



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

MEMORANDUM

JOHN W. McCONNELL
COUNSEL

October 1, 2019

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Rules for Electronic Filing in New York City Civil Court

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The Administrative Board of the Courts is seeking public comment on a proposed amendment of electronic filing practice rules addressing Civil Court matters (22 NYCRR §208.4-a) to permit e-filing in a broader range of cases (Exh. A). Proposed by the New York State Courts Electronic Filing (NYSCEF) and New York City Civil Court staff, the amended rules would permit consensual e-filing in New York City Civil Court (including Housing Court) matters in counties as approved by the Chief Administrative Judge; provide for e-filing equivalents to certain filing requirements set forth in sections 400 and 401 of the Civil Court Act; and otherwise rely substantially upon the general provisions of consensual e-filing set forth in 22 NYCRR §202.5-b (Exh. A, pp. 1-3). The proposed amendments also provide e-filers with an option, in residential housing court matters, for NYSCEF issuance of a notice required by court rules (with a corresponding postage and processing fee) and clarify that e-filed documents shall comprise the official record of the matter (Exh. A, pp. 3-5). A clean copy of the proposed rules is attached as Exhibit B.

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Persons wishing to comment on the proposal 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 November 29, 2019.

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

§208.4-a. Electronic Filing in New York City Civil Court.

(a) Application. ~~There is hereby established a pilot program in which certain civil actions~~
On consent, documents may be filed and served by electronic means in the New York City Civil Court ("Civil Court")~~may be commenced by electronic filing. Documents may be filed by such means~~ in such actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner authorized by provided in this section~~and only in an action brought by a provider of health services specified in section 5102(a)(1) of the Insurance Law against an insurer for failure to comply with rules and regulations promulgated by the Superintendent of Insurance pursuant to section 5108(b) of such law.~~

(b) Definitions. ~~For the purposes of these rules:~~

~~——(1) “Electronic means” shall mean any method of transmission of information between computers or other machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions and which allows the recipient to receive and to reproduce the information transmitted in a tangible medium of expression.~~

~~——(2) “Electronic filing address” shall mean the server accessed via the internet protocol address, and any successor thereto, established by the Unified Court System for receipt by the Civil Court of electronic filings as provided in this section.~~

~~——(3) “Hard copy” shall mean information set forth in paper form.~~

~~——(4) “Electronic filing” shall mean the filing by electronic means through the electronic filing address.~~

~~——(5) The “date of receipt” of a document by the electronic filing address shall mean the date on which electronic transmission of such document is recorded at such address.~~

~~——(e) Electronic filing in actions in the Civil Court.~~

~~(1) A party may commence an action specified in subdivision (a) of this section by the electronic filing of such documents as are required to be filed by the CPLR or the Civil Court Act in actions in the Civil Court.~~

~~——(2) (i) Documents may be transmitted at any time to the electronic filing address.~~

~~——(ii) Documents that are electronically filed to commence an action in compliance with this section will be deemed filed with the clerk of the Civil Court in the county in which the action is brought for the purposes of section 400 of the Civil Court Act upon the date of receipt of those documents by the electronic filing address, provided, however, no document will be deemed filed unless an index number for the action is endorsed thereon.~~

~~——(iii) No later than two business days following the date of receipt of documents by the electronic filing address, the clerk of the Civil Court shall make available by electronic means a confirmation of electronic filing. This confirmation will constitute the clerk's return of the copy to the party for the purposes of section 400(1) of the Civil Court Act.~~

~~——(3) When a document has been filed electronically the official record of that document shall be its electronic recording. Except as otherwise provided in this section, section 202.5-b of these rules shall apply to all actions in which electronic filing is authorized in the Civil Court.~~

~~References in section 202.5-b to the County Clerk, the Chief Clerk of the Supreme Court, or the clerk of a court shall be deemed to mean, where relevant, the Chief Clerk of the Civil Court and references in such section to the CPLR shall be deemed to include, where relevant, the New York City Civil Court Act.~~

(2) Commencing an action by electronic means. (i) A party may commence any action in the Civil Court in any county (provided that e-filing has been authorized in that county and in

the class of actions to which that action belongs pursuant to subdivision (a) of this section) by electronically filing the initiating documents with the clerk of the court through the NYSCEF site.

(ii) Documents that are electronically filed to commence an action in compliance with this section shall be deemed filed with the Clerk of the Civil Court in the county in which the action is brought for purposes of section 400 of the New York City Civil Court Act upon the date of receipt of those documents by the NYSCEF site, together with the payment of any required fee.

(iii) No later than the close of business on the business day following the date on which the initiating documents are electronically filed to commence an action pursuant to subparagraph (ii) of this paragraph, a confirmation notice shall be transmitted electronically by the NYSCEF site to the person filing such documents. The notice shall contain a link to a copy of the initiating documents to which shall be affixed an index number for the matter and a filing stamp showing the date of filing of the documents and to which there may also be affixed, as the court may require, an image of the signature of the Chief Clerk. This notice will satisfy the requirement in section 400(1) of the New York City Civil Court Act that the clerk return a copy of the filing to the party.

