

ALBANY COUNTY SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Third Judicial District, the Surrogate of Albany County, and the Chief Clerk of Albany County Surrogate's Court hereby promulgate local user protocols (Protocols) to assist users with the New York State Courts Electronic Filing System (NYSCEF). NYSCEF has been implemented in Albany County Surrogate's Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for Surrogate's Court (22 NYCRR) 207.4-a and 207.4-aa, and these Protocols provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website (www.nycourts.gov/efile). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

1) **Case Types Eligible for E-Filing:**

Mandatory E-Filing: E-filing is mandatory in all new proceedings filed in this court on or after October 19, 2016, other than guardianships, adoptions and select inter vivos filings. Except in limited circumstances, all such proceedings must be commenced by filing with the court electronically through NYSCEF and all subsequent documents in such proceedings must be e-filed.

Hybrid Proceedings: The NYSCEF System will allow a filer to e-file a document in a non e-filed estate in accordance with Uniform Rule 207.4-a (e) (1). The party first filing electronically in a hybrid proceeding, shall serve all other parties with a Notice Regarding Availability of Electronic Filing (see NYSCEF forms page).¹ Proof of service of such Notice shall be promptly filed with the court. Attorneys who do not consent to the use of e-filing in a hybrid proceeding should file a declination of consent with the court and serve the declination on all parties. Non-participating attorneys must attach a Notice of Hard Copy Submission – E-Filed Proceeding to all hard copy filings.

Documents Must Be E-Filed: Unless otherwise provided in the e-filing rules, these Protocols, or where a special exemption is granted (e.g., oversized exhibits in Section 3, below), all documents to be filed with the court in a NYSCEF case must be filed with the NYSCEF system.

Non-Participation in E-Filing: An attorney who certifies in good faith that he or she lacks the equipment or knowledge needed to e-file and has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of e-filing in each mandatory proceeding by filing an opt out form with the Clerk. Attorneys also may be exempted by the court for good cause shown. Unrepresented litigants are exempt from e-filing, but may choose to participate (see Uniform Rule [22 NYCRR] 207.4-aa [e] [1]; see also CPLR 2111).

¹ All forms referred to in the Protocols are available on the Forms page of the NYSCEF website at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>

2) **E-Filing Documents in Surrogate's Court:**

Essential Step Prior to E-Filing: Prior to entering any information into an initial filing, you should run an inquiry on the decedent's last name, using the first initial, to determine if a file is already open. Due to the numbering system in Surrogate's Court, an inquiry based on the file number alone may not produce accurate results. In addition, you must contact the court to ascertain whether there may be another will for the decedent on file with the court (e.g., filed for safekeeping). Sub-file letters are not recognized by NYSCEF and should not be used.

Initial Entering of Case Information: Any error in the initial entry of case information can significantly delay the proceeding. **Please double check to be sure to select the same county as is shown on your papers.**

The case name must be entered as follows for a *probate* proceeding:

- Initial entry must be identical to the name on the will
- If the name on the death certificate or petition is different, that becomes an "AKA"
- No punctuation or spaces should be used when entering the name or "AKA"

The case name must be entered as follows for an *administration* proceeding:

- Initial entry must be identical to the name on the death certificate
- If the name on the petition is different, that becomes an "AKA"
- No punctuation or spaces should be used when entering the name or "AKA"

Notice of Hard-Copy Submission: Where, within the e-filing rules, an attorney or an unrepresented litigant who is participating in e-filing submits a document in hard copy, the document must bear a Notice of Hard Copy Submission – E-Filed Proceeding. Attorneys who are exempt from e-filing are required to attach this form to all hard copy filings, while unrepresented litigants who are not participating in e-filing are not so required.

Request for Surrogate's Court Action: This court requires the Request for Surrogate's Court Action as the first document uploaded with each filing. This is to be filed as a stand-alone document. Do not scan any other documents with the Request.

For subsequent filings, do not re-use the original Request form. Prepare a new form for each filing with the appropriate information entered. If requesting court-certified documents or certificates of appointment, use a Request for Surrogate's Court Action Non-Proceeding Relief (p.2 of the Request form). Do not submit a blank Request for Surrogate's Court Action form.

Death Certificates: In addition to e-filing the death certificate, a certified hard copy must be filed within two (2) business days of e-filing.

