

SCHEENECTADY COUNTY SURROGATE'S COURT LOCAL PROTOCOLS FOR ELECTRONIC FILING

The Surrogate of Schenectady County hereby promulgates these local Protocols to assist users of the New York State Courts E-Filing System (hereinafter referred to as "NYSCEF") when accessing NYSCEF to electronically file petitions and documents in Schenectady County Surrogate's Court. E-filing exists in accordance with the program established by the Chief Administrator of the Courts pursuant to 22 NYCRR 207.4a and 207.4aa. Users should review the NYSCEF website (www.nycourts.gov/efile), as well as 22 NYCRR 207.4. These Protocols do not supersede any statutory or regulatory provisions.

Types of Proceedings Subject to Mandatory E-Filing:

Effective **August 16, 2017**, e-filing is **mandatory** for all types of proceedings which are commenced on or after the effective date, with the exception of guardianship proceedings and adoption proceedings. Guardianship and adoption proceedings are *specifically excluded* from e-filing regardless of the commencement date.

Documents that must be E-filed: Unless a **filer** is specifically exempted from e-filing (see section 2 below), or a **particular document** is specifically exempted from e-filing (e.g., death certificates, wills, oversized exhibits, sealed documents, documents submitted in camera [see Sections 3 and 7 below]), all paperwork and documents filed in a mandatory proceeding must be submitted electronically through the NYSCEF system.

Proceedings Not Subject to Mandatory E-Filing:

A party must not use NYSCEF to electronically file documents in any proceeding that was not commenced electronically. All paperwork and documents filed in any proceeding that was commenced prior to August 16, 2017, must continue to be submitted in hard copy until completion of such proceeding.

Exemptions from Mandatory 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 mandatory e-filing by filing with the Court (in hard copy) a "Notice of Opt-Out From Participation in Proceeding Subject to Mandatory Electronic Filing" form (see NYSCEF website for a library of forms). Attorneys may also be exempted for good cause, as determined via separate application to the Court. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing (22 NYCRR § 207.4-aa[e][1]); unrepresented litigants are exempt from e-filing, but may choose to participate (CPLR § 2111).

E-Filing Procedures:

- Essential Steps Prior to E-Filing: Prior to beginning a petition in a proceeding that is subject to mandatory e-filing, filers should run or have an inquiry run in the Court's

UCMS database, as well as in the NYSCEF system, using the decedent's last name and first initial to determine if a file is already open for that decedent.

• Importance of Accuracy when Entering Initial Case Information: Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select Schenectady County as the venue for your case.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will
- If the name on the death certificate is different, that becomes an "AKA"
- If the name on the will does not match the signature, 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" form (see NYSCEF website for a library of forms). **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: The Request for Surrogate's Court Action (see NYSCEF website for a library of forms) must be the first document uploaded with each electronically filed document. This is to be filed as a stand-alone document. Do not scan any other documents with the Request.

For subsequent filings in the same proceeding, 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 (see NYSCEF website for a library of forms). NEVER submit a blank Request for Surrogate's Court Action form.

• Death Certificates: E-File the front and back of death certificates. Original death certificates must be submitted directly to the Court along with a self-addressed stamped envelope; they will be returned to the filer after being examined by the Court.

• Wills: E-File an Affidavit of Comparison with a copy of the original Last Will and Testament and/or Codicils, attached. Original Wills and Codicils must be submitted directly to the Court.

• Citations: Proposed citations in e-filed cases must be submitted electronically through NYSCEF. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. If the proposed citation requires amendment, the filer will be notified. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt of the notification, the filer must print the citation and serve it in accordance with the SCPA. Service of the citation should be

accompanied by a “Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing” form (see NYSCEF website for a library of forms).

