



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

April 10, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Amendment of the Rules for Electronic Filing Addressing the Provision of "Working Copies" of Motion Papers to the Court (22 NYCRR §202.5-b[d][4])

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The Administrative Board of the Courts is seeking public comment on a proposed amendment of the rules for electronic filing addressing the provision of "working copies" of motion papers to the court (22 NYCRR §202.5-b[d][4]). Proffered by the Advisory Committee on Civil Practice (Exh. A), the proposal is designed to address cases where motions are denied in e-filed matters because the movant did not provide the court with working (paper) copies of motion materials as may be required under the rules. The proposed rule provides that a court contemplating dismissal in such circumstances must provide the moving party with notice and five days to correct the failure.

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Persons wishing to comment on the proposed rules should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than June 5, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

From:
Sent: Wednesday, March 8, 2017 6:16 PM
To:
Subject: Proposal of the Advisory Committee on Civil Practice

1. Allowing a 5-day Cure in E-Filed Cases for Failure to Provide Hard Copies of Prior Papers Filed Electronically
(22 NYCRR 202.5-b(d)(4))

It is of great concern to the Committee that there exists a practice in some courts to deny motions in e-filed cases, without regard to whether pursuant to the consensual e-filing or the mandatory e-filing rules, on the ground that the movants did not provide the court with "working copies" (see 22 NYCRR 202.5-b(d)(4)). The term "working copies" has no statutory basis in the CPLR, yet at this time it is recognized widely in practice and exists in court rules. Therefore, the Committee recommends, consistent with the statutory measure proposed above (see, I. New Measures, No. 5), an amendment of the Uniform Rules of the Supreme and County Courts to provide for a "safe harbor" provision, requiring a court, prior to denying a motion on the basis that the movant did not provide a working copy, to provide the movant with a brief 5-day cure period.

Proposal

22 NYCRR 202.5-b(d)(4)

(4) Official record; maintenance of files; working copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those document in hard copy form. All documents maintained by the County Clerk as the official electronic record shall also be filed in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically; provided, however, that the court shall not dismiss a motion for failure to provide hard copies of prior papers filed electronically unless it first gives notice of the failure to the filing party and allows five days from the date of such notice for the filing party to correct the failure. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.