COURT NOTICES

AMENDMENT OF RULE

Uniform Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, section 202.5-b of the Uniform Rules for the Supreme and County Courts, relating to electronic filing in the Supreme Court, to read as follows:

§202.5-b. [Filing by] Electronic [Means] *Filing in Supreme Court.*

(a) Application.

(1) There is hereby established a pilot program in which [papers in the following civil actions] documents may be [served or] filed *and served* by electronic means [(FBEM)] *in civil actions in Supreme Court. Documents may be filed or served by such means only to the extent and in the manner authorized in this section and only in the following actions:* (i) tax certiorari [claims] *actions (including small claims actions under Title 1-A of Article 7 of the Real Property Tax Law) and tort and commercial actions* in the Supreme Court in *Albany, Bronx, Essex, Kings, Livingston,* Monroe, *Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan and* Westchester [, New York and Suffolk] Counties; and (ii) [commercial claims in the Commercial Divisions of Supreme Court in Albany, Monroe, Nassau, New York, Suffolk and Westchester Counties. The pilot program also shall apply to claims in the Court of Claims as provided in section 206.5-aa of these rules] *actions in Supreme Court in Broome County and Erie County of any type designated by the appropriate Administrative Judge.*

(2) ["Electronic] *For purposes of these rules:*

(i) "electronic means" [for purposes of these rules] shall mean any method of transmission of information between computers or other machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression[.

(3) An]*;*

(ii) the "e-filing Internet site" shall mean the website located at www.nycourts.gov/efile;

(iii) "e-filing", "electronic filing" and "electronically filing" shall mean the filing and service of documents in a civil action by electronic means through the e-filing Internet site;

(iv) an "authorized e-filing user" shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an "action" [for the purposes of these rules] shall include a special proceeding[.

(4) "Hard]*;*

(vi) "hard copy" shall mean information set forth in paper form; and

(vii) "party" or "parties" shall mean the party or parties to an action or counsel thereto.

(b) [Designation of] *E-Filing in* Actions [Subject to FBEM] *in Supreme Court.*

(1) [In any case designated pursuant to this section, a] *Commencing an action by electronic means. A* party may commence [an] any action *specified in paragraph (1) of subdivision (a) of this section* by *electronically* filing the initiating [papers by electronic means] *documents* with the County Clerk [, or by filing a hard copy of those papers with the County Clerk. Upon such filing, the County Clerk shall provide the filing party with a copy of a Notice Regarding Availability of Electronic Filing in a form approved by the Chief Administrator. If that party desires that the action be subject to FBEM, the party shall serve the other parties with such Notice, together with the initiating papers].

(2) [Parties who consent to participate in FBEM shall promptly file with the court and serve on all parties of record a Consent to FBEM, in hard copy, in conformance with subdivision (c) of this section. A party represented by an attorney who has already registered as a Filing User pursuant to subdivision (d) may instead file and serve the Consent to FBEM electronically by checking the designated box and following the instructions on the New York State Unified Court System Internet Site ("UCS Internet Site") (http://fbem.courts.state.ny.us).

(3) A judge assigned to a case in the FBEM pilot program shall be denominated a "participating judge," and upon the assignment of a participating judge, the clerk shall so notify the parties. If the judge assigned does not wish to be a "participating judge" or orders that the action should not be subject to FBEM, the clerk shall direct the parties to file all papers, including any papers previously filed electronically, in hard copy. The assigned judge shall note on the initial Preliminary Conference Stipulation and Order form whether the action is subject to FBEM. All papers may be served and filed in hard copy in accordance with the Civil Practice Law and Rules until an action is subject to FBEM. Upon an action being] *E-filing in an action after commencement.*

(i) Consent of the parties required. After commencement of an action specified in paragraph (1) of subdivision (a) of this section, documents may be electronically filed and served, but only if and when all parties have consented thereto or, if fewer than all parties have so consented, only by and between consenting parties with the permission of the court.

(ii) Consent to e-filing; how obtained. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. Consent may be obtained by stipulation or a party who seeks to use e-filing in a pending action may serve upon all other parties to the action a notice regarding use of e-filing in a form approved by the Chief Administrator of the Courts. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. A party served with such a notice may consent to e-filing in the action not later than ten days after receipt of such service, either by filing with the court and serving on all parties of record a consent to e-filing or if such party or the attorney of record therefor is an authorized e-filing user, by filing the consent electronically in the manner provided at the e-filing Internet site; provided, however, the

court, in its discretion, may permit a consent to e-filing at any time thereafter. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Filing and service after consent to e-filing in an action. Once an action is made subject to [FBEM] *e-filing,* all [papers] *documents filed and served by consenting parties* shall be served and filed in accordance with this section.