- Decrees and Orders: Proposed decrees and orders in e-filed cases must be submitted electronically through NYSCEF. If the proposed decree or order requires amendment, the Court will advise accordingly. Otherwise, the decree or order will be uploaded to NYSCEF and the parties will be notified that it has been signed and posted. Those who have requested a certified copy and have paid the appropriate fee via NYSCEF (or at Court) will receive the certified copy by regular mail.
- Stipulations: Proposed “so ordered” stipulations in e-filed cases must be submitted electronically through NYSCEF. Following review, the so-ordered stipulation will be uploaded to NYSCEF and the parties will be notified that it has been signed and posted.
- 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. A “Notice of Hard Copy Submission – E-Filed Proceeding” form should be filed with the hard copy exhibit or attachment when served on the Court and all other parties. In addition, the party submitting the oversized exhibit or attachment must also file a Notice of Hard Copy Exhibit Filing form (see NYSCEF website for a library of forms) which will act as a “placeholder” in the electronic system.
- Working Copies: The Court may, upon notice, require that certain electronically filed documents be submitted to the Court in hard copy. These are called “working copies”. If a working copy request is made, it does not absolve the party from electronically filing the document through NYSCEF. The party who receives such a request should attach to the working copy proof that it has also been filed electronically (such proof can consist of the “thank you page” from NYSCEF or the e-mail notification received after successfully uploading the document to NYSCEF). Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed by the Court at the disposition of the case.

Fee Collection in E-Filed Cases: Required fees in e-filed cases may be paid either at Court (in person or through the mail) or via credit card directly through the NYSCEF system. Please be advised of the following if paying via credit card through NYSCEF: (1) there is no administrative fee; (2) your credit card will be charged at the time of filing; (3) fees are calculated automatically in accordance with SCPA §2402 based on the documents filed and the filer’s representation regarding the size of the estate; (4) once the papers are reviewed by the Court, there may be either an upward or downward modification of the fees initially assessed via NYSCEF; (5) in such event, you will be contacted by the Court; (6) if an additional fee due, the Court cannot permit any further documents to be filed until the additional fee is paid.

If the electronic filer opts to pay at court, be advised that even though the documents may already have been submitted electronically through NYSCEF, they are not deemed to be “filed” and cannot be reviewed or processed until payment in full has been received and processed.

Notifications: Notification of defective and/or incomplete filings will be via standard mail, e-mail or telephone, depending on the circumstances.

- Return of Requested Documents: To ensure rapid return of documents, please provide a stamped, self-addressed envelope with sufficient postage to permit them to be returned to you.

- Certificates and Letters: Upon request made via NYSCEF, the Court will mail out Certificates and Letters. Certificates must be requested and paid for in advance for all e-filed proceedings.

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

Signatures: Documents requiring signatures are deemed “signed” under the circumstances outlined in 22 NYCRR §207.4-a(f). When e-filing a document that bears an actual signature, the filer is responsible for maintaining the original, executed document pursuant to 22 NYCRR 207.4-a(f)(2).

Sealed Documents, Sealed Cases; Documents Presented for In Camera Review:

- Applying for a Sealing Order: One who seeks to file a document under seal must file a hard copy of the document with the Court, along with the “Notice of Hard Copy Submission – E-Filed Proceeding” form. 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 – E-Filed Proceeding” form, in the traditional manner.

If the Court finds good cause and grants the sealing request pursuant to Uniform Rule §216.1(a), the documents will then be noted and filed by the Court accordingly. If the request is denied, an order will be issued directing that the document be filed electronically.

- In Camera Documents: Documents submitted for in camera review should be delivered to the Court in a sealed envelope conspicuously marked “FOR IN CAMERA REVIEW BY THE COURT”. A “Notice of Hard Copy Submission – E-Filed Proceeding” form must be attached to the documents.

Decrees, Orders, and Judgments:

Decrees, orders, and judgments will be signed in hard copy and forwarded to the Clerk for filing and scanning into the NYSCEF system which will, in turn, transmit it to all parties. This electronic notification does not constitute service of notice of filing upon any party (22 NYCRR 207.4-a[h]).

