

SURROGATE'S COURT, KINGS COUNTY

HON. ROSEMARIE MONTALBANO
SURROGATE

HON. BERNARD J. GRAHAM
SURROGATE



JOINT PART RULES EFFECTIVE JANUARY 2023

Kings County Surrogate's Court
2 Johnson Street
Brooklyn, NY 11201
347-404-9700
KingSurr-Montalbano@nycourts.gov
KingSurr-Graham@nycourts.gov

Lisa Mathis, Chief Clerk
347-404-9700
KingSurr-chiefclerk@nycourts.gov

1. 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 Kings County Surrogate's Court unless explicitly directed otherwise in these Part Rules.

2. Communication With The Court

A. Correspondence. Correspondence to the Court and the Chief Clerk shall be copied to all parties that have appeared and must set forth the name and file number of the case to which it pertains. Correspondence between attorneys and/or self-represented 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. 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. *Ex Parte* Communications. *Ex parte* communication with the law department and chambers is strictly prohibited, except where an Order to Show Cause is submitted for signature, or with the prior consent of all parties during settlement negotiations.

3. Court Calendar Calls and Conferences

The Court's process and motion calendars are regularly called at 10:00 a.m. and 11:30 a.m., respectively on Tuesdays for Surrogate Montalbano and on Thursdays for Surrogate Graham. If a conference is deemed necessary, it will occur either immediately following the call of the calendar or at an alternate time scheduled by the Court. 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. Further, 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. All parties are to either be present or available by telephone at all pretrial and settlement conferences, unless otherwise directed by the Court.

4. Appearances

A. Knowledge and Authority. All counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements/stipulations as to both substantive and procedural matters on behalf of their client(s). Attorneys appearing of counsel to the attorney of record shall be held to the same requirement. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented litigants must be on time for all scheduled appearances.

B. Appearances. All Court proceedings are conducted in-person. As an accommodation, the Court may permit virtual appearances in extenuating circumstances. Please make an application through the appropriate department and email the appropriate Surrogates' chambers for such accommodation. All virtual appearances will be conducted via Microsoft TEAMS. Any matter conducted virtually is a formal proceeding and is akin to an in-person appearance. Parties and counsel should be dressed appropriately and guided accordingly.

C. 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 by emailing kingsurr-urgency@nycourts.gov at least seven (7) days in advance.

D. Substitution/Withdrawal of Counsel. All substitutions of counsel must be in writing, signed by the client, the incoming and outgoing attorneys, 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.

5. Urgent Matters

A matter will not be deemed urgent unless an affidavit/affirmation of urgency is filed. The filing may occur at any point during the pendency of the proceeding. **A copy of the NYSCEF Confirmation Notice must be emailed to kingsurr-urgency@nycourts.gov.**

6. Service of Process

A. Proofs of Service. Uniform Rule § 207.7(c) will be strictly enforced. All proofs of service must be filed two (2) days prior to the return date. Proofs filed late may not be reviewed prior to the return date. Further, late filings may necessitate an additional appearance at a future court day and delay the issuance of decisions and decrees.

Surrogate Montalbano: As the return date for the Court's calendar is on Tuesdays, proofs of service **must** be filed no later than the preceding Friday by 12:00 p.m. (or the preceding Thursday by 12:00 p.m., if the Monday or Friday before calendar is a holiday).

Surrogate Graham: As the return date for the Court's calendar is on Thursdays, proofs of service **must** be filed no later than the preceding Tuesday by 12:00 p.m. (or the preceding Monday by 12:00 p.m., if the Tuesday or Wednesday before calendar is a holiday).

B. Applications for Alternative Service. The Court will not issue an order for alternative service pursuant to SCPA § 307(3), until it is demonstrated that there have been three (3) attempts at personal service, on different days and different times, over a two-week period.

7. General Procedures

A. Self-Addressed Stamped 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.

B. Original Documents.

- i. The Court requires the following documents to be filed in original form:
 - a. Death Certificates of the decedent;
 - b. Purported Last Will & Testaments of the decedent;
 - c. Bonds; and
 - d. Exemplified and Certified Copies
- ii. Applications requiring such documents shall not be processed until the originals are received. Originals must be delivered to the Court within two (2) business days after such documents have been electronically filed. If the requisite originals are not

received within sixty (60) days of an applicant's filing, the application shall be deemed discontinued.

