

**SUPREME COURT, CIVIL TERM
QUEENS COUNTY
PROTOCOL ON COURTHOUSE PROCEDURES FOR
ELECTRONICALLY FILED CASES**

Attorneys seeking information about how the court's filing by electronic means system ("E-File") works are advised to consult the *User's Manual* and *FAQ's*, both available on-line at the Electronic Filing website (see "E-Courts" at www.nycourts.gov). All parties should familiarize themselves with the statewide Consensual and Mandatory E-filing Rules (Uniform Rules of the Trial Courts §202.5-b and §202.5-bb - available at www.nycourts.gov/efile). General Questions about e-filing should be addressed to the E-filing Resource Center at 646-386-3033 or efile@courts.state.ny.us. Specific questions as to local procedures should be directed to the E-Filing Department of the Queens County Clerk at 718-298-0173.

What follows is an outline of the steps that will be used in e-filed cases to satisfy traditional courthouse requirements for the processing of cases, such as the submission of orders to show cause. The steps outlined here seek, to the maximum extent possible, to integrate e-filing capabilities with normal courthouse procedures in ways that will save attorneys time, trouble and trips to the courthouse while meeting the needs of Justices and the court.

A. Identifying E-Filed Cases: All authorized Torts, Commercial and Tax Certiorari cases may be commenced by E-Filing, however all parties must consent for the action to continue as an E-file case.

B. Mandatory E-filing: *E-filing is now Mandatory in all Medical Malpractice actions and all Residential, Commercial and Tax Lien Foreclosure actions. Specific rules for e-filing in each of these categories of cases are available on-line at:*

<http://www.nycourts.gov/courts/11jd/supreme/civilterm>

C. Cases Converted to E-file: Cases originally commenced in hard-copy form but later converted to an E-file case, either by stipulation or order will bear a regular index number initially. The County Clerk will issue a new E-file index number.

D. E-file and the Court's Case Management System: At present, the E-file system is a filing system only. In contrast with the Federal software, it currently is not linked to the court's case management system (CCIS), which serves as the basis for the generation of motion and other calendars. Court staff will enter data in CCIS for E-file cases in the same way as is done with all other cases. Please consult e-courts <https://iapps.courts.state.ny.us/webcivil/ecourts> to ascertain calendaring information.

E. Forms: All forms necessary and required for E-filing are available on the NYCEF website at www.nucourts.gov/efile

F. Filing of Papers Generally

1) **Fees:** Court fees (e.g., RJI fee, motion fee) in E-filed cases may be paid for on-line using a credit

card. Papers may also be filed with the E-file system and the fee may be paid at the County Clerk's Office. In the latter case, the paper is not considered to have been filed until payment of the fee has been tendered (see CPLR 304).

2) **Papers to Be Filed to the System:** All papers to be filed with the court in an E-filed case shall be filed on-line with the E-file system except as directed by the court. Papers that attorneys would not ordinarily file with the court in a hard-copy case need not be filed in an E-filed matter.

3) **Opting Out of E-filing:** *Unless an action is subject to Mandatory e-filing, a party may 'opt-out' of e-filing at any time. A party who wishes to opt out of a Mandatory e-filed action must meet of one of the specific exempted categories set forth in Rule 202.5-bb (e) (1) and (2).*

4) **Filing With the System First; Deliver Working Copies Thereafter:** Unless otherwise directed or authorized by the court, counsel should file papers with the E-file system first and thereafter deliver a working copy to at the calendar call of the Centralized Motion Part or Assigned Justice in accordance with individual Part Rules. Filing with the system permits counsel to serve the papers electronically pursuant to Rule 202.5-b (f) once consent to E-Filing has been filed on-line. Consult Rule 202-5bb [c] for service in mandatory e-filing Any required proof of service should be E-filed as a separate document.

5. **Hard Copy Filing:** *In any matter where a party has 'opted-out' of e-filing and wishes to submit a hard copy submission, all hard copy submissions must be accompanied by a Notice of Hard Copy Filing. Papers without this notice may be rejected.*

6) **Correction of E-filed Documents:** Generally speaking, documents that have been E-filed will not thereafter be deleted by the County Clerk from NYCEF because the filer asserts that the filing contains an error or a significant omission. When the filer wishes to correct a perceived error or omission in a filed document, he or she should file an amended version of the document, with the original remaining on file, or else obtain a court order providing for deletion of the original. The County Clerk will only delete a document upon request of the filer or on the County Clerk's own initiative when it is obvious from the face of the document alone that the filer made a fundamental error and never intended to file the document that was filed (e.g., a completely unrelated non-litigation document, a different case, or a wrong county). The County Clerk will advise the filer when any such fundamental errors are detected.

