

COURT NOTICES

AMENDMENT OF RULE

Uniform Civil Rules for the Supreme and County Courts Uniform Rules for Surrogate's Court

Pursuant to the authority vested in me, and upon consultation with and approval by the Administrative Board of the Courts, I hereby amend, effective immediately, the following rules relating to electronic filing in the State of New York:

(1) section 202.5-b of the Uniform Civil Rules for the Supreme and County Courts, relating to electronic filing in the Supreme Court (consensual program), as set forth in Exhibit A;

(2) section 202.5-bb of the Uniform Civil Rules for the Supreme and County Courts, relating to electronic filing in the Supreme Court (mandatory program), as set forth in Exhibit B; and

(3) sections 207.4-a and 207.4-aa of the Uniform Rules for Surrogate's Court, relating to electronic filing in the Surrogate's Court (consensual and mandatory programs), as set forth in Exhibit C.

202.5-b. Electronic Filing in Supreme Court; Consensual Program.

(a) Application.

(1) On consent, documents may be filed and served by electronic means in Supreme Court in such civil actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section.

(2) Definitions. For purposes of this section:

(i) "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 reproduce the information transmitted in a tangible medium of expression;

(ii) "NYSCEF" shall mean the New York State Courts Electronic Filing System and the "NYSCEF site" shall mean the New York State Courts Electronic Filing System 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 NYSCEF 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" shall include a special proceeding and an "e-filed action" shall mean an action in which documents are electronically filed and served in accordance with this section;

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

(vii) "working copy" shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section;

(viii) "party" or "parties" shall mean the party or parties to an action or counsel thereto; [and]

(ix) "unrepresented litigant" shall mean a party to an action who is not represented by counsel;

(x) "expedited processing" shall mean the expedited registration of a person as an authorized e-filing user; and

[(ix)] (xi) "Resource Center" shall mean the NYSCEF Resource Center, the e-filing help center available at 646-386-3033 or efile@courts.state.ny.us efile@nycourts.gov and through the NYSCEF site.

(b) E-filing in Actions in Supreme Court. Except as otherwise

provided in section 202.5-bb of these rules, the following shall apply to all actions in Supreme Court:

(1) Commencing an action by electronic means. A party may commence any action in the Supreme Court in any county (provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph (1) of subdivision (a) of this section) by electronically filing the initiating documents with the County Clerk through the NYSCEF site. When so authorized, a petition to commence a proceeding for review of a small claims assessment pursuant to Real Property Tax Law § 730 may be e-filed, including as follows: the petition, in the form prescribed by the Chief Administrator in accordance with such section, shall be completed and signed in hard copy as provided in that section and shall be e-filed by transmission to the NYSCEF site, in conformity with procedures established by the site, of a text file containing all of the information set forth in the completed and executed hard copy petition (exclusive of the signature(s)). Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party's failure to consent to participation in electronic filing and service shall not bar any other party to the action from filing documents electronically with the County Clerk and the court or serving documents upon any other party who has consented to participation. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

(ii) Consent to e-filing; how obtained. *Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section.* 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. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice regarding availability of e-filing in a form approved by the Chief Administrator. *Such notice shall provide sufficient information in plain language concerning e-filing.* A party who seeks to use e-filing in a pending action shall serve said notice upon all other parties. Whenever such a notice is served, proof of service thereof shall be transmitted to the court. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. *Except for an unrepresented litigant, a [A] party served with such a notice shall promptly file with the court and serve on all parties of record either a consent or a declination of consent.* An authorized e-filing user may file a consent electronically in the manner provided at the NYSCEF site. Consent may also be obtained by stipulation. *An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain*

language, including the option for expedited processing, and inquired whether he or she wishes to participate. Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice.

(c) Authorized E-filing Users, Passwords and Registration.

(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 a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter "filing agent") may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an *unrepresented litigant* [a party to an action 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 as required by the jurisdiction in which the business is operated (hereinafter "small claims assessment review filing agent") may also register as 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 on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form.

