

# Combined Individual Part Rules: **Surrogate's and Supreme Court**

HON. KEITH J. CORNELL

## Contact Information:

Rockland County Courthouse  
One South Main Street  
New City, New York 10956

Courtroom: Courtroom 10  
Supreme Clerk Phone: (845) 483-8350  
Surrogate's Clerk Phone: (845) 483-8270

## Chambers Staff:

Principal Law Clerks: Aimee Pollak, Esq. Julie Weinstein, Esq.  
Email: apollak@nycourts.gov jweinste@nycourts.gov

Secretary: Hadassah Sabo Milner  
Email: hemilner@nycourts.gov

Supreme Court Part Clerk: Tara Lupi  
Email: tlupi@nycourts.gov

Surrogate's Clerk's Office:  
Chief Clerk: Heather Barney  
hbarney@nycourts.gov

These Rules supplement and, where inconsistent with, supersede the Uniform Civil Rules for the Supreme and County Court, 22 NYCRR § 202.1 et seq., and the amendments thereto, which became effective February 1, 2021.

**Surrogate's Court Procedure Act, Estates Powers and Trusts Law and Part 207 of the Uniform Rules.** Counsel and pro se parties are expected to be familiar with the Surrogate's Court Procedure Act ("SCPA"), the Estates Powers and Trusts Law ("EPTL") and the Uniform Rules for Surrogate's Court, found at 22 NYCRR § 207. Lack of familiarity with Surrogate's Court procedure will not be deemed a valid excuse for failure to comply with the SCPA, EPTL or Part 207. Official forms in fillable versions are available on the court website at [www.nycourts.gov](http://www.nycourts.gov) and are preferred to all other online forms (i.e., NYSBA, Matthew Bender, HotDocs, etc.).

Part Rules as of August 2024

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### I. Communications with the Court

- A. Ex Parte Communications. *Ex parte* communication with the Court is prohibited.
- B. Written Correspondence – Supreme Court: All correspondence to the Court must include the full Title and Index Number. Correspondence in Supreme Court cases must be transmitted to the Court via NYSCEF. (In cases that are not e-filed, correspondence to the Court must e-mailed to the Supreme Court Part Clerk or Surrogate’s Office Clerk and copied to all parties)
- C. Written Correspondence – Surrogate’s Court: DO NOT e-file correspondence in matters pending in Surrogate’s Court. All correspondence should include the Surrogate’s File Number and be emailed to the Surrogate’s Court Chief Clerk and Deputy Clerk and copied to all parties.

**Do not copy the Court on correspondence between counsel and/or self-represented parties.**

- D. Written Communication with Chambers: Correspondence should never be emailed directly to the Judge, his personal assistant, or the Court Attorney. Correspondence must be sent through NYSCEF for Supreme Court matters or emailed to the Chief and Deputy for Surrogate’s matters.

E. Telephone Calls: Phone calls to the Court are strongly discouraged. Telephone calls to Chambers are permitted only in situations requiring immediate attention that cannot otherwise be addressed by email.

F. Fax transmissions: The Court does not accept any submission by fax transmission.

G. Requests for Status Updates. **STATUS UPDATES WILL NOT BE PROVIDED**. Pending matters are reviewed in the order that they are received. The Court makes every effort to issue written decisions and orders within 60 days of the matter being marked fully submitted.

## II. Filing of Papers

A. E-filing: Supreme Court and Surrogate's Court are e-filing courts. **All documents are to be filed through the New York State Courts E-Filing System (NYSCEF)** unless otherwise directed in these rules, or documents subject to the opt-out provision of § 202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to e-filing in which consent is being withheld.

Pursuant to Surrogate's E-file protocol, the Original Last Will and Testament and Certified Death Certificate must be submitted within three business days of e-filing.

Counsel and self-represented litigants shall familiarize themselves with the statewide E-Filing Rules (§§ 202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile)), the Rockland County E-Filing Protocol, and the Surrogate's Court e-filing protocols, which can be found here:  
[https://www.nycourts.gov/LegacyPDFS/courts/9jd/efile/surrogate/rockland\\_surr\\_protocol.pdf](https://www.nycourts.gov/LegacyPDFS/courts/9jd/efile/surrogate/rockland_surr_protocol.pdf)

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or [efile@nycourts.gov](mailto:efile@nycourts.gov). Specific questions about local procedures should be addressed to the Chief Clerk's Office at (845) 483-8310.

B. Exhibits to Papers: Plaintiffs/Petitioners/Movants shall designate exhibits by number. Defendants/Respondents/Objectants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party. **Each exhibit shall contain only a single document separately uploaded to NYSCEF**. Exhibits shall be specifically referenced in the papers.

C. For those who qualify to opt out of e-filing in SURROGATE'S COURT ONLY:. All papers filed with the Surrogate's Court are scanned upon receipt, so all submissions should be bound with removable clips. DO NOT STAPLE. 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 originally signed copy of any submission is necessary.