7) **Errors Due to Failure to Redact:** If an attorney E-files a document that contains information that was intended to be, but that inadvertently was not, redacted (e.g., the full number of a bank account), the attorney may immediately inform the County Clerk of the error and the County Clerk may place the document in the status on NYCEF of "Unavailable Pending Review," meaning that the document will not be accessible in NYCEF by the public outside the courthouse pending the outcome of a review by the court. The document will, however, have been e-served on participating counsel and unrepresented parties and will be accessible to the public at the courthouse. In this situation, the County Clerk will require that the party in question obtain an order from the court resolving the redaction problem (e.g., sealing the original document and permitting its replacement

with a redacted version). If no such order is obtained within a reasonable time, the County Clerk will make public the document previously marked “Unavailable Pending Review.” If an order is obtained, the order should be brought to the attention of the County Clerk for action.

F. Requests for Judicial Intervention: A Request for Judicial Intervention (“RJI”) in an E-filed case shall be submitted via the E-filing System. When the RJI is approved, filed and paid for on-line, it will be forwarded to the relevant back office for random assignment of the case and processing of the document. In the case of RJIs seeking assignment to the Commercial Division, the filer must submit therewith, a Commercial Addendum as required by the standards for assignment of cases to the Commercial Division (Uniform Rules 202.70 [d]).

G. Notice of Medical Malpractice: Upon the filing of a Notice of Medical Malpractice in an E-filed case, the Certificate of Merit shall be filed as a separate document.

H. Motions/Petitions on Notice:

1) Motions/Petitions Returnable: The motion/petition shall be filed on-line and the fee paid for either on-line by credit card or by the “Pay at the County Clerk’s Office” option. As motions and petitions are time sensitive, if opting to pay at the County Clerk’s Office payment **MUST** be made, if filed with an RJI, a minimum of nine business days prior to the application’s return date and if filed post RJI, a minimum of nine business days prior to the application’s return date.

a) RJI Motions/Petitions: For Motions/Petitions in actions wherein a Justice has not been assigned and in which an RJI is filed, please check **e-courts at <https://iapps.courts.state.ny.us/webcivil/ecourts>** for the name of the Justice assigned and the date the motion will appear on the Centralized Motion Part Calendar. All such unassigned applications must be filed a minimum of nine business days prior to the application’s return date. Except in Tax Certiorari matters, any Request for Judicial Intervention shall be deemed to include a request for preliminary conference and shall be processed as such. (See 22NYCRR 202.8(f), 202.12(a) and 202.19).

b) Post RJI Motions/Petitions: Motions/Petitions in actions wherein a Justice has been assigned must be made returnable in accordance with the Rules of the Centralized Motion Part. Applications on notice in assigned cases must be filed a minimum of nine business days prior to the return date.

2) Centralized Motion Part Rules for E-filed cases:

a) On the return date of a motion that has been E-filed, the movant must provide the Centralized Motion Part (CMP) with a working copy of the entire motion including the notice of motion with sequence number and all of the attached exhibits. The motion must have the confirmation of filing firmly affixed to the back of the papers (facing outward). The confirmation of filing is a separate notice from the payment notice and will say confirmation clearly across the top of the page.

b) Orders to Show Cause: the movant must provide CMP with the conformed copy of the order and all the exhibits upon which it is based along with the confirmation of filing attached in the

same way as a motion. The movant must provide CMP with the affidavit(s) of service.

c) The motion or Order to Show Cause must have clearly written across its face the words “Working Copy,” it must also have the assigned Judge’s name, motion sequence number and calendar number - which may be obtained from the posted calendar outside courtroom on the return date of the motion. A confirmation of filing must attached thereto. *Working copies of e-filed Orders to Show Cause must contain a copy of the signed order and all supporting papers.*

d) E-filed opposition papers and/or reply papers must also be provided to the Centralized Motion Part in the same manner as the moving papers with the confirmation of filing firmly attached to the back of the papers.

e) E-filed cross motions: across motion must be noticed for the same return date as the main motion and have the confirmation of filing attached in the same manner as a motion.

f) Any party opting out of the e-filing system must have a “Notice of Hard Copy Submission” firmly affixed to the back of the papers.

