



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Rules for Electronic Filing in the Appellate Division of Supreme Court

Date: June 1, 2017

Public comment is requested on the Unified Court System's proposed rules for electronic filing in the Appellate Division of the Supreme Court of the State of New York (Exh. A). Drafted by a working group of senior personnel from the four Departments of the Appellate Division, the proposed rules are designed to facilitate the expansion of e-filing to the Appellate Division as authorized by chapter 237 of the Laws of 2015 (Exh. B [excerpt]). In brief, the draft rules provide a short set of standard definitions (section A), authorize each Department to approve particular case types for appellate e-filing (section B); require the timely input of initial case and attorney e-filing information (section C); memorialize statutory exemptions from e-filing by self-represented persons and certain attorneys (section D); provide formatting and filing instructions (section E); set requirements for filing of hard copies of documents in e-filed matters (section F); clarify timeliness issues in e-filing (section G); and contain miscellaneous provisions on confidentiality, scanning of documents by clerks, and rejection of documents (sections H-J). Copies of the current e-filing rules for Supreme Court are attached as Exhs. C (consensual program) and D (mandatory program).

If ultimately approved by the Departments of the Appellate Division, it is anticipated that these rules would take effect with the initiation of Appellate Division e-filing in the fall.

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 July 24, 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 Appellate Division, the Unified Court System or the Office of Court Administration.

EXHIBIT A

**Proposed Electronic Filing Rules of the Appellate Division
of the Supreme Court of the State of New York**

Issued for Public Comment
June 1, 2017

Part 12__.

A. Definitions.

For purposes of this section:

1. The phrase “e-filer” shall mean a person who has registered and entered case information at the NYSCEF site, or at another site approved by the Court, to deliver documents electronically in a matter pursuant to this Part.
2. The word “cause” or “matter” includes an appeal, a special proceeding transferred to the court pursuant to CPLR 7804(g), a special proceeding initiated in the court, and an action submitted to the court pursuant to CPLR 3222 on a case containing an agreed statement of facts upon which the controversy depends.
3. Any reference to the “clerk” means the Clerk of the Court of a Judicial Department of the Appellate Division, or his or her designee.
4. Any reference to the “court” means the Appellate Division of the Supreme Court of the State of New York for the Judicial Department having jurisdiction over the cause or matter.
5. The word “document” shall mean a brief, motion, application, record, appendix, or other paper relating to a cause or matter. “Document” shall not include correspondence, other than letter applications.
6. The term “NYSCEF” shall mean the New York State Courts Electronic Filing System, and the “NYSCEF site” shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile.
7. The phrase “electronic filing method” or “e-filing” shall mean the filing and service of a document in a cause or matter by electronic means through the NYSCEF site or other court-approved site.
8. The phrase “electronically-filed matter” or “e-filed matter” shall mean a cause or matter in which a filing has been made under the electronic filing method pursuant to this Part.
9. The phrase “hard copy” shall mean a document in paper format.

10. The phrase “hard copy filing method,” “hard copy service method” or “hard copy method” shall mean, respectively and as context requires, filing or service of a document in paper format by a method other than electronic means.

11. The phrase “PDF/A” (Portable Document Format) shall mean the required format of a document e-filed pursuant to this Part.

12. The phrase “self-represented litigant” shall mean party to a cause or matter who is not represented by counsel.

B. Designation of Case Types Subject to Mandatory E-filing.

The court may require or permit e-filing in such cases and case types as it deems appropriate.

C. Registration and Notice of Electronic Filing.

1. Appeals or Transferred Matters -- Initial Entry of Contact Information and Service of Notice of Case Number. At such time and in such manner as the court shall direct by Departmental rule, and unless exempt from e-filing under section (D) (1) of this Part, counsel for the appellant or the petitioner in an appeal or transferred matter of a case type designated for electronic filing, or a self-represented appellant or self-represented petitioner in such a matter, shall take the following steps:

(a) if not already registered, register as an authorized e-filing user with NYSCEF or other court-approved site;

(b) enter in NYSCEF or other court-approved e-filing system such information about the case and parties and such notice of appearance as the court may require;

(c) if not already provided, obtain from the court an appellate case, docket or e-filing tracking number for the matter;

(d) serve upon all parties, on a form approved by the Appellate Division, notification of that case, docket or tracking number and other pertinent information about the case and the electronic filing method; and

(e) e-file proof of service of this notification.

