

Joint Protocols for New York State Courts E-Filing (NYSCEF) Cases Filed in Supreme Court, Erie County

I. Introduction:

The previously consensual e-filing program in Erie County Supreme Court for certain civil matters was made mandatory as of October 1, 2013. (See Administrative Order 222/13 (hereafter AO/222/13) at <https://iappscontent.courts.state.ny.us/NYSCEF/staging/legislation/AO.222.13.pdf>).

These Joint Protocols are applicable to those matters previously filed under the consensual e-filing program and those matters now required to be e-filed under the mandatory program.

The Administrative Judge of the Eighth Judicial District and the Erie County Clerk as Clerk of the Supreme and County Courts hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”) implemented in the Erie County Supreme Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (hereinafter “Uniform Rules” and, in particular 22 NYCRR §202.5-bb and §202.5-b) and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website (<https://iapps.courts.state.ny.us/nyscef/Login>) as well as the appropriate IAS Courts’ Part Rules to insure compliance with all regulatory and Court requirements. These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

A. Effect of Joint Protocols: The NYSCEF system does not change the rules applicable to civil litigation. As such, the protocols promulgated herein, as well as any additions or amendments thereto, do not change applicable rules or statutes with respect to civil practice as defined by the New York State Civil Practice Law and Rules (hereinafter “CPLR”), the Uniform Rules or the Commercial Division Rules (22 NYCRR §202.70) (<http://www.courts.state.ny.us/rules/trialcourts/202.shtml>).

B. Official Case Record: The official case record for any action or proceeding, and the filing or entry of documents therefore, shall be the records maintained by the Office of the Erie County Clerk via its electronic database, online images and

hard copy filings as per the constitutional authority vested as the Clerk of the Supreme and County Courts. In addition, as Clerk of the Supreme and County Courts, the Erie County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention, and dissemination of court records within Erie County.

C. Getting Started: Prior to utilizing the NYSCEF system, an attorney, party, or filing agent must register to become an authorized user of the NYSCEF site at <https://iapps.courts.state.ny.us/nyscef/Login>. All attorneys admitted to practice in New York State can log into NYSCEF using their Attorney Registration Number and their Attorney Online Services account password.

Attorneys who have not created an Attorney Online Services account (usually done when renewing one's bar registration) can use the "Create Account" link at <https://iapps.courts.state.ny.us/nyscef/Login>. An individual registered and seeking to act as filing agent must file a *Statement of Authorization for Electronic Filing* form, accessible at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>, for each case in which an attorney authorizes the agent to file on the attorney's behalf.

All self-represented parties utilizing the NYSCEF system must register and may use the "Create Account" link at <https://iapps.courts.state.ny.us/nyscef/Login>.

All NYSCEF users shall immediately contact the NYSCEF Resource Center if they have reason to believe their user identification or password may have been compromised, and may request a new user identification or password.

D. Cases Eligible for E-Filing: Case types currently eligible and accepted for e-filing include all matters except for CPLR Article 78 Proceedings, Election Law Proceedings, In Rem Tax Foreclosures, Matrimonial Matters, Mental Hygiene Law Matters, and Proceedings pursuant to Real Property Tax Law §730. This list is subject to change.

E. No Fee Authorization Letter: Where a "No Fee Authorization Letter" is referenced, it is intended to be a written request on the letterhead of the attorney or filer that an action or particular document type will be accepted with no fee required and include the basis for the exemption.

II. Identifying E-filed Cases: E-filed cases must be readily identifiable and marked as such. If counsel presents papers to the Office of the Erie County Clerk or the Office of the Chief Clerk in a NYSCEF matter where authorized, counsel should alert the Clerk that the case is a NYSCEF matter.

Cases that are initially commenced by the filing of papers with the NYSCEF system are identified as e-filed cases by assignment of an Index Number that has “800-899” as the first three digits of the Index Number (i.e. 802391/2012). Upon filing of the commencement pleadings and payment of the statutory fee, the Erie County Clerk will assign a NYSCEF designated Index Number and the filer shall be notified via the NYSCEF system of the number assigned and filing date. Such Index Number must be affixed to all document submissions, filings, and communications to the Erie County Clerk and the Court.

III. Filing of Papers

A. Commencing an Action in NYSCEF: To commence an action, log into the NYSCEF System at <https://iapps.courts.state.ny.us/nyscef/Login>, choose the court in which you wish to commence your action, and then choose the type of action.

