

**RULES OF THE SURROGATE'S COURT
ULSTER COUNTY
PART 1901**

THIS IS A MANDATORY E-FILING COURT. Parties should refer to Uniform Rules for Surrogate's Court [22 NYCRR §§ 207.4-a and 207.4-aa] (hereinafter "URSC") and Ulster Surrogate's Court Local Rules [22 NYCRR Part 1901] for e-filing requirements for filing, service of papers and other procedures.

See also Court Rules at <https://www.nycourts.gov/rules/efiling/>

1901.2 E-filing.

- (A)** Effective January 24, 2018, all documents initiating new proceedings shall be served and filed electronically, in accordance with URSC §§ 207.4-a and 207.4-aa, unless circumstances warrant an emergency exception under URSC § 207.4-aa(b)(2) or the attorney is exempt under URSC § 207.4-aa(e)(2).

An attorney opts out of e-filing participation by certifying in writing to the Chief Clerk at the commencement of each proceeding or upon filing a Notice of Appearance that he or she:

- (1) lacks the hardware, internet service, scanner and/or equipment or knowledge of their operation; and
- (2) has no staff member or employee under his or her direction who has such knowledge and equipment. Attorneys opting out must also serve and file the notice under URSC § 207-a(e)(10) when filing hard copies of documents.

- (B)** E-filing forms in a fillable format can be found at the "FORMS" tab on the NYSCEF website:

<https://iappscontent.courts.state.ny.us/NYSCEF/live>

- (C)** Attorneys are encouraged to e-file transmittal letters to accompany and elucidate unusual or complex facts or issues in e-filed documents where appropriate.

- (D)** Tabbed pages or backers containing non-material information which are difficult to scan shall not be attached to papers submitted for filing. Exhibits

in documents shall instead be clearly delineated by cover pages (eg, "Exhibit A: Family Tree.")

1901.3 **Appearances.**

- (A) **Notice of Appearance.** All attorneys, other than those whose representation has been noted by an appearance in court, Waiver and Consent or pleading, must file a Notice of Appearance in accordance with Surrogate's Court Procedure Act (SCPA) § 401(2).
- (B) **Substitutions of attorney.** Prior to filing a Notice of Appearance, a successor to an attorney of record shall file with the clerk a consent to the change signed and acknowledged by the party represented, the attorney of record and his or her successor.

1901.4 **Calendar.**

- (A) The calendar will be called promptly at 10:00 A.M. All attorneys must appear in person. All attorneys appearing for a party or participating in a conference with the Court are expected to be fully familiar with the facts and legal principles presented, including attorneys appearing as a courtesy or "of counsel." Attorneys failing to prepare for an appearance may be subject to disallowance of their fees.
- (B) No adjournment shall be granted on Citations or Orders to Show Cause. Adjournments of other proceedings are granted only by prior written approval of the Court. Requests for such approval shall be made to the Clerk in writing no later than two (2) full business days prior to the scheduled court date. A party seeking an adjournment must attempt to obtain the consent of all parties prior to seeking approval of the Court, and must indicate to the Court whether consent has been obtained.
- (C) All parties shall appear in person at pre-trial conferences or be available to their attorneys by telephone or email.

1901.5 **Pleadings and Papers.**

- (A) The Court strongly encourages parties to employ the Official Surrogate's Court Forms in the appendix to the SCPA and found at:

<https://www.nycourts.gov/forms/surrogates/misc.shtml>
- (B) Any document submitted for filing that does not employ an existing Official Surrogate's Court form shall conform to URSC § 207.4(a) and be accompanied by

the following certification by the attorney or the party who prepared the document:

“The undersigned hereby certifies that the attached document submitted for filing is the same as the prescribed form, and the substantive text of that prescribed form has not been altered.”

