

SARATOGA COUNTY SURROGATE’S COURT / COUNTY COURT
Local Court Rules of the Honorable Jonathan G. Schopf, Surrogate

Effective January 1, 2025

Please contact Chambers if you have any questions concerning these Rules.

Court Attorney:

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Address:

Chambers of the Surrogate
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Phone: 518-451-8810

Email: chambersjschopf@nycourts.gov

The Surrogate’s Courtroom is located on the second floor of the Courthouse, in Part 3.

These Local Chamber’s Rules are promulgated pursuant to §105 of the SCPA and 22 NYCRR §9.1. **All Local Chambers rules are in addition to those promulgated under 22 NYCRR Part 202 and 207 and are subject to change in the Court’s discretion as to meet the circumstances of any particular matter or due to the creation or modification of any other controlling rule imposed by District or State Administrative Judges.** To the extent that the SCPA, CPLR, and/or Uniform Rules of practice for the Trial and/ or Surrogate’s Court conflict with these local rules, the following rules which govern the conduct of trials and the hearing of cases shall take precedence and shall apply:

1.0 – Submission of Papers.

1.1 Surrogate’s Court is an e-filing court. All newly commenced proceedings commenced by an attorney shall be filed in conformance with 22 NYCRR §207.4-aa. Once a case is electronically filed, all subsequent filings in that matter are required to be filed electronically through the New York State Courts E-filing System (NYSCEF). Parties filing as unrepresented without counsel (*pro se*) are permitted to file paper submissions.

1.2 In electronically filed matters all submissions to the Court, including proposed Decrees, Orders, Judgments, Subpoenas, and correspondence must be electronically filed via NYSCEF. **Other than motion documents**, the Court does not require paper courtesy copies of any documents, unless otherwise directed in cases where there are voluminous filings.

1.3 Chamber's paper copies of all motion documents with exhibits clearly tabbed shall be provided to Chambers prior to the return date.

1.4 Parties involved in e-filed cases shall familiarize themselves with the statewide E-Filing Rules available online at www.nycourts.gov/efile. General questions about E-Filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or nyscef@nycourts.gov and not to the Chief Clerk, Clerk's staff or Chambers.

1.5 Surrogate's Court staff and Chamber's staff cannot give legal advice. Unrepresented ("pro se") parties can find many helpful resources at: www.nycourts.gov/courthelp.

1.6 When directed by the Court to prepare a proposed Decree, Order, or Judgment (collectively "Order") Counsel shall agree upon the form and content of such Order without involvement or communication with the Court Clerk or Chambers. Should counsel be unable to agree, a conference shall be requested for purposes of settling the Order at issue.

1.7 Once submitted for signature, such Order shall be accompanied with a letter from the submitting counsel stating that all counsel has approved the Order as to form and content. In the absence of approval as to form and content, and if an agreement on the language of the Order cannot be reached after the request for and conduct of a conference required by 1.4 above, notice of settlement procedure provided in the Uniform Rules for Trial Courts (22 NYCRR) § 202.48 shall be used.

1.8 Notwithstanding the foregoing, if a proposed Order is submitted to Chambers on notice to the appearing parties, and no objection to the form/content of the Order is received within five business days of the date of e-filing, the Court reserves the right to treat the form and content thereof as unopposed and issue the Order.

1.9 The Judge's signature line should not be on a page by itself without a header.

1.10 All counsel and unrepresented parties shall be carbon copied ("cc'd") on all communications to chambers.

2.0 - Submission and Form of Exhibits for Hearings and Trials.

2.1 Counsel/ parties shall prepare, in advance, sufficient copies of their exhibits so that the judge and each party or their counsel is provided with a paper copy at the hearing/ trial of the exhibit being introduced. In addition, for virtual Surrogate's Court matters, all Exhibits shall be transmitted to the Court Clerk's Office via electronic mail to: lhasting@nycourts.gov forty-eight (48) business hours in advance of all hearings or trials. For all other County Court matters, such virtual exhibits shall be transmitted via electronic mail to: chambersjschopf@nycourts.gov forty-eight (48) business hours in advance of all trials.

