

Hon. Timothy P. McElduff, Jr.
Surrogate, Orange County, Acting Justice of the Supreme Court

Individual Part Rules
Effective October 4, 2022

Orange County Surrogate's Courthouse
30 Park Place
Goshen, New York 10924
mjetjoml@nycourts.gov
(845) 476-3615 phone
(212) 618-2138 fax

Staff:
Darren H. Fairlie, Esq., Principal Court Attorney
Maria Jetjomlong, Secretary

New proceedings are reviewed in the order they are filed. Do not call or e-mail the Clerk's Office or Chambers requesting a status update.

Part 207 of the Uniform Rules: Parties are directed to familiarize themselves with the Uniform Rules for Surrogate's Court, found in Part 207 of the Uniform Rules for the New York State Trial Courts. The Part 207 Rules shall apply to the Orange County Surrogate's Court unless explicitly directed otherwise in these Part Rules.

Accommodations. Except as otherwise provided by law, the Court is open to all. Every effort will be made to accommodate those who need assistance appearing in Court. If an attorney, party or witness requires the services of a foreign language interpreter, services for the hearing impaired or any other reasonable accommodation in order to meaningfully participate in a proceeding, please notify the Court so that the appropriate arrangements can be made.

I. COMMUNICATIONS WITH THE COURT

A. **Correspondence** - Correspondence to the Court and Clerk shall be copied to all adversaries and must include the File/Index Number. Correspondence between the parties shall not be copied to the Court unless otherwise directed, or where there is some specific judicial purpose to be served by transmitting copies to the Court.

B. **Telephone Calls** - Telephone calls to Court staff should be limited to situations requiring immediate attention that cannot otherwise be addressed by correspondence.

C. **Fax/E-Mail** - The Court will not accept faxed or e-mailed copies of papers that must otherwise 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/e-mails must be sent simultaneously to all other parties. **Faxed/e-mailed correspondence shall not exceed three (3) pages in length.**

D. **Ex Parte Communications** - Ex parte communications are prohibited except when an Order to Show Cause is submitted for signature, or with the prior consent of all parties during settlement negotiations.

II. ADJOURNMENTS

A. Surrogate's Court Matters

Adjournment requests are discouraged and, even if on consent, should not be considered effective unless and until approved by the Court. If necessary, an adjournment request must be in writing, copied to all parties, e-mailed to VirtualOrangeSurrogatesCourt@nycourts.gov at least 48 hours in advanced of the scheduled date and state:

1. The currently scheduled date,
2. Good cause why the adjournment is being sought,
3. Whether the other parties consent or object to the request, and
4. If possible, suggest a date certain to which the conference, etc., should be adjourned.

B. Supreme Court Matters

1. **Adjournment of Conferences** - Adjournment of conferences may be requested on consent of all parties. Even if a requested adjournment is on consent, the request must also be approved by the Court before it will be deemed granted. The party requesting an adjournment must deliver the adjournment request to the Court, on notice to all parties. A request to adjourn a conference should be e-mailed to Chambers at mjetjoml@nycourts.gov at least 48 hours prior to the scheduled appearance. Unless good cause is shown, no more than two adjournments of a conference shall be permitted on any matter. A written request must:

- (a) identify the current date of the scheduled conference;
- (b) identify the number of adjournments that have previously been requested, if any;
- (c) state whether the request is made on consent of all counsel; and,
- (d) identify the proposed adjourned date.

2. **Adjournment of Motion Return Dates**

- (a) **On consent**: The party seeking the adjournment of a motion with the consent of the other parties shall notify the Court in writing of the agreed upon adjournment date at least 24 hours prior to the return date. Even if a requested adjournment is on consent of all parties, the request must also be approved by the Court before it will be deemed granted.
- (b) **Without consent**: A party requesting an adjournment without consent of the other parties shall submit a letter to the Court at least 48 hours prior to the return date providing good cause as to why the adjournment should be granted. Parties opposing the request may submit a brief response setting forth their reasons for objecting.
- (c) **Adjournments of Appearances in Cases with Fully Submitted Motions** - The filing of a motion does not automatically relieve any party from attending a previously scheduled appearance, regardless of the nature of the relief sought in the motion. However, when an appearance is forthcoming while a fully submitted motion is pending before the Court, the movant may contact the Court in writing at least 24 hours in advance to request an adjournment of the appearance.

