

**HON. NELIDA MALAVE-GONZALEZ
BRONX COUNTY SURROGATE**

INDIVIDUAL PART RULES
Effective June 26, 2020

Court Information:

Address:	Bronx County Surrogate's Court 851 Grand Concourse Bronx, New York 10451
Telephone:	718-618-2300 (Main Line)
Fax:	212-720-9382

Court Staff:

Elix R. Madera-Fliegelman, Chief Clerk
Sharlotte S. Smith, Deputy Chief Clerk
Magdalena Porrata, Esq., Supervising Court Attorney
Barbara A. Schaefer, Judge's Secretary

Part 207 of the Uniform Rules. Parties are directed to familiarize themselves with the Uniform Rules for Surrogate's Court, found in Part 207 of the Uniform Rules for the New York State Trial Courts. The Part 207 Rules shall apply to the Bronx County Surrogate's Court unless explicitly directed otherwise in these Part Rules.

I. E-FILING RULES OF THE COURT

A. E-filing is not Mandatory. E-filing in the Bronx County Surrogate's Court is done on a consensual basis, except that e-filing is not permitted for guardianship matters (under SCPA Article 17 or SCPA Article 17-A), matters involving lifetime trusts, accounting proceedings, wrongful death compromises, miscellaneous proceedings and adoption proceedings. The Court's e-filing protocols can be found on its website at <http://ww2.nycourts.gov/COURTS/12jd/BRONX/Surrogates/index.shtml>. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

B. Inquiry regarding a Prior Proceeding. Immediately before entering any information into an initial e-filing, you must run an inquiry on the decedent's last name, using the first initial, to determine if a file has already been opened. Due to the numbering system used in Surrogate's Courts, an inquiry based on the file number alone may not produce accurate results. **PLEASE DO NOT CALL THE COURT TO DETERMINE IF A PROCEEDING WAS ALREADY FILED, AS IT IS THE FILER'S SOLE RESPONSIBILITY TO ASCERTAIN SUCH INFORMATION.**

C. Original Documents. An original certified birth certificate, certified death certificate and the decedent's Will must be delivered to the Court within two (2) business days after such documents have been electronically filed. Applications requiring such documents shall not be processed until the originals are received. If the requisite originals are not received within thirty (30) days of an application's filing, the application shall be deemed discontinued. **NOTE: A decedent's original Will must be scanned by the e-filer. That original Will, however, must NOT BE UNSTAPLED.**

D. **Working Copies.** Parties shall submit a working copy within two (2) business days following electronically filed documents: **all motions, memoranda of law and contested matters (i.e., objections and related proceedings/filings)**. All working copies submitted to the Court must include a copy of the **NYSCEF Confirmation Notice** firmly fastened as the front cover page of the submission and comply with other requirements set forth in the Bronx County Protocol. Working copies without the Confirmation Notice will not be accepted. **No action shall be taken on a proceeding unless working copies are received by the court.**

E. **Hard Copy Submissions.** The Court will reject any hard copy submissions in e-filed cases unless those submissions bear the **A NOTICE OF HARD COPY SUBMISSION - E-FILED CASE** form required by Uniform Rule 207.4-a(e)(10). The form is available at www.nycourts.gov/efile.

F. **Envelopes.** Filers requesting any documents must provide the court with self-addressed stamped envelopes bearing adequate postage for the return. The court will not mail documents back to the filer without such properly stamped envelopes. If self-addressed stamped envelopes are not provided, the court will place the documents into the attorney pick-up bin drawer located in our office.

II. COMMUNICATIONS WITH THE COURT

A. **Correspondence.** Correspondence to the Court and the Chief Clerk (hereafter, the “Clerk”) shall be copied to all parties that have appeared and must include the Surrogate Court’s File Number. Correspondence between the parties 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. Correspondence should not be submitted, and will not be considered, in determining motions, etc. The Court will only act upon appropriate application or proceeding and does not permit litigation by correspondence.