[(4) The parties may apply at any time for an order that an action be subject to FBEM by submitting a Consent by all parties to FBEM satisfying the requirements of subdivision (c), which application the court in its discretion may grant or deny.

(5)]

(iv) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to [FBEM] e-filing, the court may direct that [papers] *documents* previously filed in the action in [the County Clerk's office] *hard copy* be filed electronically by the *parties*. [The parties shall be responsible for converting all previously filed hard-copy documents into electronic form.

(6)] The court may [terminate] *at any time order discontinuation of e-filing in such action* or [modify the application of FBEM to an action at any time and may excuse a party from compliance with any provision of these rules] *modification of e-filing procedures therein* in order to prevent prejudice and promote substantial justice.

[(7) When a case subject to FBEM is removed from FBEM, in whole or in part] *Where a court orders discontinuation of e-filing in an action*, the *court may direct the* clerk [shall] to convert into hard copy those documents comprising the case file which had been received [by FBEM] *electronically*.

(c) [Consents to FBEM and E-Mail Addresses of Record.

(1) The consent to FBEM shall state that the submitting party consents to the use of FBEM in the action, including consent to be bound by the service and filing provisions in these rules, and shall set forth up to three Internet e-mail addresses for the purposes of service and giving notice of each filing (the "E-Mail Addresses of Record"). In addition, the consent to FBEM shall state that the party agrees to comply with the User's Manual approved by the Chief Administrator.

(2) The UCS Internet Site shall include for each action subject to FBEM a current list of the E-Mail Addresses of Record maintained by the County Clerk and the Chief Clerk of the Supreme Court. Access to e-mail addresses may be restricted to prevent unwanted e-mail solicitations. Each attorney of record and each unrepresented party shall promptly serve notice upon all parties of any change in such person's E-Mail Addresses of Record, and shall promptly notify the appropriate clerks of such change, including identifying to the clerks each action subject to FBEM in which the e-mail address must be updated and confirming that such person has received test e-mail messages successfully from all persons who have consented to FBEM in the action.

(d) Filing] *Authorized E-Filing* Users, Passwords and Other [Attorney] Information.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York [, or admitted pro hac vice for purposes of an action], *or a person seeking to use e-filing as an authorized agent on behalf of attorneys of record in an action or actions (hereinafter "filing agent")* may register as [a Filing User of] *an authorized e-filing user of* the [UCS] *e-filing* Internet [Site] *site*. [A] *An attorney admitted pro hac vice in an action*, a party to an action subject to [FBEM] *e-filing* who is not represented by an attorney, *or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business by the jurisdiction in which the business is operated (hereinafter "small claims assessment review filing agent")* may also register as [a Filing User of the UCS Internet Site] *an authorized e-filing user, but solely* for purposes of such action *or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.*

(ii) How to register. Registration shall be [by paper] on a form prescribed by the [appropriate clerk] *Chief Administrator*, which shall require [identification of the action and the name, address, telephone number and Internet e-mail address of the Filing User. An attorney registering as a Filing User shall declare on the registration form that the attorney is admitted to the Bar of the New York State or admitted pro hac vice in the particular action. If, during the course of the action, an unrepresented party retains an attorney who appears on the party's behalf, the appearing attorney shall ask the clerk to terminate the party's registration as a Filing User upon the attorney's appearance] *such information as he or she shall specify. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user*.

[(2) A Filing User] *An authorized e-filing user* shall notify the appropriate clerk immediately of any change in the information provided [in the Filing User's] *on his or her* registration *form*.

(3) [A Filing User] *Identification and password. Upon registration, an authorized e-filing user* shall be issued a *confidential* User Identification Designation ("User ID") and a password by the [appropriate clerk upon registration] *Unified Court System ("UCS").* [The clerk shall maintain a confidential record of issued User IDs and passwords.

(4) A Filing User] *An authorized e-filing user* shall maintain *his or her User ID and password* as confidential, except as provided in [subparagraph (6), the User ID and password issued by the clerk] *paragraph (4) of this subdivision*. Upon learning of the compromise of the confidentiality of either the User ID or the password, [the Filing User] an authorized e-filing user shall immediately notify the appropriate clerk[, who shall issue the user a new User ID or password as appropriate.

