

NEW YORK STATE UNIFIED COURT SYSTEM
FOURTH JUDICIAL DISTRICT
LOCAL PROTOCOLS FOR ELECTRONIC FILING
MONTGOMERY COUNTY

I. Introduction

A system for electronic filing (hereinafter referred to as NYSCEF) in civil actions and proceedings has been authorized in the New York State Supreme Court. In accordance with the program established by the Chief Administrator of the Courts pursuant to 22 NYCRR §§202.5-b and 202.5-bb, the Administrative Judge of the Fourth Judicial District and the Montgomery County Clerk hereby jointly promulgate local user protocols to assist users in implementing NYSCEF in practice and to provide guidance with respect to local practice and procedures used to process filings, fees and court calendaring. In addition, it is suggested that users consult the User Manual provided online at the NYSCEF website (www.nycourts.gov/efile), as well as any applicable Part rules.

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 under the CPLR. In addition, users are encouraged to become fully familiar with the IAS Part Rules for each judge as they apply to the type of action being filed in the NYSCEF system.

B. Official Case Record: The official case record for any action or proceeding, and the filing or entry of documents thereto, shall be the records maintained by the Office of the Montgomery County Clerk via its electronic database, online images and hard copy filings as per the constitutional authority vested in the Clerk of the Supreme and County Courts. In addition, as Clerk of the Supreme and County Courts, the Montgomery County Clerk is and remains the vested constitutional official with respect to access, maintenance, retention and dissemination of records in Montgomery County.

C. Getting Started: Prior to utilizing the NYSCEF system, an attorney, party or filing agent must register to become an authorized user. To set up an account, go to the NYSCEF log-in page (www.nycourts.gov/efile) and click on the “create account” button.

An attorney who intends to use a filing agent for a case must file a form accessible at www.nycourts.gov/efile whereby the attorney authorizes the agent to file on the attorney's behalf. Only one such form may be filed in any NYSCEF case. NYSCEF users shall immediately contact the NYSCEF Resource Center if they have reason to believe that their user identifications or passwords may have been compromised.

D. Cases Eligible for E-Filing

Effective **October 21, 2020** Montgomery County will have a mandatory e-filing program in all civil actions, with the **exception** of the following case types which may be e-filed on consent of all parties:

- CPLR Article 70 Proceedings
 - CPLR Article 78 Proceedings
 - Election Law Proceedings
 - Matrimonial Matters
 - Mental Hygiene Matters
 - consumer credit transactions as defined in CPLR 105(f) *
 - residential foreclosure actions as defined in RPAPL 1304 *
- (* except initial filing of commencement papers by a represented party, which is mandatory)

*****IMPORTANT:** Cases commenced prior to the above dates cannot be converted to electronic filing. They are to continue to conclusion as paper filings. **E-filing only applies to cases commenced on or after the effective date noted above. *******
By Administrative Order of Judge Marks, this rule has been temporarily suspended during the COVID-19 pandemic.

II. How to Electronically File

A. Pleadings: After the effective date, an eligible case, as identified above, must be commenced by electronically filing the initial pleadings through the NYSCEF System.

B. Receipts and Confirmations: Receipts and confirmations of electronically filed documents will be emailed to the filer directly from the NYSCEF system.

C. Serving Pleadings: Service is to be accomplished as set forth in 22 NYCRR 202-5-bb(b)(3). A "Notice of Electronic Filing" form must accompany the pleadings when served.

D. Proof of Service: If required, it must be electronically filed.

E. Filing a Document where Size, Consistency or Context Prevent Electronic Filing: Where the size, consistency or context of a document preclude its electronic filing, the user shall electronically file a "Notice of Hard Copy Exhibit Filing" form (www.nycourts.gov/efile) and, if filing the document in hard copy, attach a copy of the "Hard Copy Exhibit Filing Form" to the document. Any party may object to such hard

copy filing and the Court, in response to such objection, may fashion such relief as it deems appropriate including, but not limited to, an order requiring the filing party to file such documents electronically via the NYSCEF system.