III. E-FILING RULES AND PROTOCOL

A. E-Filing Protocols: 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 and the Joint Protocols for New York State Courts e-filing for cases filed in Orange County available at: <https://ww2.nycourts.gov/courts/9jd/e-file.shtml>

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Specific questions about local procedures should be addressed to the Orange County and Supreme Court Clerk's Office at (845) 476-3500.

All documents in mandatory e-filed cases, except 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, are to be filed through the New York State Courts E-Filing System (NYSCEF).

B. **Working (Hard) Copies:** Counsel and self-represented litigants MUST provide the Court with working copies of all legal papers which require judicial action (e.g., Orders to Show Cause, motions, notices of settlement, *ex parte* applications and proposed orders) within 24 hours of e-filing. The working copy of a motion must include all documents filed in support of the motion, including exhibits WITH external tabs.

All working copies MUST hard copies and include a copy of the NYSCEF Confirmation Notice, firmly fastened, and must comply with all requirements of the E-Filing Protocols. The Confirmation Notice is generated when the case is e-filed and is available in the specific case file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice will be rejected.

Orders to Show Cause which are not of an emergent nature will NOT be acted upon until the working copy is received by Chambers.

C. Hard Copy Submissions: Hard copy submissions in e-filed cases will be rejected unless they bear the Notice of Hard Copy Submission - E-Filed Case required by Uniform Rule § 202.5-b(d)(1)(iv). The form is available at www.nycourts.gov/efile.

D. E-filing is mandatory in Orange County Surrogate's Court, with the exception of the following types of proceedings: SCPA Article 17, SCPA Article 17-A, adoption and inter vivos trusts. The Court's E-Filing protocol can be found at: <http://nycourts.gov/courts/9jd/e-fileSurrogate.shtml>

IV. APPEARANCES

A. Pursuant to §130-2.1 of the Rules of the Chief Administrator of the Courts, the Court may impose financial sanctions and award costs and reasonable attorney's fees against any attorney who, without good cause, fails to appear at a time and place scheduled for an appearance in any action or proceeding.

B. Pursuant to §202.27 of the Uniform Civil Rules for the Supreme Court, upon the default of any party in appearing at a scheduled call of a calendar or at any conference, the Court may grant judgment by default against the non-appearing party.

C. At all scheduled appearances and conferences before the Court, only an attorney thoroughly familiar with the action and authorized to act on behalf of a party shall appear.

D. Virtual Appearances. When authorized by the Court, conferences or hearings may be conducted virtually via Microsoft Teams. In such cases:

1. Chambers will e-mail the Microsoft Teams link for the virtual courtroom to the parties who have appeared prior to the Court date. Counsel should forward the link to any necessary party who may not have received it. Any member of the public who wishes to attend a virtual proceeding may request the link from Chambers prior to the Court date.
2. Failure to receive the Teams link prior to the appearance does not excuse the obligation to appear and the parties are expected to contact the Court in such circumstances to obtain the link.
3. Virtual appearances do not obviate the need to file and serve papers and pay all applicable filing fees, as required by statute and/or these Part Rules.

V. SURROGATE'S COURT PROCEEDINGS

A. Accounting Proceedings - Service of Citation - Whenever a citation is served in an Accounting Proceeding, a copy of the accounting shall be served on all parties with the Citation. The Citation and affidavit of service shall recite that a copy of the accounting was served with the Citation. See 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, an affidavit explaining the circumstances surrounding the making of the bequest and the drafting of the Will must be filed with the petition.

C. Objections to Probate - All discovery (paper and depositions under SCPA § 1404) shall be completed before objections are filed, unless granted prior approval by the Court. Objections shall be filed with the Court within 10 days of the completion of all SCPA §1404 discovery, pursuant to SCPA §1410. Once the objections have been filed, an SCPA §1411 citation must be submitted to the Court by the proponent, objectant or interested party. The SCPA §1411 citation must be filed within 30 days of the filing of objections.