(5) The clerk]. *At its initiative or upon request, the UCS* may at any time issue a new User ID or password to any [Filing User. A Filing User may at any time obtain a new User ID or password upon request to the clerk by following procedures prescribed by the clerk] *authorized e-filing user*.

[(6) In the event the Filing User authorizes] *(4) An authorized e-filing user may authorize* another person to file a [paper] *document electronically* on [the Filing User's] *his or her* behalf *in a particular action* using the User ID and password of the [Filing User] user, but in such [Filing User] *event, the authorized e-filing user* shall retain full responsibility for any [papers] *document* filed.

[(e)] (d) Electronic Filing of [Papers] *Documents*.

(1) In any [case] action subject to [FBEM] *e-filing,* all [papers] *documents* required to be filed with the [clerk] *court by a party that has consented to such e-filing* shall be filed electronically [on the UCS Internet Site], except as [expressly] provided herein. [Only a Filing User as defined in subdivision (d) may file papers under FBEM.

(2) Every paper filed electronically shall be signed for the purposes of Part 130 of the Rules of the Chief Administrator (22 NYCRR) in accordance with subdivision (f). The paper shall provide the signatory's name, address and telephone number.

(3)] *Each document to be filed electronically by a filing agent (other than one employed by a governmental entity) shall be accompanied by a statement of authorization from counsel of record*

in a form approved by the Chief Administrator.

(2) Payment of fees. Whenever [papers] documents are filed electronically that require the payment of a filing fee, [such papers shall include a separate] *the person who files the documents shall provide, in payment of the fee: (i) such* credit or debit card [authorization sheet and shall contain] *information as shall be required at the e-filing Internet site to permit* [the card number or other information of the party or attorney permitting such] a card to be *charged or* debited by the County Clerk [for the payment of the filing fee. The card authorization shall be kept separately by the clerk and shall not be a part of the public record. The]*; or (ii) the form or information required by the County Clerk to permit him or her to debit an account maintained with the County Clerk by an attorney or law firm appearing for a party to the case; or (iii) any other form of payment authorized by the* Chief Administrator [may establish alternative methods for the payment of a filing fee by credit or debit card in some or all classes of cases and may permit other methods of paying filing fees from remote locations, such as electronic funds transfers and digital cash payments, and may provide guidelines for their use]. *Notwithstanding the foregoing, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter in person at the office of the County Clerk.*

[(4) Papers] *(3) Filing and receipt of documents; confirmation; secure information.*

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the [UCS] *e-filing* Internet [Site, and will be deemed] *site*. Documents are deemed filed [upon the receipt of those papers by] on the date on which their electronic transmission is recorded *at* that [Site] *site*, provided, however, that where payment of a fee is required *upon the filing of a document*, the [papers] *document* will not be deemed filed [unless accompanied by a completed credit card or debit card authorization sheet] *until transmission of the information or form or information as required in (i) or (ii), respectively, of paragraph (2) of this subdivision is recorded at the e-filing Internet site; or, if no such transmission is recorded, until payment is physically presented to the County Clerk.*

(ii) Confirmation. No later than the *close of business on the* business day following [transmittal] *the electronic filing* of [papers to the UCS Internet Site, the clerk] *a document, a confirmation notice* shall [transmit] *be transmitted* electronically *by the e-filing Internet site* to the [sender a Confirmation of Electronic Filing] person filing such document. When [papers] *documents* initiating an action are filed electronically, *the County Clerk shall assign* an index number [shall be assigned] or filing number to the action and [the number] shall *cause that number to* be transmitted to the [filing party] *person filing such documents* as part of the [Confirmation of Electronic Filing] *confirmation notice. If payment is submitted in person after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.*

(iii) *Secure information.* When [transmitting papers to the UCS Internet Site, a Filing User] *electronically filing a document, the person filing such document* shall indicate whether [the document to be transmitted] *it* contains any of the following: individually identifiable health information, a social security number, a credit card number, a bank account number, an individual's date of birth, an individual's home address, a minor child's name, or trade secrets. If [the Filing User] such person indicates that any of this information is contained in the document [being transmitted, the document being transmitted may be viewed on-line electronically only by the court, counsel of record for the parties to the action in which this document is filed, and any party to that action], *access to it on the e-filing Internet site may be restricted to consenting parties to the action, the County Clerk and the court.* The document will, however, be available for public inspection at the [courthouse] *office of the County Clerk* unless [otherwise] sealed by the court.

