ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

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, section 207.4-a of the Uniform Civil Rules for the Surrogate's Court, relating to consensual electronic filing of actions in the Surrogate's Court, to read as follows:

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§ 207.4-a **Electronic Filing in Surrogate's Court; ~~[E-filing Pilot]~~Consensual Program ~~[Rules]~~**

(a) Application. ~~[Documents]~~ 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 ~~[E-filing]~~ Electronic Filing System" ("NYSCEF") shall mean the system, located at the Internet site at www.nycourts.gov/efile, established by the Chief Administrator ~~[of the Courts]~~ 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 ~~[estate]~~ 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 ~~[and who maintains an office in this state]~~, or admitted pro hac vice, or an authorized agent thereof, or a pro se 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 ~~[of the Courts]~~ and filed ~~[with the court]~~ 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.

(c) Intent.

(1) 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.

(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 ~~[of the Courts]~~. 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 ~~[of the Courts]~~, 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 ~~[a certified]~~ the death 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 ~~[certified]~~ 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 ~~[a certified]~~ 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 ~~[certified]~~ 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

~~[Uniform]~~ 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, or decision. 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.

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Chief Administrative Judge of the Courts

Dated: January 9, 2012

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