- (C) A check, pleading or paper bearing a date, jurat or acknowledgment which is more than 6 months prior to date of submission will be considered stale and shall not be accepted as payment or for filing.
- (D) No interested party in a proceeding may act as notary for any papers filed in that proceeding. For purposes of Affidavits of Attesting Witnesses under SCPA § 1406, a “party in interest” shall include a witness to a testamentary instrument.
- (E) A copy of the decedent’s funeral bill -- and proof of payment, if any -- must be filed with all petitions for letters of administration or administration cta. In the absence of such proof, jurisdiction must be obtained over the mortuary by its appearance in court, a Waiver and Consent or service of a Citation.
- (F) An Affidavit of No Debt shall accompany petitions for Letters of Administration cta.
- (G) All pleadings, memoranda, affirmation or affidavits shall have numbered pages and paragraphs, with clear delineation of exhibits. Tabbed pages or backers containing non-material information and which are difficult to scan shall not be attached to papers submitted for filing. Exhibits in documents shall instead be clearly delineated by cover pages (eg, “Exhibit A: Family Tree”).
- (H) Affidavits of Service by domestic or international registered mail shall have annexed a US Postal Service “pink” card or “green” card confirming receipt. A Postal Tracking Record reflecting actual delivery to the address will be accepted for this purpose if the pink or green card is not received in a timely manner.
- (I) Attorneys submitting documents or pleadings for filing which have twice before been returned or rejected for corrections and who fail, on the third attempt, to make all such required corrections will be required to attend a Court conference to review the proffered documents or pleadings.

1901.6 Descriptions of Parties’ Relationship to Decedent; Confidential Relationships.

- (A) Whenever an interested person derives their interest from a predeceased distributee, the petition shall describe the source of the person’s interest by

providing the name of the predeceased distributee, date of death and distributee's relationship to the decedent (example: "John Doe, son of decedent's predeceased son, James Doe [DOD 1/1/2015])" URSC § 207.16(b)

A family tree or diagram shall accompany any such petition to illustrate how each such person derives their respective interest in the proceeding.

- (B) Confidential relationships between the decedent and a beneficiary shall be disclosed in all petitions for letters testamentary or letters of administration cta. In each such case, an affidavit of the beneficiary explaining the circumstances of the bequest and showing that it was fair and free of undue influence shall accompany the petition.

For purposes of these Rules a "confidential relationship" shall include decedent's attorney, clergyperson, accountant, caregiver, medical professional and personal aide or assistant. Parties are referred to *Matter of Aoki v. Aoki*, 27 NY 3d 32 [2016].

1901.7 Jurisdiction over Unknowns or Parties Whose Whereabouts are Unknown.

- (A) In addition to the sources enumerated in URSC § 207.16(d), due diligence intended to identify or locate distributees or other parties in interest shall include: (i) databases of public records such as the US Census, Social Security death index, Veteran's Administration records; (ii) social media and (iii) search of contact names and communications stored in the decedent's cell phone, tablet or personal computer or found among his or her personal effects.
- (B) Copies of all online search results relied upon in a due diligence affidavit shall be attached to the affidavit.

1901.8 Last Wills and Testament Filed with the Court.

An affidavit explaining the condition of will submitted for probate or administration cta shall accompany any such instrument which is unstapled, appears to have been previously unstapled or bears any indication of erasure, insertion, amendment or alteration.

1901.9 Bonds.

All bonds filed with the Court shall be signed and acknowledged by the fiduciary and accompanied by the Surety's certificate of solvency and proof that the bonding company is licensed to do business within the State of New York. A fee is due upon filing (SCPA § 2402(9)(vi)).

1901.10 **Discovery.**

- (A) Counsel shall notify the Court immediately upon completion of the SCPA 1404 examination of attesting witnesses. A return date for objections shall be fixed by the Court.
- (B) No CPLR discovery demands shall be made in a proceeding until an objection has been filed or issue is otherwise joined (URSC § 207.27).
- (C) No trial or hearing date shall be fixed until a Note of Issue with a Certificate of Readiness and an affidavit of service has been filed with the Court by any party. Thereafter, the Court will schedule a pre-trial conference that counsel and all parties shall attend unless otherwise directed.

1901.11 **Motions.**

- (A) Return dates for Orders to Show Cause will be fixed by the clerk. Any form of Order submitted to the Court with a pre-designated return date shall be rejected. Return dates in Notices of Motion under CPLR Articles 22 or 31 are fixed by the movant.
- (B) Except as required by Court Order, no appearance by counsel is required on the return date of a motion.
- (C) An application to be relieved as counsel shall be made by an Order to Show Cause.