[(5)] *(4) Official record; courtesy copies.* When a [paper] *document* has been filed electronically *pursuant to this section,* the official record shall be the electronic recording of the [paper] *document* stored by the clerk. [Such document also may be filed in hard copy with the appropriate clerk.] The [participating judges] *court* may [request] *require the parties to provide* courtesy hard copies of [the papers] *documents filed electronically. Unless the court directs otherwise, each such copy shall bear a conspicuous notice on the first page that the document has been electronically filed.*

[(6) A Filing User seeking to file electronically] *(5) Orders and judgments. Unless the court directs otherwise,* any [paper] *document* that requires a judge's signature shall [also transmit such document] *be transmitted electronically and* in hard copy to the court. [Orders] *Unless the Chief Administrator authorizes use of electronic signatures, orders and judgments* signed by a judge shall be [filed] *signed* in hard copy, *and shall be* converted into electronic form by the appropriate clerk[, and entered into the official record.

(7) A participating judge, by use of a password and participating judge designation issued by the clerk, may approve preliminary conference, scheduling, and other non-dispositive orders, which shall be effective upon filing and issuance of an electronic notice of entry by the clerk.

(8) Nothing in the procedures for FBEM shall be interpreted to permit access to material filed under seal except upon order of the court]. *The County Clerk may sign judgments in hard copy, or may affix a digital image of his or her signature to judgments in electronic form.*

(6) Exhibits in hard copy. Notwithstanding any other provision of this section, the clerk may permit a party to file in hard copy an exhibit which it is impractical or inconvenient to file electronically.

[(f)] *(e)* Signatures. [A paper filed or served electronically shall be deemed to be signed by a person (the "signatory") when the paper identifies the person as a signatory in compliance with paragraph (1), (2), or (3). The filing or service shall bind the signatory as if the paper were physically signed, and shall function as the signatory's signature.

(1) In the case of a signatory who is a Filing User, such paper shall be deemed signed regardless of the existence of a physical signature on the paper, provided that such paper is filed using the User ID and password of the signatory.

(2) In the case of a signatory who is not a Filing User, such as an affiant or a deponent, or who is a Filing User but whose User ID and password will not be utilized in the electronic filing or service of the paper, such paper must be physically signed by the signatory before it is filed. A Filing User who files or serves such paper represents that he or she possesses the executed hard copy of such paper and agrees to produce it at the request of a party or the court.]

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in hard copy form (which hard copy must be preserved until the conclusion of all proceedings, including appeals,

in the case in which it is filed) and the electronic record of the document bears the word "Signed" typed on the signature line; or

(v) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130. A document shall be considered to have been signed by an attorney or party in compliance with section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR §130-1.1-a) if it has been signed by such attorney or party as provided in paragraph (1) of this subdivision and it bears the signatory's name, address and telephone number.

(3) *Certification of Signature.* A party or attorney may add his or her signature to a stipulation or other filed [paper] document by signing and filing a Certification of Signature for such [paper] document in a form prescribed by the Chief Administrator. [Such Certification shall provide the title, sequential number on the list of papers filed, and date and time filed of the paper being so signed.

(g)] *(f)* Service [on Parties Who Have Consented to FBEM] *of Documents*.

(1) [An attorney or party seeking to effect service upon the opposing party to obtain personal jurisdiction] *Service of initiating documents in an action. Initiating documents* may [serve the party by any of the methods permitted by] *be served in hard copy pursuant to* Article 3 of the CPLR, or [may serve the party] *in tax certiorari cases, pursuant to the Real Property Tax Law, or* by electronic means if the party *served* agrees to accept such service [by this method]. A party [that agrees to accept service] *served* by electronic means shall, *within 24 hours of service,* provide the serving party or attorney with an electronic confirmation [within 24 hours of service] that the service has been effected.

