

COURT NOTICES

AMENDMENT OF RULE

Local Court Rules for the Richmond County Surrogate's Court

Pursuant to the provisions of § 207.1(c) of the Uniform Rules for Surrogate's Court, and Part 9 of the Rules of the Chief Judge, 22 NYCRR Part 9, I, Robert J. Gigante, Surrogate of Richmond County, hereby amend, effective November 1, 2008, the Local Court Rules for the Richmond County Surrogate's Court, 22 NYCRR Part 1851, as follows (matter in brackets is deleted, matter italicized is added):

1851.4 Motions

(B) Appearance is required by counsel for all parties on the return date of the motion[,] and all motions are to be orally argued, *unless the written consent of all counsel to have the motion submitted on the papers without their appearance is received by the Court not later than the close of business on the Friday immediately preceding the return date.*

1851.6 Pre-trial Discovery

(A) Upon completion of the SCPA 1404 examination of attesting witnesses, counsel shall notify the Law Department before leaving the Court, and [the matter will be restored to the Court's calendar for the fourth Wednesday after said examination. Any post- SCPA 1404 objections to probate must be filed with the Court no later than the close of business on the Friday immediately preceding the adjourned date. If no objections are filed by that time, the matter will proceed as an uncontested probate and marked for decree at the call of the calendar.] *counsel will be advised by what date objections must be filed. If no objections are filed and properly served by the close of business on that date, the proponent shall so notify the Court, in writing, and the proceeding will then be referred to the Clerk's Office as an uncontested probate.*

(B) Upon the filing of objections [or an answer, and after SCPA 1411 jurisdiction has been obtained, if required, a discovery conference will be scheduled with the Court. At such conference, a detailed schedule for an exchange of bills of particulars and of all pre-trial discovery procedures, and a firm trial date shall be set forth in a pre-trial stipulation to be executed by the attorneys in attendance and "So Ordered" by the Court. Immediately upon completion of discovery, a note of issue with a certificate of readiness and an affidavit of service shall be filed with the Court. Thereafter the Court will schedule a pre-trial conference that counsel and all parties shall attend.] *the proponent shall submit to the Clerk's Office for issuance a Citation pursuant to SCPA 1411 for service upon all those persons entitled thereto. Should a Citation not be required, the proponent shall submit to the Court an affirmation so indicating, and request that the matter be restored to the calendar for further disposition.*

(C) *At the next appearance, a detailed schedule for an exchange of Bills of Particulars and for all pretrial discovery shall be set forth in a pre-trial stipulation to be executed by the attorneys in attendance and "so ordered" by the Court. Immediately upon completion of discovery, a Note of Issue with a Certificate of Readiness and an affidavit of service shall be 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.*

1851.8 Accounting Rules

[(A) The accounting party must sign each page in the Account of Proceedings.]

(A) [(B)] A copy of the Account of proceedings must be served with each Citation, and the Affidavit of Service of Citation must recite that a copy of the Account of Proceedings was also served.

(B) [(C)] A copy of the Account of Proceedings must be served on each party signing a Waiver and Consent and the Waiver and Consent must acknowledge the receipt of the Account.

(C) [(D)] If attorney's fees, commissions, disallowances of claims or like matters must be approved, these items with the monetary values thereof must specifically be set forth on all petitions, Citations and Waivers and Consents.

(D) [(E)] If any attorney other than the accounting party's attorney appears, or if a Guardian Ad Litem is appointed, all accounting decrees must contain a Notice of Settlement unless the decree is approved by said persons as to form and content.

(E) [(F)] In order for an accounting to be accepted for filing by the Court, the petition must state whether or not an inventory of assets pursuant to Uniform Rule of the Surrogate's Court 207.20 has been filed with the Court.

(F) [(G)] In all accounting proceedings, the petitioner may either cite the State Tax Commission as a party in interest, or submit proof of fixation and payment of tax or a no-tax letter, prior to the entry of a final decree.

(G) [(H)] In all judicial accounting proceedings, an affidavit of legal services pursuant to Uniform Rule of the Surrogate's Court 207.45 must be filed with the account of proceeding.

1851.10 Safe Deposit Box Openings

A representative of the Surrogate's Court shall be present at all safe deposit box openings *held in Richmond County that are ordered pursuant to SCPA 2003(1).*

1851.11 Guardianship Rules

(A) In addition to the requirements contained in the maintenance petition, [all applicants] *any application from a parent* requesting withdrawal [in] *from a guardianship account[s] must [submit] include a copy of the federal and state income tax returns of the [guardian and/or the guardian's spouse] applicant for the last three years.*

(B) *In order to ensure the proper opening of all initial guardianship accounts, where the court directs that the deposit be made jointly with the Clerk of the Surrogate's Court, a representative of the Surrogate's Court shall be present at the bank when the account is opened.*

1851.12 [Variance] Bonds

[Any of the rules set forth herein may be varied in the discretion of the Court for good cause shown.] *All bonds filed with the Court shall be 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.*

1851.13 Subpoenas

Subpoenas presented to the Clerk's Office to be "so ordered" by the Surrogate must be accompanied by a written statement of the attorney indicating the reasons why he or she requires it to be "so ordered," except for subpoenas directed to a hospital, a library, a municipal corporation or any of its departments or agencies, or the State. If the subpoena is presented by a party or person not represented by an attorney, the written statement shall be made by such party or person.

1851.14 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 there will be significant prejudice to the party seeking the restraining order by the giving of notice. 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 permit the party an opportunity to appear in response to the application.

1851.15 Variance

Any of the rules set forth herein may be varied in the discretion of the Court for good cause shown.