B. **Telephone Calls.** Telephone calls to Court staff should be limited to situations requiring immediate attention that cannot otherwise be attained by correspondence.

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. **Faxed correspondence shall not exceed three (3) 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.

III. ADJOURNMENTS

A. **Adjournment of Conferences.** An adjournment of a conference may be requested on consent of all parties. Even if a requested adjournment is on consent, the request must also be approved by the Court before it will be deemed granted. The party requesting an adjournment must submit the adjournment request to the Court, on notice to all parties. A request to adjourn a conference should be delivered to this Court at least 48 hours prior to the scheduled appearance. Unless good cause is shown, no more than two adjournments of a conference shall be permitted on any matter. A written request must:

(1) identify the current date of the scheduled conference;

(2) identify the number of adjournments that have previously been requested, if any;

- (3) state whether the request is made on consent of all counsel; and,
- (4) identify the proposed adjourned date, after consultation with the clerk.

B. Adjournment of Motion Return Dates.

(1) On consent: The party seeking the adjournment of a motion with the consent of the other parties shall notify the Court in writing of the agreed upon adjournment date at least 24 hours prior to the return date. Even if a requested adjournment is on consent of all parties, the request must also be approved by the Court before it will be deemed granted.

(2) Without consent: In those situation where an opposing party does not consent to the adjournment, a party requesting an adjournment shall submit a letter to the Court, with notice to all parties, at least 48 hours prior to the return date providing good cause as to why the adjournment should be granted. Parties opposing the request may submit a brief response setting forth their reasons for objecting.

C. 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 dispositive motion is pending before the Court, the movant may contact the Court in writing, with notice to all parties, at least 48 hours in advance to request an adjournment of the appearance.

IV. COURT CONFERENCES AND CALENDAR CALLS

A. Court Conferences and Calendar Calls. Except as otherwise provided in paragraph B below, conferences and calendar calls are held in Room 406 of the Bronx County Courthouse located at 851 Grand Concourse, Bronx, New York 10451. The Court calendar is regularly called on Tuesdays at 9:30 a.m. and Thursdays at 9:30 a.m. Conferences with court attorneys are regularly held on Thursdays. **The failure to appear at a scheduled calendar call or conference may result in appropriate relief, including default pursuant to 22 NYCRR 202.27 and/or dismissal of the proceeding.** If a conference is deemed necessary, it will occur immediately following the call of the calendar unless otherwise scheduled with the approval of the Court. Pursuant to §130-2.1 of the Rules of the Chief Administrator of the Courts, the Court may impose financial sanctions and award costs and reasonable attorney's fees against any attorney who, without good cause, fails to appear at a time and place scheduled for an appearance in any action or proceeding.

B. Virtual Appearances. Until further notice is given, all appearances by attorneys and parties on any matter will be conducted by virtual (remote) means such as videoconferencing (e.g., Microsoft Teams) or joint telephone calls. You should continue to check the Court's website for updates and information as to when the Court will resume having attorneys and parties come into the Courthouse. Prior to a scheduled court date, a litigant/party must contact the Court's Calendar Clerk to confirm how the appearance shall be virtually conducted. The Court's Calendar Clerk can be reached at 718-618-2373 or by e-mail at VirtualBronxSurrogatesCourt@nycourts.gov.

C. Adjournments. As a matter of general practice, requests for adjournments of motions, conferences, and hearings and trials are discouraged. All adjournment requests must be in writing and either on consent of all parties, or on prior notice to such parties. **A request for an adjournment, even if on consent of all parties, is NOT effective unless and until approved by the Court.** Applications for adjournments must be made in writing and received by the Court (by e-filing, letter or email) not less than forty-eight (48) hours in advance of the scheduled conference, etc. and shall state: (1) good cause why the adjournment is being sought, and (2) whether the other parties consent or object to the application. The

party seeking the adjournment may also suggest an approximate time period for the adjournment, and/or a date certain to which the conference, etc. should be adjourned. All communications with the Court must be contemporaneously copied to all other parties and pro se litigants in accordance with the correspondence rules above. All requests for adjournments of a trial, fact finding or hearing submitted after the scheduling of the same, shall be subjected to the strictest scrutiny.