F. Proposed Orders to Show Cause

- 1. Case Initiating OTSC's or OTSC's with TRO's:** A proposed Order to Show Cause (OTSC) which initiates a lawsuit or one that seeks temporary relief, including those for which the Rules require prior notice to the opposing party, must be submitted to the County Clerk in hard copy with a "Notice of Hard Copy Submission" form attached and the appropriate fee paid. After the OTSC has been executed by Judge, the Chambers' staff will upload it into NYSCEF *for filing and entry by the County Clerk*. Thereafter, it must be served in the manner directed by the Court. If the temporary relief sought in the proposed OTSC is such that the Rules require prior notice to the opposing party, counsel must contact Chambers to set up a time to be heard as to the temporary relief requested.
- 2. Other Orders to Show Cause:** Proposed OTSC's that are not initiatory or do not seek temporary relief should be filed electronically through NYSCEF with a courtesy copy provided to Chambers via email.

G. Signed/Declined Orders to Show Cause: Once the OTSC has been signed by the Court, Chambers will upload it into NYSCEF for filing by the County Clerk. Counsel must serve the OTSC in the manner directed by the Court. If the Court declines to sign the OTSC, the Court will electronically file the declined order with the notation "DECLINED" written across the face of the document and across the signature line.

H. Exhibits and Attachments: If pleadings, motions or other applications contain exhibits or attachments, those must also be submitted in electronic form. All exhibits or attachments must be filed as **separate attachments** to their parent document (not filed as a single "pdf" document) and each attachment must be labeled and described in sufficient detail so the Court and the opposing parties can easily identify and distinguish the filed attachments. After uploading a parent document, choose the document type "Exhibit", enter the appropriate number or letter and upload the attachment of exhibit.

If certain exhibits or attachments are unsuited to electronic filing (e.g., large maps, videotapes, unusually lengthy documents, etc.), they shall be submitted to the Court and served on the parties in hard copy. A "Notice of Hard Copy Exhibit Filing" form must be completed and must accompany the hard copy. A copy of this Notice must also be electronically filed.

I. General Correspondence/ Adjournment Requests/Conference Requests: All correspondence to the Court must be electronically filed and transmitted to the other parties via the NYSCEF system with a courtesy copy provided to Chambers via email.

When submitting documents to Chambers, please be sure to attach the NYSCEF confirmation notice so the Court can verify that the document was e-filed.

J. Discovery Materials: Parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such 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, unless otherwise specified by statute, rule or Part rule. Electronically filed discovery materials may become publicly available in the case docket. As a result, consideration should be given to exchanging confidential information outside of the NYSCEF system.

K. Technical Failures: When filing by electronic means is hindered by a technical failure (22 NYCRR 202.5-b), a party may file with the appropriate Clerk in hard copy. With the exception of deadlines that by law cannot be extended (e.g., Statute of Limitations, filing a notice of appeal), the time for filing any document that is delayed due to a technical failure of the NYSCEF system shall be extended for one day for each day on which said failure occurs, unless otherwise ordered by the Court.

L. Signatures: Documents requiring signatures shall be considered to be signed by the party under the circumstances outlined in 22 NYCRR §202.5(b).

M. Applications to the County Clerk for a Default Judgment (CPLR 3215[1]): A party seeking entry of a default judgment by the County Clerk in accordance with CPLR 3215(a), shall choose the following NYSCEF document type: “Clerk Default Judgment (Proposed)”. If the bill of costs is not included on the judgment itself, the filer must choose the “Bill of Costs” document type and file it as a separate document.

N. Notice of Appeal and Appeal Papers: A notice of appeal shall be filed electronically through NYSCEF and payment shall be processed through the NYSCEF system. The Notice shall be filed in conformity with existing rules and shall contain the “Request for Appellate Division Intervention” (RADI) form as required by the Appellate Division. The other parties to the case may be served via the NYSCEF system in the manner described herein. Proof of hard copy service must be filed via NYSCEF. At present, the Appellate Division Third Department does not handle appeals from e-filed cases by electronic means. As such, the appellant shall be responsible for converting the electronic submissions to hard copy. The County Clerk’s Office will not provide hard copies of electronically filed documents to constitute the record. Upon disposition of the appeal, the prevailing party must upload a copy of the Appellate Division decision in NYSCEF.

III. Exemptions from E-filing

A. Unrepresented Litigants: Unrepresented litigants are exempt from e-filing. They

can file and serve documents in paper and must be served with documents in paper form. However, an unrepresented party may choose to participate in e-filing (www.nycourts.gov/efile/unrepresented). An unrepresented litigant who consents to e-filing may cease participation at any time by filing a “Notice of Intent to Cease E-Filing” form. However, the other participating parties shall continue to e-file their court documents.