3) Service: With regard to service of a motion/petition on notice in an E-filed action, CPLR 2214(b) and Rule 202.5b(f) applies. Where required, proof of service shall be filed on-line as a separate document.

4) Exhibits: Attorneys submitting exhibits to the court on E-file cases shall make each exhibit a separate, labeled attachment to an affidavit/affirmation.

5) Sequence Number for E-file Motions: A motion sequence number is required for all E-filed motions. After a motion is E-filed, please consult **e-courts**. At <https://iapps.courts.state.ny.us/webcivil/ecourts> within 24 to 48 hours to obtain the sequence number . The Confirmation Notice of E-filing MUST indicate the sequence number of any motion submitted at the Centralized Motion Part calendar call.

6) Cross-Motions and Other Motion Papers to be Filed On-Line: Cross-motions and opposition and reply papers must be filed on-line. A fee must be paid on cross-motions and may be paid on-line.

7) Working Copies: Exact hard copies of all papers on E-filed motions shall be submitted in accordance with Rules of the Centralized Motion Part and/or with the Part Rules of the individual justice. These copies will not be filed with the resulting decision. **All working copies submitted must include a copy of the NYCEF Confirmation Notice *firmly fastened, facing outward, to the back cover page of the submission and comply with the requirements of Rule 202.5-b (d)(4).* The Confirmation Notice must be an updated version that indicates the sequence number of the motion being submitted at the CMP calendar call. **WORKING COPIES WITHOUT A CONFIRMATION NOTICE WILL NOT BE ACCEPTED.****

8) Scanning and Transmission of Decisions: After the court issues a decision on a motion in an E-file case, it will forward the decision to the County Clerk’s office, which will promptly scan it,

with County Clerk entry stamp, into the E-file system. The system will immediately transmit notice of this event via e-mail, including a link to the “entered” document, to all registered users.

I. Long Form Orders on Motions: If the court directs that an order be settled or submitted on a motion in an E-file case, the proposed order and any proposed counter-order shall be filed with the court on-line with proof of service. (If a decision refers to a proceeding on the record, a copy of the transcript must be submitted.) Working copies of all proposed orders **MUST** be submitted to the Motion Support Office before an order can be reviewed. As appropriate, the Clerk may make changes on the proposed order/counter-order by hand. Once a proposed order/counter-order in proper form has been submitted, the Clerk of the back office will forward a hard copy to the Justice for signature. After an order/counter-order has been signed, the County Clerk will scan it, with County Clerk entry stamp, into the E-file system, which will immediately transmit notice of this event via e-mail, including a link to the entered document, to all registered users.

J. Orders to Show Cause

1) **Proposed Orders to Show Cause and Supporting Papers to be Filed On-Line; Alternative Submission by E-Mail:** Proposed orders to show cause and supporting papers in an E-file case must be filed with the system by the applicant. Generally, it is expected that the proposed order and supporting papers will be filed on-line prior to review by the Ex Parte Office. There may, however, be instances in which a party, because of exigent or other circumstances, does not wish to provide advance notice to the adversary of a proposed order by filing it and supporting papers with the E-file system (which will generate an e-mail message to all parties). In those cases, the proposed order to show cause and supporting papers may be submitted to the Ex Parte Office by regular e-mail (i.e., outside the E-file system). An E-mail box for this office has been established at the following address: QUEENSEXPARTEF@courts.state.ny.us. In such instances, the applicant must file the proposed order and supporting papers with the E-file system after signature.

2) **Review of Proposed Orders to Show Cause Will be Done On-Line:** Absent unusual practical difficulties, a proposed order to show cause and supporting papers will be reviewed for form on-line in the Ex Parte Office.