Unless otherwise stated in these Protocols, each document must be uploaded as a separate .pdf file and the correct document type must be selected under the Document Type menu.

B. Response to Electronic Filing: In order to receive notifications on a case filed electronically, you must use the “Consent/Represent” action on the NYSCEF site to indicate your representation of a party and your contact information. Please note that using the “Consent/Represent” action does not constitute a Notice of Appearance for jurisdictional purposes; it simply enters you in the case as counsel of record and entitles you to notification of any future filings or notices. Self-represented Litigants who do not opt-out of the E-filing system must also use the “Consent/Represent” action to indicate their contact information.

For cases commenced in the consensual program which predated the mandatory program, the procedure for obtaining consent for electronic filing is set forth in Uniform Rule §202.5-b(b)(2), and may be found at <http://www.courts.state.ny.us/rules/trialcourts/index.shtml>. A party which commenced a case electronically has consented to e-filing. For parties responding to an e-filed case, consent shall be obtained by stipulation or by electronically registering consent. Any party not consenting to e-filing must indicate his/her/its non-consent in writing. Please note that filing papers in hard copy, along with the *Notice of Hard Copy Submission – E-filed Case (EF-20)* form, is not sufficient to register non-consent. By logging in at your earliest convenience to register your consent, you will be assured of promptly receiving all notifications of documents electronically filed to the case.

A party who has been permitted to opt-out from e-filing is responsible for filing all paper documents with the County Clerk or the Court. Papers filed manually must be presented unbound. Papers that are bound will be returned to the party or attorney. The Court will not assume the responsibility of filing any papers. Self-represented parties will be referred to the Court Help Center to assist with uploading the document into NYSCEF. Although NYSCEF will notify the parties that a document has been filed, any party that has been permitted to opt-out must also serve the documents on the opposition in paper format and file an Affidavit of Service with the County Clerk and/or Court along with the *Notice of Hard Copy Submission – E-filed Case* (EF-20) form for any such documents.

C. Converting a Case to Electronic Filing: Cases originally commenced in hard-copy format but later converted to NYSCEF status by delivery of an original *Stipulation and Consent to E-file* form signed by all parties (with limited exceptions) to the Office of the Erie County Clerk (and a copy to the Part Clerk if assigned to an IAS Justice) will initially bear a regular Index Number. If the case is converted prior to the filing of a Request for Judicial Intervention (RJI), the County Clerk will upload the County Clerk's docket and any initiating documents (i.e., Summons, Complaint, Petition) into NYSCEF. If the case is converted subsequent to the filing of an RJI, the Part Clerk will upload the County Clerk's docket and any initiating documents. **The attorney must provide a certified copy of the initiating documents to the County Clerk / Part Clerk in .pdf format.**

D. Paper Documents Not Accepted: All documents required to be filed with the Court in any e-filed case must be electronically filed unless otherwise provided by the Uniform Rules or this Protocol.

Any document that is submitted in hard copy form in an e-filed case must bear a *Notice of Hard Copy Submission – E-filed Case* (EF-20) form attached as a cover sheet. Any hard copy document not bearing this form will not be accepted by the Clerk. The documents will be returned and deemed filed when properly submitted.

E. Rejection of Hard Copy Filings: In accordance with Uniform Rule §202.5-b(d) (<http://www.courts.state.ny.us/rules/trialcourts/index.shtml>), the County Clerk shall refuse to accept for filing hard copy papers filed to an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules and the papers bear a completed *Notice of Hard Copy Submission - E-filed Case* (EF-20) form.

Equipment available for use by filers will be available at: the Chief Clerk's Office, 25 Delaware Avenue, Buffalo, New York; the 8th Judicial District Court Help Center presently located at 77 West Eagle Street, Buffalo, New York; and the Erie County Clerk's Office, 92 Franklin Street, Buffalo, New York. Hard copy submissions may

be electronically filed as long as the party has a User Identification name and Password.

F. Payment of Fees: Payment for fee-bearing NYSCEF documents may be made online via credit card (American Express, MasterCard or Visa) at the time of submission. Alternatively, payment may be made at the Erie County Clerk's Office by cash, check, credit card (Discover, MasterCard or Visa), or debit from an existing escrow account with the Erie County Clerk. If "Pay at Court" is selected and payment is not made at the Erie County Clerk's Office within 2 business days of filing with NYSCEF, the papers(s) will be rejected (Removed from the Case Record) and returned. Documents uploaded to NYSCEF are not "filed" until payment is presented.

