

HON. KEITH J. CORNELL
Surrogate Rockland County

INDIVIDUAL PART RULES – Updated July 2021

Court Information:

Address: Rockland County Surrogate’s Court
1 South Main Street, Suite 270
New City, New York 10956

Telephone: Surrogate’s Clerk: (845) 483-8270

Fax: Surrogate’s Clerk: (845) 358-8067

Chambers Staff:

Principal Court Attorney: Aimee Pollak, Esq.
Judge’s Assistant: Vanessa Kiers

Clerk’s Office:

Chief Clerk: Eileen Horan
Deputy Chief Clerk: Heather Barney

Surrogate’s Court Procedure Act, Estates Powers and Trusts Law and Part 207 of the Uniform Rules. Parties are directed to familiarize themselves 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 and are preferred to all other online forms (i.e., NYSBA, Matthew Bender, HotDocs, etc.).

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I. COMMUNICATIONS WITH THE COURT

- A. Ex Parte Communications. Ex parte communication with the Court is prohibited.
- B. Telephone Calls. Questions about procedure should be researched by counsel prior to calling the Clerk's Office. Neither Counsel nor pro se litigants should call to discuss the substance of pending cases.
- C. Written Correspondence. All letters/emails to the Court and/or Clerk shall be copied to all parties and should include the Surrogate's File Number. Correspondence between attorneys and/or pro se litigants shall not be copied to the Court or Clerk unless otherwise directed by the Court. DO NOT e-file correspondence.
- D. Faxes. The Court will not accept faxed copies of papers that must 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. **No fax in excess of 5 pages may be sent without prior approval from the Clerk's office.**
- E. Requests for Status Updates. **STATUS UPDATES WILL NOT BE PROVIDED.** Pending matters are reviewed in the order that they are received.
- F. Decisions and Orders. The Court makes every effort to issue written decisions and orders within 60 days of the matter being marked fully submitted.
- G. Communication with Chambers. Correspondence should never be emailed directly to the Judge, his personal assistant, or the Court Attorney. Correspondence must be sent through the Clerk's Office. Correspondence emailed directly to the Judge or Chambers will not be read.

II. FILING PAPERS

- A. E-filing. As of February 16, 2021 this Court is a mandatory e-filing Court. The Court E-filing Protocols can be found here:
https://www.nycourts.gov/LegacyPDFS/courts/9jd/efile/surrogate/rockland_surr_protocol.pdf
- B. 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.
- C. Form of Papers – for those who qualify to opt out of e-filing ONLY: All papers filed with the Court are scanned upon receipt. Therefore, **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. Attorney Mailing Address. The Court will only send papers to attorneys at their New York mailing address (either office or home) identified on the Petition in the Part 130 certification. Please note that Judiciary Law § 470 requires all attorneys that practice in New York to have a physical address in New York state (P.O. Boxes alone are not acceptable). Mail

to non-New York addresses will be sent if self-addressed and stamped envelopes are provided with the filing.

III. CALENDAR CALLS AND CONFERENCES

A. Calendar calls. Appearances at the calendar call are required by attorneys in all matters. All calendar calls are conducted before Judge Cornell in the Surrogate's Courtroom of the Rockland County Courthouse (on the second floor) on Tuesdays at 9:30a.m., unless otherwise directed. **The Judge takes the bench promptly at 9:30a.m. Please arrive on time.**

B. 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 Petition or Objections, or any other appropriate remedy authorized by 22 NYCRR § 202.2.

IV. ADJOURNMENTS

A. Requests for adjournments are discouraged. If absolutely necessary, requests for adjournments shall be made in writing (e-mailed to the Chief Clerk and/or Deputy Chief Clerk of the Court with copies shown for all other parties DO NOT e-file) at least 48 hours in advance and must include:

- (1) The date of the scheduled appearance (and trial date, if any);
- (2) GOOD CAUSE for why the adjournment is sought;
- (3) whether the adverse party(ies) consent(s) to the adjournment; and
- (4) at least two suggested dates for the adjournment.

V. MOTIONS AND ORDERS TO SHOW CAUSE

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.

B. Return Dates.

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

(2) OTSC. Prior to filing an OTSC, the filing party should call the Clerk's Office and request a return date, which date and time shall be included in the proposed Order affixed to the supporting papers.

C. Affirmation of Good Faith for OTSCs. 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. Format. All papers must conform to Rule II.A above. Motions and OTSCs must have original signatures on the supporting affidavits and affirmations.

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. 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. If the entire action has been settled or otherwise resolved, counsel shall e-file a Stipulation of Settlement or a Stipulation of Discontinuance.

G. Decisions and Orders. The Court makes every effort to issue written decisions and orders within 60 days of the matter being marked fully submitted.

VI. DISCOVERY DISPUTES

A. Generally. Counsel should make every effort to resolve discovery disputes amongst themselves and avoid written discovery motions.

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(a) detailing the good faith efforts made by counsel to resolve the issues prior to filing the motion.

VII. PARTICULAR SURROGATE'S COURT PROCEEDINGS

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 – Confidential Relationships. In a probate proceeding, if a beneficiary, attorney or draftsman 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.

C. 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).

D. 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.

VIII. 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.

IX. TRIALS AND HEARINGS

- 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.
- 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. Trial Notebooks. At least two weeks prior to the scheduled trial date, unless specifically relieved of such requirement by the Court, counsel shall each provide to all other counsel and/or pro se litigants and the Court a tabbed trial notebook which includes:
- (1) A list of all potential witnesses for each party, along with a brief statement of proof.
 - (2) A list of all exhibits and copies of the exhibits to be offered into evidence at trial by each party with a brief description of the purpose of each exhibit (if not obvious).
 - (3) **NOTE:** Any witness or exhibit not identified in the lists provided to opposing counsel, other than a witness or exhibit offered for the purpose of impeachment or rebuttal, may not testify or be admitted into evidence unless an adequate explanation is provided for the failure to identify such witness or exhibit prior to trial.

E. Jury Trials. If a jury trial is scheduled, the Court will schedule a pre-voir dire conference to discuss all necessary issues.

F. 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.

X. MISCELLANEOUS

A. Substitution or Withdrawal of Counsel. 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 wants to be relieved and discharged or where a client wants to discharge an attorney and where there is no 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 until the court decides the motion and relieves and discharges the moving attorney.

B. Settled or Discontinued Cases. Counsel shall immediately notify the Court in writing of a settled or discontinued matter. Following the initial notification counsel shall file a fully executed original Stipulation of Discontinuance or Settlement with the Clerk.

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 at least ten days in advance.