- 2.2** For witnesses for whom permission has been granted to appear virtually, counsel for all parties shall submit copies of all pre-marked exhibits to such witness via electronic mail at least forty-eight (48) business hours in advance of the scheduled time for the hearing or trial.
- 2.3** Such exhibits shall, in all cases, be pre-marked with identifying labels commonly used by, or substantially similar to those used by the Clerks and Court Reporters of the Unified Court System. Petitioner/Movant/Plaintiff's exhibits are to be numbered and Respondent's/Objectant's/Defendant's exhibits are to be lettered.
- 2.4** Counsel/parties must confer before the appearance in regard to stipulating to their respective exhibits' admissibility. Any exhibits not so stipulated shall be ruled upon with regard to their admissibility at the time offered.
- 2.5** Individual exhibits which exceed five (5) pages shall be "Bates" stamped or otherwise paginated in such a manner that does not interfere with the authenticity or readability of the document.
- 2.6** **The Court cannot insert USB flash drives, CD's, DVD's, jump drives, SD cards, external hard drives or other electronic media into computers of the NYS Unified Court System.**
- 2.6.1** Any attorney/ party intending on submitting electronic evidence such as audio or video files to be used on court technology shall provide a USB flash drive marked as an exhibit which contains the material intended to be presented to the Court.
- 2.6.2** A personal laptop and audio equipment shall be provided by the attorney/ party who intends to present electronic media.
- 2.6.3** Anyone intending to play audio/ video evidence as part of a proceeding where a party or witness will be appearing virtually shall contact the Chief Clerk at least a week prior to the scheduled appearance date to discuss technical arrangements.

2.7 USE OF ARTIFICIAL INTELLEGENGE (A.I.)

- 2.7.1** Purpose and Scope: This rule is established to govern the use of artificial intelligence (A.I.) technologies by attorneys and/or parties in the preparation and submission of materials to the Court. It aims to ensure the ethical use of A.I. and maintain the integrity of evidence.
- 2.7.2** Definitions.
- 2.7.2.1** "Artificial Intelligence" ("A.I."): Any technology that uses machine learning, natural language processing, or any other computational mechanism to simulate human intelligence, including document generation, evidence creation or analysis, and legal research, and/or the capability of computer systems or algorithms to imitate intelligent human behavior.

2.7.2.2 “Generative artificial intelligence” or “Generative A.I.” means artificial intelligence that is capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.

2.7.2.3 “A.I.-Assisted Material”: Any document or evidence prepared with the assistance of AI technologies.

2.7.3 Disclosure of A.I. Assistance. Attorneys, witnesses, and/or parties must disclose the use of A.I.-assisted technology, whether generative or A.I. assisted, in the creation or editing of any document or material submitted as evidence to the court. Such disclosure should include a general description of the type of A.I. technology used, such as identifying the operating software or program and its role in the preparation of the materials. The disclosure must be made at the time of submission through a written certification attached to or submitted with the evidence, indicating the type of A.I. used and certifying the attorney, witness, or party’s final review and approval of the A.I.-generated or A.I.-assisted material.

2.7.4 Responsibility and Review. Attorneys, witnesses, and/or parties remain ultimately responsible for the accuracy, relevance, and appropriateness of all other A.I.-generated and/ or A.I.-assisted materials submitted to the court including but not limited to legal memorandum, affidavits and briefs. Attorneys, witnesses, and/or parties must thoroughly review all A.I.-assisted materials to ensure they meet all legal and ethical standards. Use of A.I. does not absolve attorneys from their duty of competence, diligence, and supervision as required under the New York State Rules of Professional Conduct and any applicable ethical opinions promulgated now or in the future which become subject to this rule.