G. Filing a Document where Size, Consistency or Context Prevent E-filing: Please contact the Supervisor of Actions & Proceedings, Erie County Clerk's Office by calling (716) 858-6662 or the Deputy County Clerk - Legal at (716) 858-6348 for information.

H. Confidential Personal Information: An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing Social Security Numbers. It is the sole responsibility of counsel or self-represented person filing to be aware of and to comply with existing laws requiring non-disclosure of confidential personal information contained in any document e-filed in NYSCEF.

I. Exhibits: In the NYSCEF system, each exhibit must be uploaded as a separate .pdf file. After uploading a primary document, please choose the document type "Exhibit" and enter the appropriate number or letter and a brief description of the exhibit; each exhibit should bear a separate cover sheet clearly marked as "Exhibit A," "Exhibit B," etc.

J. Affidavits of Service: In the NYSCEF system, each Affidavit of Service must be uploaded as a separate .pdf file. After uploading the Affidavit, please choose the document type "*Affirmation/Affidavit of Service*" and enter the name of the party served as Additional Document Information.

K. Errors Upon Submission: Submission of documents which, upon examination, require correction or addition will result in notification to the filer advising that the document has been returned for correction. Documents may be returned for correction by either the County Clerk or the Part Clerk. The filer shall make the required corrections and/or additions as indicated in the e-mail

transmission sent by the County Clerk or Part Clerk through the NYSCEF site. The corrected documents may be resubmitted using the “Re-file this document” link highlighted in the filer’s document list for the respective case. Please note that in the case of multiple submissions, all related documents filed at the same time will be removed from the case record and returned until all documents are properly submitted.

L. Technical Failures: When filing by electronic means is hindered by a technical failure, please refer to Uniform Rule §202.5-b(i) (<http://www.courts.state.ny.us/rules/trialcourts/index.shtml>).

M. Discovery Materials and Correspondence: In the absence of the Court’s permission or stipulation of the parties, no party shall file electronically any correspondence or discovery materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the Court.

N. Notice of Entry: The Part Clerk shall file orders electronically and such filing shall constitute entry of the order. The NYSCEF system will provide notification that the order has been entered. Such notice does not constitute service of Notice of Entry by any party. Notice of Entry must be made pursuant to the Uniform Rules and the CPLR.

O. Working Copies: Electronically filed documents subject to review and processing by the Part Clerk do not require a working copy unless otherwise directed or provided for in IAS Part Rules. Pursuant to Uniform Rule §202.5-b(d)(4) (<http://www.courts.state.ny.us/rules/trialcourts/index.shtml>), any working copy submitted shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice generated by the NYSCEF site at the time of filing. Please consult the individual Justice’s Part Rules and/or consult with the chambers to determine whether and how working copies are to be provided. Working copies will not be printed or delivered by the Erie County Clerk or the Chief Clerk of the Courts or any of their personnel to chambers. The official record of a document in an electronically filed case is the document filed via the NYSCEF system. Working copies are intended only for use by the Justice. The Court will discard all working copies after the Justice has finished with them. Thus, in the event that counsel fails to file a document via the NYSCEF system, the document will not be part of the court record.

IV. Requests for Judicial Intervention (RJIs): An RJI in a NYSCEF case shall be filed via the NYSCEF system.

A. Tort, Contract and other NYSCEF-eligible Actions and Proceedings: If a Preliminary Conference is requested, the filer should choose document type *RJI re: Request for Preliminary Conference* and it must be uploaded in the NYSCEF system. In a medical malpractice action, if an RJI is accompanied by a Notice of Medical Malpractice, the filer should choose document type *RJI re: Notice of Medical Malpractice* and both documents must be uploaded as one .pdf file in the NYSCEF system.

B. Commercial Division Assignments: If the case is to be assigned to the Commercial Division, the filer must submit as required by the standards for assignment of cases to the Commercial Division (Uniform Rule §202.70 (d)(2)) (<http://www.courts.state.ny.us/rules/trialcourts/index.shtml>), the document type *Commercial Division Addendum (840C)* and ensure that all pleadings have been electronically filed. Filing the Commercial Addendum as a separate document will result in the case type being automatically revised from ANY OTHER case type to Commercial Division and the case will be assigned to the Commercial Division subject to acceptance by the division's presiding Justice.

