

HON. KEITH J. CORNELL
Surrogate Rockland County

INDIVIDUAL PART RULES
Effective January 1, 2018

Court Information:

Address: Rockland County Courthouse
1 South Main Street
New City, New York 10956

Telephone: Chambers: (845) 483-8353
Surrogate's Clerk: (845) 483-8264

Fax: Chambers: (845) 638-5944
Surrogate's Clerk: (845) 638-5632

Court Staff:

Principal Court Attorney: Aimee Pollak, Esq.
Judge's Secretary: Vanessa Kiers
Surrogate's Court Clerk: Eileen Horan

Part 207 of the Uniform Rules. Parties are directed to familiarize themselves with the Uniform Rules for Surrogate's Court, found at 22 NYCRR § 207. All rules found in Part 207 shall apply to the Rockland County Surrogate's Court unless explicitly directed otherwise below.

I. COMMUNICATIONS WITH THE COURT

A. Written Correspondence. All correspondence to the Court and Clerk shall be copied to all adversaries and must include the Surrogate's File Number. Correspondence between attorneys and/or pro se litigants shall not be copied to the Court unless otherwise directed or where there is some specific judicial purpose to be served by transmitting copies to the Court.

B. Telephone Calls. Telephone calls to Court staff are permitted only in emergency situations requiring immediate attention that cannot otherwise be attained by correspondence. Counsel and pro se litigants should not individually call Chambers to discuss the substance of pending cases.

C. Faxes. The Court will not accept faxed copies of papers that must otherwise be filed in original form (such as objections, petitions, proofs of service, motions, opposition to motions, replies, proposed Orders, and documents to be "So Ordered"). All faxes must be faxed simultaneously to all other parties. Counsel are not permitted, without prior approval, to send faxes that exceed five (5) pages in length.

D. Ex Parte Communications. Ex parte communications are prohibited except when an Order to Show Cause is submitted for signature, or, with the prior consent of all parties during settlement negotiations at the Courthouse.

II. FILING PAPERS

A. E-filing. This Court does not yet participate in e-filing per § 207.4-a.

B. Form of Papers. All papers filed with the Court are scanned upon receipt. Therefore, all submissions should be **bound with removable clips**, and all exhibits must be labeled with **bottom tabs** and a single sheet of paper indicating the number/letter of the exhibit that follows. Velobound documents will not be accepted for filing. All papers must include the Surrogate's File Number. Only one copy of any submission is necessary.

C. Backs. Backs are not required. If papers are filed with a back, please use a light colored paper and make sure that the width of the back is 8.5 inches.

III. ADJOURNMENTS

A. Generally. Requests for adjournments of conferences and appearances are discouraged.

B. Adjournment of Conferences. Applications for adjournments of conferences shall be made in writing at least 48 hours in advance and must address:

- (1) The date of the scheduled appearance and trial date, if any;
- (2) GOOD CAUSE why an adjournment is sought;
- (3) whether the adverse party(ies) consent(s) to the adjournment; and
- (4) a suggested date for the adjournment.

C. Adjournment of Motion Return Dates.

- (1) On consent: The party seeking the adjournment of a motion with the consent of adversary parties shall notify the Court in writing of the agreed upon adjournment date at least 24 hours prior to the return date.
- (2) Without consent: A party requesting an adjournment without consent of the other parties shall submit a letter to the Court at least 48 hours prior to the return date providing good cause as to why the adjournment should be granted. Counsel opposing the request may submit a brief response setting forth their reasons for objecting.

D. Adjournments of Appearances in Cases with Fully Submitted Motions. The filing of a motion does not automatically relieve any party from attending a previously scheduled appearance, regardless of the nature of the relief sought in the motion. However, when an appearance is forthcoming while a fully-submitted motion is pending before the Court, the movant may contact the Court in writing at least 24 hours in advance to request an adjournment of the appearance.

IV. COURT CONFERENCES AND CALENDAR CALLS

A. Calendar calls. Appearances at the calendar call are required by attorneys in all matters. All calendar calls are conducted before Judge Cornell in the Surrogate's Courtroom of the Rockland County Courthouse (on the second floor) on Tuesdays at 9:30a.m., unless otherwise directed. All counsel and pro se litigants must be fully familiar with the matter(s) on which they appear and be authorized to enter into substantive and procedural agreements on behalf of their clients. **The Judge take the bench promptly at 9:30a.m. Please arrive on time.**

B. Interpreters/ Hearing Impaired. When a party or witness requires the services of an interpreter of a foreign language or services for the hearing impaired, please notify the Court in writing at least ten days in advance.

