

INDIVIDUAL PART RULES OF

HON. BRANDON R. SALL, WESTCHESTER COUNTY SURROGATE

Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
19th Floor
White Plains, New York 10601 Main number: (914) 824-5656

Principal Law Clerk: Amy Thompson Carvelli, Esq. email: acarvell@nycourts.gov

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E-FILING RULES OF THE COURT

With certain exceptions, E-filing is mandatory in the Westchester County Surrogate's Court for all Administration, Probate, Accounting, and Miscellaneous matters. Surrogate's Court proceedings are filed through the New York State Courts E-Filing system (NYSCEF), which can be found at <https://iapps.courts.state.ny.us/fbem/LoginFormSevlet>. All submissions to the court, including proposed orders, proposed judgments, and letters, must be electronically filed. An original death certificate and Last Will and Testament, if applicable, must be delivered to the court 48 hours after a case has been E-filed.

All original documents that are E-filed must be retained by the filer or their attorney, pursuant to Uniform Rules §207.4-a(f)(2).

E-Filing is not mandatory if the matter concerns a Voluntary Administration, Guardianship proceeding, or any matter brought by an unrepresented litigant (i.e., "pro se" litigant).

In certain situations, attorneys may file an "Opt-Out" of participation in the E-filing mandate by the court, as appropriate. The notice can be found at

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.of.optout.surr.pdf>.

All parties must familiarize themselves with the statewide E-filing Uniform Rules §207.4-a and §207.4-aa, available at <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation.htm> and the Westchester County E-filing Protocol.

General questions about E-filing should be addressed to the E-filing Resource Center at efile@courts.state.ny.us. Specific questions relating to local procedures should be addressed to the Chief Clerk's office at (914) 824-5626 or Deputy Chief Clerk's office at (914) 824-5640.

NOTICE: The court appreciates the submission of working copies of electronically filed documents for Miscellaneous and Accounting matters where the page count is greater than 50 pages. Please include a copy of the NYSCEF Confirmation Notice.

GENERAL RULES OF THE COURT

SERVICE OF PROCESS

The court will not direct an alternative to service under SCPA §307(1), until it can be demonstrated that there have been four (4) attempts at personal service, on different days and different times, including one Saturday (unless the party is observant of this day), over a 2-week period.

All proofs of service must be filed two (2) days prior to the return date, 22 NYCRR §202.7(c). Proofs filed late may not be reviewed prior to the return date, and late filing may necessitate an additional appearance at a future court date and a delay in the processing of petitions. (Since the court's return date is usually on a Wednesday, proof of service must be filed by Monday.)

PUBLIC ADMINISTRATOR

In matters involving the Westchester County Public Administrator, please contact the Public Administrator for more information at: (914) 995-3700, or visit their website: [About \(westchestergov.com\)](http://www.westchestergov.com).

COMMUNICATION WITH THE COURT

1. Correspondence: All correspondence to the court shall be copied to all parties and set forth the name and file number of the case to which it pertains. For all cases that are commenced through E-filing, correspondence must be electronically filed. Correspondence from court personnel received by email may be responded to by email. Unless otherwise directed, correspondence between attorneys and/or self-represented litigants shall not be copied to the court. Further, the court does not permit litigation by correspondence. Correspondence should not be submitted, and will not be considered, in determining anything; except for a Fassig letter from a Guardian ad litem.
2. Mail: 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.

3. Telephone Calls: Telephone calls shall be limited to situations requiring immediate attention which cannot be addressed by written correspondence. Requests for adjournments WILL NOT be entertained by telephone (see below for process).
4. Ex Parte Communications: *Ex parte* communications with the law department and chambers are strictly prohibited, except where an Order to Show Cause (OSC) is submitted for signature, or upon consent of all parties during settlement negotiations.

PRELIMINARY/TEMPORARY LETTERS

Any Order granting Preliminary or Temporary Letters will provide that such Letters will expire six (6) months after the date of issuance. The Order may further provide that the petitioner must post a bond for the full or partial amount of the estate assets alleged in the petition. Preliminary or Temporary Letters may be of limited authority as determined by the court.