3) **Processing Proposed Orders to Show Cause:** A proposed order to show cause requires a judicial signature. Thus, after the proposed order to show cause has been transmitted to court and approved for form by the Ex Parte Office and the motion fee has been paid, the Ex Parte Office will print out a hard copy of the proposed order to show cause and transmit to the appropriate Justice for signature. **Please consult the assigned judge’s individual Part Rules as to the submission of working copies of any supporting documentation.**

4) **Posting the Signed Orders to Show Cause to the E-file System:** In all instances, Chambers will promptly forward to the Motion Support Office the order to show cause as marked up and signed by the Justice. After processing, the Motion Support Office will file the signed order to show cause with the County Clerk. In the event of an emergency Order to Show Cause, any documents in hard copy form shall be uploaded within three (3) days of determination.

K. Marked Pleadings: Consult the individual judge’s Part Rules for the requirements as to the e-filing of marked pleadings.

L. Procedures Regarding Service On-Line <https://iapps.courts.state.ny.us/nyscef/Login> to e-filing rule 202.5-b (f).

M. Sealing of Documents

1) **Secure Document Status Repealed:** In the past, E-filed documents could be designated “secure” by the filing user, as a result of which the documents would be accessible in NYCEF outside the courthouse only to the parties to the case, though they would be accessible to all at the courthouse. The relevant portion of the rules that so provided, Uniform Rule 202.5-b (d) (3) (iii) was deleted by Administrative Order effective April 15, 2013. Documents previously filed in secure status will retain that status unless otherwise directed by the court. It is the responsibility of counsel and parties to comply with legislation restricting disclosure of confidential personal information.

2) **Sealing; Compliance with Part 216; Procedures:** If counsel for a party seeks to have documents sealed in NYCEF, specific steps, set forth below, must be taken and an order pursuant to Part 216 of the Uniform Rules obtained. Until the court has resolved the sealing issue, counsel shall file documents in hard copy form, with a Notice of Hard Copy Submission - E-filed Case (EF 20) appended.

(a) **Commencing a New Case Under Seal; Anonymous Caption:** Where counsel seeks to obtain a sealing order for a case file at the outset of the case, the attorney should not simply E-file the commencement documents, but should rather submit a proposed order to show cause, in hard copy form with a Notice of Hard Copy Submission - E-filed Case (EF 20), seeking a sealing order and a TRO restricting access to the file pending the hearing on the application. If the Justice signs the TRO, the attorney should inform County Clerk. The attorney should then E-file the documents as directed by the County Clerk, who will restrict access to the E-file. An RJI should be submitted and the matter will then be referred to the assigned Justice for action on the full application.

The same process should be followed if the applicant wishes an anonymous caption and a sealing order. Counsel must promptly inform the County Clerk staff if, upon presentation of the proposed order to show cause and TRO, the court refuses to issue the TRO and after the court acts upon the order to show cause regardless of the outcome. If the relief sought is denied, the applying counsel must, within three business days after the sealing issue is determined, E-file all documents not yet E-filed.

(b) **Application for Sealing Order in a Pending E-filed Case:** To seal a document or the case file in a pending E-filed case, counsel must move for a sealing order. Counsel may file a motion to seal in hard copy form, with Notice of Hard Copy Submission (EF 20) annexed. Any opposition or reply papers shall likewise be submitted in hard copy form, with said Notice attached. If the court issues an order directing the sealing of a complete existing NYCEF case file or a document or documents previously filed with NYCEF, the applicant shall contact the County Clerk and shall file with NYCEF a Notification for Sealing (NYCEF Form EF 7) to effectuate the order. The County Clerk will, during regular business hours, seal the file or the document(s) in question as directed by

the court, both in the NYCEF system and, if any covered documents are found therein, in a hard copy file. If the court issues an order directing the sealing of a document that has not yet been E-filed, counsel should contact the County Clerk and by Notice for Sealing prior to e-filing the document, the County Clerk will E-file the document under seal. All documents presented in connection with the sealing issue that have not yet been E-filed must be E-filed within three business days after the County Clerk seals the file if the entire file is sealed or after the sealing issue is determined adversely to the applicant.

3) **Previously Sealed File:** If a case that was previously sealed pursuant to court order is converted to E-file status, counsel for the parties should promptly file with the County Clerk's Office that an order sealing the file was issued. Counsel are advised to contact the Office by e-mail or phone and must submit a copy of the sealing order by posting it to the E-file system. Upon such submission, the E-file will be sealed.