C. Preliminary Conferences. Preliminary Conferences shall be scheduled once the Surrogate has obtained jurisdiction and objections to probate are filed. Preliminary Conferences will ordinarily result in an order addressing all aspects of anticipated pretrial discovery and scheduling a Compliance Conference or the dates by which a Note of Issue, Order Framing Issues or Statement of Issues is to be filed. Discovery may be expedited in third party actions, joint actions and consolidated actions to avoid undue delay.

D. Discovery Dispute Resolution Conferences. Counsel shall endeavor to resolve any discovery disputes and avoid burdening the Court with discovery motions. If the parties reach an impasse, the party seeking discovery or objecting to the discovery demands shall request a conference with the Court Attorney, who will assist in resolving the issues. **Leave of Court shall be required before making motions related to discovery disputes.**

E. Non-Appearance at Scheduled Conferences. The failure of any attorney or pro se litigant to appear for a scheduled conference may be treated as a default and may, when appropriate, result in the dismissal of a Petition or Objections, or by other appropriate remedy authorized by Uniform Rule 202.27.

F. Substitution/withdrawal. All Substitutions of Counsel must be in writing, signed by the client, the incoming and the outgoing attorney, filed with the Court, and served on all other parties in accordance with the CPLR before the outgoing attorney is relieved and discharged from the matter. In any matter where an attorney wants to be relieved and discharged or where a client wants to discharge an attorney and where there is no incoming attorney, a motion for that relief must be made by Order to Show Cause on notice to the client and all other parties. In such event the moving attorney will remain the attorney of record until the court decides the motion and relieves and discharges the moving attorney.

V. PARTICULAR PROCEEDINGS

A. Accounting Proceedings – Service of Citation. Whenever a citation is served in an Accounting Proceeding, a copy of the accounting shall be served on all parties, including waiving parties, with the Citation. The Citation and affidavit of service shall recite that a copy of the accounting was served with the Citation. See 22 NYCRR § 207.40(e).

B. Probate Proceedings – Confidential Relationships. In a probate proceeding, if a beneficiary, attorney or draftsman has a fiduciary or confidential relationship with the testator/testatrix, an affidavit explaining the circumstances of the making the bequest and the drafting of the Will must be filed with the petition.

C. **Probate Proceedings – Attesting Witnesses** - The clerk will not take a deposition or the testimony of any attesting witness in a probate proceeding unless the time to file objections per SCPA § 1410 has expired. See 22 NYCRR § 207.28.

VI. MOTIONS AND ORDERS TO SHOW CAUSE

A. **Return Dates. Motions in Surrogate’s Court shall be made returnable at 9:30 a.m. on any Tuesday that the Court is in session.** Return dates for Orders to Show Cause shall be determined by the Court.

B. **Format.** All Motions and Orders to Show Cause (“OTSCs”) must be typed, double-spaced, bound with removable clips (so the submission can be scanned), and all exhibits must be labeled with bottom tabs and a single sheet of paper indicating the number/letter of the exhibit that follows (again, for scanning purposes). All motions and OTSCs shall be submitted with original signatures affixed to the supporting affidavits and affirmations. OTSCs shall include one proposed Order affixed to the supporting papers. All papers must include the Surrogate’s File Number.

C. **Appearances/Oral Argument.** No appearances are required on motion return dates unless otherwise ordered by the Court. Oral argument may be requested on a motion by noting the request on the Notice of Motion (above the index number). If the Court determines that oral argument would assist the Court in deciding the motion, the movant’s attorney will be advised of the date for such argument, with direction to notify all other parties.

D. **Withdrawal of Motions.** If a matter has been resolved and the parties no longer require a decision from the Court, counsel are directed to **immediately** notify the Court in writing. If the entire action has been settled or otherwise resolved, counsel shall file a Stipulation of Settlement or a Stipulation of Discontinuance.

E. **Orders to Show Cause.**

(1) **Generally.** **Motions should be filed by Notice of Motion unless immediate, emergency relief is absolutely necessary per CPLR § 6631.** Non-emergency motions filed by OTSC will be treated as if they had been filed by Notice of Motion.