D. Surrogate's Court Proof of Service: Pursuant to 22 NYCRR § 207.7(c), proof of service must be e-filed by 5:00 on the Friday preceding the Tuesday of the return date, except in cases where Monday or Friday is a holiday, then proof of service must be e-filed by 5:00 on Thursday. **Proof of**

**service of Citations must be submitted in the form directed by the Clerk.** Late filing of proof of service will result in adjournment of the return date and delay of issuance of decisions and decrees.

### **III. Calendar Calls & Appearances**

A. Time. The Court's calendar will be called at **9:30 a.m.** daily unless the parties are advised otherwise. Counsel and self-represented parties are expected to appear on time.

B. Conflicts: Counsel who have conflicting appearance before this Court and another Court must communicate that fact to the Court prior to the date of appearance so that the conflict can be reconciled. Do not ask opposing counsel to advise the Court of conflicting appearances when the case is called. The Court may proceed in that counsel's absence.

C. Emergencies. If counsel or a party is unable to appear on time due to unforeseen circumstances (i.e., inclement weather, illness, road closures), please contact opposing counsel and advise the Part Clerk or the Surrogate's Court's Clerk staff by telephone as soon as possible.

D. Non-Appearance at Scheduled Conferences and Appearances. The failure of any attorney or *pro se* litigant to appear for a scheduled conference or citation return date may be treated as a default and may, when appropriate, result in the dismissal of a pleading or any other appropriate remedy authorized by 22 NYCRR § 202.2.

E. Appearance by Parties. In matrimonial actions, litigants must appear with their counsel for all conferences unless such appearance is excused by the Court. In all other actions, represented parties need not appear for conferences unless directed to do so by the Court.

F. Authority. Only counsel who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. Counsel for the plaintiffs/petitioners must be prepared to make a settlement demand, and counsel for the defendants/respondents must be prepared to respond to the demand. **Please note that failure to comply with this Rule may be treated as a default for purposes of 22 NYCRR § 202.27 and/or may be treated as a failure to appear for purposes of 22 NYCRR § 130.2.1.** Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant, as well as the name, claim number and phone number of the adjuster assigned to the matter.

G. Adjournments of Appearances.

1. Requests for adjournments are discouraged.
2. Requests to adjourn in **SUPREME COURT** must be made in writing and filed **via NYSCEF** (an email requesting an adjournment will only be considered in non-e-filed cases). Requests should be made at least 48 hours in advance.
3. Requests to adjourn in **SURROGATE'S COURT** may be made by **email to** the Chief Clerk and the Deputy Clerk and copied to all counsel and self-represented parties. Requests should be made at least 48 hours in advance.

4. All applications for adjournments must set forth the reason why an adjournment is necessary and the length of the adjournment sought or a date all parties are available with an indication that the requested date was discussed and agreed upon by all parties.

5. If adjournment sought is **not on consent**, the requesting party must briefly set forth why the adjournment is necessary, the length of the requested adjournment, and the reason offered by the non-consenting party for his/her lack of consent, if known. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her position has been stated incorrectly. No further communication concerning the request for adjournment will be permitted. The request and the response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

The Court will advise the requesting party by court notice via NYSCEF for Supreme Court cases, or by email in non-e-filed cases and Surrogate's Court cases, whether the requested adjournment has been granted. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.

#### **IV. Preliminary Conferences – Supreme Court**

The Court will schedule a Preliminary Conference within 45 days after a Request for Judicial Intervention (RJI) has been filed on a matter. The Part Clerk will forward to the party filing the RJI a letter or email setting forth the date on which the Preliminary Conference will be conducted. The party who files the RJI shall advise all other parties of the date in writing.

At the Preliminary Conference, the Court will set specific dates for completion of various items of discovery, the date by which all disclosure must be completed, and a date for a Compliance Conference. All counsel and self-represented litigants are expected to abide by and comply with the Court's discovery schedule and deadlines.

**No modifications of the dates set by the Court are permitted except by Order of the Court.**

Counsel are generally referred to 22 NYCRR § 202.12(c) concerning the conduct of the Preliminary Conference and the matters to be considered. Counsel in medical, dental, and podiatric malpractice actions are referred to 22 NYCRR § 202.56(b) and counsel in matrimonial actions are referred to 22 NYCRR § 202.16 and DRL § 236(B)(4) for other specific requirements in such cases.

#### **V. Discovery Disputes – Supreme and Surrogate's Court**

A. Generally: Counsel should make every effort to resolve discovery disputes amongst themselves and avoid discovery motions. DO NOT copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court.

B. Dispute Resolution. If the parties reach an impasse, the party seeking discovery or objecting to the discovery demands may request a conference with the Court Attorney for assistance in resolving the issues.

C. Motions to Compel. Leave of Court shall be **required** before making motions related to discovery disputes. All discovery motions must include an affidavit per 22 NYCRR § 202.7(c) detailing the good faith efforts made by counsel to resolve the issues prior to filing the motion. A pro forma letter will not constitute a good faith effort.