Wills: The will is required to be scanned by the filer. Scan the original will, NOT an attorney certified copy. It is permissible to have the will unstapled, *in the discretion of the*

filing party. A staple affidavit may be requested if a contest is anticipated. File the original paper with the court within two (2) business days of the e-filing.

Citations: Submit a proposed citation electronically through NYSCEF only. Once the citation is signed, the court will upload the completed version to NYSCEF. If the proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent through the NYSCEF system when the completed citation is posted to NYSCEF. After receipt of the notification, print the citation and serve it in accordance with the SCPA service rules, as reflected in the order for service that may accompany the citation. Service of the citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be.

Decrees and Orders: E-file proposed decrees and orders through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF thereby notifying all consenting parties that the decree or order has been signed and posted. Users who have requested a certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy by first class mail.

Stipulations: Stipulations submitted for purposes of being “so ordered” by the court shall be electronically filed. Albany Surrogate’s Court does not require working copies of e-filed documents.

Oversized Exhibits: If an exhibit or attachment is unsuited for electronic filing (e.g., a large map or a videotape), it shall be submitted to the court and served on the other parties in hard copy. Attach a Notice of Hard Copy Submission – E-Filed Proceeding. In addition, a Notice of Hard Copy Exhibit must be completed and electronically filed.

Working Copies: Albany County Surrogate’s Court does not require working copies of e-filed documents.

- 3) **Payment:** This court accepts payment of fees by credit card payments made online through NYSCEF or by payments made at the court. There are no fees to use the NYSCEF System. Fees are calculated in accordance with SCPA 2402 based on the documents filed with NYSCEF and the representation of the filing user regarding the size of the estate. Review by the court may result in a modification of the fees initially anticipated or charged in connection with this transaction. In the event of any such modification, the court will contact the filing user by email with the proper amount and request an additional fee, if applicable. The filing of additional documents may not be permitted if the filer owes an outstanding fee in that proceeding.

If choosing to pay by credit card at the time of filing on the NYSCEF website, enter your credit card information directly on the website. You must provide the credit card information with each filing; your credit card will be charged at the time of filing. Make sure your credit limit is large enough to cover anticipated filings.

If choosing to pay at the court, be aware that documents are not “filed” until payment is received. The court cannot process the filing until payment is received in full and will delete the filing if payment is not made within **ten business days** after e-filing.

Notifications: Notification of defective filings will be sent out by email through the NYSCEF system or made by telephone, depending on the circumstances. Clerks are available for consultation during regular business hours via telephone at (518) 285-8585 or email at albanysurrogatecourt@nycourts.gov.

Certificates and Letters: Upon request made via NYSCEF, the court will mail out certificates and letters. Users must request and pay for certificates in advance in any e-filed proceeding.

General Correspondence: All general correspondence, adjournment requests and conference requests shall be electronically filed.

- 4) **Signatures:** Documents requiring signatures shall be considered to be signed under the circumstances outlined in Uniform Rule 207.4-a (f). When e-filing a document bearing an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to Uniform Rule 207.4-a (f) (2).
- 5) **Sealed Documents, Sealed Cases; Documents Presented for in Camera Review:**

Applying for a Sealing Order: A party who wishes to file a document under seal must file a hard copy of the document, along with the Notice of Hard Copy Submission with the Surrogate’s Court. Unless the document is being filed ex parte, the filing party shall serve all parties with hard copies of the document, along with the Notice of Hard Copy Submission form, in the traditional manner.

If the court grants the sealing request, the Clerk will then file the documents in the appropriate manner, as directed. If the application is denied, an order will be issued that directs the party to file the documents electronically.

In Camera Documents: Documents submitted to the court for in camera review should be delivered to the court in a sealed envelope conspicuously marked “FOR IN CAMERA REVIEW BY THE COURT” with a Notice of Hard Copy Submission form attached.

Decrees, Orders, and Judgments: Decrees, orders, and judgments will be signed in hard copy by the Surrogate and forwarded to the Clerk for filing and scanning into the NYSCEF system, which will then transmit notification to all parties. However, the notification does not constitute service of notice of entry upon any party (see Uniform Rule 207.4-a [h]). Court-issued letters and certificates of appointment will be provided in hard copy to the filer via the usual means (SASE, USPS mailing, messenger). The preferred method of contact/return should be noted by the filer on the Request for Surrogate’s Court Action form.