D. Appearances by Counsel with Knowledge and Authority. All counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing of counsel to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

E. 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 seven (7) days in advance.

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 seeks to be relieved and discharged and there is no proposed 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 pending determination of the motion to be relieved.

V. MOTIONS AND ORDERS TO SHOW CAUSE

A. Return Dates. Motions made by Notice of Motion shall be made returnable on any Tuesday when the Court is in session. Return dates for Orders to Show Cause shall be determined by the Court. Appearances are required on motion return dates unless directed by the Court that no appearance is necessary.

B. Format. With the exception of e-filed motions, courtesy copies of motion papers are not necessary. All affirmations, affidavits and memoranda of law must contain numbered pages and exhibit tabs. If a motion submitted to the Court is not electronically filed, it shall not be stapled, but securely fastened together by a means that allows the motion papers to be scanned.

C. Disclosure Motions. It is the policy of this Court to make itself and its staff available to resolve disputes related to pretrial disclosure. Therefore, if a dispute over disclosure arises that cannot be resolved by the parties own diligent, good faith efforts, the aggrieved party shall notify the Court and a conference will be scheduled. A motion related to disclosure is not to be made by any party, in any type of a proceeding, unless authorized by the Court after conferencing fails.

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. **COUNSEL SHALL IMMEDIATELY NOTIFY THE COURT WHEN IT BECOMES UNNECESSARY TO DECIDE A MOTION. A FAILURE TO DO SO MAY RESULT IN SANCTIONS.**

E. Motions Seeking Temporary Injunctive Relief. Any application for temporary injunctive relief shall include 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 the notice.

F. Summary Judgment Motions. Summary judgment motions shall be filed with the Court and served upon all other parties no later than 120 days after the filing of the Note of Issue. If an application to extend the time to make such a motion has been granted by the Court, the moving party must so state in the motion papers.

G. Proposed Orders, Judgments and Findings of Fact. All proposed orders, judgments and findings of facts are to be submitted with notice of settlement on at least 10 days' notice. Proposed Judgments or Orders shall be submitted on all unopposed motions. A conformed copy of an order, judgment or decree will be mailed back to the submitting party only when it is accompanied by a sufficiently stamped, self-addressed envelope.

VI. PRETRIAL CONFERENCES

A. At the pretrial conference, the Court shall schedule a date certain for trial of all outstanding issues. The Court will also explore referring the case to a referee, if appropriate.

B. The Court will explore limitation of issues for trial, including any application that counsel anticipates making to limit or preclude testimony or other evidentiary matters. If an evidentiary issue cannot be resolved by the Court at the pretrial conference, a motion *in limine* briefing schedule shall be established. The intent of this rule is to avoid *in limine* applications on the eve or, or during, trial of a matter. Failure to bring an *in limine* application before the Court in a timely manner may result in summary denial of the application.

C. Counsel should be prepared to discuss settlement and should have full authority from their respective clients.

VII. TRIALS

A. **Trial Dates.** Once scheduled, all trial dates shall be deemed firm. Accordingly, it is expected that clients, witnesses, experts and others will be timely advised of scheduled dates to avoid last minute claims of unavailability.

B. **Pretrial Settlement Conference.** At the pretrial conference, all counsel must be present and prepared to engage in good faith settlement negotiations. All counsel must be vested with the full authority to negotiate and settle the matter. All parties are to either be present or available by telephone. A party represented by an attorney without authority to negotiate and settle the matter may be considered in default, and the Court may issue appropriate orders including dismissal of a proceeding, or other appropriate relief.

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

(1) Pretrial memorandum of law addressing any known disputed legal issues that must be determined by the Court.

(2) A list of all potential witnesses for each party along with a brief statement of proof. A witness not identified in the witness list, 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.