B. Attorney Opt-Out: 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 a “Notice of Opt-Out” form with the County Clerk. Pursuant to e-filing rules, non-participating counsel shall submit to the County Clerk the original hard copy documents in normal format together with a “Notice of Hard Copy Submission” form. ***PLEASE NOTE: All filers who have an e-filing exemption or waiver must submit a Notice of Hard Copy Submission form with every document that is filed.***

C. Additional Considerations for Paper Submissions: Although an unrepresented party and/or opted-out attorney may be filing in paper, the action will still proceed electronically in NYSCEF. As such, all paper filers must be aware that the image copies of documents filed in hard copy are public records available for public inspection. It is the responsibility of the filer to ensure that the hard copy documents comply with New York law governing exclusion of Social Security Numbers and confidential personal information (*see*, General Business Law §399-ddd[6]; 22 NYCRR 202.5[e]). ***Further, although NYSCEF will generate a notification to the participating parties as a result of the County Clerk uploading a non-participant’s documents to complete the record, any attorney who has opted out or any non-participating unrepresented litigant must also serve the documents on the opposition in paper format and file an affidavit of service with the County Clerk.***

IV. Payment of Filing Fees

All filing fees in electronically filed cases --- and this includes not only the Index Number and RJI fees, but any and all motion fees, note of issue fees, etc. --- are made online via credit card through the NYSCEF system. The County Clerk will not accept in-person payments in electronically filed cases.

1. Effect of Payment: Pursuant to CPLR 304, a document is not filed until payment of the fee has been tendered.
2. Effect of a Refused Payment: If, for any reason or at any time, the fee payment is returned or refused, the filer will be notified and required to pay the document fee. Failure to pay or a recurring payment return notification will result in the filer being reported to the Court and to the Unified Court System for further action.

V. Emergency Exceptions to Electronic Filing: Emergency exceptions to electronic filing are set forth in two sections of 22 NYCRR Part 202:

- 22 NYCRR §202.5-bb(b)(1) speaks to exceptions to electronic filing when commencing an action or proceeding.
- 22 NYCRR §202.5-bb(c)(3) speaks to exceptions to electronic filing after the action or proceeding has been commenced.

VI. Assigning an Index Number: Upon filing of the commencement pleadings and payment of the statutory fee, the County Clerk will assign an Index Number and notify the filer via the NYSCEF system of the number assigned and the filing date. This Index Number must be affixed to all documents, submissions, filings and communications to the court. E-filed cases must be readily identifiable and marked as such. Whenever counsel presents papers to the Montgomery County Clerk's Office or to the Montgomery County Supreme Court Chief Clerk's Office in a NYSCEF matter, counsel should alert the clerk that the case is an e-filed case.

VII. RJI Filing and Assignment of a Judge: The RJI shall be electronically filed in NYSCEF. Any attachments to the RJI, *with the exception of a motion or order to show cause*, shall be submitted along with the RJI as one .pdf file, for example:

a. RJI accompanied by a Notice of Medical Malpractice Action: The filer should choose the document type "RJI re: Notice of Medical, Dental or Podiatric Malpractice" and both documents should be uploaded as one .pdf file.

b. RJI Accompanied by a request for Preliminary Conference: The filer should choose the document type "RJI re: PC Request" and both documents should be uploaded as one .pdf file.

After an RJI is electronically filed, the County Clerk will electronically forward the RJI (with any attachments) to the Supreme Court Chief Clerk's Office for random assignment to a Supreme Court Justice off the assignment wheel. The Judicial Assignment Notice will be uploaded into NYSCEF by the Chief Clerk's Office and parties will receive it electronically through the NYSCEF system. Hard copies of the assignment notice will be mailed to those parties who have been exempted from mandatory electronic filing.

VIII. Working Copies of Electronically Filed Documents

Working copies of all electronically filed documents are required. All working copies must have a copy of the NYSCEF confirmation notice attached and affixed to the front of the document. In addition, if the electronically filed document contains redactions and the working copy does not, a redaction cover sheet should also accompany the working copy. Working copies do NOT become part of the official court record and will be destroyed by Chambers at the disposition of the case. **All working copies should be mailed or delivered directly to the assigned Justice at his/her Chambers address.**

IX. Public Access and Privacy Concerns

When electronically filing a document, the filer shall indicate whether it contains any of the following:

- individually identifiable health information;
- a Social Security Number;
- a credit card or bank account number;
- an individual's date of birth or home address;
- a minor child's name; or
- trade secrets

Social Security Numbers: An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of General Business Law §399-ddd(6) which will often require redaction of any Social Security Number that appears in the original document.

