

ONEIDA COUNTY PROTOCOL FOR CASE FILINGS NEW YORK STATE COURT ELECTRONIC FILES (NYSCEF) Feb 2016

Attorneys seeking general information about the New York State Unified Court System's electronic filing program (NYSCEF) are advised to consult the *User's Manual* and *FAQs*, which may be found on the New York State Unified Court System's website www.nycourts.gov/efile

A. Identifying E-Filed Cases

Commencing February 1, 2016, all Oneida County cases must be filed electronically **except for the following case types:**

CPLR Article 70 proceedings (habeas corpus)
CPLR Article 78 proceedings
Election Law proceedings
Emergency medical proceedings
Foreclosure actions as defined in RPAPL 1304
Matrimonial actions
Mental Hygiene Law matters, including Art 10 and Art 81 proceedings
Name change applications
Small Claims Assessment Review actions

In addition residential foreclosures as defined in RPAPL 1304 and consumer credit transactions as defined in CPLR 105(f) will be subject to consensual e-filing as of February 1, 2016

B. Filing of Papers Generally

1. Index Numbers. The index number must be referenced on all e-filed documents and correspondence. All e-filed case index numbers will contain the prefix "EF" before the file number (for example, EFCA2016-999999)

2. Court fees. Court fees in e-filed cases must be paid online with the NYSCEF system using a credit card. The document is not considered to have been filed until payment of the fee has been tendered (see CPLR 304).

¹ **3. Requests for Judicial Intervention (RJI).** The RJI shall be submitted via the NYSCEF system along with any required RJI addendum forms. When the RJI is filed and the fee paid online, the Oneida County Clerk's Office will electronically forward the RJI and any accompanying documents to the Oneida Supreme Court Clerk's Office for assignment and processing. Counsel will receive notification of judge assignment via the NYSCEF system.

4. Notice of Hard- Copy Submission Wherein accordance with the E-filing rules, an attorney or an unrepresented litigant who is participating in E-filing submits a document in hard copy in an e-filed case, such document must contain, Notice of Hard-Copy Submission-E-filed Case (Form EFM-3)* indicating the reason for the hard copy submission. Under the rules, in most instances, filers shall be required to e-file their documents within 3 business days, based on the designation indicated on the Notice of Hard Copy Submission form. The originals will be discarded after the documents have been processed and the failure to e-file as required will result in an incomplete record.

5. Exhibits

- a. Attorneys submitting exhibits in NYSCEF cases must make each exhibit a separate attachment to an affidavit/affirmation in the system. Exhibits should not be filed as a single PDF-A together with the affidavit/affirmation or grouped together as a single PDF-A attachment. Both of these formats make it difficult for the Justice to locate particular exhibits as needed. Filers will also be required to include appropriate descriptive language in the *Additional Document Information* field in NYSCEF, i.e. Copy of Contract.
- b. If a filer needs to submit unusual exhibits in original form that cannot practically be e-filed, such as oversized maps or electronic recordings, the filer shall file with NYSCEF a space saver in the form of a Notice of Hard Copy Exhibit Filing (Form EF21)*. Such Notice should be uploaded to NYSCEF as document type EXHIBIT and the filer should indicate in the *Additional Document Information* where the exhibit is being retained. Failure to e-file the Notice may result in a gap in the official record of the court.

6. Filing errors/corrections. If there is an error or an additional document is required, the system will notify the filing party, who will make the corrections/additions and resubmit them online.

*Form available in the forms section of the NYSCEF website.

7. Working Copies of E-filed Documents.

- a. For information as to whether or not an Oneida Supreme Court Justice requires working copies of e-filed documents, please consult the Oneida County Individual E-filing Rules which are available on the Fifth Judicial District website:

<http://www.nycourts.gov/courts/5jd/oneida/supremecounty/rules.shtml>

- b. The Supreme Court Clerk's Office and the Oneida County Clerk's Office will NOT accept the working copies. Working copies must be sent directly to the assigned justice's chambers.
- c. A copy of the *Confirmation Notice*, generated by the NYSCEF system at the time a document is e-filed, must be attached to every working copy provided to chambers. If the *Confirmation Notice* is missing, the copy will not be accepted.
- d. Working copies do not become part of the official court record as maintained by the Oneida County Clerk's Office and will be destroyed by chambers at the disposition of the case. In the event that counsel fails to file a document via NYSCEF, the document will not be part of the court record.

