

**HON. THOMAS E. WALSH II, Surrogate, A.J.S.C.**

Rockland County Courthouse  
1 South Main Street  
New City, New York 10956-3512  
Chambers tel.: (845) 483-8274

Principal Court Attorney/Referee: STEPHEN B. LOWE (845) 483-8274  
Secretary: JEAN FINAN (845) 483-8274 Chief Surrogates' Court Clerk:  
VIRGINIA ATHENS (845) 483-8264 Supreme Court Part Clerk: LARRY  
GILBERT (845) 483-8351

**INDIVIDUAL PART RULES**

Effective January 1, 2012

I. COMMUNICATIONS WITH THE COURT

A. Correspondences. All correspondences to the Court and Clerk shall be copied to all adversaries and must include the Index Number or Surrogates' File Number. Correspondences 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. All correspondences and phone calls to the Clerk of the Court in a Supreme Court matter shall be addressed the Supreme Court Part Clerk and all correspondences and phone calls in a Surrogate's Court matter shall be addressed to the Chief Surrogate's Court Clerk.

B. Faxes. The fax number to be used for all Surrogates' matters is (845) **638-5632** and the fax number for all other matters (including Chambers) is (845) **638-5944**. Neither Chambers nor the clerk will 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 and the original document must be sent to the Court via regular mail. Counsel are not permitted, without prior approval, to send facsimile transmissions to Chambers that exceed five (5) pages in length.

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

D. Court Papers. All submissions bearing the caption of the matter must be signed by counsel [See *Rules of the Chief Administrator Section 130-1.1a*]. In any instance where a 'service list' is required on a legal document, the list must set forth not only the name, address and phone number of the submitting party or attorney but must also identify the party or person represented by that attorney and the person or party represented by the other persons named in that service list. All Surrogates' Court filings are to be made at the office of the Surrogate's Court clerk, and all Supreme Court filings are to be made at the Supreme Court Civil window.

II. COURT CONFERENCES AND CALENDAR CALLS

A. General Rules. Appearances at the calendar call are required by attorneys in all matters. All calendar calls are conducted before Judge Walsh in the Surrogates' Courtroom of the Rockland County Courthouse Monday through Friday, except Surrogate matters which shall be called on Tuesdays at 9:30a.m., unless otherwise directed. All counsel, and pro se litigants, must be fully familiar with the matter on which they appear and be authorized to enter into substantive and procedural agreements on behalf of their clients.

B. Preliminary Conferences. Preliminary Conferences shall be scheduled and then conducted: (1) in civil matters after a Request For Judicial Intervention ("RJI") is filed in accordance with *Uniform Rule 202.12(a)*, or, (2) upon a specific directive by the Court, or, (3) 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.

C. Compliance Conferences in Civil Matters. The purpose of the Compliance Conference is for counsel, and pro se litigants, to report to the Court that pre-trial discovery has been completed, to enable the Court to direct a date by which a Note of Issue or Order Framing issues shall be filed, and to schedule dates for motions, a pre-trial conference, and trial. Parties are not permitted to file a Note of Issue in any action or proceeding unless permission to do so is granted by the Court at the Compliance Conference. Motions to strike Notes of Issue are discouraged as matters of outstanding discovery, if any, shall be raised, discussed and resolved at the Compliance Conference. The Court may issue a further discovery schedule at the Compliance Conference if circumstances or the interests of justice require. Any such additional discovery is likely to be based on an expedited schedule.

D. Pre-trial Conferences. The Court will conduct a Pre-trial Conference with all counsel and pro se litigants prior to the trial. Trial dates scheduled during a Pre-trial Conference should be viewed by parties and counsel as firm dates. Counsel attending Pre-trial Conferences shall be fully familiar with the facts and issues of the matter and shall be authorized to discuss and to enter into binding settlements, agreements and stipulations with respect to: (1) the factual, legal and evidentiary issues presented by the litigation, (2) settlement demands and offers, (3) unique or unusual issues likely to present themselves at trial, (4) witness scheduling, as well trial attorneys' vacation schedule, (5) likely duration of the trial and requests for adjournments of the trial date, and (6) applications for relief from part or all of the Trial Notebook requirements set forth in section VI(D)(A) hereof. The parties in any litigation, or in actions involving insurance carriers an authorized claims representative, must be available for the Pre-trial Conference in person if directed, or by telephone, for the purpose of direct contact with the attorneys engaged in settlement discussions [See 22 NYCRR §202.26(e)]. The Court will conduct an additional Pre-trial Conference, but no such additional conference will delay the trial as then scheduled or once the jury panel is seated for selection. Counsel shall notify all clients, witnesses and experts, in writing, of the trial date within three (3) business days of the pre-trial conference [See Part VI(E)(b) hereof].