N. Entry and Notice of Entry

1) **Entry:** Pursuant to the E-file Rules (Section 202.5-b[h]), the Clerk shall file orders electronically and such filing shall constitute entry of the order. The Clerk is required to and will transmit an e-mail message to all filing users on the case notifying that the order has been entered. Such notice does not constitute service of notice of entry by any party.

2) **Notice of Entry:** Notice of Entry is served by a party as follows: the party simply transmits electronically to the parties to be served the notification received from the court, along with an express statement that the transmittal constitutes Notice of Entry.

O. Judgments and the Judgment Roll

1) **Entry of Judgment; Procedures:** If the court in an order directs entry of judgment by the County Clerk, the party seeking entry should enter the file for the case in question and select **Judgment to County Clerk (Proposed)**. The Judgment Clerk will review the submission and if needed, will communicate with the attorney as to any issues. If the judgment is in proper form, it will be printed out, the Judgment Clerk will tax costs and disbursements and calculate interest as required add those figures to the judgment and have the judgment signed by the County Clerk and entered.

2) **Default Judgment; Entry by Clerk:** If the plaintiff in an E-file case seeks entry of a default judgment by the clerk pursuant to CPLR 3215, the attorney should enter the file for the case in question and select **Clerk Default Judgment (Proposed)**. The Judgment Clerk will review the submission and if needed, will communicate with the attorney as to any issues. If the judgment is in proper form, it will be printed out, the Judgment Clerk will tax costs and disbursements and calculate interest as required add those figures to the judgment and have the judgment signed by the County Clerk and entered.

3) **Judgment by Confession:** Where a party seeks entry of a Judgment by Confession pursuant to CPLR 3218, the party should select **Judgment by Confession (Proposed)**. The Judgment Clerk will review the submission and if needed, will communicate with the party as to any issues. If the

judgment is in proper form, it will be printed out, the Judgment Clerk will tax costs and disbursements and calculate interest as required add those figures to the judgment and have the judgment signed by the County Clerk and entered.

4) **Judgments Signed by Court:** In some instances, the court itself may sign the judgment. Calculation of disbursements, costs and interest will generally be left to the County Clerk by the court. The bill of costs and all other supporting documentation shall be submitted as separate documents to the County Clerk in the same manner as described above.

5) **Judgment Roll:** Whenever a judgment is to be entered, a judgment roll must be created by counsel or the clerk (CPLR 5017 [a]). Counsel shall submit the Certificate Requesting Entry of Judgment and shall identify therein, by title of the paper, number of the paper on the E-file List of Papers Filed, and date filed, all E-filed documents that should form part of the judgment roll. Any documents that were filed in hard-copy form only that are to be included in the judgment roll should be scanned into the system by counsel and included in the Certificate. The County Clerk will post the Certificate on-line once approved and this will constitute the judgment roll.

6) **Entry of Judgment:** Once the County Clerk has taxed costs and disbursements and calculated interest and has in hand a signed judgment, the Clerk will stamp the judgment with the County Clerk file stamp and scan the judgment to the system. This constitutes entry. The County Clerk is required to and will transmit an e-mail message to all registered users on the case notifying that the judgment has been entered. This notice does not constitute service of Notice of Entry by any party.

P. Notices of Appeal and Appeal Papers

1) **Notice of Appeal; Payment of Fee:** A notice of appeal shall be filed on-line in an E-file case. The fee therefor must be paid by credit card on-line or by means of the "Pay at the County Clerk's Office" option. In the latter situation, the notice will not be considered "filed" until payment of the fee is tendered to the County Clerk at the office.

2) **Notice of Appeal; Procedures:** The notice shall be filed together with a pre-argument statement and a copy of the judgment or order appealed from. The other parties to the case may be served on-line in the manner described above. Proof of service must also be filed on-line. The County Clerk will print a hard copy of any E-filed notice of appeal and include it in the County Clerk file.

3) **E-file; Appellate Division:** At present, the Appellate Division, Second Department does not handle appeals in E-file cases by electronic means. Counsel are advised to consult the rules of that court and to confer with the County Clerk.

Dated: February 25, 2015

HON. JEREMY S. WEINSTEIN
ADMINISTRATIVE JUDGE