- iii. **Do not unstaple original Wills when photocopying or scanning.** A staple affidavit will be required if it appears that the original Will was unstapled.

C. Working Copies. Parties shall submit a working copy within two (2) business days following electronically filed documents of:

- i. accounting with schedules;
- ii. affidavits of due diligence and exhibits in excess of six (6) pages; and
- iii. all proposed orders to show cause

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. 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.**

D. Notices of Appearance. Pursuant to SCPA § 401(3) and 22 NYCRR 207.9(b), attorneys appearing on behalf of nondomiciliaries or parties not personally served within the state must furnish acknowledged evidence of authority.

E. Email Address. All petitions, other pleadings and notices of appearance must contain a valid email address for the attorney of record or self-represented litigant.

F. Amended Petitions. A full amended petition is required to amend the following:

- i. the relief;
- ii. to remove, replace or add parties; and/or
- iii. where there have been two prior amendments by affirmation or affidavit.

All other amendments may be made by affirmation or affidavit.

G. Reply to Objections. Reply to objections will not be accepted or considered.

H. Adjournments. A request for an adjournment, even if on consent of all parties, **is not effective** unless and until approved by the Court. The party requesting an adjournment must submit a written request at least 48 hours prior to the scheduled appearance to the appropriate department, on notice to all parties. The written request must (1) identify the current date of the scheduled appearance; (2) identify the number of adjournments that have been previously requested, if any; (3) good cause why the adjournment is being sought; (4) whether the other parties consent or object to the request; and (5) identify the proposed adjournment date. All communication with the Court must be contemporaneously copied to all other parties and self-represented litigants in accordance with the correspondence rules above. Unless good cause shown, no more than two (2) adjournments shall be permitted on any matter.

8. Article 17-A Guardianships

Respondents in guardianship hearings are encouraged to appear in-person, if physically capable. Virtual appearances will be at the discretion of the Surrogates.

9. Motion Practice

A. Return Date. Motions made by Notice of Motion shall be made returnable on any Tuesday when the Court is in session for Surrogate Montalbano and on any Thursday when the Court is in session for Surrogate Graham. The motion calendar is called at 11:30 a.m. Return dates for Orders to Show Cause shall be determined by the Court, if entertained.

B. Appearances.

Surrogate Montalbano

- i. **Motions.** The motion calendar is a submission calendar only. Appearances are not required on fully submitted motions unless directed by the Court or unless oral argument is requested in writing. **Appearances are required for oral argument.**
 - a. **Oral Argument.** **Arguments are upon written request only.** A party may request oral argument on a notice of motion, order to show cause, or answering paper in the area across from the caption of the proceeding.
- ii. **Orders to Show Cause.** Appearances are required on the return date.

Surrogate Graham

- i. **Motions and Orders to Show Cause.** All motions, whether made by notice of motion or order to show cause, shall be argued in-person and not taken on submission.

C. Motions Seeking Temporary Injunctive Relief. Any application for temporary injunctive relief shall include either: (1) 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 giving the notice.

D. Withdrawal of Motions. If a matter has been resolved and the parties no longer require a decision from the Court, counsel or self-represented litigants are directed to immediately notify the Court in writing. Failure to immediately notify the Court when it becomes unnecessary to decide a motion, may result in sanctions.

E. Sur-reply. Sur-replies will not be accepted or considered, unless otherwise directed by the Court.

10. Settled And Discontinued Cases

Counsel and self-represented litigants shall immediately provide the Court with written notice whenever a case has been settled or otherwise disposed. Following the initial notification, counsel

or self-represented litigants shall file a true copy of the fully executed stipulation of settlement or discontinuance with the clerk's office.

11. Guardian *ad Litem*

In order to be eligible for appointments to serve as a guardian *ad litem*, counsel must qualify for and appear on the Part 36 list promulgated by the Office of Court Administration. Guardian *ad litem*s are directed to file timely reports and interim reports when appropriate. Those who wish to be considered for appointments are encouraged to write to the Surrogates as to their interest, qualifications and hourly rate.

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