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 Complaint or Petition, the striking of an Answer or objections, or by other appropriate remedy authorized by Uniform Rule 202.27.

F. Substitution/withdrawal. (i) In any matter in court all Substitutions of Counsel must be in writing, signed by the client, the incoming and the outgoing attorney, and, 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. (ii) In any matter in court 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.

### III. DISCOVERY AND INSPECTION

A. General Rules. Every attorney shall exert a continuing effort to work co-operatively and courteously with all adverse attorneys towards the goal of completing all discovery expeditiously, efficiently and in the spirit of avoiding unnecessary motion practice and court intervention. Once a discovery schedule has been set by the court the dates and deadlines set forth therein shall be adhered to. All CPLR §3101(d) Expert witness disclosure shall be completed by no later than thirty (30) days prior to trial, except that on application on notice and for good cause shown, the Court may shorten this requirement. All objections to Expert witness disclosure must be served within five (5) days of receipt of the disclosure.

### IV. MOTIONS AND ORDERS TO SHOW CAUSE

A. Prerequisite. Prior to the filing of any motion the potential movant must notify the court in writing (one page maximum length), with a copy to all parties, setting forth the relief sought and the basis for the requested relief. The Court will then schedule a conference the purpose of which will be to hear and resolve the issues to be addressed in the motion without the necessity of a written application. Only where this conference does not resolve the dispute may the party seeking the relief proceed with the motion. All motions shall contain an "affirmation in support" executed by the movant's attorney which shall recite

the details of the compliance with this paragraph. Failure to comply with this paragraph will result in a denial of the motion and or appropriate sanctions.

B. General Rules. All motions and oppositions to motions must be accompanied by a stamped, self-addressed envelope. The Court will entertain motions at 9:30 a.m. on any Friday, or in the case of a Surrogates' proceeding on any Tuesday, when the Court is in session. All Orders to Show Cause shall be submitted with original signatures affixed to the supporting affidavits and affirmations, shall include one proposed Order affixed to the supporting papers. There shall be no oral argument on any motion unless otherwise directed by the Court. The failure of a party to appear for oral argument when directed to will result in the waiver of that party's opportunity to offer oral argument in connection with the motion. All Orders to Show Cause shall include a provision that the method of service selected by the Court will be sufficient only if proof of such service is filed with the Court prior to the return date of the Order to Show Cause.

C. Filing of Papers Applicable To All Motions. The service list on all motions must include the identity of the party represented by each attorney identified in that service list. Motion papers must reflect the Index Number or Surrogates' File Number. The filing of a motion does not relieve any party from attending any previously scheduled conference or court appearance, regardless of the nature of the relief sought in the motion.

D. Supporting Documents. All documents required to decide the application must be included in the moving papers. It is not sufficient that those documents are on file with the Court Clerk. All motions to re-argue and renew shall include a copy of the prior decision and the entire prior motion, with its exhibits, if any.

E. Reply Papers. Reply papers shall not set forth new factual claims, legal arguments or requests for relief that were not within the scope of the papers that initiated the motion.

F. Sur-Reply Papers. Neither the *CPLR* nor the *SCPA* recognizes the existence of Sur-Reply papers, however denominated, and accordingly, the Court will not consider any post-Reply papers or materials absent a party receiving express permission from the Court in advance. Post-Reply materials received in violation of this rule will be returned, unread, to the Office of the Rockland County or Surrogate's Clerk for filing. Opposing counsel who receives a copy of post-Reply materials submitted in violation of this rule should not respond in kind.

G. Summary Judgment. Summary Judgment motions must be made no later than sixty (60) days from the date of the filing of the Note of Issue or Order Framing Issues. All such motions must be fully submitted by no later than ninety (90) days from the date of the filing of the Note of Issue and under no circumstances may they be fully submitted beyond one hundred and twenty (120) days from the filing of the Note of Issue.