2.7.5 All parties and their counsel have a duty to immediately inform the Court if they discover the use of A.I. in any document filed in their case which was not properly disclosed under this rule. Parties and their counsel who violate this rule may face sanctions including, *inter alia*, striking the document from the record, the imposition of economic sanctions or contempt, and/ or dismissal of the lawsuit/petition/claim.

2.7.6 Evidence and Expert reports which utilize A.I. – In addition to the disclosure required by 2.6.3 above, should a document, report or other material be sought to be admitted into evidence, the opposing party shall have the right to request an evidentiary “*Frye*”¹ hearing as to the reliability and admissibility of the A.I. assisted or generated evidence prior to the hearing or trial in which the evidence is proposed to be introduced.

2.8 Attorneys should consider consulting the New York City Bar Association’s Committee on Professional Ethics Opinion 2024-5 concerning the ethical obligations of attorneys and non-attorney affiliates with respect to the use of A.I. - https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf

¹ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)

3.0 – Communication with Chambers, Adjournments, and Settlements Prior to Hearing or Trial.

- 3.1** Requests for adjournment absent a *bona fide* emergency shall be made at least seventy-two (72) hours in advance via an email to chambers at: chambersjschopf@nycourts.gov and copying the Chief Clerk at: lhasting@nycourts.gov. All opposing parties shall also be copied.
- 3.2** Requests to mark a matter off the calendar as settled or resolved shall be made in writing by the requestor at least twenty-four (24) hours in advance of the scheduled appearance via an email to chambers at: chambersjschopf@nycourts.gov, copying the Chief Clerk at: lhasting@nycourts.gov, and copying all other counsel. All counsel shall reply to such email and affirmatively state that they are in agreement that the matter is settled or resolved as stated by requestor.
- 3.3** Chambers hours are 9:00 a.m. until 5:00 p.m. If the phone is not answered, voicemail will take messages and calls will be returned as soon as possible. Please do not make multiple calls or leave duplicate messages.
- 3.4** Requests to schedule a conference should be done by email to chambers at chambersjschopf@nycourts.gov and should include the reason for the conference.
- 3.5** Unless specifically requested, the Court does not wish to be copied on contentious correspondence between counsel. Rather, if assistance is needed in resolving an issue, counsel may either request a conference or file a motion. **Prior to filing a motion to resolve a discovery issue, counsel shall request a pre-motion discovery conference.**
- 3.6** Unless provided by statute (*e.g. presentation of an order to show cause or particular petition*), *ex parte* communication with the Judge on pending or contemplated matters, whether or not contested, is prohibited. All inquiries to chambers should be to the chamber's email address, chambersjschopf@nycourts.gov, to the judge's confidential secretary, or court attorney.

4.0 – Conduct of Calendar Dates, Hearings, and Trials.

- 4.1** Generally, all Surrogate's Court appearances for the hearing of petitions are scheduled for a general calendar call on Wednesdays which begins at 10:00 a.m. in the second floor Part 3 courtroom at 30 McMaster Street, Ballston Spa, New York unless the parties are specifically advised otherwise by the Court. Please be prompt for your scheduled appearance time and promptly inform the Court if you are delayed. Defaults in appearance may be taken on the record after the scheduled appearance time. At 10:00 a.m. the Court will begin to hear citation return dates, oral argument on motions, special proceedings, compliance, status, and any other conferences may proceed on cases in which all attorneys and necessary parties are present and have checked in with the Court Officer on duty.