**Exception for Pro se Parties:** Where an Order of Protection prohibits one party from contacting another party, the party who believes that discovery is not being complied with shall contact the court for assistance.

D. Depositions: Counsel are expected to abide by the Uniform Rules for the Conduct of Depositions, 22 NYCRR § 221.1, et seq., in particular section 221.2, which prohibits, except in certain instances, directing a witness not to answer a question. Rulings concerning disputed objections may be obtained by contacting the Court.

## **VI. Other Conferences – Supreme and Surrogate’s Court**

A. Compliance Conference. The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed at the Preliminary conference or Surrogate’s Court status conference. At the compliance conference, the Court will ensure that discovery proceeded as scheduled.

**Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute to the Court's attention.** Such parties shall comply with the procedures set forth above in Discovery Disputes.

The Court will require an update on settlement efforts at this conference. Counsel must be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held. As noted above, in all cases where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant, as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may contact the claims adjuster by telephone or direct that the claims adjuster shall appear for a conference.

If the matter is ready for trial, the Court will direct that a Note of Issue be filed. Counsel shall not file a Note of Issue until directed by the Court.

B. Pretrial/ Settlement Conference. Pretrial Conference with all counsel and self-represented parties will be conducted before the commencement of jury selection or of the non-jury trial. Counsel must be fully familiar with the action and authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers, witness scheduling, and trial procedure including, for example, whether any party or witness will require a translator. Counsel must also be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The Court will

explore limitation of issues for trial (e.g., whether liability may be conceded or certain claims or defenses withdrawn in an appropriate case).

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with counsel separately during the discussions. Counsel are presumed to have consented to the Court doing so unless an objection is stated.

C. Trial Notebooks. Counsel and self-represented parties must provide the Court and opposing counsel or self-represented parties with a trial notebook prior to the Pretrial Conference. Trial notebook rules are found at Appendix A to these rules.

## VII. Motions & Orders to Show Cause (Temporary Restraining Orders)

A. Generally: Motions should be filed by Notice of Motion unless immediate, emergency relief is absolutely necessary per CPLR § 6631. Non-emergency motions filed by Order to Show Cause (“OTSC”) will be treated as if they had been filed by Notice of Motion. However, **all motions and cross motions in matrimonial actions are to be made by Order to Show Cause.**

B. Return Dates for Motions:

1. Motions in Surrogate’s Court shall be made returnable on any Tuesday that the Court is in session.
2. Motions in Supreme Court shall be made returnable on any Friday that the Court is in session.
3. The notice of motion shall contain the dates for opposition and reply per CPLR § 2214(b).

C. Rules for OTSCs:

1. All proposed OTSCs shall be filed electronically on NYSCEF.
2. The OTSC should leave a blank space for the Court to fill in the return date, method of service, and dates for filing opposition and reply (if applicable).
3. The OTSC must be accompanied by or refer to an underlying complaint, petition, or motion.
4. Any application for temporary injunctive relief shall comply with 22 NYCRR § 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.

D. No Sur Replies: Motion papers are limited to Moving Papers, Opposing Papers, including Cross Motions, and Reply (except that reply papers are not permitted on Orders to Show Cause without advance permission). **Sur-Reply papers, including those contained in letter submissions, are not permitted and will not be considered.** There is no Reply permitted to a Cross Motion.

E. Appearances/Oral Argument: Unless otherwise ordered by the Court, no appearances are required on motion return dates. 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.

F. Adjournments of Motion Dates: When all sides agree, a stipulation to adjourn a submission date on a motion shall be submitted.

1. If it is a Supreme Court e-filed case, the request must be filed in NYSCEF.
2. If it is a Surrogate's Court case or a non-e-filed Supreme Court case, the request must be transmitted by email to the appropriate Clerk prior to the return date of the motion, copied to all counsel and self-represented parties.
3. No more than two (2) adjournments on consent of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed 60 days. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.
4. **When the adjournment sought is not on consent**: the requesting party should briefly set forth in writing (1) why an adjournment is necessary; (2) why the opposing party objects to the application; (3) the length of the adjournment sought; and (4) the number of prior requests for adjournment and the dates previously set. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her position has been stated incorrectly. Neither the request nor the response, may be used to advocate a position on the substantive dispute.

The Court will advise the requesting party by NYSCEF or email (with copies to all parties copied on the originating email) whether the requested adjournment has been granted and, if so, the new return date for the motion.

G. Summary Judgment Motions: Summary Judgment motions must be made within sixty (60) days of the filing of the Note of Issue or on the direction of the Court.

If Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed to be an automatic stay of discovery. The parties are to continue to abide by any Order or Notice pertaining to discovery unless otherwise directed by the Court.

Unsigned deposition transcripts will not be considered on motions for Summary Judgment unless it is demonstrated that the transcript was forwarded to the deponent for his/her review and signature in compliance with CPLR 3116(a).