2. Original Proceedings – Commencement by E-filing. Unless exempt from e-filing under section (D) (1) of this Part, counsel for a petitioner or a self-represented petitioner commencing an original proceeding in a case type subject to e-filing shall:

(a) if not already registered, register as an authorized e-filing user with NYSCEF or other court-approved site;

(b) file the notice of petition (or, as appropriate, the executed order to show cause), the petition and other initiating documents in the matter by electronic filing method through NYSCEF or other court-approved e-filing system as provided in this Part;

(c) if not already provided, obtain from the court a case number or e-filing tracking number for the matter; and

(d) serve upon all parties by hard copy service method as provided in CPLR 2103 and court rule

(i) the initiating documents in the case; and

(ii) on a form approved by the Appellate Division, notification of the case, docket or tracking number and other pertinent information about the case and the electronic filing method; and

(e) e-file proof of service of the initiating documents and notification.

3. Initial Filing Where Petitioner, Appellant or Counsel is an Exempt Person.

(a) A self-represented appellant or petitioner, or an attorney for an appellant or petitioner, claiming exemption from e-filing pursuant to section (D) (1) (a) of this Part shall, at the time of an initial filing of any document with the court in a case type designated for e-filing, serve upon all parties and file with the court by hard copy method an appropriate notice of status as a self-represented party or attorney exemption certification.

(b) Where a self-represented party or an attorney has filed a notice pursuant to subsection (3) (a), the clerk may direct another party or attorney in the matter to undertake the entry and service of case information as set forth in subsection (1) or (2), on such terms as it deems just.

4. Entry of Additional Information. Within 14 days of service of the notification of the case, docket or tracking number as required in subsection (1) or (2), counsel to all other parties to the matter, or other self-represented parties, shall:

(a)

(i) if not registered, register as an authorized e-filing user with NYSCEF or other court-approved site; and

(ii) enter in NYSCEF or other court-approved e-filing system such contact information and additional information as the court may require; or

(b) if a self-represented party or an attorney exempt from e-filing pursuant to section (D) (1) (a) of this Part, serve upon all parties and file with the court by hard copy method an appropriate notice of status as a self-represented party or attorney exemption certification.

5. Service and Filing.

(a) Prior to the expiration of the 14-day period described in subsection (4) (“registration and notice period”), service and filing of documents by all parties in an e-filed matter, including without limitation service and filing of emergency applications and orders to show cause, shall be by hard copy method. In the event that all parties to an appeal have complied with the requirements of subsection (4) at a date prior to the expiration of the 14-day registration and notice period, parties may file and serve documents by electronic method as further set forth in this Part on and after that earlier date.

(b) Upon the expiration of the 14-day registration and notice period described in subsection (4), service and filing of all documents by and upon all parties, other than persons exempt from e-filing under section (D) (1), shall be by electronic method as further set forth in this Part. The participation in a matter by a person exempt from e-filing under section (D) (1) shall not alter the e-filing obligation of other parties.

(c) Once the 14-day registration and notice period has concluded, any party, other than persons exempt from e-filing under section (D)(1), who fails to meet his or her obligation to register and enter information as required under subsection 4, will be deemed served with any document electronically filed in that matter as set forth in section (G) (3) of this Part.

(d) Service of documents in an e-filed matter by and upon persons exempt from e-filing under section (D) (1), and the filing of documents by such exempt persons, shall be by hard copy method as specified in section (F) of this Part.

D. Exemptions of Certain Persons from the Electronic Filing Method.

1. Personal Exemptions. The following persons are exempt from the requirement of participation in the electronic filing method:

(a) self-represented litigants; and

(b) attorneys who certify in good faith, on a form provided by the Appellate Division, that they lack either (i) the computer hardware and/or connection to the

internet and/or scanner or other device by which documents may be converted to an electronic format; or (ii) the requisite knowledge in the operation of such computers and/or scanners necessary to participate, pursuant to CPLR §2111 (b) (3) (A) or (B).

2. Consensual Participation. Notwithstanding this personal exemption, a self-represented litigant may voluntarily participate in e-filing in a cause or matter by

(a) serving on all parties at any time and filing with the court a notice of consent to participate in electronic filing on a form approved by the Appellate Division;

(b) registering as an e-filing user with the NYSCEF site or other court-approved site; and

(c) serving and filing documents by electronic means as provided under this Part.