If the document to be filed does include such unredacted information, the filer should follow the procedures set forth in 22 NYCRR §202.5(b). This will result in access under NYSCEF being restricted to the parties in the action. Be advised, however, that, unless there is a court order sealing the document, it will be available for inspection at the County Clerk's Office.

Counsel and the parties are **strongly encouraged** to avoid including sensitive information in any document filed with the court. If inclusion is necessary, parties may redact the following personal information from all pleadings, motion papers and correspondence electronically filed with the Court, including exhibits and attachments, unless the Court orders otherwise:

1. Social Security Numbers. If an individual's Social Security Number must be included in a document, use only the last four digits of that number.
2. Names of minor children: If the involvement of a minor child must be mentioned, use only the initials of that child.
3. Dates of birth. If an individual's date of birth must be included in a document, use only the year.
4. Financial account numbers. If financial account numbers are relevant, use only the last four digits of those numbers.
5. Home addresses. If a home address must be used, use only the City and State.

In addition, caution should be exercised when filing documents that contain the following:

- personal identifying number, such as a driver's license number
- medical records, treatment and diagnosis
- employment history
- individual financial information
- proprietary or trade secret information

Counsel is strongly urged to discuss these issues with all of their clients so that an informed

decision about the inclusion of certain information may be made. **The responsibility for redacting personal identifiers rests solely with counsel and the parties. Neither the County Clerk nor the Supreme Court Clerk will review each pleading or paper for compliance with this requirement.** Counsel and the parties are cautioned that failure to redact personal identifiers may subject them to the Court's full disciplinary power.

If it is necessary and relevant to include personal information, a party wishing to file a document containing such unredacted information should apply to the court to file an unredacted version of the document under seal.

Secure filings of the following documents are not permitted:

- Affidavit /Affirmation of Service
- Notice of Pendency
- Cancellation of a Notice of Pendency
- Bill of Costs
- Proof of Service
- Request for Judicial Intervention (all forms)
- Release of Lien
- Satisfaction of Judgment

X. Sealed Documents, Sealed Cases; Documents Presented for In Camera Review

A. Applying for a Sealing Order: A party who wishes to file a document containing unredacted personal or sensitive information must:

1. Electronically file a "Notice of Hard Copy Submission" form;
2. Identify with specificity on that form the document sought to be sealed; and
3. File a hard copy of the actual document, along with the "Notice of Hard Copy Submission" with the County Clerk. 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 County 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 document electronically.

B. 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". A "Notice of Hard Copy Submission" form, identifying the general nature of the document, should be electronically filed indicating that an in camera submission has been delivered to the Court.

XI. Proposed Orders/Judgments/Stipulations

If the Court requests the submission of a proposed order or judgment, it shall be electronically filed through NYSCEF by the party who was directed to submit it and a hard copy should be delivered to Chambers, along with the confirmation receipt. Any objections to the proposed order or judgement shall likewise be electronically filed through NYSCEF with a hard copy delivered to Chambers. If the electronic copy contains redactions and the hard copy does not, please submit a hard copy of both documents, along with the redaction cover sheet.

All proposed orders/judgments so submitted shall be conspicuously identified as "PROPOSED ORDER" or "PROPOSED JUDGMENT" so they can easily be distinguished in the electronic file from actual, signed Orders of the Court.

Stipulations submitted for purposes of being "so ordered" by the Court shall be electronically filed, with the original submitted in hard copy to the Court. A copy of the NYSCEF confirmation receipt must be attached to the original Stipulation when it is submitted to the Court.

XII. Decisions, Orders, Judgments ---- Entry and Notice of Entry

Decisions, orders and judgments in electronically filed cases will be signed in hard copy by the assigned Justice. Chambers' staff will then upload the signed decision/order/judgment into the NYSCEF system for filing and entry by the County Clerk. When the County Clerk completes this process, all parties will be notified electronically. **IMPORTANT: Such action will constitute entry, but does not constitute Notice of Entry. Notice of Entry, when required, must be served by the responsible party in the manner set forth in 22 NYCRR §202.5(b).**

Should you need assistance, contact the NYSCEF Resource Center, Monday through Friday from 8am to 6pm at (646) 386-3033, by email at NYSCEF@nycourts.gov or by fax at (212) 401-9146.

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