(iv) Where a summary proceeding under Article 7 of the Real Property Actions and Proceedings Law involving residential property is commenced electronically, NYSCEF shall provide the petitioner with the option, in lieu of submitting a stamped postcard containing the written notice required by section 208.42(i) of these rules, of having the clerk of the court generate such notice to the respondent(s). If the petitioner selects this option, the clerk shall charge the petitioner the cost of postage and a processing fee.

(3) E-filing in an action after commencement. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. Consent shall be obtained and such e-filing shall be conducted as provided in section 202.5-b(b)(2) of these rules.

~~(d)~~(c) Service of documents.

(1) A person seeking to obtain personal jurisdiction over a person named as a party to an action specified in subdivision (a) of this section may serve the opposing party in hard copy or by electronic means if the opposing party agrees to accept such service in accordance with the CPLR or the New York City Civil Court Act.

(2) Where an action is commenced by electronic filing pursuant to this section, the original proof of service required by section 409 of the New York City Civil Court Act ~~must be electronically~~ shall be filed with the Clerk of the Court in the county in which the action was commenced by filing with the NYSCEF site. Service is deemed complete for the purposes of section 410(b) of the New York City Civil Court Act upon ~~the date of~~ receipt of the electronic proof of service by the ~~electronic filing address~~ NYSCEF site.

(3) Service of documents after commencement of an e-filed action shall be made as provided in section 202.5-b (f) (2). When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

~~(e)~~ Signatures.

~~—— (1) Documents filed electronically shall be signed as required by Part 130 of the Rules of the Chief Administrator ("Part 130") and shall provide the signatory's name, address and telephone number.~~

~~—— (2) A signature on a document filed electronically pursuant to this section, including for the purposes of Part 130, shall be made (i) by autograph of the signatory on a hard copy that is thereafter scanned into portable document format or (ii) by the signatory electronically affixing the digital image of his or her signature to the document.~~

(d) Official Record; Maintenance of Files; Working Copies.

(1) 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 NYSCEF system. The 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 documents in hard copy form.

(2) Except to the extent otherwise provided by section 202.5-b (d) (6), the court shall not require parties participating in e-filing to submit working copies of documents filed electronically.

EXHIBIT B

§208.4-a. Electronic Filing in the New York City Civil Court.

(a) Application. On consent, documents may be filed and served by electronic means in the New York City Civil Court ("Civil Court") in such actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section.

(b) Electronic filing in actions in the Civil Court.

(1) Except as otherwise provided in this section, section 202.5-b of these rules shall apply to all actions in which electronic filing is authorized in the Civil Court. References in section 202.5-b to the County Clerk, the Chief Clerk of the Supreme Court, or the clerk of a court shall be deemed to mean, where relevant, the Chief Clerk of the Civil Court and references in such section to the CPLR shall be deemed to include, where relevant, the New York City Civil Court Act.

(2) *Commencing an action by electronic means.* (i) A party may commence any action in the Civil Court in any county (provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to subdivision (a) of this section) by electronically filing the initiating documents with the clerk of the court through the NYSCEF site.

(ii) Documents that are electronically filed to commence an action in compliance with this section shall be deemed filed with the Clerk of the Civil Court in the county in which the

action is brought for purposes of section 400 of the New York City Civil Court Act upon the date of receipt of those documents by the NYSCEF site, together with the payment of any required fee.

(iii) No later than the close of business on the business day following the date on which the initiating documents are electronically filed to commence an action pursuant to subparagraph (ii) of this paragraph, a confirmation notice shall be transmitted electronically by the NYSCEF site to the person filing such documents. The notice shall contain a link to a copy of the initiating documents to which shall be affixed an index number for the matter and a filing stamp showing the date of filing of the documents and to which there may also be affixed, as the court may require, an image of the signature of the Chief Clerk. This notice will satisfy the requirement in section 400(1) of the New York City Civil Court Act that the clerk return a copy of the filing to the party.

(iv) Where a summary proceeding under Article 7 of the Real Property Actions and Proceedings Law involving residential property is commenced electronically, NYSCEF shall provide the petitioner with the option, in lieu of submitting a stamped postcard containing the written notice required by section 208.42(i) of these rules, of having the clerk of the court generate such notice to the respondent(s). If the petitioner selects this option, the clerk shall charge the petitioner the cost of postage and a processing fee.

(3) *E-filing in an action after commencement.* After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. Consent shall be obtained and such e-filing shall be conducted as provided in section 202.5-b(b)(2) of these rules.

(c) Service of documents.

(1) A person seeking to obtain personal jurisdiction over a person named as a party to an action specified in subdivision (a) of this section may serve the opposing party in hard copy or by electronic means if the opposing party agrees to accept such service in accordance with the CPLR or the New York City Civil Court Act.

(2) Where an action is commenced by electronic filing pursuant to this section, the original proof of service required by section 409 of the New York City Civil Court Act shall be filed with the Clerk of the Court in the county in which the action was commenced by filing with the NYSCEF site. Service is deemed complete for the purposes of section 410(b) of the New York City Civil Court Act upon receipt of the electronic proof of service by the NYSCEF site.

(3) Service of documents after commencement of an e-filed action shall be made as provided in section 202.5-b (f) (2). When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

(d) Official Record; Maintenance of Files; Working Copies.

(1) 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 NYSCEF system. The 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 documents in hard copy form.

(2) Except to the extent otherwise provided by section 202.5-b (d) (6), the court shall not require parties participating in e-filing to submit working copies of documents filed electronically.