3. Withdrawal of Consent. A self-represented litigant who has consented to participate voluntarily in e-filing in a matter pursuant to this section may withdraw such consent at any time by filing and serving on all parties a notice of intent to cease e-filing, on a form provided by the Appellate Division.

E. Instructions for Electronic Filing; Formatting.

1. Site Instructions. In addition to the provisions of this Part, instructions for filing of documents under the electronic filing method shall be as set forth on the NYSCEF site (www.nycourt.gov/efile) or other court-approved site.

2. Formatting.

(a) General. In addition to compliance with the court's general rules for document formatting, e-filed documents filed pursuant to this Part shall

(i) comply with text searchable PDF archival format (PDF/A);

(ii) contain bookmarks linking the tables of contents of briefs and records to the corresponding page of the document; and

(iii) comply with additional formatting requirements set forth in attachment A.

(b) Size. E-filed documents shall be no greater than 100MB in size.

(c) Multiple Volumes. Each volume of a multi-volume record or appendix shall be submitted as a separate e-filed document.

(d) Virus Protection. E-filers shall attest that, prior to filing, each e-filed document was scanned for viruses using updated commercial scanning technology, and that no virus was detected.

F. Hard Copy Filing and Service.

1. Filing of Additional Hard Copies of Documents in E-filed Matters.

(a) Unless otherwise directed by the court, a party required to file documents in a matter by electronic filing method shall, in addition, file hard copies of such documents as follows:

(i) appellate briefs, records, appendices, agreed statements in lieu of record: one original and five copies.

(ii) original proceedings, transferred proceedings, motions, applications: such number as is required by court rule in matters not subject to e-filing.

(b) Filers shall delay the filing of hard copies of documents required under subsection (G) (3) until the clerk has reviewed and approved the electronic version of the document. Where hard copies of documents are not filed following such approval, the filing shall be deemed incomplete.

2. Hard Copy Service Upon Exempt Attorneys and Self-Represented Parties. Whenever an attorney or a self-represented party in an e-filed matter is exempt from, and has not consented voluntarily to participate in, electronic filing pursuant to section (D) (1) of this Part, service upon that attorney or self-represented party shall be by hard copy service method. Service upon all other parties in an e-filed matter shall be by electronic service method.

3. Hard Copy Filing and Service by Exempt Attorneys and Self-Represented Parties; Filing of Unbound Copy. Whenever an attorney or self-represented party in a cause or matter subject to e-filing is exempt from and has not consented voluntarily to participate in, electronic filing pursuant to section (D) (1) of this Part, that attorney or self-represented party shall serve and file documents by hard copy service method and hard copy filing method. That attorney or party shall additionally file, together with the bound copy or copies otherwise required by court rule, an unbound copy of the filing, containing no staples or binding other than easily removable clips or rubber bands.

G. Timeliness of Filing and Service of Electronically-filed Documents and Hard Copy Filings; Subsequent Rejection by Clerk.

1. Timeliness of Filing of E-filed documents. For purposes of timeliness under a statute or court rule or directive, an e-filed document is deemed filed under the electronic filing method when

(a) the document has been electronically transmitted to the NYSCEF site or other court-approved site; and

(b) the appropriate fee, if any, has been paid to the court either through the NYSCEF site or other court-approved site or, where permitted, by delivery to the office of the Clerk.

2. Rejection by the Clerk. An e-filed document deemed filed for purposes of timeliness under this Part may thereafter be reviewed and rejected by the Clerk for any reason.

3. Timeliness of Service of E-filed Documents. Upon receipt of an e-filed document and appropriate fee, if any, NYSCEF or such other court-approved site shall immediately notify all e-filers in the matter of the receipt and location of the document. For purposes of timeliness of service under a statute or court rule, at the issuance of such notification the document shall be deemed served upon all parties (including persons who have failed to register and enter information as required under section (C) of this Part), other than persons exempt from e-filing under section (D) (1).

4. Timeliness of Hard Copy Filing or Service. The timeliness of service or filing by hard copy method by or upon persons exempt from electronic filing pursuant to section (C) (1) of this Part shall be as provided by court directive or the CPLR.

H. Confidentiality; Sealed Documents; Redaction.

E-filed matters deemed confidential by statute or court directive, as well as sealed documents or documents that are the subject of an application to seal in an e-filed matter, shall be filed and maintained on the NYSCEF site or other court-approved site in a manner that precludes viewing by the public and such other persons and court personnel as the case may require. In all matters, e-filers shall attest to compliance with statutory redaction requirements (e.g., Gen. Bus. L. §399-ddd) and relevant sealing requirements in filings.