C. Residential Foreclosure Actions: The Plaintiff is required to simultaneously file the following four (4) documents, unless previously filed, as separate .pdf files:

1. Proof of Service of the Summons, Complaint, Summons with Notice, or Summons and Complaint;

2. *Request for Judicial Intervention*;

3. *Foreclosure Addendum (840F)*; and

4. Depending on the commencement date of the action, either (a) or (b), below: a. If the action is commenced on or after August 30, 2013, a *Certificate of Merit* pursuant to CPLR §3012-b(a) (See *Certificate of Merit* form here: <http://nycourts.gov/law/index.shtml>) or:

b. If the action is commenced prior to August 30, 2013, *Affirmation of Accuracy* pursuant to Administrative Order 431/11 (hereinafter AO/431/11) or *Certificate of Merit* pursuant to Administrative Order 208/13 (hereinafter AO/208/13) (See Order and *Affirmation* form here: <http://nycourts.gov/law/index.shtml>) (See Order and *Certificate of Merit* form here: <http://nycourts.gov/law/index.shtml>.)

Further, if the matter is NOT eligible for settlement conference, Plaintiff must file the *Foreclosure – Settlement Conference Ineligible Affirmation* pursuant to Justice Feroletto's Administrative Order dated March 3, 2010. (See Order and *Foreclosure – Settlement Conference Ineligible Affirmation* form here:

<http://www.nycourts.gov/COURTS/8jd/programs-procedures-protocols.shtml>.) This Affirmation must provide a specific reason (i.e., mortgagor is deceased/estate, foreclosure is of tax or mechanic's lien foreclosure, or of reverse mortgage, premises is vacant, not owner occupied or not intended to be owner occupied, etc.) that the action is not entitled to a settlement conference. If the reason is that

premises is vacant, not owner-occupied/not intended to be owner occupied, the Affirmation must also state the efforts that were taken to determine same. The mere fact that the homeowner was served at a location other than the property address is not sufficient.

If the matter is eligible for settlement conference, no further documents need be filed. The Court will schedule a mandatory settlement conference pursuant to CPLR §3408 and Uniform Rule §202.12-a. (<http://www.courts.state.ny.us/rules/trialcourts/index.shtml>) No motions or ex parte applications should accompany the RJL if the matter is subject to a mandatory settlement conference. No motions are to be filed until the settlement conference phase is completed.

D. Commercial Foreclosure Actions: All foreclosure actions involving commercial property, commercial loans, or between commercial entities require the Plaintiff to file, as a separate document, a *Foreclosure – Settlement Conference Ineligible Affirmation* detailing the reason that the action is commercial. If the Plaintiff is also seeking assignment to the Commercial Division, the *Commercial Division Addendum (840C)* must be filed with the Request for Judicial Intervention (see section B above).

E. Sale/Finance of Religious/Not for Profit Property: Filer shall commence the action as a Case Type: “Other Special Proceeding” and commence the action by choosing document type *Petition*.

A certified copy of the filed Order or Order and Petition, if the Petition is referenced as “attached or affixed,” is required to be filed into the corporate record, either in the Erie County Clerk’s Office (Registrar Division/Land Records) or at the Department of State, as appropriate.

V. Motions and Petitions: Submission of motions, including cross motions, shall comply with all relevant provisions of the CPLR, the Uniform Rules of the New York State Trial Courts (NYCRR) and Part Rules.

A. General: A motion on notice or a notice of petition in a NYSCEF case shall be filed through the NYSCEF system and, except regarding a notice of petition commencing a Tax Certiorari Action, must be accompanied by a Request for Judicial Intervention if the motion is being filed upon commencement or if the matter has not yet been assigned to an IAS Justice. In addition, cross motions with the appropriate filing fees and opposition and reply papers must be submitted via the NYSCEF system.

1. Commercial Division: Refer to the 8th Judicial District Commercial Division website (<http://www.nycourts.gov/courts/comdiv/8thdistrict.shtml>).

