

## SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Fifth Judicial District, the Surrogate of Herkimer County, and the Chief Clerk of the Herkimer County Surrogate Court 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 Herkimer County Surrogate Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules 207.4a and 207.4aa 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 ([www.nycourts.gov/efile](http://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) Cases Types Eligible for E-Filing:

Mandatory E-Filing: E-filing is mandatory in Probate, Administration, Voluntary Administrations, Judicial Settlement Proceedings and all Miscellaneous proceedings that are commenced in this court on or after November 20, 2019. 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.

Consensual E-Filing: Consensual e-filing is not applicable as we are a mandatory e-filing court.

Hybrid Proceedings: Documents in proceedings that were previously commenced in paper, may be e-filed at any time. In addition, all new proceedings in a previously completed estate must be e-filed. For example: Probate was paper filed and decree issued; judicial settlement must now be e-filed as it is a new proceeding.

Documents Must Be E-Filed: Unless otherwise provided in the e-filing rules, this protocol, 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.

### 2) Non-Participation in E-Filing:

- 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 e-filing in each mandatory proceeding by filing an opt out form<sup>1</sup> with the Clerk. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing. (Uniform Rule § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing, but may choose to participate. (CPLR § 2111)

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

3) 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.
- 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:

- 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 (see NYSCEF Forms page). 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.
  - Death Certificates: The certified copy of the original death certificate should be e-filed (both sides). Original death certificates must be submitted directly to the Surrogate's Court within two (2) business days of e-filing.
  - Wills: The ORIGINAL WILL/CODICILS are required to be scanned. **DO NOT UNSTAPLE**, file the original paper will within two (2) business days of e-filing. Do not e-file an attorney certified copy, as this is not required.

Do not remove staples from the original will. The court will upload the will to NYSCEF within two (2) business days after the filing of the hard copy original.

- Citations: Submit a proposed citation electronically through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. If your proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent 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 of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing. (See Forms page on NYSCEF site.)
- 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 and notify all consenting parties that the decree or order has been signed and posted.

- Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed. If the court requires a working copy, the filer must attach proof that the stipulation has been e-filed (e.g., the thank you page or the e-mail notification) to the back of the stipulation when it is submitted to the Court.
- 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 upon request 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. (See Forms page on the NYSCEF site.)
- Working Copies: Herkimer County Surrogate Court requires submission of hard copies of e-filed documents, also known as working copies. The filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail notification) to the back of all working copies submitted to the court. 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 chambers at the disposition of the case. Working copies must be submitted to the Court within two (2) business days of filing.

4) Payment: This court accepts payment of fees required by the SCPA by credit card payments made via 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 e-mail with the proper amount and request an additional fee, if applicable. Herkimer Surrogate’s Court will not allow the filing of additional documents by the filer if the filer owes an outstanding fee in that proceeding.

If choosing to pay by credit card at time of filing on NYSCEF website, enter credit card information directly on website. You must insert the credit card information with each filing; your credit card will be charged at the time of filing. Make sure 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 two (2) business days after e-filing.

#### 5. Notifications:

Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Clerks/staff are available for consultation during regular business hours.

- Return of Requested Documents: To ensure rapid return of documents you have requested from Surrogate's Court, please provide pre-paid self-addressed envelopes. The court will keep your pre-paid self-addressed envelopes on file. If self-addressed stamped envelopes are not provided, the court will place the documents into the pick-up bin located in our office and contact you to pick up your documents timely.

- 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.

6. 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).

7. 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. (See Forms page on the NYSCEF site.)

If the Court grants the sealing request, the Surrogate 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.

- 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. (See Forms page on the NYSCEF web site.)

8. 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 filing 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).