## **VIII. Judgments, Decisions and Orders**

A. From the Bench. Where the Court issues a Decision from the bench and a party desires a written Decision or Order, the party may submit a proposed Order to the Court on notice, together with the transcript of the proceedings at which the Decision was rendered. Transcripts will not be "So-Ordered" except in highly unusual circumstances.



B. On Notice. Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will not be signed unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

C. Signature Line. Proposed orders/judgements which are submitted for signature by the Court shall not contain a signature line at the top of a page. The page continuing the signature line shall have at least one full substantive sentence above the signature line.

## **IX. Particular Surrogate's Court Matters**

A. Accounting Proceedings – Service of Citation. Whenever a citation is served in an Accounting Proceeding, a copy of the accounting summary statement 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 summary statement of account was served with the Citation per 22 NYCRR § 207.40(e).

B. Probate Proceedings – Affidavit of Comparison. The Affidavit of Comparison required by 22 NYCRR 207.19 is dispensed with for e-filed probate proceedings. The document will still be required for non-e-filed probate cases.

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

D. Probate Proceedings – Service of Citation. Unless service is by publication, a copy of the will shall be attached to all citations served and the affidavits of service of citation shall recite that a copy of the will was served per 22 NYCRR § 207.19(b)(1).

E. Supplemental Needs Trust. All SNTs shall be in the form promulgated by the Court, attached here as Appendix C (available as a word doc by email from the clerks).

F. Will for Safe Keeping. When submitting a Will for safekeeping during Testator's lifetime, the Will must be trifolded into a sealed number 10 envelope with the name and address of the Testator, the date of the Will's execution and the name of the nominated Executor written on the outside of the envelope. The filing fee is \$45 and a receipt will be issued which should be retained.

G. Wrongful Death Compromises. All petitions to compromise wrongful death and/or pain and suffering actions must include a proposed decree. If the Clerk notifies the petitioner that the petition requires amendments, a corrected decree should be submitted when the amended petition is filed. Failure to include a decree that reflects the latest amended petition will result in a decision that prohibits distributions and payments until such decree is received and signed by the Court.

H. Wrongful Death or Personal Injury Compromises with Accounting – Service of Citation. a copy of the accounting shall be served on all parties with the Citation. The affidavit of service shall recite that a copy of the account was served with the Citation per 22 NYCRR § 207.40(e).

I. Postage or Stamped Envelopes. All Proceedings require the submission of a postage paid envelope. For small estates, envelopes are required for the voluntary administrator and all persons entitled to notice. For Probates, Administrations, Guardianships and requests for certificates, certified documents and exemplifications appropriately sized envelopes are required with sufficient postage for the return of the documents requested. If envelopes are not provided, the clerk's office may request payment via NYSCEF or if it is not an e-file proceeding, the cost of postage can be paid with the filing fee.

## **X. Uncontested Matrimonial Actions**

The Court will review all uncontested matrimonial materials submitted on an as-received basis. Counsel or self-represented parties will be advised of any deficiencies in the papers submitted. The parties will be notified of any deficiency with the papers submitted which must be cured.

All deficiencies in the papers must be cured by the date in the Court notice or the matter will be dismissed (without prejudice to refile on proper papers).

Counsel or a party seeking to vacate the dismissal shall submit a letter application to the Court requesting vacatur. The letter application must include a proposed order or stipulation vacating the order of dismissal and the document(s) which cure the deficiencies identified in the Court notice.

Where a Stipulation of Settlement or Settlement Agreement is being incorporated into the Judgment of Divorce, all the provisions of the Stipulation or Agreement must not be copied into the proposed Judgment of Divorce or the Findings of Fact and Conclusions of Law. Only those provisions required by the form proposed Judgment of Divorce and/or Findings of Fact and Conclusions of Law should be repeated from the Stipulation or Agreement. See the forms which are provided at [http://www.nycourts.gov/divorce/divorce\\_withchildrenunder21.shtml](http://www.nycourts.gov/divorce/divorce_withchildrenunder21.shtml).

## **XI. Contested Matrimonial Actions – Special Rules**

A. Exchange of Documents per 22 NYCRR § 202.16 (f)(1). Prior to the Preliminary Conference, the parties are required to file and exchange those documents set forth in, including Net Worth Statements, pay stubs, W-2 statements, tax returns and statements of accounts. In the event either party fails to comply with this provision of the Part Rules, the Court may adjourn the conference and assess costs and fees against the party who failed to comply. If both sides fail to comply, the Court may deem such non-compliance to be a withdrawal of the request for a conference and cancel same, requiring payment of a second fee or the Court may treat the failure as a default under Court Rule § 202.27(c) authorizing the Court to strike pleadings or impose other sanctions.

B. Grounds. The Court expects the parties to agree upon grounds if the action has been brought under DRL § 170(7). If the action is predicated on DRL § 170(7) and defendant wishes to contest grounds, trial of that issue will be held on the date scheduled for the preliminary conference or as soon thereafter as the Court's schedule allows.