D. Objections to Administration - All discovery (paper and/or depositions) shall be completed before objections may be filed pursuant to SCPA §709, unless granted prior approval by the Court.

E. Pursuant to 22 N.Y.C.R.R. § 207.7(c), original affidavits of service must be filed with the Court at least two (2) days prior to the return date. Failure to do so could result in the denial of jurisdiction for failure to complete service. Late filing of proof of service will result in adjournment of the return date and delay of issuance of decisions and decrees.

F. Guardian ad Litem reports must be filed and served at least two (2) days prior to the return date. Late filings will result in adjournments and delays in the issuance of decrees and orders.

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. A proposed order/judgment/decreed shall be submitted on all unopposed motions. For contested Surrogate's Court motions, proposed orders/judgment/decrees shall be submitted on notice in accordance with 22 NYCRR 207.37.

VI. PRELIMINARY CONFERENCES

A. A party may request a preliminary conference any time after issue has been joined. The Court will schedule a preliminary conference within forty-five (45) days after an RJI requesting a preliminary conference has been filed. The Court may also schedule a preliminary conference sua sponte at any time after an RJI has been filed.

B. Upon scheduling a preliminary conference, the Court will provide the parties with a form Stipulation and Order. The Stipulation and Order shall provide a date and time for the parties to appear at a compliance conference to ensure that discovery is proceeding as scheduled. The Stipulation and Order shall also identify the deadline selected by the Court for filing a note of issue and certificate of readiness. Counsel shall confer and fill out the Stipulation and Order to provide a timetable for discovery within the parameters set forth by the Court. The attorneys are encouraged to complete the Stipulation and to mail it back to the Court for review and approval in advance of the scheduled preliminary conference.

C. If counsel for all parties sign the Stipulation and return it to chambers prior to the scheduled conference, such form shall be "So Ordered" by the Court and, unless the Court orders otherwise, appearances will not be required at the preliminary conference. However, appearances are required in all matrimonial, products liability, and medical, dental and podiatric malpractice actions.

D. Once the stipulation has been "so ordered", no modifications are permitted except by written order of the Court.

VII. COMPLIANCE CONFERENCES

The preliminary conference order shall provide a date and time for the parties to appear at a compliance conference. At the compliance conference, the Court will ensure that discovery is proceeding as scheduled and, unless a note of issue has been earlier filed, schedule the deadline for filing a note of issue and certificate of readiness.

VIII. DISCOVERY MATTERS

A. Counsel must confer with one another in a good faith effort to resolve all discovery disputes pursuant to 22 NYCRR §202.7.

B. No discovery motion may be made without the permission of the Court.

C. It is the policy of this Court to make itself available to facilitate resolution of any discovery disputes without formal motion practice. In the event of a discovery dispute, the aggrieved party shall organize a conference call with counsel for all parties and the Court's Principal Court Attorney. If the dispute cannot be resolved in that conference call, the parties will be provided with a prompt appearance date to address any unresolved discovery disputes with the Court.

IX. PRETRIAL CONFERENCE

A. Upon the filing of a note of issue, the Court shall schedule a pretrial conference.

B. At the pretrial conference, the Court shall schedule a date certain for trial of all outstanding issues. The Court will also explore referring the case to mediation, if appropriate.

C. At the pretrial conference, the Court shall establish a deadline for the exchange of expert witness information pursuant to CPLR §3101(d)(1) which shall, in no event, be later than ninety (90) days before trial for the party bearing the burden of proof on that issue. The opposing party must serve its disclosure within forty-five (45) days of trial. Any amended or supplemental expert disclosures shall be allowed only with leave of the Court on good cause shown. The statutory stay of disclosure upon the service of a dispositive motion (CPLR 3214[b]) shall not apply to the service of these expert responses. Unless the Court directs otherwise, a party who fails to comply with this rule will be precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

D. The Court will explore limitation of issues for trial, including any application that counsel anticipates making to limit or preclude testimony or other evidentiary matters. If an evidentiary issue cannot be resolved by the Court at the pretrial conference, a motion in limine briefing schedule shall be established. The return date of that briefing schedule, including any adjourned return dates, shall be at least thirty (30) days before the trial date. The intent of this rule is to avoid in limine applications on the eve of, or during, trial of a matter. Failure to bring an in limine application before the Court in a timely manner may result in summary denial of the application.