2. Residential Foreclosure Actions: If no defendant served an Answer to the Complaint, the Plaintiff may apply ex parte for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. If a defendant served an Answer and did not waive further notice, the Plaintiff must move on notice for Summary Judgment for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. Applications for the appointment of a referee to compute must include a proposed Order of Reference submitted as document type *Proposed Ex Parte Order*, if ex parte, or document type *Proposed Order* simultaneously with a separate document type *Notice of Motion*, if on notice.

Similarly, applications for a Judgment of Foreclosure and Sale must include a proposed judgment submitted as document type *Proposed Ex Parte Order*, if ex parte, or as document type *Judgment to Court (Proposed)* with a separate document type *Notice of Motion*, if on notice. **In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the Settlement Conference Part.**

B. Calendaring of Motions and Petitions: Refer to individual Justice's Part Rules.

C. Adjournments: Refer to individual Justice's Part Rules.

D. Exhibits: Please see Section III (I) above regarding the submission of exhibits.

E. Working Copies: Please see Section III (O) above regarding working copies.

F. Affidavits of Service: Affidavits of Service are required in an e-filed case only when documents have been served in hard copy or pursuant to the directive of the Court. Refer to the Uniform Rules for additional information.

G. Notices to County Clerk: Requested changes to the caption of a case for the addition of parties must be accompanied by the form *Notice of County Clerk Amendment to Caption* form (EF-23).

H. Proposed Orders: Proposed orders shall be submitted through the NYSCEF system and a working copy provided to the IAS Justice if Part Rules so require for signature.

I. Decisions and Orders: Decisions and/or Orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event and a link to the decision and/or order via the NYSCEF system to all consenting parties. This notice does not constitute service of Notice of Entry of an order by any party (See Section III(N) for more information regarding Notice of Entry).

VI. Orders to Show Cause: Proposed Orders to Show Cause (hereinafter “OTSC”) shall comply with all relevant provisions of the CPLR, the Uniform Rules including Commercial Division Rule (22 NYCRR 202.70) and Uniform Rule 202.7(f), and any other applicable provision of the law, regarding notice of the application to the opposing party. Counsel must contact Chambers to schedule a return date.

Except as provided in the following paragraph, a proposed OTSC and supporting documents must be submitted by filing with the NYSCEF system. Original paper documents will not be accepted by the County Clerk unless specifically permitted by the Uniform Rules or these Protocols.

A. OTSC Concurrent with Commencing an Action: Where the action is being commenced and an Order to Show Cause (hereinafter OTSC) is submitted simultaneously with the purchase of an Index Number, a Summons and Complaint, a Petition or a Summons with Notice, and the filing of an RJI, the filer must select the document type *Proposed Order to Show Cause Accompanying Commencement Doc(s)* to file the proposed OTSC.

B. OTSC and Temporary Restraining Order Concurrent with Commencing an Action: Where the action is being commenced and an Application for an OTSC with a Temporary Restraining Order (hereinafter TRO) is being made simultaneously, an Index Number must be obtained at the County Clerk’s Office and the documents (with Index Number affixed) presented to the Chief Clerk’s Office in hard (paper) copy with the *Notice of Hard Copy Submission – E-Filed Case (EF-20)* form and payment receipt attached. An IAS Justice will be assigned to the matter and the OTSC with TRO should be submitted to the Justice. That same hard (paper) copy of the proposed OTSC, having been signed by the Justice, will be uploaded and filed upon communication by the attorney or self-represented party to the Part Clerk that the commencement and supporting papers have been filed to NYSCEF. It shall be the obligation of counsel or the party to file all supporting papers in the NYSCEF system. The filer shall choose the option “Previously Paid” and in the notes section, indicate the receipt and index numbers.

C. OTSC in Existing Action:

1. If there is no prejudice or emergency, the proposed OTSC and supporting papers should be uploaded to NYSCEF as separate .pdf files, with a paper copy of the OTSC provided to the Justice for signature.

2. Where the filer is submitting an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Uniform Rule 202.7(f)), or where a party seeks to submit documents in an emergency in accordance with the Uniform Rules, the proposed OTSC may be presented to the IAS Justice in hard copy. Payment shall first be made to the County Clerk. Completed *Notice of Hard-Copy Submission – E-Filed Case (EF-20)* form and payment receipt must be affixed to the Proposed OTSC. The signed Order will be uploaded and filed without supporting papers to NYSCEF by the Part Clerk. Thereafter, the rest of the papers will be returned to counsel or the party and it shall be the obligation of counsel or the party to file all supporting papers in the NYSCEF system. The filer shall choose the option “Previously Paid” and in the notes section, indicate the receipt number.