## V. DECISIONS AND ORDERS

In certain instances, the Court may render a Decision and issue an Order orally from the Bench. In such instances a transcript of the Decision and Order, the cost of which shall be born equally by the parties, shall be purchased by the plaintiff or petitioner and then served on all other parties and submitted to the court so the same can be executed by the Court and filed with the Office of the Rockland County Clerk or Surrogates' Clerk. Indigent parties may be excused from having to pay their share for the cost of the transcripts of such decisions and orders whereupon the other parties will pay their proportionate share of the total cost of the transcript.

## VI. TRIALS AND HEARINGS

A. Trial Dates. Scheduled trial and hearing dates shall be adhered to except for the most extra-ordinary good cause shown and accordingly it is expected that clients, witnesses, experts and others will be timely advised of scheduled dates pursuant to Part II, Subdivision (D) hereof. The parties and their attorneys are encouraged to videotape the trial testimony of witnesses who are likely to be unavailable at trial in accordance with the applicable statutes and uniform rules, at the producing party's expense. All such

videotaping should be conducted between the date of the Pre-trial Conference and the date of the trial. In scheduling and conducting trials, the Court shall endeavor to accommodate bona fide special preferences to the extent recognized by *CPLR Rule 3403* and *Uniform Rules 202.24* and *202.25*.

B. Subpoenas. When a Subpoena Duces Tecum is sought for a library, hospital or municipal corporation, or their departments and bureaus, the subpoena must be "So Ordered" on notice in accordance with *CPLR §2306* and *§2307*, and, the subpoena must be served on the intended recipient at least three days before the time fixed for the production of the documents, unless such notice is waived by the recipient of the subpoena or dispensed with by the Court. The Court's issuance of a "So Ordered" subpoena does not constitute a ruling as to the admissibility of the subpoenaed materials. All subpoena for materials protected by HIPPA shall refer to and annex a duly executed HIPPA compliant authorization.

C. Interpreters. In the event that any party or witness requires the services of a translator for foreign languages or services for the hearing impaired during a court appearance, conference, hearing or trial, the party shall notify, in writing, the Court, and the Clerk of the Court in which the matter is pending, of the need for same no later than three weeks prior to the court appearance, conference, hearing or trial.

D. E.B.T. Transcripts. Copies of E.B.T. transcripts that will be read or used for cross examination at trial shall be provided to the Court just before their use at trial.

#### E. Pre-Trial Requirements

##### a. Trial Notebook

No later than five (5) business days prior to the scheduled trial date, counsel shall each provide to the other (one copy) and submit to the Court (two copies) a trial notebook which shall consist of:

- 1) Marked pleadings in accordance with *CPLR §4012*;
- 2) Statement of the relevant facts stating separately those that are not in dispute and those that are;
- 3) Pre-trial memorandum of law addressing any known or anticipated disputed legal issues that must be determined by the court;
- 4) A list of all potential witnesses for each party;
- 5) A **list** of all exhibits to be offered into evidence at trial by each party with a brief description of each exhibit...do **not** submit copies of the exhibits;
- 6) Preliminary requests to charge. The charges will be drawn from the Pattern Jury Instructions (PJI). If no deviation from the pattern charge is sought only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted in writing together with any supporting authority.
- 7) In jury trials a proposed verdict sheet typed in final form for presentation to the jury. If agreement cannot be reached on a joint submission, then each side shall present a proposed verdict sheet, along with a written explanation as to why agreement on the verdict sheet was not reached.
- 8) All motions In Limine and or for Preclusion. Each shall set forth the factual basis and authority for the objected to exhibits or testimony. All opposition shall be filed no later than the first day of jury selection or openings in a non-jury trial.
- 9) The court may, in its discretion and for good cause shown, relieve counsel from all or part of the trial notebook requirements upon a showing that the issues to be tried are sufficiently narrow that the trial notebook is not necessary or that the interest of justice otherwise justifies such relief. Such requests will be entertained only at the pre-trial conference.

b. Witnesses. 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. Parties, witnesses and experts shall be advised of the scheduled dates in writing within three (3) business days of the day on which the trial dates are set [See *Part II (D)* hereof].

c. Exhibits. 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. Exhibits marked into evidence at trial will not be returned until the final conclusion of the matter. Exhibits marked for identification will be retained by the offering attorney during trial, unless taken into evidence.

