

(updated 8/27/19)

**INDIVIDUAL PART RULES OF
HON. BRANDON R. SALL, WESTCHESTER COUNTY SURROGATE**

Westchester County Courthouse
111 Dr. Martin Luther King Jr. Blvd
19th Floor
White Plains, NY 10601

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E-FILING RULES OF THE COURT

With certain exceptions, E-Filing is mandatory in the Westchester Surrogate's Court for all Administration, Probate, and related Miscellaneous matters. Surrogate's Court actions must be filed through the New York State Courts E-Filing system (NYSCEF) which can be found at <https://iapps.courts.state.ny.us/fbem/LoginFormServlet>. 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 must be delivered to court 48-hours after a case has been E-Filed.

E-Filing is not mandatory if the matter concerns a Voluntary Administration, an Accounting Proceeding, any matter brought by an unrepresented litigant (i.e. *Pro se* litigant). Matters relating to a lifetime trust, guardianship or adoption matter need not be E-Filed.

In certain situations, Attorneys may file an *AOpt-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 Rules Uniform Rule " 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 (646) 386-3033 or efile@nycourts.gov. Specific questions relating to local procedures should be addressed to the Chief Clerk's Office (845) 476-3429.

NOTICE- The Court requires the submission of A working copies@ of electronically filed documents for Miscellaneous and Accounting matters. See Uniform Rule ' 202.5-b(d)(4). All working copies submitted to this Part 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 Westchester County Protocol. Working copies without the Confirmation Notice will not be accepted.

Hard Copy Submissions

The Court will reject any hard copy submissions in e-filed cases unless those submissions bear the ANOTICE OF HARD COPY SUBMISSION - E-FILED CASE@ form required by Uniform Rule '202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

GENERAL RULES OF THE COURT

SERVICE OF PROCESS

The Court will not direct an alternative to service under subdivision 1 of SCPA §307, until it can be demonstrated that there have been four attempts at personal service, on different days, and different times, including one Saturday, over a one week period.

NOTICE- With regard to certain matters involving the Public Administrator, this Court has been advised as follows:

- (1)that in foreclosure actions, except under certain circumstances reviewed and agreed to by the Public Administrator prior to filing, the Public Administrator will only consent to the issuance to the Public Administrator of limited letters for the acceptance of service of process on behalf of the Estate;
- (2)that in personal injury or medical malpractice actions, where a petitioner seeks to have the Public Administrator appointed in order to commence or continue such an action against as Estate, except under certain circumstances reviewed

and agreed to by the Public Administrator prior to filing, the Public Administrator will only consent to the issuance of letters to the Public Administrator limited to the defense of a pending proceeding in Supreme Court Westchester County under a specified index number, subject to the existence, and extent of, insurance coverage and the insurance carrier defending the action;

- (3) that in Medicaid fair hearings, except under certain circumstances reviewed and agreed to by the Public Administrator prior to filing, the Public Administrator will only consent to the issuance of letters to the Public Administrator limited to signing necessary documentation in connection with such Medicaid fair hearing.

COMMUNICATION WITH THE COURT

A. Correspondence: All correspondence to the Court shall be copied to all parties and set forth the name and Index 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. Matters assigned to court attorney/referees in the law department may communicate with such attorney by email. Otherwise, correspondence must be mailed. Correspondence between attorneys and/or pro se litigants shall not be copied to the Court absent some specific purpose for the Court to be made aware of the same.

B. 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.

C. Ex Parte Communications. Ex parte communications with the Court are strictly prohibited, except where an Order to Show Cause 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 months after the date of issuance. The order will further provide that the petitioner must post a bond for the full amount of the estate assets alleged in the petition. Preliminary or temporary letters may be of limited authority as determined by the Court.

COURT CONFERENCES AND CALENDAR CALLS

Unless otherwise advised, Judge Sall's Surrogate's Court Conferences and Calendar calls are held at the Westchester County Surrogate's Courthouse located at 111 Dr. Martin Luther King, Jr. Blvd., 18th Floor, White Plains, New York 10601. The Court Calendar is regularly called on Wednesdays at 9:30 a.m. **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 immediately following the call of the calendar unless otherwise scheduled with the approval of the Court.

A. Scheduling

Counsel/parties should address questions about scheduling appearances or adjourning appearances to the Calendar Clerk Veronica Sanchez at (914) 824-5836 or by email at vsanchez@nycourts.gov. All adjournment requests must be in writing and on consent.

B. 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.

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 (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.

C. 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.

MOTION PRACTICE

Motion Calendar and Appearances: All motions /proceedings brought on by notice of motion or notice of petition shall be made returnable before the Court on any WEDNESDAY the Court is in session (as outlined above). 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

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.

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 proceeding, unless authorized by the Court after conferencing fails.

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

Proposed Judgments/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. THE COURT DOES NOT PERMIT LITIGATION BY CORRESPONDENCE. CORRESPONDENCE SHOULD NOT BE SUBMITTED, AND WILL NOT BE CONSIDERED, IN DETERMINING MOTIONS, ETC.

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 maybe 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 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 a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the number of the same need be submitted. If 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 precedent. In addition, such proposals shall be submitted in a format convertible to Word and submitted to the Court=s Supervising Court Attorney at jforbes@nycourts.gov.

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 and submitted to the Court=s Supervising Court Attorney at jforbes@nycourts.gov.

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.

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.