8. Technical Failures. When filing by electronic means is hindered by a technical failure (as set forth in Uniform Rule §202.5-b(h)(3)(i)), a party may file a hard copy with the County Clerk. With the exception of deadlines that by law cannot be extended (e.g., a statute of limitations or the deadline for filing a Notice of Appeal), the time for filing of any document that is delayed due to technical failure of the NYSCEF system will be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. A Notice of Hard Copy Filing Submission - E-filed Case must accompany any documents not filed via NYSCEF.

9. Motions on Notice

- a. Appearances are required on all motions in Oneida Supreme Court except those filed with respect to asbestos actions, which will be marked submitted unless otherwise directed by the Court.
- b. All exhibits in e-filed cases must be e-filed individually as *separate PDF's*.

- c. If the motion is the first filing in an action, the case will be assigned and counsel will be notified by the Supreme Court Clerk's Office via the NYSCEF system of the assigned justice and return date.
- d. If the motion is on a previously assigned case, counsel may choose a return date from the assigned justice's motion term schedule. If the date is unavailable, the Supreme Court Clerk's Office will assign the motion to the next available motion term date and will notify counsel via e-mail. The change will also appear in the notification generated by the NYSCEF system.
- e. Cross-motions, opposition and reply papers must be submitted online. Any "working" copies, if required (see Section 7B of these rules), must be provided directly to the assigned justice. Fees must be paid on all cross motions.
- f. Motions and Orders to Show Cause are assigned a motion sequence number by the system. Counsel must be sure that opposition papers correspond with the correct sequence number so that a cross motion will not be associated with the wrong original motion.
- g. For information regarding requests for adjournments, please see the assigned Justice's individual e-filing rules on the Fifth Judicial District website.
- h. Decisions and/or orders on motions in an e-filed case will be signed in hard copy by the assigned justice. Original orders and decisions will be uploaded to NYSCEF either by chambers or by the Oneida County Clerk's Office. Parties will receive notifications of the filing from NYSCEF. (Original orders and decisions will not be sent to counsel for filing).

10. Orders to Show Cause

- a. Proposed Orders to Show Cause and supporting papers must be filed online. Please leave return date and location blank.
- b. Parties submitting a proposed Order to Show Cause with an RJI commencing the action, are required to e-file the commencement document (petition or summons and complaint), the proposed order to show cause, supporting documents, and RJI in separate PDF's via NYSCEF. On the "Add Documents" page the filer shall select and attach their "Commencement Document" in the first section.

In the next section located underneath entitled "Accompanying Documents" they shall select the document type "Order to Show Cause-Accompanying Commencement Doc(s) (Proposed), followed by supporting affirmations/affidavits and exhibits thereto.

- c. In instances where a party because of exigent circumstance does not wish to provide advance notice to an adversary of a proposed Order to Show Cause by filing the Order to Show Cause with supporting papers on NYSCEF (which generates an e-mail message to the parties), the proposed Order to Show Cause and supporting documents may be submitted in hard copy to the Oneida County Clerk. Form EF-20, Notice of Hard Copy Filing Submission - E-filed case, must accompany the hard copy of the Order to Show Cause. Within 3 business days after service has been effectuated as directed in the Order to Show Cause, parties are required to e-file the supporting papers thereof. Filers shall select from the NYSCEF drop down, the document type displayed as "Supporting Papers to OSC (After Service) for this purpose.
- c. Any additional documents submitted in opposition or further support of the Order to Show Cause shall be e-filed before the return date. Should the assigned judge require "working copies" the Confirmation shall be affixed thereto.

11. Procedures Regarding Service Please reference the Uniform Civil Rules for the Supreme and County Courts 202.5-b (1) & (2) for initial and subsequent service of e-filed documents. These rules are available at the NYSCEF website at www.nycourts.gov/efile at the bottom of the page under the "Rules & Legislation" link.