I. Scanning of Documents by Clerk.

1. The Clerk may scan hard copy filings in a cause or matter for upload into the NYSCEF system or such other system approved by the court, and may deem such scanned documents to be the official record copy of the filing.

2. The court may deem documents e-filed by the parties to be the official record of a cause or matter.

J. Rejection of Non-Compliant Documents; Modification of Electronic Filing Procedures.

1. Rejection of Documents. The clerk may refuse to accept for filing or e-filing any document that does not comply with this Part, or is otherwise unsuitable, and may direct that a document be refiled.

2. Modification of Procedures. The court or its designee may at any time modify or discontinue e-filing in a matter for good cause shown.

EXHIBIT B

LAWS OF NEW YORK, 2015

CHAPTER 237

AN ACT to amend the judiciary law, the civil practice law and rules, the court of claims act, the criminal procedure law, the family court act, the New York city civil court act and the surrogate's court procedure act, in relation to use of electronic means for the commencement and filing of papers in certain actions and proceedings; and providing for the repeal of certain provisions upon expiration thereof

Became a law August 31, 2015, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (t) to read as follows:

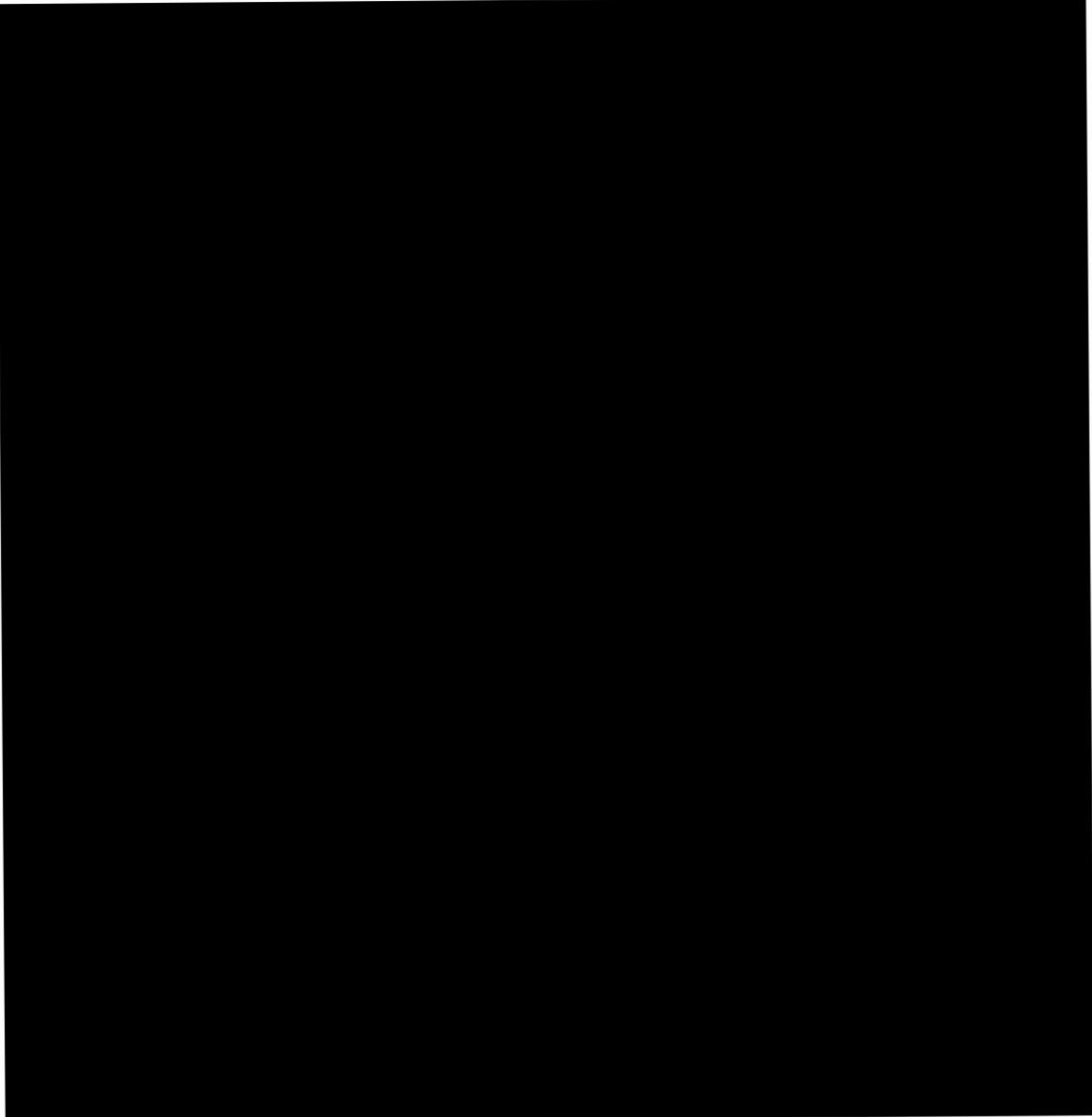
(t) (i) (A) Not later than April first in each calendar year, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county a program has been implemented in civil cases in the supreme court, the advisory committees established pursuant to subparagraphs (ii) through (vi) of this paragraph, the organized bar including but not limited to city, state, county and women's bar associations; the office of indigent legal services; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and afford them an opportunity to submit comments with respect to such implementation for inclusion in the report and address any such comments.