E. Counsel should be prepared to discuss settlement and should have full authority from their respective clients.

X. MOTIONS AND ORDERS TO SHOW CAUSE

A. Return Dates: Motions made in the Surrogate's Court by Notice of Motion shall be made returnable on Wednesday. Motions made in the Supreme Court are returnable on any day of the week. Return dates for Orders to Show Cause shall be determined by the Court.

B. Summary Judgment Motions in Supreme Court Matters: MOTIONS SHALL BE MADE WITHIN NINETY (90) DAYS AFTER FILING THE NOTE OF ISSUE.

C. Where a party seeks summary judgment based in whole or in part upon a motion to preclude or limit expert testimony, both the motion to preclude or limit and the motion for summary judgment shall have the same return date.

D. Format: All affirmations, affidavits and memoranda of law must contain numbered pages and exhibit tabs. For e-filed motions, a hard copy of the motion papers with exhibits tabs must be delivered to chambers by the motion return date, along with a copy of the filing confirmation notice received by the NYSCEF site. All answering and reply papers should be submitted directly to chambers. In Supreme Court matters, original initiating motion papers should be submitted directly to the County Clerk accompanied by an affidavit/affirmation of service and the required fees. All documents required to decide the application must be attached to the motion. It is not sufficient that documents may be on file with the Clerk of the Court.

E. 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.

F. Motions Seeking Temporary Injunctive Relief - Any application for temporary injunctive relief, including but not limited to a stay or temporary restraining order, shall include either: (i) an affirmation demonstrating that a good faith effort has been made to notify the party against whom the relief is sought of the time, date and place that the application will be made in a manner sufficient to permit the party a reasonable opportunity to appear in response to the application, or (ii) an affirmation that there will be significant prejudice to the party seeking the relief by the giving of notice. See 22 NYCRR 202.7(f).

G. Proposed Orders, Judgments and Findings of Fact. Unless otherwise directed by the Court, all proposed orders, judgments and findings of facts are to be submitted with notice of settlement pursuant to 22 NYCRR 202.48.

H. Sur-replies will not be accepted or considered.

I. Motions in limine are also subject to the requirements of the "Pretrial Conference" section of these Part Rules.

J. Counsel shall immediately notify the Court whenever it becomes unnecessary to decide a motion.

XI. TRIALS

A. Once scheduled, a trial shall not be adjourned for any reason other than the actual engagement of counsel as provided for in §125.1 of the Rules of the Chief Administrator of the Courts, or upon good cause shown. Any application for an adjournment based upon actual engagement of counsel must be supported by an affirmation establishing the requisite grounds set forth in 22 NYCRR §125.1.

B. Trial Binders. Unless otherwise ordered by the Court, no later than two (2) weeks prior to the scheduled trial or hearing date, each party shall each provide to all other parties and to the Court a binder consisting of:

1. Pretrial memorandum of law addressing any known disputed legal issues that must be determined by the Court.
2. A list of all potential witnesses, other than an impeachment or rebuttal witness, along with a brief statement of proof. A witness not identified in the witness list, other than an impeachment or rebuttal witness, may not be permitted to testify unless an adequate explanation is provided for the failure to identify such witness prior to trial.
3. An exhibit list and copies of all proposed exhibits the party expects to offer at trial. Materials such as deposition transcripts that a party reasonably anticipates will only be used on cross-examination or to refresh the recollection of a witness do not need to be included.
4. Marked pleadings as required by CPLR 4012, including bill(s) of particular, and any exhibits incorporated by reference in the pleadings.
5. All relevant expert reports.
6. Proposed jury charges. The charges will be drawn from the Pattern Jury Instructions (PJI). Unless counsel seeks a deviation from or an addition to the pattern charge, only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted, together with any supporting legal precedents. Upon request, counsel shall promptly

submit the proposed revision or addition to the pattern charge to the Court in an electronic format convertible to Word Perfect. Amendments to the suggested jury charges will be permitted at the final charge conference following the close of evidence.