C. Preliminary Conference. **Counsel must have substantive communications before the date set for the preliminary conference, either in person or telephonically, to determine the issues to be litigated.**

D. Discovery. The scope of discovery shall be discussed at the Preliminary Conference so that the Court can determine if the requested items are necessary and/or to set dates for compliance with the demands.

E. Automatic Orders. Counsel are to inform their clients of the automatic orders created by DRL § 236(B)(2)(b) as soon as the attorney-client relationship is formed.

F. Motions. As noted above, all motions (including cross-motions) in matrimonial actions MUST be made by Order to Show Cause. Both parties and counsel must appear on the return date of any motion brought.

On the return date of any *pendente lite* motion, the Court will conduct either a Preliminary Conference or conference on the motion, as appropriate. If a Bench Decision is issued on the motion, a copy of the transcript will be ordered by the court, the cost of which will be shared by the parties unless otherwise ordered.

Any *pendente lite* motion which does not include a statement of net worth and calculations showing the manner in which the amount of any *pendente lite* support sought has been calculated will be denied.

G. Child Custody/Access Forensic Evaluator Report. When a neutral forensic evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are confidential. These may be reviewed only by the attorney for a party. The report(s) shall not be copied or disclosed to any person except as permitted by order of the Court.

Any attorney who wishes to receive a copy of the report must first sign an affirmation that may be obtained from the Judge's Part Clerk. A party may review the report but may not possess a copy of the report. Self-represented litigants may arrange directly with the Part Clerk to review the report at the courthouse. No device, capable of recording or photographing, is permitted in the room where the self-represented litigant is reviewing the report. Notes may be taken.

If any party seeks to retain an expert other than the neutral forensic evaluator appointed by the Court, counsel may apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report.

The Report shall be admissible at trial pursuant to the rules in Appendix B.

Any counsel or party who violates these restrictions is subject to sanctions.

H. Contested Matrimonial Settlement Conference. The parties must submit the following documents to the Court at the Settlement Conference. Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with these Rules.

1. A fully executed stipulation of relevant facts that are not in dispute. The Court expects that no matter how contentious the case, there will be at least some facts that are not in dispute (e.g., the date of marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);
2. A joint statement of proposed disposition as required by 22 NYCRR § 202.16(h). To the extent that the parties disagree on any item, the plaintiff's position should be set out first, followed by the defendant's position;
3. A child support worksheet, if applicable;
4. Updated statements of net worth (with the latest available supporting documents, such as income tax returns, W-2s, brokerage and retirement plan statements).

## **XII. Trials and Hearings – Supreme and Surrogate's Court**

A. Scheduling. Once scheduled, all trial and hearing dates shall be deemed firm. Parties, witnesses, experts and others must be timely advised of the scheduled date(s) to avoid last minute claims of unavailability. All hearings and cases assigned to this Part for trial will proceed day-to-day until they are concluded, unless the Court directs otherwise.

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. 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.

D. Subpoenas. Counsel are referred to CPLR § 2306 and § 2307 for guidance as to subpoenas directed to municipal entities such as libraries, municipal corporations and their departments and bureaus. The Court's issuance of a subpoena to such entities does not constitute a ruling as to the admissibility of the subpoenaed records. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR § 2303-a. All subpoenas seeking the production of medical (or other) records subject to the HIPAA Rules shall attach a duly executed authorization permitting the release of such records.

E. Interpreters. Counsel shall notify the Clerk as soon as possible if a translator or interpreter will be required at trial so that timely and appropriate arrangements can be made.

F. Personal Injury/Bifurcation. Trials of personal injury actions, except those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42.

G. Jury Selection. Juries will be selected using "White's Rules." (See 22 NYCRR § 202.33). Jurors will be designated; alternate jurors will be non-designated unless the parties otherwise agree on the record prior to commencement of jury selection that the alternates will also be designated.

Counsel shall not read from any pleading, part of a pleading or other document during jury selection, nor may counsel refer to any specific amount of money being sought. Counsel shall not to discuss any aspect of the law with the jury. Instruction on the law is for the Court alone.

H. Witnesses. Non-party witnesses shall not be in the courtroom during the trial except when they are testifying.

I. Reading of Exhibits during Opening Statements. If counsel intends to use/read from any anticipated exhibit or item of demonstrative evidence during Opening Statements, counsel is to advise the Court of such intention prior to commencement of jury selection.

J. Objections. Objections to questions at trial are to be limited to the objecting party stating "Objection" and the basis for the objection. Speaking Objections are not to be made.

K. Use of Recordings. Any party intending to use a recording at trial is to submit a copy of the recording and transcript, if applicable, to the Court at least 2 weeks prior to the scheduled trial date so that the court to rule on the admissibility of the recording and any objections made during the recording.

L. Requests to Charge. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number should be submitted. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedents.

M. Proposed Verdict Sheet. At the commencement of the trial, counsel for the parties and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The verdict sheet shall be in a final, typewritten form, which may be given to the jury. In addition, the proposed verdict sheet(s) shall be submitted by email to the Principal Law Clerks.