VII. Secure Documents and Documents with Confidential Information:

Please be advised that pursuant to Administrative Order 134/13 (hereinafter AO/134/13), (See Order here:

<https://iappscontent.courts.state.ny.us/NYSCEF/staging/legislation/AO.134.13.pdf>)

documents may no longer be designated and filed as "secure" in NYSCEF. Documents previously e–filed as secure in NYSCEF prior to April 15, 2013 will retain the secure status unless otherwise directed by the court. Online access to those documents will continue to be restricted to counsel of record and self–represented parties in the case, the County Clerk, the court, and the filer if an agent. Public inspection of the documents will be available at the County Clerk’s Office.

An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing social security numbers. It is the sole responsibility of counsel or self-represented person filing to be aware of and to comply with existing laws requiring non-disclosure of confidential personal information contained in any document e-filed in NYSCEF.

VIII. Sealed Documents:

A. Application for a Sealing Order: Requests to seal a document or file shall comply with all relevant provisions of the CPLR, the Uniform Rules, and any other applicable provision of the law. To seal a document or file in a NYSCEF case, a party/counsel must apply to the Court for a “sealing” order pursuant to Uniform Rule 216.1 directing the County Clerk to seal the document or case file.

1. Sealing document(s) previously filed in NYSCEF: To seal a document previously e-filed or a case file in a pending e-filed case, party or counsel must apply for a sealing order. Application may be made through the NYSCEF system and, upon issuance of an Order directing the sealing of an existing e-filed document or case file, the Part Clerk shall upload and file the signed Order. Counsel/party must file the *Notification for Sealing (EF-7)* form to effectuate the order. The County Clerk shall seal the document(s) or file identified in the sealing Order as directed by the court, both in the NYSCEF system and, if any of the covered documents are found therein, in the hard copy file. No further action by counsel is required.

2. Sealing Document(s) Not Yet filed in Existing NYSCEF case:

a. Where a party/counsel seeks to obtain an order in an existing case for a document or documents not yet filed, application may be made through the NYSCEF system. If the motion/application is filed with the NYSCEF system, the motion and accompanying documents will be open to the public until a sealing order is issued. If the court issues an order directing the sealing of a document that has not yet been e-filed, counsel should upload the *Notice for Sealing* form after the Order is filed and prior to filing the document, and then contact the County Clerk when the document is uploaded. The County Clerk will process and 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 with additional *Notice of Sealing* form(s), if applicable, within three business days after the County Clerk seals the file if the entire file is sealed or after the sealing issue is determined if adverse to the applicant.

b. Alternatively, in the event that a party/counsel wishes the motion/application and/or documents be unavailable on the NYSCEF system, counsel may file a motion to seal in hard copy form, as follows: Following payment of any fees due, application may be made in hard copy with the NYSCEF document type *Notice of Hard-copy Submission – E-Filed Case (EF-20)* form attached, to the IAS Justice. Any opposition or reply papers shall likewise be submitted in hard copy form, with said Notice attached. Upon receiving the signed Order directing the sealing of a document that has not yet been e-filed, the Part Clerk shall upload the Order and contact the party/counsel to upload the *Notice for Sealing* form. The party/attorney, when filing the documents intended to be sealed, shall simultaneously contact and coordinate with the County Clerk who will process the documents under seal. All documents presented in connection with the sealing

issue that have not yet been e-filed will be returned to counsel or the party, and must be e-filed with additional *Notice of Sealing* form(s), if applicable, within three business days.

IX. Note of Issue: The case will be deemed ready for trial once a NYSCEF document type *Note of Issue-With Jury* or *–without Jury* has been uploaded to the NYSCEF system.

X. Consolidation or Joint Trial: Consolidation or joint trial of proceedings shall be at the discretion of the Court as permitted under the CPLR and case law. Upon filing of a document type *Order Directing Consolidation*, all subsequently filed pleadings/papers shall be filed in the case bearing the lower Index Number assigned unless directed otherwise by the Court. An order directing a joint trial of proceedings will not result in the consolidation of cases.