(2) **Notice.** Any application for temporary injunctive relief shall comply with Uniform Rule § 202.7(f) by including either: (i) an affirmation demonstrating that a good faith effort has been made to notify the party against whom the TRO is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application, or (ii) an affirmation that there will be significant prejudice to the party seeking the TRO by the giving of notice.

F. **Decisions and Orders.** Generally, decisions and orders will be in written form. However, if a Decision and Order are made orally from the Bench, a transcript of the Decision and Order, the cost of which shall be born equally by the parties, shall be purchased by the Petitioner and then served on all other parties and submitted to the court so the same can be So Ordered by the Court and filed with the Office of the Rockland County Surrogates’ Clerk. Indigent

parties may be excused from having to pay their share for the cost of the transcripts of such decisions and orders upon request to the Court.

VII. TRIALS AND HEARINGS

A. Trial, Hearing and Inquest Dates. Once scheduled, all trial, hearing and inquest dates shall be deemed firm in every action. Accordingly, it is expected that clients, witnesses, experts and others will be timely advised of scheduled dates to avoid last minute claims of unavailability. In scheduling and conducting trials, the Court shall endeavor to accommodate bona fide special preferences to the extent recognized by CPLR § 3403 and Uniform Rules 202.24 and 202.25.

B. Expert Witness Disclosure. All CPLR § 3101(d) expert witness disclosure shall be completed no later than 30 days prior to trial, unless otherwise shortened by the Court upon application made on notice and for good cause shown. All objections to expert witness disclosures must be served within 5 days of receipt of such disclosure.

C. Trial Notebook. No later than **two weeks prior** to the scheduled trial date, unless specifically relieved of such requirement by the Court, counsel shall each provide to all other counsel and/or pro se litigants and to the Court a tabbed trial notebook which shall consist of:

1. Marked pleadings in accordance with CPLR §4012;
2. A joint statement of the relevant facts that are not in dispute;
3. Pre-trial memorandum of law addressing any known disputed legal issues that must be determined by the court;
4. A list of all potential witnesses for each party along with a brief statement of proof. A witness not identified in the witness list provided to opposing counsel either in discovery or in the trial notebook, other than an impeachment or rebuttal witness, may not be permitted to testify unless an adequate explanation is provided for the failure to identify such witness prior to trial.
5. A list of all exhibits and to be offered into evidence at trial by each party with a brief description of the purpose of each exhibit (if not obvious). Any exhibit not identified in the exhibit list provided to opposing counsel, other than an exhibit offered for the purpose of impeachment or rebuttal, may not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to trial.

D. Identification of Trial Counsel. If a matter is to be tried by an attorney other than the attorney of record, trial counsel shall be identified in a writing, filed with the Court on notice to all parties, no later than fifteen (15) days from the date of the pretrial conference per 22 NYCRR § 202.31.

E. Non-jury Trials. Unless the Court directs otherwise, the parties may obtain (at their expense) a copy of the trial transcript, and each party may submit a post-trial brief with respect to the issues raised at the trial, setting forth specific references to the relevant portions of the transcript and the documents in evidence and citing the applicable law. Along with the submission of the post-trial briefs, counsel may also present the Court with proposed findings of fact and proposed disposition.

VIII. JURY TRIALS

A. Pre-Voir Dire Conference. Immediately prior to jury selection the Court will conduct a conference in order to set time limits on jury selection, to hear and determine arguments concerning the number of peremptory challenges, to discuss trial stipulations, argue and/or decide motions in limine, to discuss scheduling and to address any other appropriate trial related issues.

B. Jury Selection. Juries shall be selected by the parties outside the presence of the Court in accordance with Appendix "E" of the Uniform Rules for the New York Trial Courts. The Court may impose time limits for jury selection as authorized by 22 NYCRR § 202.33 (d).

C. Peremptory challenges. Peremptory challenges will ordinarily be pooled between multiple plaintiffs on the one hand and between multiple defendants on the other, and generally, each side shall be entitled to three (3) peremptory challenges for regular jurors per panel and one (1) peremptory challenge for each alternate juror per panel.

IX. SETTLED AND DISCONTINUED CASES

Counsel shall immediately notify the Court in writing of a settled or discontinued matter. Following the initial notification counsel shall file a fully executed duplicate original Stipulation of Discontinuance or Settlement with the appropriate Court Clerk. Court appearances and jury proceedings scheduled prior to the settlement or discontinuance are not excused or delayed until the fully executed Stipulation is received by the Court.