N. Post-trial briefs. Upon permission of the Court, 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.

### **XIII. Settled and Discontinued Cases**

Counsel must notify the Part Clerk by email of the settlement or withdrawal of any action or proceeding immediately upon such settlement or withdrawal. A copy of the signed Stipulation

of Discontinuance which has been (or will be) submitted to the County Clerk shall be submitted to the Part Clerk so that the matter may be marked disposed.

In those cases where a party is obligated to make payments over time, the parties shall file a Stipulation of Discontinuance **without prejudice**. The Court will not allow counsel to hold the Stipulation of Discontinuance until all payments are made.

#### **XIV. Substitution/Discharge of Attorneys**

Except in cases where an attorney is replaced by another attorney on consent, any change or withdrawal of counsel must be approved by the Court on a motion, brought by Order to Show Cause pursuant to CPLR § 321.

The Court does not recognize the purported withdrawal by counsel where such withdrawal would result in a party becoming self-represented (except where the party is an attorney) by the filing of a "Consent to Change Attorney" form. The use of a "Consent to Change Attorney" to withdraw where a party becomes self-represented is specifically prohibited.

#### **XV. Guardian Ad Litem Appointments**

A. Qualification. Once notified of appointment, GALs must qualify within 10 days by filing the online certification of compliance. A link will be e-mailed to you.

B. Appearance. The appointed GAL must record their representation and consent to e-filing online within 10 days of appointment.

C. Report. The report and recommendation of the GAL must be e-filed within 10 days after the later of i) the date jurisdiction is deemed complete or ii) the return date (or adjourned date) of the citation. If discovery is needed in order to complete a report and recommendation, the GAL should e-file a preliminary report and subsequently file a supplemental report and recommendation within 10 days after discovery is complete.

D. Decrees directing payment to GAL's ward. See 22 NYCRR § 207.13(b). A GAL in a proceeding in which a decree has been entered directing payment of money or delivery of property to or for the benefit of the GAL's ward must file a supplemental report within 60 days after a decree settling the account, showing whether the decree has been complied with insofar as it affects the ward.

#### **XVI. Civility**

This Court values civility and courteousness. Parties are encouraged to refrain from histrionics, showmanship, gamesmanship, dishonesty, and discourteousness. The Court expects that the Judge, the staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. Discourteous behavior (constant interruptions, outbursts, or ad hominem attacks for example) will not be tolerated by the Court.

## **Appendix A – Trial Notebook Requirements**

1. A statement of the estimated length of trial.
2. Marked pleadings and bills of particulars.
3. A list of all witnesses who may be called at trial, including any potential rebuttal witnesses, as well as all expert witnesses and their expert reports, if any exist.
4. A copy of each exhibit the party expects to use at trial, with an index indicating which exhibits are stipulated for admission into evidence or are marked only for identification.
5. A written stipulation governing all facts that are not in dispute.
6. A statement of the relief requested.
7. Trial memorandum on special points of law or disputed legal issues.

## Appendix B – Forensic Evaluation Report Admissibility

1. The report in its entirety shall be admissible in evidence if all parties to the action stipulate to its admission.
2. All parties, or their attorneys if represented, have an opportunity to object to the admissibility of the forensic evaluation report (“report”). Said objection to the admissibility of the report must be made in writing and filed with the Court, copied to all sides. **The written objection must be received on or before the earlier of the following two dates: (1) two weeks before the date of the scheduled trial; or (2) on the date of the compliance conference with the court attorney.**

If a written objection to the admissibility of the report is not properly received by the Court in accordance with this procedure, then such objection will be deemed waived, and the report will be automatically received into evidence as Court’s Exhibit #1 at the commencement of trial. In that circumstance, any party (or his/her attorney) that wishes to cross-examine the maker of the report will be responsible to secure his/her attendance during the hearing, and payment of any attendance fees, subject to reallocation.

3. If one or more parties properly object to the admission of the report in accordance with the procedure outlined above, then the report shall be admitted into evidence only if:
  - a. the evaluator testifies at the hearing regarding the contents of the report and demonstrates that they relied upon collateral information accepted in the profession as a basis in forming an opinion and that such out-of-court material is accompanied by evidence at the hearing establishing its reliability (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002); D’Esposito v. Kepler, 14 A.D.3d 509 (2d Dept. 2005));  
**or**
  - b. the evaluator testifies at the hearing regarding the contents of his or her report and the out-of-court statements made by collateral sources in the report are derived from a witness or witnesses subject to full cross-examination at the hearing (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002)).

If hearsay from a collateral contact is not “of a kind accepted in the profession as reliable in forming a professional opinion” and if there is no “independent evidence establishing the reliability of the out-of-court material”, and the “collateral source” does not testify then the hearsay portions of the report must be stricken from the report prior to the report’s admission into evidence. See Lubit v. Lubit, 885 N.Y.S.2d 492 (1<sup>st</sup> Dept. 2009).