(3) 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, 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 writing, filed with the Court on notice to all parties, no later than fifteen (15) days prior to the date of trial.

E. Non-Jury Trial. Unless the Court directs otherwise, the parties shall obtain (at their expense) a copy of the trial transcript. Following the close of evidence and receipt of the trial transcript, counsel shall also present the Court with proposed findings of fact and proposed conclusions of law. 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.

F. Jury Trial.

Until further notice is given, all jury trials in this Court have been adjourned without being given a new date. You should continue to check the Court's website for updates and information as to when the Court will resume conducting jury trials.

(1) The Court will conduct a preliminary charge conference at 9:00 a.m. on the morning of the first day of jury selection. In complex matters, the Court reserves the right to schedule the preliminary charge conference for a date prior to trial.

(2) At the preliminary charge conference, each party shall provide the Court and all other parties with:

a. The trial notebook described above.

b. A complete list of suggested jury charges. The charges will be drawn from the Pattern Jury Instructions (PJI). Unless counsel seeks a deviation from or an addition to the pattern charge, only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted, together with any supporting legal precedents. Upon request, counsel shall promptly submit the proposed revision or addition to the pattern charge to the Court in an electronic format convertible to WordPerfect. Amendments to the suggested jury charges will be permitted at the final charge conference following the close of evidence;

c. A proposed verdict sheet. The proposed verdict sheet shall be jointly prepared by counsel and presented to the Court in a typed final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet. Upon request, counsel shall promptly submit the proposed verdict sheet to the Court in an electronic format convertible to Microsoft Word.

(3) At the preliminary charge conference, counsel for all parties shall also be prepared and shall have the requisite authority:

a. to stipulate to undisputed facts and the admissibility of clearly admissible documents and records;

b. to discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial; and

c. to alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling.

G. Post-Trial Submissions. Motions brought by a party after jury trial pursuant to CPLR 4403 or CPLR 4404 must be supported by a copy of the trial transcript. Unless otherwise directed by the Court, in accordance with the schedule set by the Court at the conclusion of a bench-trial or hearing, the parties shall jointly submit a trial transcript, and each party shall prepare and submit a post-trial memorandum.

VIII. SETTLED AND DISCONTINUED CASES

The parties shall immediately provide the Court with written notice whenever a case has been settled or otherwise disposed. Following the initial notification, counsel shall file a fully executed duplicate original stipulation of discontinuance with the Clerk's Office.

IX. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

All disputed matters shall be referred to some form of ADR. Settlement conferences will be an integral part of the Court's ADR program, occurring early and frequently during the litigation process. In addition, the Surrogate shall refer disputes between the parties to mandatory mediation. The rules of the Bronx Surrogate's Court mediation program can be found at <http://ww2.nycourts.gov/alternative-dispute-resolution-adr-bronx-surrogates-court-29661>.

X. ARTICLE 17-A PROCEEDINGS

Absent an emergency, all hearings for Article 17-A proceedings shall be heard by the Surrogate on a Wednesday at 9:30 a.m. and 2:30p.m. or as designated by the Court. **Such hearings may be conducted virtually.** At the hearing, the Court shall only consider medical evaluations of persons alleged to be intellectually or developmentally disabled that have been performed within one (1) year of the hearing date. This requirement, however, may be relaxed by the Court under compelling circumstances.

XI. FIDUCIARY APPOINTMENTS

A. Part 36 Requirement. In order to be eligible for appointments to serve as a guardian ad litem (GAL), referee, receiver, or attorney for receiver, counsel must qualify for and appear on the Part 36 list promulgated by the Office of Court Administration.

B. Forms. Appointed attorneys or receivers must compete and file each of the following forms:

- (1) Notice of Appointment (UCS-872)
- (2) Statement of Approval of Compensation (UCS-875)
- (3) Certificate of Compliance (UCS-872)

C. Affirmation of Services/Proposed Orders. Affirmations of legal services and proposed orders shall be submitted with notice of settlement on at least 10 days' notice or by notice of motion.