(2) [An attorney or a party filing] *Service of interlocutory documents. (i) E-mail address for service. Each party in an action subject to electronic filing that has consented thereto shall identify on an appropriate form an e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the e-filing Internet site (hereinafter the "e-mail service address"). Each attorney of record and each self-represented party shall promptly notify the appropriate clerk in the event he or she changes his or her e-mail service address.*

(ii) How service is made. Where parties have consented to e-filing, upon the receipt of an interlocutory [paper pursuant to the FBEM procedures shall, on the day of filing, send electronically a Notice of Filing of the paper] *document by the e-filing Internet site, the site shall automatically transmit electronic notification* to all [E-Mail Addresses of Record] *e-mail service addresses.* Such [Notice] notification shall provide [the sequential number on the list of documents filed and] the title of the [paper filed, and] *document received,* the date [and time filed, as set forth in the Confirmation of Electronic Filing received from the court. The] *received, and the names of those appearing on the list of e-mail service addresses to whom that notification is being sent. Each* party receiving the [Notice of Filing] notification shall be responsible for accessing the [UCS] *e-filing* Internet [Site] *site* to obtain a copy of the [paper filed] *document received*. The electronic transmission of the [Notice of Filing] *notification* shall constitute service of the [paper] *document* on the [addressee] *e-mail service addresses identified therein, except that such service will not be effective if the filing party learns that it did not reach the address of the person to be served.* Proof of *such* service [shall] *will* be [filed electronically with the court pursuant to the FBEM procedures, but such proof of service need not itself be served on other parties. Nothing in this section shall preclude a] *recorded on the e-filing Internet site. A* party [from utilizing] may, however, utilize other service methods permitted by the CPLR *provided that, if one of such other methods is used, proof of service shall be filed electronically.*

[(h) Service on] *(g) Addition of* Parties [Who Are Added to the Case.

(1) In] *or Proposed Intervenors in a Pending E-Filed Action. A party to be added in* an action [subject to FBEM, initial service of papers on parties who are added to the case shall be in hard copy and shall include, in addition to the papers, a notice that the action is subject to FBEM. Responsive papers may be served in hard copy and shall include (i) a Consent to FBEM for purposes of the action, or (ii) a statement that the party does not wish to utilize the FBEM option and will file and serve all papers in hard copy. Papers served on a party that declines the FBEM option shall be served in hard copy.

(2) In an action subject to FBEM, a] *subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding use of e-filing specified in paragraph (2)(ii) of subdivision (b) of this section, to which response shall be made as set forth in that paragraph. A* proposed intervenor or other [person seeking] *non-party who seeks* relief from the court [who is not a party may: (i) file a consent to FBEM procedures and thereby, upon being represented by or registering as a Filing User, become subject to FBEM procedures for such an application, or (ii) file or serve papers in hard copy, together with a statement that he or she does not wish to utilize the FBEM option.

(i) List of Papers Filed. For each action subject to FBEM, the UCS Internet Site shall provide a sequentially numbered list of all papers filed with the court and shall note the entry of any order or judgment by the court, regardless whether such paper was filed electronically. The record of those filings and entries for each case shall constitute the List of Papers Filed.

(j) Notice and] *in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent to e-filing. If an added party or intervenor does not so consent, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.*

(h) Entry of Orders and Judgments *and Notice of Entry*. In an action subject to [FBEM] *e-filing,* the [Clerk] *County Clerk or his or her designee* shall file [electronically] orders and judgments of the court [in accordance with the procedures for FBEM] *electronically,* which shall constitute entry of the order or judgment. [This shall not prevent the appropriate clerk from filing and maintaining a paper copy of such orders or judgments, in his or her discretion. At the time of the] *The date of entry shall be the date on which transmission of the order or judgment is recorded at the e-filing Internet site. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk a request for entry of judgment. Upon* entry of an order or judgment, the [clerk] *County Clerk, his or her designee, or the e-filing Internet site* shall transmit [by e-mail] to the [E-Mail Addresses of Record] *e-mail service addresses* a notification [that the order or judgment has been entered and shall make a note in the Electronic Filing Index of the transmission. Such notice by the clerk] *of such entry, which* shall not constitute service of notice of entry by any party. A party [may] *shall* serve notice of entry of an order or judgment on another party by [separately transmitting to the party to be served] *serving a copy of* the notification received from the [clerk] *County Clerk, his or her designee or the e-filing Internet site,* a copy of the order or judgment, [together with] and an express statement that the transmittal constitutes notice of entry. *Service may be made through the e-filing Internet site, or by any other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of service shall be filed electronically.*

[(k)] *(i)* Technical Failures. The appropriate clerk shall deem the [UCS] *e-filing* Internet [Site] *site* to be subject to a technical failure on a given day if the [Site] *site* is unable to accept filings or provide access

to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. The clerk shall provide notice of all such technical failures on the [UCS Internet Site and by means of the UCS Internet Site status line, which persons may telephone in order to learn the current status of the Site] *site*. When filing by electronic means is hindered by a technical failure, a party may file with the appropriate clerk in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to technical failure of the [UCS Internet Site] site shall be extended for one day for each day [in] on which such [technical] failure occurs, unless otherwise ordered by the court.