7. Proposed verdict sheet. The proposed verdict sheet shall be jointly prepared by counsel and presented to the Court in a typed final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet. Upon request, counsel shall promptly submit the proposed verdict sheet to the Court in an electronic format convertible to Microsoft Word.

8. In matrimonial actions, a statement of proposed disposition and an updated Statement of Net Worth, if circumstances have changed.

9. For virtual trials/hearings, copies of the foregoing shall also be e-mailed to Chambers in “.pdf” format.

C. Trial Counsel. If a matter is to be tried by an attorney other than the attorney of record, a Notice of Appearance, served on all parties, shall be filed with the Court with an Affidavit of Service of same, no later than fifteen (15) days prior to the date of trial.

D. Bench Trials. Unless the Court directs otherwise, the parties shall obtain (at their expense) a copy of the trial transcript. Following the close of evidence and receipt of the trial transcript, counsel shall also present the Court with proposed findings of fact and proposed conclusions of law. 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.

E. Jury Trials. The Court will conduct a preliminary charge conference at 9:00 a.m. one (1) business day prior to the first day of jury selection. In complex matters, the Court reserves the right to schedule the preliminary charge conference for another date prior to trial. At the preliminary charge conference, counsel shall also be prepared to: (a) stipulate to undisputed facts and the admissibility of clearly admissible documents and records, (b) discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial, (c) alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling, and (d) alert the Court to any anticipated requests for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.

F. Expert Witness Testimony.

1. Videotaping. While the court strives for adherence to scheduled jury selection and commencement dates, the court's trial calendar is such that exact days cannot always be guaranteed. Requests for a continuance or rescheduling due to an expert's unavailability for testimony generally cannot be granted due to the large number of matters pending for trial. Counsel may use videotaping of experts when necessary.

2. Any motion by a party to preclude or limit expert testimony under the expert disclosure part of this order or pursuant to CPLR 3101(d) must be made as soon as practicable.

3. Where a party seeks summary judgment based in whole or in part upon a motion to preclude or limit expert testimony, both the motion to preclude or limit and the motion for summary judgment shall have the same return date.

XII. MENTAL HYGIENE LAW ARTICLE 81 PROCEEDINGS

- A. All proceedings instituted pursuant to Mental Hygiene Law §81 et seq. will be returnable on a date and time to be determined by the Court.
- B. All proposed orders to show cause must conform with the requirements of MHL §81.07.
- C. Propose orders to show cause must contain separate decretal paragraphs for service as provided in MHL §81.07(d)(1) and (2).
- D. The form of order to show cause/petition and findings of fact, conclusions of law and judgment to be used in this Part are available on the following link:
[Findings Conclusion oraSurr.pdf \(nycourts.gov\)](#)
[Art81OSC OraSurr.pdf \(nycourts.gov\)](#)

XIII. FIDUCIARY APPOINTMENTS

In order to be eligible for appointment to serve as a referee, court evaluator, guardian, guardian ad litem, receiver, attorney for receiver or attorney for an alleged incapacitated person (AIP), counsel must be eligible and appear on the Part 36 list promulgated by the Office of Court Administration.

XIV. SETTLED AND DISCONTINUED CASES

The parties shall immediately provide the Court with written notice whenever a case has been settled or otherwise disposed. Any stipulation of settlement or settlement agreement to be “so ordered” must state either that all issues between the parties have been resolved and all contested proceedings are being discontinued or set forth with specificity any matters that remain unresolved. Stipulations of settlement and settlement agreements shall not provide that the Court shall retain jurisdiction over the agreement without prior approval of the Court.