

SURROGATE'S COURT UPDATE

April 24, 2025

1. Annual Statistics

- a. In 2024, 100 Trials and Hearings were commenced by the Surrogate.
This is up from 54 in 2023.
- b. In 2024, 76 Referee Hearings were commenced. This is up from 66 in 2023.
- c. 2,952 conferences were held by the Law Department in 2024, up from 2,528 in 2023.
- d. There were 1362 written decisions issued in 2024; in 2023 1306 were issued.
- e. There were 2,376 Orders signed in 2023; 2610 were signed in 2024.
- f. There were 2,341 Decrees signed in 2024; 2509 were signed in 2024.
- g. There were 6,088 calendared matters in 2024, up from 5769 in 2023.

2. Probate Department

- a. The time regarding the issuance of letters remains largely unchanged since last year (2 weeks – 2 months).

3. Guardianship Department

- a. The Guardianship Department is accepting filings electronically via NYSECF. This type of filing is voluntary at this time, and access is limited when viewing files.
- b. Fingerprinting has now been outsourced for the convenience of the public. Previously, individuals who needed to be fingerprinted had to make an appointment to have this done at the Surrogate's Court during certain limited days and times. Now fingerprints can be taken at numerous locations throughout the county during much more extensive hours.

4. Administration Department

- a. The triage approach taken with respect to filings in the Probate Department has now been employed in the Administration Department to address the current backlog.
 - i. Filings will now take one of four paths:
 - 1. Urgent matters, upon request and the filing of an Affirmation or Affidavit of Urgency
 - 2. Matters submitted upon waivers and consents of all required parties

3. Regular course

4. Creditor's Applications

5. CLE

- a. Over one dozen CLE programs were held involving the Court in the 2023, all in conjunction with Committees of the SCBA (usually the Elder Law Committee or the Surrogate's Court Committee).
- b. In 2024, the Guardian ad Litem series was held. This series consisted of both the Part 36 training necessary for placement on the OCA list of persons eligible to receive appointments, as well as specific programs dealing with GAL responsibilities for each department in the court. While they took place at the courthouse, these are hybrid programs for the convenience of the members of the bar.

6. GAL Reports

- a. GAL reports are generally due in 30 days; one extension may be granted; after that, absent extraordinary circumstances, an in person conference on the record will be held for the GAL to explain the delay. All parties are notified of these conferences.

7. Unveiling of Surrogate Theresa Whelan's portrait

- a. We now have portraits of eight (8) of the previous twenty-six (26) judges of the Surrogate's Court now hanging in the courtroom.

8. Court Protocols/Rules

a. Oral Arguments on Motions

- i. Oral argument is mandatory on all applications for Temporary Restraining Orders. Please see the existing protocols for the procedure that is employed. The existing protocols are attached.
- ii. Oral argument is the default procedure for all summary judgment motions.
- iii. Requests for oral argument are entertained for all other motions.

b. At the Surrogate's Court Committee, a discussion was held regarding new rules which have been implemented. The highlights of the rule changes are:

- i. The current rule requiring filing two (2) business days prior to the return date of all matters on the process calendar will be more strictly enforced.

ii. Papers in General

1. Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation and any attached exhibits shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document. All e-filed exhibits must be described sufficiently to allow the court to ascertain what document is filed in the exhibit. Each exhibit must be numbered and paginated. Any reference to deposition testimony must cite to the exact page and line numbers relied upon and the entire transcript must be submitted as an exhibit. **This requirement will not be imposed until a CLE program is held regarding same.**

iii. Motions: Length of Papers

1. Unless otherwise permitted by the court in advance: (i) affidavits, affirmations, briefs and memoranda of law in support of a motion or in opposition thereto shall be limited to 20 pages and no more than 7,000 words each:

reply affidavits, affirmations, and memoranda shall be limited to 12 pages and no more than 4,200 words.

2. For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.
3. Every brief, memorandum, affirmation, and affidavit shall include a page attached to the end of the applicable document certifying that the document complies with the page and word count limits. The person certifying compliance may rely on the word count of a word-processing system used to prepare the document.
4. Where a cross-motion is made, the affidavits, affirmations, briefs, or memoranda submitted in support of the cross-motion or in opposition thereto shall be limited to 20 pages and no more than 7,000 words each.
5. Where the court permits the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth above the certification required by

paragraph (c) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

6. Sur-Reply and Post-Submission Papers

- a. Absent express permission in advance, sur-reply papers, including correspondence addressing the merits of a motion are not permitted, except that counsel may by stipulation inform the court of the citation of any post-submission appellate court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered.

iv. Trials: Pre-Marking of Exhibits

1. Unless permitted by the court in advance, prior to trial, the attorneys for the respective parties, or the parties pro se, shall appear at a conference with the court for the purposes of pre-marking trial exhibits.

2. Each party shall provide the original exhibit, and a paginated copy thereof for each of their adversaries and any other party who has appeared, and a copy thereof for the court.
3. Each attorney/party shall provide a numbered list of exhibits in Word format to the court prior to the pre-marking conference. Each entry shall concisely describe the exhibit and include the number of pages. The list shall include two columns one labeled "ID Only" and the other labeled "Evidence".
4. All of the pages of each Exhibit shall be sequentially numbered.