12. Sealing of Documents

- a. In order to seal a document in a NYSCEF case, a party must proceed in accordance with Part 216 of the Uniform Rules for the Trial Courts (NYCRR). If concerns exist with respect to confidential information in the request to the Court, the submitting party should e-file the documents "Redacted" in the first instance, and select such designation in the "Security" section of the filing page in NYSCEF.
- b. If a party wishes to file and maintain papers under seal and no sealing order has been issued in the case, the party must, either by motion or on submission to the court of a stipulation, obtain a court

order directing the County Clerk to seal the file. The court will conduct a Part 216 analysis in deciding whether to issue such an order. If the motion/stipulation is filed via the NYSCEF system, it will be open to the public until a sealing order is served upon the County Clerk. (See paragraph c. below). Alternatively, the parties may make a motion or submit a stipulation without filing it to the NYSCEF system until the court rules on the sealing issue. Any such motion or stipulation submitted in hard copy must bear Form EF-20 Notice of Hard Copy Submission -E-filed Case and must be accompanied by a CD or other acceptable electronic storage device containing the Filings in PDF format. Each such CD shall bear a label containing the name of the case, the index number, and the email address of the attorney submitting it. Should the sealing application be granted, the court shall upload the motion & supporting papers to NYSCEF as sealed. Should such application be denied, the filer will be responsible to upload the motion and supporting papers within 3 business days of the issuance of the decision /order denying the application. Filers shall select the Fee "Already Paid" method of payment in NYSCEF for the \$45 motion fee and provide any helpful information for the clerk to identify the transaction when it was paid in person at the County Clerk's Office in the "Comments" section of the payment page.

- c. If the court issues an order directing the sealing of an existing NYSCEF file or a document(s) already filed via the NYSCEF system, the applicant shall file with the NYSCEF system a Notification for Sealing - Electronically Filed Case (Form EF-7), available at the NYSCEF website www.nycourts.gov/efile under the "Forms" tab, along with a copy of the order as required by CPLR 8019©. The County Clerk will seal the file or documents(s) in question as directed by the court. In addition, service should include a reference, if applicable, to any hard copy filings that may exist for the sealed case in question.
- d. Submission of "working copies" as defined by rule 202.5-b(a)(2)(vii) or "hard copies" as defined by rule 202.5-b(a)(2)(vi) that have been sealed via court order or by operation of law shall be clearly labeled as SEALED on the title page of the document submitted and be accompanied by a copy of the court order directing or permitting the sealing of same. As indicated in section 7 (c) of this protocol, a Confirmation Notice is also required to be affixed to all "working copies" if previously e-file, whereas a Notice of Hard Copy Submission-E-filed Case is required for any "hard copy" yet to be filed.

13. Notice to the County Clerk If an order filed in a case on the NYSCEF system requires the Oneida County Clerk to take action, including but not limited to discharging a mortgage, or amending a judgment, counsel is required to e-file a "Notice to County Clerk-CPLR 8019 (c)" (form EF-22) including a copy of the order

14. Notice of Entry The Oneida County Clerk shall file judgments electronically, and the Supreme Court as a designee thereof shall e-file decisions and orders, which shall constitute entry thereof (Uniform Rules 202.5 b (h)(1) as will be reflected in a legend on the document. Upon e-filing, an email message will be transmitted immediately to all filing users on the case notifying that the order/judgment has been entered and a copy thereof will be accessible via a link in the message. Such notice does not constitute service of notice of entry by any party. Notice of entry shall be served by a party by serving a copy of the order/judgment and written notice of its entry in the manner set forth in Uniform Rule 202.5-b (h)(3).

15. Judgments and the Judgment Roll

- a. The filing fee for a default judgment is \$45. For e-filing, use document type, "Clerk Default Judgment Proposed ".
- b. When the judgment is approved the judgment will be entered on the County Clerk docket, this will constitute entry. Then later uploaded to NYSCEF, at which time the notification will be sent.
- c. Orders that can be countersigned by the Oneida County Clerk as a judgment will be reviewed and uploaded by the County Clerk.
- d. If any problems are detected, the County Clerk will communicate with the filer by phone, e-mail or a return/correction thru NYSCEF.

16. Notices of Appeal and Appeal Papers A notice of appeal shall be filed with NYSCEF in an e-filed case, together with a Request for Appellate Division Intervention (RADI), a copy of the order of judgement appealed from, and proof of service on any party who has opted out, if applicable. All of these documents shall be e-filed as a single PDF-A document. All participating parties to the case will be served via NYSCEF. Should a party choose to serve by another method authorized by the CPLR, proof of such service shall be e-filed as instructed above. No hard copy should be delivered to the County Clerk's Office.