XI. Judgments

A. General Procedures for Money Judgments: Filers must submit proposed judgments through the NYSCEF system as single documents and not combined with any other unrelated filings or documents. The filer may choose document type *Judgment – to County Clerk (Proposed)*, *Judgment – to Court (Proposed)*, or *Clerk Default Judgment (Proposed)* and may file a statement for judgment as either document type *Judgment – to County Clerk (Proposed)* or *Clerk Default Judgment (Proposed)*. An additional *Bill of Costs* may be required.

1. Submission: A party seeking the entry of a money judgment must submit papers in compliance with statutory requirements including, but not limited to, submission of a document type *Bill of Costs* with attorney affirmation, if applicable, including interest calculation, proof of additional mailing, and any necessary supporting information to be included in the judgment roll. The Judgment or Bill of Costs must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Clerk and failure to include the addresses will result in the document being returned to the filer for correction.

2. Examination: The Judgment Clerk will examine the submission for entry. If the submission is deficient, the documents will be returned for correction and deficiencies will be communicated to the filer via the NYSCEF system. Once corrected, the judgment should be refiled via the NYSCEF system.

3. Notification of Entry: Once the judgment is entered, notification will be sent via the NYSCEF system to all consenting parties. “Entry” by the Clerk constitutes entry as defined by CPLR §5016(a) and requires payment by the

filer of any statutory fee. Such notification via the NYSCEF system shall not constitute service of Notice of Entry, but only notification that the judgment has been entered. It shall be the responsibility of the submitting party to serve Notice of Entry on all parties, if required.

B. Entry of Default Judgments: A party seeking the entry of a default money judgment by the Clerk shall choose the following document type *Clerk Default Judgment (Proposed)*. The statutory filing fee required and a statement for judgment and *Bill of Costs* may be submitted as the document type *Clerk Default Judgment (Proposed)* as one .pdf file.

1. Entry of Default Judgment Based on Stipulation of Settlement: A party seeking the entry of a default money judgment by the County Clerk pursuant to a Stipulation of Settlement or Release shall choose the following document type *Clerk Default Judgment (Proposed)*. If the Stipulation of Settlement on which the judgment is based has not yet been filed or is being filed simultaneously with the judgment, the filer shall choose the following NYSCEF document type: *Stipulation of Settlement* and pay the required fee. If the Release on which the judgment is based has not yet been filed, the original or a copy must be filed.

2. Entry of Judgment Based on Decision and/or Order: If the entry of the judgment is based upon a previously signed decision and/or order, the filer shall choose the following document type *Judgment - to County Clerk (Proposed)*. There is no fee to enter said judgment. See also Paragraph C, below.

3. Severance of Action: If a money judgment is to be entered against less than all of the defendants in an action, the proposed judgment should indicate that the action is severed as to one or more defendants and a money judgment entered against the specifically named Defendant. If the party/counsel requests that a Judge sign an Order of Severance, it must be uploaded as document type *Order to Court – Proposed* and filed PRIOR to the entry of the money judgment.

C. Judgment Signed by the Court: A party seeking the entry of a money judgment signed by the Court shall choose the following document type *Judgment – To Court (Proposed)*. The Part Clerk will upload the signed document to NYSCEF. Notification of the signed Order will be transmitted by the NYSCEF System to the filer. The filer shall then upload document type *Judgment - to County Clerk (Proposed)* and submit the necessary supporting documents, including document type *Bill of Costs* with complete calculations of costs, interest, and attorney fees, if applicable, unless included in the signed Order. The judgment shall comply with

statutory requirements and failure to include the addresses of the debtor(s) or creditor(s) will result in the judgment being returned to the filer for correction. Notification of entry will be transmitted by the NYSCEF System to all consenting parties.

In the event a signed Order is filed, but no *Bill of Costs* is submitted, the filer must affirmatively indicate his/her intent that a Money Judgment be docketed in the public records of the County Clerk as a result of the Order and pursuant to CPLR §5018(a) by uploading document type *Notice to County Clerk CPLR 8019(C)*. A copy of the order directing the County Clerk to enter a money judgment must be included as part of the attached .pdf file.

D. Judgment of Foreclosure. A party seeking the entry of a Judgment of Foreclosure should first upload document type *Oath* (of Referee) and NYSCEF document type *Bill of Costs* for approval by the County Clerk. Applications for a Judgment of Foreclosure and Sale should be delayed until the County Clerk has reviewed and granted costs. Said application for judgment of foreclosure must include a proposed judgment submitted as document type *Proposed Ex Parte Order*, if ex parte, or as document type *Judgment to Court (Proposed)* with a separate document type *Notice of Motion*, if on notice. In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions may be made only after the case has been released from the Settlement Conference Part.