## **Appendix C – Form of Supplemental Needs Trust Agreement**

This TRUST AGREEMENT made this (DATE) day of (MONTH), 20\_\_, between (GUARDIAN NAME), as Guardian of the property of (WARD/BENEFICIARY NAME), as Grantor, and (PROPOSED TRUSTEE(S) NAME), as Trustee, is established pursuant to a Decree of the Surrogate's Court of the State of New York, Rockland County. The petitioner currently resides at: (ADDRESS).

The Trustee (NAME) currently resides at:

(ADDRESS).

**1.0 Trust Name:** The Trust shall be known as the (BENEFICIARY NAME) Supplemental Needs Trust.

**1.1 Purpose of Trust:** The Beneficiary of the Trust is (BENEFICIARY NAME), a person under the age of 65 years. The purpose of the Trust is that the Trust's assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any Federal, State, County, City, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. The Trust is intended to conform with New York State EPTL § 7-1.12.

**1.2 Declaration of Irrevocability:** The Trust shall be irrevocable and may not at any time be altered, amended, or revoked without Court approval.

**1.3 EPTL § 7-1.6:** EPTL § 7-1.6, or any successor statute, or any similar statute of any jurisdiction, shall not be applied by any court having jurisdiction of an inter vivos or testamentary trust to compel, against the Trustees' discretion, the payment or application of the trust principal to or for the benefit of (BENEFICIARY NAME), or any beneficiary for any reason whatsoever.

**2.0 Administration of Trust During Lifetime of Beneficiary:** The property shall be held in trust for the Beneficiary, and the Trustee shall collect income and, after deducting all charges and expenses attributed thereto, shall apply for the benefit of the Beneficiary, so much of the income and principal (even to the extent of the whole) as the Trustee deems advisable in his sole and absolute discretion subject to the limitations set forth below. The Trustee shall add the balance of net income not paid or applied to the principal of the Trust.

**2.1 Maximize Benefits:** Consistent with the Trust's purpose, before expending any amounts from the net income and/or principal of this Trust, the Trustee shall consider the availability of all benefits from government or private assistance programs for which the Beneficiary may be eligible. The Trustee, where appropriate and to the extent possible, shall endeavor to maximize the collection and facilitate the distribution of these benefits for the benefit of the Beneficiary.

**2.2 No Impairment:** None of the income or principal of this Trust shall be applied in such a manner as to supplant, impair or diminish any governmental benefits or assistance for which the Beneficiary may be eligible or which the Beneficiary may be receiving.

**2.3 No Authority to Beneficiary:** The Beneficiary does not have the power to assign, encumber, direct, distribute, or authorize distributions from this Trust.

**2.4 Discretion to Determine Best interest:** Notwithstanding the above provisions, the Trustee may make distributions to meet the Beneficiary's need for food, clothing, shelter, health care, or other personal needs, even if those distributions will impair or diminish the Beneficiary's receipt or eligibility for government benefits or assistance only if the Trustee determines that the distributions will better meet the Beneficiary's needs, and it is in the Beneficiary's best interests, notwithstanding the consequent effect on the Beneficiary's eligibility for, or receipt of benefits.

However, if the mere existence of this authority to make distributions will result in a reduction or loss of the Beneficiary's entitlement program benefits, regardless of whether the Trustee actually exercises this discretion, the preceding paragraph (2.4) shall be null and void and the Trustee's authority to make these distributions shall terminate and the Trustee's authority to make distributions shall be limited to purchasing supplemental goods and services in a manner that will not adversely affect the Beneficiary's government benefits.

**2.5 Additions to Income and Principal:** With the Trustee's consent, **and upon order of the Surrogate**, any person may, at any time, from time to time, by assignment, gift, transfer, deed or will, provide income or add to the principal of the Trust created herein, and any property so added shall be held, administered, and distributed under the terms of this Trust. The Trustee shall execute documents necessary to accept additional contributions to the Trust and shall designate the additions on an amended Schedule A of this Trust.

**3.0 Disposition of Trust on Death of Beneficiary:** The Trust shall terminate upon the death of the Beneficiary and the Trustee shall distribute any principal and accumulated interest that then remains in the Trust as follows:

**3.1 Medicaid Reimbursement:** The New York State Department of Social Services, or the Rockland County Department of Social Services, or other appropriate Medicaid entity within New York State shall be reimbursed for the total Medical Assistance provided to (BENEFICIARY NAME) during his lifetime, as consistent with Federal and State Law. If (BENEFICIARY NAME) received Medicaid in more than one State, then the amount distributed to each State shall be based on each State's proportionate share of the total amount of Medicaid benefits paid by all States on the behalf of the Beneficiary. Pay back is to the entitled Department(s) of Social Services to the elimination of any other creditor, including funeral expenses.

**3.2 Remainder to Estate.** All remaining principal and accumulated income shall be paid to the legal representative of the Estate of the Beneficiary. No other creditor or distributee of the deceased beneficiary may be paid from the trust remainder.