- 4.2 The Court considers every appearance to be both a settlement and compliance conference. Counsel attending the appearance must be fully familiar with the case and have authority to enter into binding stipulations,** and the parties, their representatives and/or representative(s) of insurance carrier(s) or financial institutions may also be required to attend, in person or by telephone. **All counsel shall confer prior to the date of the conference to discuss settlement and the resolution of any triable issues.**
- 4.3** All appearances, hearings, and trials are conducted in person, unless prior permission has been granted based upon a request made to chambers via electronic mail at chambersjschopf@nycourts.gov at least seventy-two (72) hours in advance of such appearance. All parties, witnesses, and counsel requesting such accommodation must have a valid e-mail address and a stable internet connection.
- 4.4** All appearances by counsel shall be made by attorneys with knowledge of the facts of the case and vested with authority to enter into stipulations and/or dispositions which bind their respective clients.
- 4.5** All persons appearing virtually shall be appropriately dressed and seated in full view of the camera. If the person appearing virtually is a party or a witness, no other persons shall be present in the room with the party or witness. Parties and witnesses shall not use background filters. Virtual appearances should not be made from a vehicle or a public location.
- 4.6** For witnesses for whom permission has been granted to appear virtually, counsel for all parties shall submit copies of all pre-marked exhibits to such witness via electronic mail at least forty-eight (48) business hours in advance of the scheduled time for the hearing or trial.

5.0 - Motions.

- 5.1** Motions shall be made returnable on Wednesdays at 1:00 PM and in accordance with the filing and service requirements imposed by the SCPA and/ or CPLR. Counsel shall appear on that date and time prepared for oral argument, or as otherwise notified by the Court.
- 5.2** The Court may re-schedule the date and time for oral argument. In such instance the return date for submission of papers shall remain as originally set by movant.
- 5.3** In those cases which pre-date e-filing and have not been converted to e-filing, original motion papers should be filed with the Chief Clerk, accompanied by the requisite filing fee, if applicable. The Clerk will then forward the original papers to Chambers. Original opposition and reply papers should be sent directly to Chambers.
- 5.4** Other than motion papers, do not submit courtesy copies of petitions or other documents to Chambers, unless directed by Chambers or the Chief Clerk.
- 5.5** Counsel and self-represented parties are reminded that neither the SCPA nor the CPLR provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. Nor is motion practice by

correspondence permitted. Any counsel or self-represented parties who receive a copy of such materials submitted in violation of this rule shall not respond in kind.

- 5.6 Reply papers should not raise issues that were not previously raised in the moving or opposition papers. Attorney Affirmations should not present facts for which the attorney does not have personal knowledge of.
- 5.7 Papers shall not be submitted for filing via e-mail unless specifically directed by the Court.
- 5.8 Papers should be timely served on all counsel, unrepresented parties and interested parties in accordance with both the SCPA and/or the CPLR, as applicable. In the event papers are not served in a timely manner, the Court reserves the right to adjourn the return date of the motion, or re-issue a Citation to ensure that proper service will be made.
- 5.9 Adjournment requests for a return date of a motion shall be made to the Court in writing at least seventy-two business hours before the scheduled return date of the motion. Requesting counsel shall confer with opposing counsel(s) prior to making the request and shall specifically indicate if the request is on consent.
- 5.10 For an Order to Show Cause that seeks a preliminary injunction or Temporary Restraining Order pending the return date, the procedure set forth in Uniform Rules for Trial Courts (22 NYCRR) § 202.7 (f) must be followed by giving notice to the opposing party or, alternatively, submitting an affirmation to demonstrate that prejudice would result from the giving of notice.
- 5.11 Please call Chambers immediately, 518-451-8810, after the filing of an Order to Show Cause, which addresses an urgent matter of genuine and legitimate emergency, so that the Court can ensure it receives immediate attention.
- 5.12 All proposed Orders to Show Cause shall include blank lines for the insertion of a date by the Court for the submission of opposition and reply papers.

6.0 – Conduct of Trials and Hearings.

- 6.1 Unless otherwise ordered by the Court, expert disclosure shall be provided by the Petitioner/Plaintiff/ Movant sixty (60) days before the scheduled trial or hearing. Expert Disclosure shall be provided by Respondent(s)/Defendant(s) thirty (30) days before trial.
- 6.2 Motions *in limine* are to be fully submitted fourteen (14) days before trial with a courtesy copy to chambers on paper. All opposition papers are due nine (9) business days before the trial starts and reply papers are due four (4) business days before the trial is scheduled to commence.