(3) 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 Unified Court System ("UCS"). An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) User ID and password; use by authorized person. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) Electronic Filing of Documents.

(i) Electronic filing required; format of e-filed documents; statement of authorization. In any action subject to e-filing, all documents required to be filed with the court by a party that has consented to such e-filing shall be filed and served electronically, except as provided in this section. Documents shall be e-filed in text-searchable portable document format (PDF-A) and shall otherwise comply with the technical requirements set forth at the NYSCEF site. A filing agent (other than one employed by a governmental entity) shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel.

(ii) Emergency exception; other hard copy filings. Documents that are required to be filed and served electronically in accordance with this section or paragraph (1) of subdivision (c) of section 202.5-bb of these rules may nevertheless be filed and served in hard copy where required by statute or court order, where the document is an application that may by statute be presented without notice, or provided the document is accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) a deadline for filing and service fixed by statute, rule or order of the court will expire on the day the document is being filed and served or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to file and serve such document electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by this paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter. (iii) Form of notice required on hard copy filing. Where an action is subject to e-filing and a party or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that the party or attorney: (A) is authorized to and does withhold consent to e-filing, (B) is exempt from having to e-file, or (C) is authorized or required to file such document in hard copy pursuant to an exception provided in these Rules or other provision of law.

(2) Payment of Fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: (i) such credit card information as shall be required at the NYSCEF site to permit a card to be charged by the County Clerk; 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 action; or (iii) such information as shall be required at the NYSCEF site to permit an automated clearing house debit to be made; or (iv) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, where permitted by the County Clerk, 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 at the office of the County Clerk.

(3) Filing and receipt of documents; notification.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the NYSCEF site. A document is filed when its electronic transmission or, in the case of a petition that is e-filed by submission of a text file as provided in subdivision (b)(1) of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in (i), (ii) or (iii) of paragraph (2) of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk.

(ii) Notification. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and all other parties participating in e-filing. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.

(4) Official record; maintenance of files; working copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action

subject to e-filing or maintain those documents in hard copy form. All documents maintained by the County Clerk as the official electronic record shall also be filed in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.

(5) Decisions, orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in hard copy to the court. Unless the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk.

(6) Exhibits and other documents in hard copy. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief [Administrative Judge] *Administrator*, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically.

(e) Signatures.

(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 full in hard copy (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed);

(v) in a small claims assessment review proceeding, it is a petition recorded by the NYSCEF site upon the filing of a text file as provided in subdivision (b)(1) of this section, provided that prior to filing, the document was signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings in the matter, including article 78 review and any appeals, and must be made available during the proceeding upon request of the respondent or the court); or

(vi) 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.

(3) Certification of Signature. A judge, party or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision (b)(1) of this section, a hard copy of the petition, fully completed and signed

as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section 730 of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(2) Service of interlocutory documents in an e-filed action.

(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 NYSCEF site (hereinafter the "e-mail service address"). Each filing user shall promptly notify the Resource Center in the event of a change in his or her e-mail service address.

(ii) How service is made. Where parties to an action have consented to e-filing, a party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date 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 notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision (h) (3) of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. Proof of such service will be recorded on the NYSCEF site. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically.

(g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding availability 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 non-party who seeks relief from the court in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent. If an added party or intervenor does not consent to e-filing, 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.

(1) Entry; date of entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically, which shall constitute entry of the order or judgment. The date of entry shall be the date on which transmission of the order or judgment is recorded at the NYSCEF site. Notwithstanding the foregoing, if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp.

(2) Notice requesting entry of judgment. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk, in a form specified by the County Clerk, a request for entry of judgment.

(3) Notification; service of notice of entry by parties. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method

set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.

(i) Technical Failures. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the 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. Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.

(j) Electronic Filing of Discovery Materials. In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such 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.