[(l)] *(j)* Electronic Filing of [Papers Not Otherwise Permitted to be Filed] *Discovery Materials*. In any action subject to [FBEM procedures, the court] *e-filing, parties and non-parties producing materials in response to discovery demands* may enter [an order] *into a stipulation* authorizing the electronic filing of discovery [requests, discovery] responses[,] and discovery materials [or other matter] to the degree and upon terms and conditions [to which all of the parties (or nonparties producing such materials) have previously agreed in a stipulation submitted to the court] *set forth in the stipulation*. In the absence of such [an order] a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

[(m)] *(k)* Copyright, Confidentiality, And Other Proprietary Rights.

(1) Submissions pursuant to [FBEM] *e-filing procedures* shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to [FBEM] *e-filing,* any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. Unless otherwise permitted by the court, a motion for such an order shall be filed not less than [five] *ten* days before the materials to which the motion pertains are due to be produced or filed with the court.

AMENDMENT OF RULE

Uniform Rules for the Surrogate's Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate, effective immediately, the attached new section 207.4-a of the Uniform Rules for the Surrogate's Court, relating to the Surrogate's Court e-filing pilot program.

§ 207.4-a Surrogate's Court E-filing Pilot Program Rules

(a) Application. There is hereby established in designated Surrogate's Courts a pilot program in which documents may be filed or served electronically in Probate or Administration proceedings, miscellaneous proceedings related thereto, or such other types of proceedings as the court may permit. This pilot program shall apply in the Erie County Surrogate's Court.

(b) Definitions. The following definitions shall be used for the purposes of these rules:

(1) "New York State Courts E-filing" ("NYSCEF") shall mean the system, located at the Internet site at www.nycourts.gov/efile, established by the Chief Administrator of the Courts to permit the electronic transmission of documents to courts and parties in authorized cases.

(2) "Consent" shall mean the voluntary agreement by an attorney or party to an estate proceeding to participate in that estate proceeding through NYSCEF pursuant to these rules.

(3) "Document" shall mean any submission to the court for filing.

(4) "Electronic filing" ("e-filing") shall mean the electronic transmission of documents through NYSCEF to the Surrogate's Court.

(5) "Electronic service" ("e-service") shall mean the electronic transmission of documents to a party or that party's attorney or representative in accordance with these rules. E-service shall not include service of process to gain jurisdiction. E-service shall be complete upon transmission of documents to NYSCEF.

(6) "E-filer" shall mean an attorney admitted to practice in New York State and who maintains an office in this state, or admitted pro hac vice, or an authorized agent thereof, or a pro se party, any of whom is registered as an e-filer with NYSCEF as set forth below.

(7) "Hard copy" shall mean a document in paper form.

(8) "Party" shall mean an individual or entity who has an interest in the proceeding and without whom the case may not proceed.

(9) "Authorized agent" shall mean a person or filing service company designated by an attorney to file and serve documents on the attorney's behalf in an estate proceeding, pursuant to a form promulgated by the Chief Administrator of the Courts and filed with the court.

(c) Intent.

(1) E-filing is voluntary and nothing herein shall preclude a party from filing and serving documents in hard copy. Except as provided in subdivision (e)(9), a party who initiates a proceeding by e-filing and any other party who chooses to participate as an e-filer must thereafter file, serve, and accept service of all documents electronically unless notice is given to the court and all other parties that the party no longer wishes to participate electronically.

(2) The court may terminate, modify, or suspend the use of e-filing in a proceeding at any time and may in its discretion excuse an e-filer from compliance with any provision of these rules.

(3) A party or that party's attorney or representative who participates as an e-filer consents to be bound by the provisions of these rules, and participates at the discretion of the Court.

(d) E-filers.