Public comments shall also be sought via a prominent posting on the website of the office of court administration. All comments received from any source shall be posted for public review on the same website.

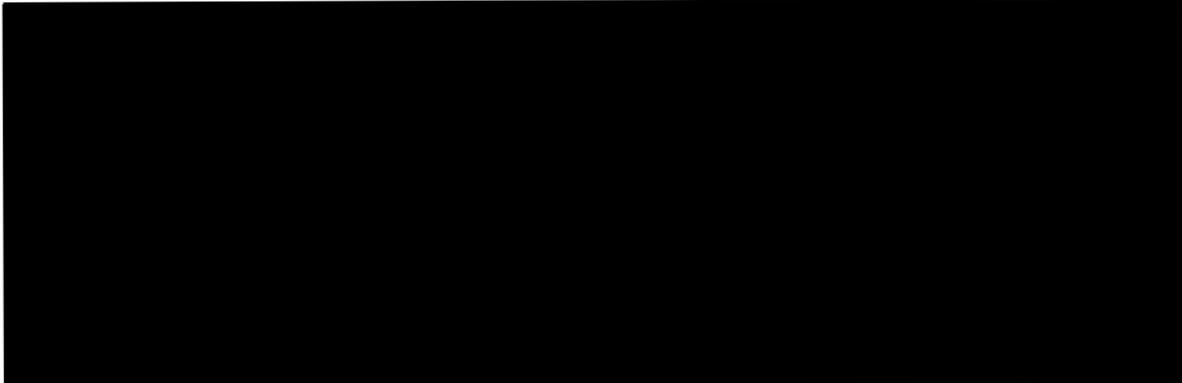
(B) The report submitted hereunder in the two thousand seventeen calendar year shall include:

(I) the evaluation specified in subparagraph (vi) of this paragraph, including the entities or individuals consulted, input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.



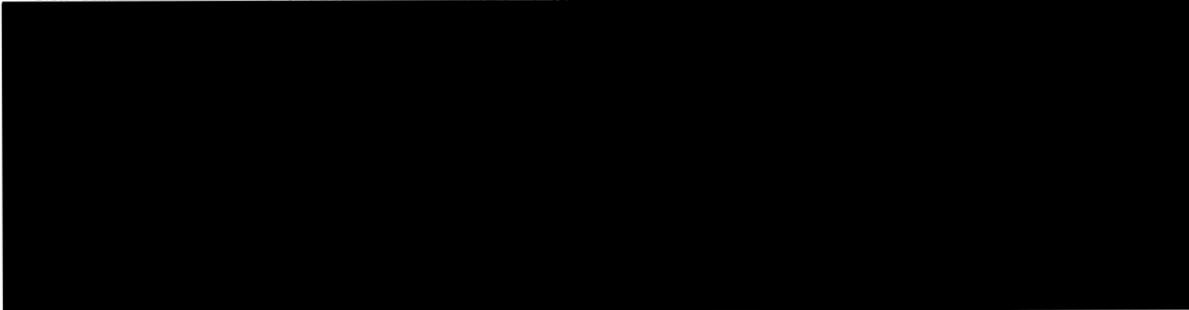
§ 2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section twenty-one hundred eleven of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in pending actions and proceedings. Provided however, the appellate division may not eliminate the requirement of consent to participation in appeals in such a program involving matrimonial actions as defined by this chapter, election law proceedings, proceedings brought pursuant to article seventy or seventy-eight of this chapter, proceedings brought pursuant to the mental hygiene law, resi-



§ 5. The criminal procedure law is amended by adding a new section 460.90 to read as follows:

§ 460.90 Filing of papers on appeal to the appellate division by electronic means.

Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certification specified in subparagraph (i) or (ii) of paragraph (c) of subdivision two of section 10.40 of this chapter to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including district attorneys; representatives of the office of indigent legal services; not-for-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; interested members of the criminal justice community; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of such law and rules.



§ 7. The family court act is amended by adding a new section 1122 to read as follows:

§ 1122. Filing of papers on appeal to the appellate division by electronic means. Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in paragraph (i) or (ii) of subdivision (c) of section two hundred fourteen of this chapter to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform.

EXHIBIT C

202.5-b. Electronic Filing in Supreme Court; Consensual Program.

(a) Application.

(1) On consent, documents may be filed and served by electronic means in Supreme Court in such civil 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.

(2) Definitions. For purposes of this section:

(i) "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 reproduce the information transmitted in a tangible medium of expression;

(ii) "NYSCEF" shall mean the New York State Courts Electronic Filing System and the "NYSCEF site" shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile;

(iii) "e-filing", "electronic filing" and "electronically filing" shall mean the filing and service of documents in a civil action by electronic means through the NYSCEF site;

(iv) an "authorized e-filing user" shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an "action" shall include a special proceeding and an "e-filed action" shall mean an action in which documents are electronically filed and served in accordance with this section;

(vi) "hard copy" shall mean information set forth in paper form;

(vii) "working copy" shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section;

(viii) "party" or "parties" shall mean the party or parties to an action or counsel thereto;

(ix) "unrepresented litigant" shall mean a party to an action who is not represented by counsel;

(x) "expedited processing" shall mean the expedited registration of a person as an authorized e-filing user; and

(xi) "Resource Center" shall mean the NYSCEF Resource Center, the e-filing help center available at 646-386-3033 or efile@nycourts.gov and through the NYSCEF site.

(b) E-filing in Actions in Supreme Court. Except as otherwise provided in section 202.5-bb of these rules, the following shall apply to all actions in Supreme Court:

(1) Commencing an action by electronic means. A party may commence any action in the Supreme 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 paragraph (1) of subdivision (a) of this section) by electronically filing the initiating documents with the County Clerk through the NYSCEF site. When so authorized, a petition to commence a proceeding for review of a small claims assessment pursuant to Real Property Tax Law § 730 may be e-filed, including as follows: the petition, in the form prescribed by the Chief Administrator in accordance with such section, shall be completed and signed in hard copy as provided in that section and shall be e-filed by transmission to the NYSCEF site, in conformity with procedures established by the site, of a text file containing all of the information set forth in the completed and executed hard copy petition (exclusive of the signature(s)). Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. 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. A party's failure to consent to participation in electronic filing and service shall not bar any other party to the action from filing documents electronically with the County Clerk and the court or serving documents upon any other party who has consented to participation. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. 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.

(ii) Consent to e-filing; how obtained. Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice regarding availability of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing. A party who seeks to use e-filing in a pending action shall serve said notice upon all other parties. Whenever such a notice is served, proof of service thereof shall be transmitted to the court. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. Except for an unrepresented litigant, a party served with such a notice shall promptly file with the court and serve on all parties of record either a consent or a declination of consent. An authorized e-filing user may file a consent electronically in the manner provided at the NYSCEF site. Consent may also be obtained by stipulation. An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate. Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice.

(c) Authorized E-filing Users, Passwords and Registration.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter "filing agent") may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business as required by the jurisdiction in which the business is operated (hereinafter "small claims assessment review filing agent") may also register as an authorized e-filing user, but solely for purposes of such

action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.

(ii) How to register. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form.