(k) Copyright, Confidentiality and Other Proprietary Rights.

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

(2) In an action subject to 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 ten days before the materials to which the motion pertains are due to be produced or filed with the court.

202.5-bb. Electronic Filing in Supreme Court; Mandatory Program.

(a) Application.

[There is hereby established a pilot program in which a] (1) *Except where otherwise required by statute*, all documents filed and served in Supreme Court shall be filed and served by electronic means in such classes of actions and such counties as shall be specified by order of the Chief Administrator of the Courts and only to the extent and in the manner prescribed in this section [in accordance with chapter 367 of the laws of 1999, as amended]. Except to the extent that this section shall otherwise require, the provisions of section 202.5-b of these rules shall govern *electronic filing under this section* [this pilot program].

(2) *Notwithstanding the foregoing, the Chief Administrator shall not eliminate the requirement of consent to participate in electronic filing in the following classes of cases:*

(i) *matrimonial actions as defined by the civil practice law and rules;*

(ii) *election law proceedings;*

(iii) *proceedings brought pursuant to article 70 or 78 of the civil practice law and rules;*

(iv) *proceedings brought pursuant to the mental hygiene law;*

(v) *residential foreclosure actions involving a home loan as such term is defined in section 1304 of the real property actions and proceedings law other than actions commenced prior to September 1, 2017 in Erie, Essex, New York, Queens, Rockland, Suffolk and Westchester Counties; provided, however, the Chief Administrator*

may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed; and

(vi) *proceedings related to consumer credit transactions as defined in subsection (f) of section 105 of the civil practice law and rules other than proceedings commenced prior to September 1, 2017 in Erie, New York, Onondaga, Rockland and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed.*

(b) Commencement of Actions Under this Section.

(1) Mandatory commencement in general. Except as otherwise provided in this section, every action authorized by subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the County Clerk through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, an action otherwise required to be commenced electronically may or shall be commenced by the filing of initiating documents in hard copy where permitted or required by statute or court order, and may be so commenced provided such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter. For purposes of this section, such an action shall be deemed to have been commenced electronically.

(3) Service of initiating documents. Personal service of initiating documents upon a party in an action that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Civil Practice Law and Rules, or the Real Property Tax Law, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) Filing and Service of Documents After Commencement in Actions Under this Section.

(1) All documents to be filed and served electronically. Except as otherwise provided in this section, filing and service of all documents in an action that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Addition of parties after commencement of action. Notwithstanding any other provision of this section, a party to be added in an action that has been commenced electronically in accordance with this section shall be served with initiating documents in hard copy together with the notice specified in paragraph (3) of subdivision (b) of this section. A proposed intervenor or other non-party who seeks relief from the court in such an action shall make his or her application for such relief by electronic means as provided by the NYSCEF system.

(3) Emergency exception; other hard copy filings. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy where permitted by paragraph (1) of subdivision (d) of section 202.5-b of these rules. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b, and the filer shall, as required, file those documents with the NYSCEF site within three business days thereafter.

(d) County Clerk and Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. As provided in section 202.5(d)(1) of these Rules, a County Clerk and a

Chief Clerk of Supreme Court, as appropriate, shall refuse to accept for filing hard copies of documents sought to be filed in actions where such documents are required to be filed electronically.

(e) Exemptions From the Requirement of Electronic Filing.

(1) *Exemption of unrepresented litigants.* Notwithstanding the foregoing, an unrepresented litigant or a proposed intervenor or other non-party seeking relief from the court who is unrepresented is exempt from having to file and serve documents electronically in accordance with this section. No such party shall be compelled, directly or indirectly, to participate in e-filing. As to each unrepresented litigant, the clerk shall explain his or her options for e-filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the e-filing program only upon his or her request, which shall be documented in the case file, after he or she has been presented with sufficient information in plain language concerning the program. Where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.