(1) In order to file documents electronically pursuant to these rules, an e-filer shall register with the Office of Court Administration of the New York State Unified Court System by filing with that Office a registration form promulgated by the Chief Administrator of the Courts. Upon completion of registration, a user ID and password will be issued to the e-filer by NYSCEF. If, during the course of the proceeding, a pro se party who registered as an e-filer retains an attorney, the attorney shall register, if not already registered as an e-filer, and inform the Chief Clerk of his or her appearance on behalf of the pro se party.

(2) Registration as an e-filer shall not constitute consent to participate in any particular estate proceeding; consent to do so must be provided pursuant to subdivision (b)(2).

(3) Upon learning of the compromise of the confidentiality of either the user ID or the password, the e-filer shall immediately notify NYSCEF, which shall arrange for the issuance of a new user ID or password as appropriate.

(e) Electronic Filing of Documents.

(1) An eligible proceeding may be commenced by filing the initial documents electronically. If the proceeding is commenced electronically, all other parties shall be served with a Notice regarding the use of e-filing and the procedure for participating therein in a form approved by the Chief Administrator of the Courts, which may be obtained through NYSCEF. Such Notice shall be served in person or by regular mail prior to the return date of the citation.

(2) Whenever documents are e-filed that require payment of a court filing fee, the e-filer shall pay such fee through NYSCEF, or by mail, or in person.

(3) Documents may be transmitted at any time to NYSCEF and will be deemed filed when transmission to NYSCEF is complete and payment of any court filing fee due is received by the court. A document due to be filed by a particular date shall be considered to have been timely filed if filed through NYSCEF no later than midnight of that date.

(4) Upon completion of transmission of an e-filed document, an electronic confirmation that includes the date and time of receipt shall be issued through NYSCEF to the e-filer.

(5) Receipt of documents submitted through NYSCEF and issuance of a confirmation shall not be proof of the completeness or technical or legal sufficiency of the documents. If the court identifies any defects as to form, or omissions, in any e-filed documents, the court may direct that the e-filer resubmit them in proper and complete form or amend or supplement them as appropriate.

(6) If an e-filer submits a petition for probate for which the court does not already have in its possession the original purported last will and testament and any codicils thereto being offered for probate, the e-filer shall file directly with the court the paper original purported last will and testament and any codicils thereto and a hard copy of a certified death certificate within two business days of the date of e-filing. Except as otherwise directed by the court, process shall not issue nor shall a fiduciary be appointed before the original purported last will and testament, any codicils thereto and certified death certificate are filed with the court.

(7) If an e-filer submits a petition for administration the e-filer shall file a hard copy of a certified death certificate directly with the court within two business days of the date of e-filing. Except as otherwise directed by the court, process will not issue nor shall a fiduciary be appointed before the certified death certificate is filed with the court.

(8) Whenever a document is e-filed pursuant to this section, the official record of that document shall be the electronic record maintained by the court.

(9) Documents that cannot be e-filed because of size, content, format, or any other reasons satisfactory to the court shall be filed in hard copy directly with the court together with, when required, an affidavit of service upon all parties to the proceeding.

(f) Signatures.

(1) Every document which is e-filed shall be signed as required by Part 130 of the Uniform Rules of the Chief Administrator in accordance with this section. The document shall provide the signatory's name, address, e-mail address of record and telephone number.

(2) A document shall be considered to have been signed by, and shall be binding upon, a person identified therein as a signatory, if it is e-filed bearing the actual signature of such person, or, where the person identified as the signatory is the e-filer and the document is being e-filed under the e-filer's user ID and password, an "/s/" is used in the space where the signature would otherwise appear. An attorney or party who e-files a document that bears an actual signature, or causes such a document to be e-filed, represents that he or she possesses the executed hard copy of such document and that he or she shall make it available at the request of the court or any party.

(g) Service of Parties.

(1) An attorney or party seeking to obtain jurisdiction over a party to a proceeding shall serve that party by any of the methods permitted by the SCPA.

(2) In all other instances where service of documents is required, e-service may be made upon any party who is an e-filer in the proceeding. Upon e-filing of any such document, NYSCEF shall transmit notification of filing of the document to all e-mail service addresses of record. Such notification shall provide the date and time of filing and the names of those appearing on the list of e-mail service addresses of record who are receiving notification. The party receiving the notification shall be responsible for accessing NYSCEF to obtain a copy of the document filed. Proof of transmission to the party or the failure thereof shall be recorded by NYSCEF and displayed in the e-filing case record.