**4.0 Trustee:** (NAME) is appointed Trustee of this Trust. If, for any reason, (TRUSTEE) is unable to or unwilling to serve as Trustee, then (NAME) shall serve as Successor Trustee, subject to the approval of the Surrogate's Court, Rockland County.

4.1 **Consent of Trustee:** A Trustee shall file with the Clerk of the Surrogate's Court, Rockland County, a Consent to Act as Trustee, Oath and Designation, duly acknowledged.

4.2 **Bond:** The Trustee shall be required to execute and file a bond and comply with all applicable law, as determined by the Surrogate's Court, Rockland County. **-OR-**

4.2 **Bond:** The Trustee shall not be required to execute and file a bond, unless the corpus of the trust exceeds \$\_\_\_\_\_.

**(IF PETITIONER IS REQUESTING WAIVER OF A BOND, OR A CONDITIONAL BOND, THIS PARAGRAPH MAY BE CHANGED TO CONFORM WITH WHATEVER RELIEF IS SOUGHT)**

4.3 **Resignation:** A Trustee may resign by petitioning the Surrogate's Court, Rockland County for permission to resign and for the appointment of a successor trustee.

4.4 **Discharge and Final Accounting of Trustee:** No Trustee shall be discharged and released from office and bond, except upon filing a Final Accounting in the form and manner required by the Rockland County Surrogate's Court and obtaining judicial approval of same.

4.5 **Annual Accounting:** The Trustee shall file during the month of January in the Office of the Clerk of the Surrogate's Court in the County of Rockland, an annual account in the form and manner required by said Court and shall also submit an affidavit of service of a complete copy of said account on the Rockland County Department of Social Services or other appropriate Medicaid entity within New York State.

4.6 **Continuing Jurisdiction:** The Court shall have continuing jurisdiction over the performance of the duties of Trustee, the interpretation, administration, and operation of this Trust, the appointment of a successor Trustee and all other related matters.

4.7 **Powers of Trustee:** A court order authorizing the Trustee to invest trust funds is required prior to any investment of said trust funds. In addition to any statutory authority existing regarding the powers of a trustee, any trustee serving hereunder is authorized to seek and retain the services of social workers, consultants or other individuals or agencies, public or private, skilled in the identification and/or provisions of services for disabled, handicapped or mentally ill individuals. The trustee is further authorized to seek and utilize or reject in his/her sole discretion the counsel and recommendations of any guardian, or physician of the beneficiary. The examples cited herein are not intended to be a limitation of the trustee's authority.

4.8 **Trustee Liability:** The trustee shall not be liable to any present or future beneficiary for seeking or not seeking the counsel and recommendations of any expert, whether or not expressly named and authorized herein, or for accepting or rejecting all or part of the counsel and recommendations offered by any such expert. Nor shall the trustee be liable for failing to identify or inquire as to the existence of individuals or agencies, public or private that may be available to meet the needs of the beneficiary. In the event that the Trustee wishes to exercise powers beyond the express and implied powers of EPTL article 11, the Trustee shall seek and must obtain judicial approval.

4.9 **Appointment of a Successor Trustee:** Appointment of a successor Trustee not named in this Trust shall be upon petition to the Court.

4.10 **Compensation of Trustee:** A Trustee shall be entitled to such compensation as may be allowable under the laws of the State of New York. A calculation of commissions, if sought, must be provided with the annual account and are subject to the court’s approval.

4.11 **Payment of Professional Fees:** Payment of professional fees such as attorney’s and accountant’s fees may not be made prior to Court approval.

5.0 **Governing Law:** This Trust Agreement shall be interpreted and the administration of the Trust shall be governed by the laws of the State of New York; provided, however, that Federal law shall govern any matter alluded to herein which shall relate to or involve government entitlements such as SSI, Medicaid, and/or other Federal benefit programs.

5.1 **Savings Clause:** If it is determined that any provision hereof shall in any way violate any applicable law, such determination shall not impair the validity of the remaining provisions of the Trust.

5.2 **Usage:** In construing this Trust, feminine or neuter pronouns shall be substituted for those of the masculine form and vice versa, and the plural for the singular and vice versa in any case in which the context may require.

5.3 **Headings:** Any headings or captions in the Trust are for reference only, and shall not expand, limit, change, or affect the meaning of any provision of the Trust.

5.4 **Binding Effect:** This Trust shall be binding upon the estate, executors, administrators and assigns of the Grantor and any individual Trustee, and upon any Successor Trustee.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above and here below written.

\_\_\_\_\_  
Guardian of the property of grantor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Date

STATE OF NEW YORK ) ss.:  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came (GRANTOR'S PROPERTY GUARDIAN NAME), to me known and known to me to be the individual described in and who executed the foregoing Trust Agreement and duly acknowledged to me that s/he executed the same.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date and seal

STATE OF NEW YORK ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came (TRUSTEE'S NAME), to me known and known to me to be the individual described in and who executed the foregoing Trust Agreement and duly acknowledged to me that s/he executed the same.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date and seal

**On a separate page: Schedule A To Supplemental Needs Trust**  
(List all funds to be added to the trust)