(2) *Exemption of represented parties.* Notwithstanding the foregoing, an attorney or a representative of a property owner designated as such as provided in Real Property Tax Law § 730 (“small claims assessment filing agent”), [or a party who is not represented by an attorney in an action that is required to be commenced electronically, or a person who is a proposed intervenor or other non-party who seeks relief from the court in such an action, may claim exemption] shall be exempt from having to file and serve documents electronically in accordance with this section [by] upon filing with the County Clerk and the clerk of the court in which the action is or will be pending a form, [to be] prescribed by the Chief Administrator, on which the[: (1) if an] attorney or small claims assessment filing agent[, he or she] certifies[,] in good faith that he or she:

(i) lacks the computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney’s law firm, office or business who is subject to such attorney’s direction, shall be imputed to the attorney).[: or]

[(2) he or she indicates that he or she is not represented by an attorney and wishes to be exempt from having to file and serve documents electronically in accordance with this section.]

(3) *Exemption of counsel upon a showing of good cause.* Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

(4) *Procedures applicable to exempt attorneys and small claims assessment filing agents.* Where an attorney[, party, proposed intervenor] or small claims assessment filing agent [other non-party who seeks relief from the court in an action that is subject to this section] is exempt from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules. The County Clerk or the court, with the approval of the Chief [Administrative Judge] Administrator, may require an exempt attorney or small claims assessment filing agent [a person who is exempt from having to file and serve documents electronically] to submit an additional, unbound hard copy of documents being presented in hard copy to the court. [Notwithstanding the foregoing, all other attorneys, parties and others seeking relief from the court in such action shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person or party who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.]

(5) *Procedures applicable to e-filing attorneys and other persons.*

In any action in which an attorney or other person is exempt pursuant to this subdivision, all other attorneys, small claims assessment filing agents, unrepresented litigants, proposed intervenors, or others participating in e-filing and seeking relief from the court shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.

Section 202.5 Papers filed in court.

* * *

(d)(1) In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator’s rule or order of the court:

(i) The paper does not have an index number;

(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an “et al” or otherwise does not contain a full caption;

(iii) The paper sought to be filed with the County Clerk is filed in the wrong court;

(iv) The paper is not signed in accordance with section 130-1.1-a of the Rules of the Chief Administrator; or

(v) The paper sought to be filed: (A) is in an action subject to electronic filing pursuant to Rules of the Chief Administrator, (B) is not being filed electronically, and either (C) is not being filed by an unrepresented litigant who is not participating in e-filing, or (D) does not include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of such Rules.

§ 207.4-a Electronic Filing in Surrogate’s Court; Consensual Program

(a) Application. On consent, documents may be filed or served electronically in Surrogate’s Court proceedings and counties as specified by order of the Chief Administrator of the Courts. This section shall apply only to those proceedings and counties.

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

(1) “New York State Courts Electronic Filing System” (“NYSCEF”) shall mean the system, located at the Internet site at www.nycourts.gov/efile, established by the Chief Administrator 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 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, or admitted pro hac vice, or an authorized agent thereof, or [a pro se] an unrepresented 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 and filed as provided therein.

(10) “Working copy” shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section.

(11) "Unrepresented litigant" shall mean a party to an action who is not represented by counsel.

(12) "Expedited processing" shall mean the expedited registration of a person as an authorized e-filing user.

(c) Intent.

(1) [E-filing] Except as otherwise provided in section 207.4-aa of these rules, 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. *Notwithstanding any other provision of this rule, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. An unrepresented litigant may consent to participate in e-filing hereunder provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate. Where an unrepresented litigant opts to consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.*

(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. 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, or may become an e-filed proceeding after commencement upon the filing of documents electronically pursuant to these rules. A party commencing a proceeding electronically, or the party first filing electronically, shall serve all other parties with a Notice regarding the use of e-filing and the procedure for participating therein in a form approved by the Chief Administrator, 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. Proof of service of such Notice shall be promptly filed with the court.