(h) Documents Filed by the Court. Decrees, judgments, orders, and decisions in proceedings governed by these rules shall be electronically filed by the court with the appropriate signature affixed and such e-filing shall constitute filing of the decree, judgment, or order. At the time of the filing of the decree, judgment, order, or decision, NYSCEF shall transmit by e-mail to the e-mail service addresses of record a notification that the decree, judgment, order, or decision has been filed and is accessible through NYSCEF. Such notice shall not constitute service of notice of filing by any party.

(i) Technical Failures.

(1) The Chief Clerk shall deem NYSCEF to be subject to a technical failure on a given date if NYSCEF is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. The court shall provide notice of all such technical failures on the NYSCEF site. When e-filing is hindered by a technical failure, a party may file with the court in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to the technical failure as defined herein shall be extended for one day for each day in which such technical failure occurs, unless otherwise ordered by the court.

(2) If the e-filing or e-service does not occur because of any of the following, the court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically or extending the date for service of the paper: an error in the transmission of the document to NYSCEF or served party which was unknown to the sending party; the party was erroneously excluded from the service list; or other technical problems experienced by the e-filer.

AMENDMENT OF RULE

Uniform Rules for the New York City Civil Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate, effective immediately, the attached new section 208.4-a of the Uniform Rules for the New York City Civil Court, relating to electronic filing in the Civil Court.

Section 208.4-a. Electronic Filing.

(a) Application. There is hereby established a pilot program in which certain civil actions in the New York City Civil Court ("Civil Court") may be commenced by electronic filing. Documents may be filed by such means only to the extent and in the manner authorized by this section and only in an action brought by a provider of health services specified in section 5102 (a) (1) of the Insurance Law against an insurer for failure to comply with rules and regulations promulgated by the Superintendent of Insurance pursuant to section 5108 (b) of such law.

(b) Definitions. For the purposes of these rules:

(1) "Electronic means" shall mean any method of transmission of information between computers or other machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions and which allows the recipient to receive and to

reproduce the information transmitted in a tangible medium of expression.

(2) "Electronic filing address" shall mean the server accessed via the internet protocol address, and any successor thereto, established by the Unified Court System for receipt by the Civil Court of electronic filings as provided in this section.

(3) "Hard copy" shall mean information set forth in paper form.

(4) "Electronic filing" shall mean the filing by electronic means through the electronic filing address.

(5) The "date of receipt" of a document by the electronic filing address shall mean the date on which electronic transmission of such document is recorded at such address.

(c) Electronic Filing in actions in the Civil Court.

(1) A party may commence an action specified in subdivision (a) of this section by the electronic filing of such documents as are required to be filed by the CPLR or the Civil Court Act in actions in the Civil Court.

(2) (i) Documents may be transmitted at any time to the electronic filing address.

(ii) Documents that are electronically filed to commence an action in compliance with this section will be deemed filed with the clerk of the Civil Court in the county in which the action is brought for the purposes of section 400 of the Civil Court Act upon the date of receipt of those documents by the electronic filing address, provided, however, no document will be deemed filed unless an index number for the action is endorsed thereon.

(iii) No later than two business days following the date of receipt of documents by the electronic filing address, the clerk of the Civil Court shall make available by electronic means a confirmation of electronic filing. This confirmation will constitute the clerk's return of the copy to the party for the purposes of section 400(1) of the Civil Court Act.

(3) When a document has been filed electronically the official record of that document shall be its electronic recording.

(d) Service of Documents.

(1) A person seeking to obtain personal jurisdiction over a person named as a party to an action specified in subdivision (a) of this section may serve the opposing party by electronic means if the opposing party agrees to accept such service in accordance with the CPLR or the Civil Court Act.

(2) Where an action is commenced by electronic filing pursuant to this section, the original proof of service required by section 409 of the Civil Court Act must be electronically filed. Service is deemed complete for the purposes of section 410(b) of the Civil Court Act upon the date of receipt of the electronic proof of service by the electronic filing address.

(e) Signatures.

(1) Documents filed electronically shall be signed as required by Part 130 of the Rules of the Chief Administrator ("Part 130") and shall provide the signatory's name, address and telephone number.

(2) A signature on a document filed electronically pursuant to this section, including for the purposes of Part 130, shall be made (i) by autograph of the signatory on a hard copy that is thereafter scanned into portable document format or (ii) by the signatory electronically affixing the digital image of his or her signature to the document.