a then affiliated attorney, who serves as an executor shall be one-half the statutory commissions to which such person as executor would otherwise be entitled pursuant to sections 2307 and 2313 of this article.

6. Rents. Notwithstanding the provisions of subdivision 5 of this section, the additional commissions to which an attorney, or an employee of the attorney who prepared the will or a then affiliated attorney, who

serves as an executor may be entitled pursuant to subdivision 6 of section 2307 shall not be diminished.

7. Time of determination of compliance. A determination of compliance with the requirements of subdivisions 1 and 2 of this section shall be made in a proceeding for the issuance of letters testamentary to an executor-designee to whom subdivision 1 of this section applies.

8. Definitions. For purposes of this section, the words or phrases hereafter shall be construed as follows:

(a) Affiliated attorney. An attorney who, by reason of partnership, share holding, association or other relationship, express or implied, could participate directly or indirectly, with the attorney who prepared the will in fees for legal services rendered.

(b) Executor-designee. A person named in a will or codicil, separately or jointly with one or more persons, as a primary, successor, ancillary, or preliminary executor.

(c) Employee. A person who was employed by the attorney who prepared the will or an affiliated attorney when the will was executed.

9. Application. (a) This section shall apply to wills executed on or after January 1, 1996 and, irrespective of the date of any will, to estates of decedents dying after December 31, 1996.

(b) With respect to wills executed prior to January 1, 1996:

(i) subdivisions 1 and 2 of this section shall not apply if the testator has acknowledged the disclosure required by subdivision 1 of this section in a writing that conforms or substantially conforms to the model in paragraph (b) of subdivision 3 of this section; and

(ii) the court in its discretion may waive application of subdivisions 1 and 2 of this section for good cause shown; good cause shall include, but not be limited to:

(A) a good-faith effort after the enactment of this statute either to make to the testator the disclosure required by subdivision 1 of this section or obtain from the testator a written acknowledgment substantially conforming to that set forth in paragraph (b) of subdivision 3 of this section, or

(B) otherwise establishing to the satisfaction of the court reasonable

grounds to excuse the absence of a written acknowledgement substantially conforming to that set forth in paragraph (b) of subdivision 3 of this section; and

(iii) section 4519 of the civil practice law and rules shall not apply.