F. Identification of Trial Counsel. Whenever 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 [See *Uniform Rule 202.31*]. The court may waive this rule only in instances where the attorney of record is unexpectedly engaged in an unrelated trial and the late retention of trial counsel permits the trial before Judge Walsh to proceed without adjournment.

G. Pre-Voir Dire Conference. Immediately prior to jury selection the Court will conduct a conference [See *Uniform Rule 202.33 (b)*] in order to set time limits on jury selection, to hear and determine arguments concerning the number of peremptory challenges, to discuss trial stipulations, to hear and determine last minute arguments on motions in limine, to discuss scheduling and to address any other appropriate trial related issues.

H. Jury Selection. Juries shall be selected by the parties outside the presence of the Court in accordance with "Whites Rules" found in *Appendix "E"* of the *Uniform Rules for the New York Trial Courts*. The Court may impose time limits for jury selection as authorized by *Uniform Rule 202.33 (d)*. 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. However, pursuant to *CPLR Section 4109*, the number of peremptory challenges may be adjusted by the Court in certain matters in the discretion of the Court and in the interest of justice. The jury selection process will not be delayed by settlement negotiations once the jury panel is seated.

I. Bifurcation. Trials of personal injury actions involving issues of both liability and damages shall be bifurcated in accordance with *Uniform Rule 202.42* and all subdivisions thereof. Trials on damages will commence immediately upon the completion of the trial on liability.

J. Non-jury Trials. Unless the Court directs otherwise, the parties may obtain and provide to the Court, at the party's expense, at the conclusion of the trial, 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.

## VII. ADJOURNMENTS

All applications for adjournments of conferences, court appearances, hearings, trials and motions **shall** be made in writing actually received by the appropriate Clerk. No request for adjournment will be entertained unless the party seeking the adjournment has first attempted to obtain consent from all other parties. The application must be made immediately upon receipt of knowledge of the event or reason giving rise to the need for the adjournment. All requests shall state: good cause for the adjournment; whether the adverse party(ies) consent(s) to the adjournment; and may, at the option of the requesting party, suggest a date for the adjournment. The attorney receiving the adjournment **shall** immediately advise all other parties and pro-se litigants in writing of the adjourned date with a copy to the Court. Under no circumstances will there be any adjournments for greater than twenty-eight (28) days without a court appearance by all attorneys.

## VIII. 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.

#### IX. MATRIMONIALS

A motion for a default Judgment of Divorce is required in all un-contested Matrimonial Actions unless the submitted papers include, among the other documents otherwise required by Statute or Rule: (i) an acknowledged affidavit from the defaulting party admitting service of the Summons & Complaint and consenting to all of the relief requested, or, (ii) an acknowledged Stipulation of Settlement executed by the defaulting party addressing all of the relief requested; and, (iii) a proposed Findings of Fact and Judgment.

#### X. ARTICLE 81 PROCEEDINGS

All Court Evaluator's reports shall be filed with the Court no later than noon of the day before the scheduled hearing date.

#### XIII. E-FILING

Counsel for all parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§ 202.5-b and 202.5-bb) available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and the Rockland County E-Filing Protocol. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us). Specific questions relating to local procedures should be addressed to the Chief Clerk's Office (845) 638-5393.

Electronic Filing: All Supreme actions and proceedings in Judge Thomas E. Walsh II's Part [60] are to be filed through the New York State Courts E-Filing system (NYSCEF). All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed.

Working Copies: One working copy is required in addition to the submission of working copies of electronically filed documents. See Uniform Rule § 202.5-b(d)(4). Working copies shall be delivered to the Rockland Chief Clerk's Office.

This Part does not require working copies.

This Part does not require working copies but may request working copies in specific instances.

This Part requires working copies for all electronic submissions.

This Part requires working copies for:

motion submissions

proposed orders to show cause

proposed orders/judgments

stipulations to be "so ordered"

transcripts  letters

#### XII. RULES APPLICABLE ONLY TO SURROGATE'S COURT

1. 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, and the Citation and affidavit of service shall recite that a copy of the accounting was served with the Citation.

2. If, in a probate proceeding, 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.

3. The clerk will not take a deposition or the testimony of any attesting witness in a probate proceeding unless the time to file objections limited in *SCPA 1410* has expired.

So Ordered:/s/ Hon. Thomas E. Walsh II, Surrogate/A.J.S.C.