Preliminary or Temporary Letters may be renewed on an Affirmation prior to their expiration provided in the Order. If the Preliminary or Temporary Letters have expired, a new application on notice is required with an inventory of what assets have been marshalled.

NON-MARITAL ISSUE AND POST-DECEASED ISSUE

EPTL §4-1.2 sets forth the rights to inherit for a decedent by non-marital children. Specifically, EPTL §4-1.2 (a)(2) defines when a non-marital child is a legitimate child of the father.

When you have a male decedent with all of his children being non-marital issue, you need to either provide an Order of Filiation or an Acknowledgment of Paternity. If none exists, then the next presumptive class of distributees would be necessary parties in the petition and jurisdiction must be obtained over them. Also, an Affidavit of Heirship and a Family Tree Affidavit must be submitted that includes information through the next presumptive class of distributees. If some children are non-marital and some are marital, then the next presumptive class of distributees need not be listed, as the potential contest would be between the same class of distributees.

The same concept applies to post-deceased distributees who left non-marital issue.

COURT CONFERENCES AND CALENDAR CALLS

Unless otherwise advised, Surrogate Sall's court conferences and calendar calls are held in person at the Westchester County Surrogate's Courthouse located at 111 Dr. Martin Luther King, Jr. Blvd., 18th Floor, Courtroom 1800, White Plains, New York 10601. The court calendar is regularly called on Wednesdays at 9:30 am. **The failure to appear at a scheduled calendar call or conference may result in a default pursuant to 22 NYCRR §202.27 and/or CPLR §3215.** 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.

1. Scheduling: Counsel/parties should address questions about scheduling appearances or adjourning appearance to the Calendar Clerks: Iesha Etheridge, ietherid@nycourts.gov or Anthony Guarente, aguarent@nycourts.gov.
2. Adjournments: As a matter of general practice, request for adjournments of motions, conferences, and hearings and trials are discouraged.

NOTE: 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 NOT LESS THAN 48 HOURS in advance of the scheduled calendar or conference date, 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 calendar or conference date, etc., should be adjourned.

All communications with the court must be contemporaneously copied to all other parties and self-represented 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.]

3. Appearance 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. Although counsel may file a notice of appearance as trial counsel to the attorney of record, attorneys may not appear “of counsel” to the attorney of record. All counsel and self-represented parties must be on time for all scheduled appearances.

MOTION PRACTICE

1. Motion Calendar and Appearances: All motions/proceedings brought on by notice of motion or notice of petition shall be made returnable before the court, for Surrogate Sall, on any WEDNESDAY the court is in session (as outlined above); and for the Acting Surrogate on the third THURSDAY of the month. Appearances are not required on motions unless directed by the court or unless oral argument is requested in writing and granted.

Time for Filing and Serving (Unless a different time and briefing schedule has been set by the court.)

2. 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.
3. 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. Unless directed by the court, a motion related to disclosure is not to be made by any party, in any type of proceeding.

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

TRIALS

Once scheduled, trial dates are deemed firm.

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 pursuant to CPLR §3215 and 22 NYCRR §202.27.

Jury Charges: In all jury trials, a complete list of proposed requests to charge shall be submitted to the court immediately preceding the commencement of trial, with copies to be provided to all other counsel and self-represented parties. If deviations from, or additions to, the Pattern Jury Instructions (PJI) are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedent. In addition, such proposals shall be submitted in a format convertible to Word.

Verdict Sheet: The parties shall jointly prepare and submit a verdict sheet to the court. If agreement cannot be reached as to the same, each party shall prepare and submit a proposed verdict sheet to the court and other parties. A proposed verdict sheet must be in a final typewritten form sufficient to submit to the jury. The proposed verdict sheet shall also be submitted in a format convertible to Word.

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, the parties shall jointly submit a trial transcript, and each party shall prepare and submit a post-trial memorandum.

Settled and Discontinued Cases: Counsel shall immediately notify the court of a settled or discontinued matter. Following the initial notification, counsel shall file a fully executed duplicate original stipulation of discontinuance with the clerk's office.