Upon notice that the Judgment of Foreclosure has been filed, the Plaintiff shall file the remaining supporting documents for entry of the Judgment of Foreclosure, if not previously filed.

E. Confession of Judgment: Entry of a money judgment by confession shall adhere to statutory and regulatory requirements. A party seeking the entry of judgment by confession via the NYSCEF system shall choose the document types: *Confession of Judgment (Affidavit of Defendant)* as the Commencement Document and *Judgment by Confession (Proposed)* for submission of the judgment. A statutory fee for the assignment of an Index Number is required, unless the Affidavit of Confession is executed in conjunction with an already existing Supreme Court action. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

F. Foreign Judgment: Entry of a foreign money judgment shall adhere to statutory and regulatory requirements. A party seeking entry of a foreign judgment shall choose the document type *Foreign Judgment [5402]* as the Commencement Document and document type *Judgment to County Clerk – (Proposed)* for submission of the *Bill of Costs*, and document type *Affirmation* for submission of the Affidavit pursuant to CPLR Article 54. A statutory fee for assignment of an Index

Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

G. Subsequent Judgment or Order: When a previously entered money judgment is affected by a subsequent order or judgment, the attorney must obtain a Certified Copy of the Order affecting the docketed Judgment, and file same with the Registrar's Division (Land Records). County Clerk (Registrar's Division) will make no notation to the docket entry without submission of certified copies of Orders, except as follows:

1. Renewed Judgments. In instances wherein the change to an entered and docketed money judgment is the result of a renewed judgment, the notation will be made simultaneously with the entry of the renewal judgment by filing *Judgment to County Clerk (Proposed)* and including a *Bill of Costs*, with addresses of the parties, if applicable.

XII. Discontinuing (Foreclosure) Actions and Cancelling Notices of Pendency/Lis Pendens: Discontinuances of Action and Cancellations of Notices of Pendency/Lis Pendens cannot be combined into one document and must be uploaded as two separate documents. Select document type *Stipulation of Discontinuance (Post or Pre RJI)* or *Notice of Discontinuance*, if applicable, as a separate document under the Accompanying Documents menu. If also cancelling the Notice of Pendency/Lis Pendens, select document type *Cancellation of Notice of Pendency/Lis Pendens* as a second document under the Accompanying Documents menu. The Affidavit required by CPLR §6514 must be attached to the document type *Cancellation of Notice of Pendency/Lis Pendens*, if applicable.

XIII. Notice of Appeal: A Notice of Appeal shall be filed online in a NYSCEF case and the appropriate fee paid. The Notice shall be filed in conformity with all pertinent statutory and regulatory requirements.

XIV. Consumer Credit Card Transactions: Actions commenced pursuant to 22 NYCRR 202.27-a must be filed under case type: "Consumer Credit (Card) Transaction Original Creditor," "Consumer Credit (Card) Transaction Debt Buyer," or "Consumer Credit (Card) Transaction Secondary Debt Buyer," in order to obtain access to specific document types required by the Rule. See Administrative Orders dated September 15, 2014 (AO/185/14) and December 23, 2014 (AO/337/14 and AO/338/14), Rules 202.27-a and -b, and forms at <http://www.nycourts.gov/rules/ccr/>.

XV. Other:

A. Effect of Communication from the Office of the Erie County Clerk or Chief Clerk's Office: Any and all e-mail notifications from the Erie County Clerk or the Chief Clerk's Office shall not be construed or considered to be service of Notice of Entry for purposes of commencement of the statutory time to appeal or otherwise. Such communications from the County Clerk or Chief Clerk shall constitute and serve only as notification of receipt or entry in a ministerial capacity.

B. Support: Any attorney or self-represented litigant who requires assistance in a NYSCEF case is encouraged to contact the Court part with questions about individual Part Rules or contact the E-filing Resource Center at 646-386-3033 with any questions about the NYSCEF System. In addition, a computer and scanner will be made available by the Chief Clerk's Office for the use of individuals who may need assistance in making filings in a NYSCEF case.

Dated: April 17, 2015