1901.12 **Temporary Restraining Orders.**

Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, shall contain, in addition to any other information required by law, an affirmation demonstrating that the giving of notice will result in significant prejudice to the party seeking the restraining order. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to provide the party an opportunity to appear in response thereto.

1901.13 **Accounting Rules.**

- (A) An affidavit of legal services pursuant to URSC § 207.45 shall be required in any accounting proceeding in which fees are sought to be determined or approved.

- (B) No order judicially approving an account shall issue unless an Inventory of Assets (URSC § 207.20) and, if applicable, a Report of Estates Not Fully Distributed (URSC § 207.42) have been filed with the Court.

1901.14 Petitions for Consent to Sell Real Property.

- (A) All requests for leave to convey title to real property and/or for lifting of restrictions in letters shall include (i) an appraisal, (ii) a contract of sale and, if the petitioner is an administrator or an executor of whom a bond is required by the terms of the will accepted for probate, (iii) a fiduciary bond in the amount of the appraised value of the property or its contract price, whichever shall be the greater.
- (B) When the contract price for the real property in question is less than \$75,000, the Court may accept in lieu of an appraisal under the preceding subsection (A) an affidavit of the listing realtor attesting to his or her opinion of its value (with market comparables), the price(s) at which the property has been listed, the number of times that the property was shown and the number and terms of any formal offers.

1901.15 Distribution of Estates.

A statement substantially in the form prescribed in URSC § 207.42 shall be filed whenever an estate has not been fully distributed within 2 years from the issuance of the first permanent letters, unless a federal estate tax return is required, in which case the deadline for such a report shall be 3 years from the issuance of such letters. Failure to file such a statement may be considered by the Court in any application for legal fees or commissions.

1901.16 Voluntary Administration (Small Estates).

- (A) Attorneys are reminded that prior to accepting an engagement for voluntary administration, their clients must be advised that the procedure is a simplified one tailored for unrepresented parties (NYS Bar Assn Comm on Prof Ethics Op 569 [1985]).
- (B) **DIY forms.** The DIY website and its copyrighted forms are intended for use by parties appearing pro se, legal services and pro bono attorneys and their staff helping clients who cannot afford legal representation. Commercial use is prohibited and no one may charge for using these programs.

NOTE: Attorneys are not permitted to employ documents generated by the DIY online document preparation system unless a pro-bono or low-bono affirmation or affidavit is also submitted.

- (C) When medical records are sought in anticipation of a wrongful death proceeding, it is suggested that an Article 13 proceeding for Voluntary Administration be employed.

1901.17 Preliminary/Temporary Letters.

Orders granting preliminary or temporary letters will provide that such letters will expire six (6) months after the date of issuance unless waived. Unless expressly waived by the decedent's will or on the waiver and consent of all parties, the order will further require the petitioner to post a bond for the full amount of the estate assets alleged in the petition. The Court may in its discretion limit the authority granted in preliminary or temporary letters.

1901.18 Safe Deposit Box Openings.

- (A) Where it appears that a safe deposit box contains items or documents relevant to the administration of an estate, access to the box shall be obtained by means of an ex parte order pursuant to SCPA § 2003 prior to the issuance of letters or certificates of voluntary administration.
- (B) Whenever a decedent's safe deposit box is opened pursuant to an order of the Court, the contents shall be inventoried by the petitioner in a writing prepared in the presence of a person authorized for such purpose by the custodian of the safe deposit box. The inventory shall promptly thereafter be delivered by mail to the Court.

1901.19 Accommodations.

It is the duty of this Court to provide ready access to all Court facilities to all persons. Counsel shall therefore immediately inform the Court in writing whenever a party, witness, expert or counsel expected to appear in court or for a court conference may require any accommodation, including, without limitation, foreign language or American sign language interpreters, accommodations for disabilities affecting hearing, sight or ambulation, and/or the use of service animals as provided for by the Americans with Disabilities Act (ADA) and the Rules of the Chief Judge/Guidelines for New York State Court Facilities Part 34. Further information on accommodations can be found at:

https://www.nycourts.gov/accessibility/courtusers_guidelines.shtml
<https://www.nycourts.gov/rules/chiefjudge/34.shtml>