- 6.3** At least five (5) days prior to trial, counsel/ parties shall provide the Court with printed copies of the following papers and documents (counsel/ parties shall provide a copy electronically or in paper to their adversary):
- 6.3.1** Marked pleadings and amendments thereto and all bills of particulars served.
 - 6.3.2** An exhibit list of pre-marked exhibits for use by the stenographer/ Court Clerk.
 - 6.3.3** A list of proposed witnesses to be called at trial, including expert witnesses, with the information required pursuant to CPLR §3101(d)(1)(i).
 - 6.3.4** A pre-trial memorandum in letter format not to exceed five (5) pages, setting forth your position, the relevant factual and legal issues to be tried, and citing all relevant statutes and case law which you feel support your position. Such memorandum shall include your present settlement position and the estimated length of trial.
 - 6.3.5** If applicable, counsel must provide the Court with the following: a list of applicable PJI sections and any other requested jury charges; each party's contentions; and a proposed jury verdict sheet.
 - 6.3.6** Counsel shall cooperate to prepare an agreed-upon verdict sheet. If that is not possible, then the parties shall submit separate proposed verdict sheets following the suggested forms in the PJI. Each question shall be on a separate page. All verdict sheets shall be submitted in writing and Word format, via e-mail to chambersjschopf@nycourts.gov.
 - 6.3.7** A charge conference will be held prior to summations, at which time counsel may supplement or amend their previously submitted requests to charge.
- 6.4** Jury selection shall follow one of the authorized methods contained within the Uniform Rules for Trial Courts 22 NYCRR §202.33 (f), as the parties may agree. The Court may preside over a portion of, or the entire, jury selection process. Time limits on counsel may be imposed.
- 6.5** Parties and all witnesses expected to testify at the commencement of the hearing/ trial are to be present at the Courthouse and ready to take testimony at 9:30 a.m.
- 6.6** All fact witnesses will be excluded from the courtroom until such time as they testify. Expert witnesses are generally exempted from this exclusion requirement.
- 6.7** If any experts testify, they must bring their original files with them. Also, at the time that any expert testifies, counsel shall provide the Court a copy of the expert's report.
- 6.8** In respect to objections, it is the Court's preference that when counsel objects to include the basic legal ground for the objection. The Court will make a ruling and the hearing/trial will continue.
- 6.9** If there are any pre-trial matters to be discussed, the Judge will conference with counsel in chambers or the courtroom at 9:00 a.m. and begin testimony at 9:30 a.m. Please have witnesses scheduled and present in advance.

- 6.10** Counsel/parties are asked to cooperate, in the event that any witnesses are to be taken out of order so that the trial will continue to move along in an efficient manner.
- 6.11** Please contact the Chief Clerk directly in advance of trial should counsel intend to present any video or audio evidence (see Rule 2.5).
- 6.12** Any records that have been subpoenaed to the custody of the Chief Clerk may be reviewed by counsel/parties in advance with an appointment being made with the Clerk's Office, but may not be removed from the Clerk's Office.
- 6.13** Post-trial motions may be presented orally on the record or submitted in writing.
- 6.14** For non-jury trials and hearings, proposed Findings of Fact and Conclusions of Law shall be submitted by each party.
- 6.14.1** The parties shall e-file such Findings of Fact and Conclusions of Law within sixty (60) days of the receipt of transcripts, unless otherwise scheduled by the Court.
- 6.14.2** In addition to e-filing, the proposed findings of fact and conclusions of law shall be submitted in writing in Microsoft Word format via email to chambersjschopf@nycourts.gov. All citations within the proposed findings shall be to the record. The parties shall provide to the Court a transcript of the entire trial or hearing and shall agree amongst themselves as to the cost sharing of such transcript in the absence of a statute or rule which provides for designation of responsibility for payment of the same.
- 6.15** For all County Court civil cases, if a case has been settled or otherwise disposed, counsel shall promptly advise the Court, in writing, and ensure that a Stipulation of Discontinuance is promptly filed, prior to the next scheduled appearance before the Court. A copy of the filed Stipulation of Discontinuance shall be provided to Chambers.