(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 the death certificate certificate, attorney certified if required by the court, 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 the appropriate 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 the death certificate, attorney certified if required by the court, 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 appropriate 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.

(10) When filing a document in hard copy pursuant to these rules, the filer shall firmly affix thereto a notice of hard copy filing indicating the basis for filing in that form.

(11) The court may require that working copies of documents be filed with the court. When filing a working copy, the filer shall firmly affix thereto a notice identifying the document as a working copy and indicating that the document has been e-filed.

(f) Signatures.

(1) Every document which is e-filed shall be signed as required by Part 130 of the 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 or is prevented 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 filing or 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, including problems with the filer's equipment or Internet connection.

Section 207.4-aa Electronic Filing in Surrogate's Court; Mandatory Program.

(a) Application. There is hereby established a [pilot] program in which all documents filed and served in Surrogate's Court proceedings and counties specified by order of the Chief Administrator of the Courts shall be filed and served electronically. Except to the extent that this section shall otherwise require, the provisions of section 207.4-a of these rules shall govern this program.

(b) Commencement of Proceedings Under this Section.

(1) Mandatory commencement in general. Except as otherwise provided in this section, every proceeding specified in subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the clerk of the court through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, a proceeding required to be commenced electronically may be commenced by the filing of initiating documents in hard copy provided that such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party, or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter, unless the clerk of court elects to e-file the documents on behalf of the filer. For purposes of this section, such a proceeding shall be deemed to have been commenced electronically.

(3) Service of process. Service of process upon a party in a proceeding that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Surrogate's Court Procedure Act, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the proceeding is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) Filing and Service of Documents After Commencement in Proceedings Under this Section.

(1) All documents to be filed and served electronically. Except as

otherwise provided in this section, filing and service of all documents in a proceeding that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy provided that they are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) a deadline for their filing and service fixed by statute, rule, or order of the court will expire on the day the documents are being filed or served or on the following business day; and (ii) the attorney, party, or filing agent therefor is unable to file and serve such documents electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a, and the filer shall file those documents with the NYSCEF site within three business days thereafter, unless the clerk of court elects to e-file the documents on behalf of the filer.

(d) Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. The clerk of the court shall refuse to accept for filing hard copies of documents sought to be filed in proceedings where such documents are required to be filed electronically.

(e) Exemption From the Requirement of Electronic Filing.

(1) *Exemption of unrepresented litigants.* Notwithstanding the foregoing, an unrepresented litigant or a proposed intervenor or other non-party seeking relief from the court who is unrepresented is exempt from having to file and serve documents electronically in accordance with this section. No such party shall be compelled, directly or indirectly, to participate in e-filing. As to each unrepresented litigant, the clerk shall explain his or her options for e-filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the e-filing program only upon his or her request, which shall be documented in the case file, after he or she has been presented with sufficient information in plain language concerning the program. Where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.

(2) Exemption of represented parties. Notwithstanding the foregoing, an attorney shall be exempt from [or a party who is not represented by an attorney in a proceeding that is required to be commenced electronically may claim exemption from] having to file and serve documents electronically in accordance with this section [by] upon filing with the clerk of the court in which the proceeding is or will be pending a form, to be prescribed by the Chief Administrator, on which the[.]:

[(1) if an] attorney[, he or she] certifies[, in good faith that he or she:

(i) lacks the required computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney).]; or

(2) he or she indicates that he or she is not represented by an attorney and wishes to be exempt from having to file and serve documents electronically in accordance with this section.]

(3) *Exemption of counsel upon a showing of good cause.* Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

(4) *Procedures applicable to exempt attorneys.* Where an attorney or party in a proceeding that is subject to this section is exempt

from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (10) of subdivision (e) of section 207.4-a of these rules. Notwithstanding the foregoing, all other attorneys and parties in such proceeding shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person or party who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy and shall file electronically proof of such service.