(3) Identification and password. Upon registration, an authorized e-filing user shall be issued a confidential User Identification Designation ("User ID") and a password by the Unified Court System ("UCS"). An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) User ID and password; use by authorized person. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) Electronic Filing of Documents. (i) Electronic filing required; format of e-filed documents; statement of authorization. In any action subject to e-filing, all documents required to be filed with the court by a party that has consented to such e-filing shall be filed and served electronically, except as provided in this section. Documents shall be e-filed in text-searchable portable document format (PDF-A) and shall otherwise comply with the technical requirements set forth at the NYSCEF site. A filing agent (other than one employed by a governmental entity) shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel. (ii) Emergency exception; other hard copy filings. Documents that are required to be filed and served electronically in accordance with this section or paragraph (1) of subdivision (c) of section 202.5-bb of these rules may nevertheless be filed and served in hard copy where required by statute or court order, where the document is an application that may by statute be presented without notice, or provided the document is accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) a deadline for filing and service fixed by statute, rule or order of the court will expire on the day the document is being filed and served or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to file and serve such document electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by this paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter. (iii) Form of notice required on hard copy filing. Where an action is subject to e-filing and a party or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that the party or attorney: (A) is authorized to and does withhold consent to e-filing, (B) is exempt from having to e-file, or (C) is authorized or required to file such document in hard copy pursuant to an exception provided in these Rules or other provision of law.

(2) Payment of Fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: (i) such credit card information as shall be required at the NYSCEF site to permit a card to be charged by the County Clerk; or (ii) the form or information required by the County Clerk to permit him or her to debit

an account maintained with the County Clerk by an attorney or law firm appearing for a party to the action; or (iii) such information as shall be required at the NYSCEF site to permit an automated clearing house debit to be made; or (iv) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk.

(3) Filing and receipt of documents; notification.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the NYSCEF site. A document is filed when its electronic transmission or, in the case of a petition that is e-filed by submission of a text file as provided in subdivision (b)(1) of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in (i), (ii) or (iii) of paragraph (2) of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk.

(ii) Notification. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and all other parties participating in e-filing. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.

(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 documents 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. 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.

(5) Decisions, orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in hard copy to the court. Unless the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk.

(6) Exhibits and other documents in hard copy. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrator, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically.

(e) Signatures.

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed);

(v) in a small claims assessment review proceeding, it is a petition recorded by the NYSCEF site upon the filing of a text file as provided in subdivision (b)(1) of this section, provided that prior to filing, the document was signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings in the matter, including article 78 review and any appeals, and must be made available during the proceeding upon request of the respondent or the court); or

(vi) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130. A document shall be considered to have been signed by an attorney or party in compliance with section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR §130-1.1-a) if it has been signed by such attorney or party as provided in paragraph (1) of this subdivision and it bears the signatory's name.

(3) Certification of Signature. A judge, party or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision (b)(1) of this section, a hard copy of the petition, fully completed and signed as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section 730 of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(2) Service of interlocutory documents in an e-filed action.

(i) E-mail address for service. Each party in an action subject to electronic filing that has consented thereto shall identify on an appropriate form an e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site (hereinafter the "e-mail service address"). Each filing user shall promptly notify the Resource Center in the event of a change in his or her e-mail service address.

(ii) How service is made. Where parties to an action have consented to e-filing, a party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date received, and the names of

those appearing on the list of e-mail service addresses to whom that notification is being sent. Each party receiving the notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision (h) (3) of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. Proof of such service will be recorded on the NYSCEF site. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically.

(g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding availability of e-filing specified in paragraph (2)(ii) of subdivision (b) of this section, to which response shall be made as set forth in that paragraph. A proposed intervenor or other non-party who seeks relief from the court in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent. If an added party or intervenor does not consent to e-filing, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.

(h) Entry of Orders and Judgments and Notice of Entry.

(1) Entry; date of entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically, which shall constitute entry of the order or judgment. The date of entry shall be the date on which transmission of the order or judgment is recorded at the NYSCEF site. Notwithstanding the foregoing, if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp.

(2) Notice requesting entry of judgment. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk, in a form specified by the County Clerk, a request for entry of judgment.

(3) Notification; service of notice of entry by parties. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.

(i) Technical Failures. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the

notice required by paragraph (1) of subdivision (d) of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.

(j) **Electronic Filing of Discovery Materials.** In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the 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.

(k) **Copyright, Confidentiality and Other Proprietary Rights.**

(1) Submissions pursuant to e-filing procedures shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to e-filing, any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. Unless otherwise permitted by the court, a motion for such an order shall be filed not less than ten days before the materials to which the motion pertains are due to be produced or filed with the court.

Historical Note

Sec. filed Oct. 13, 1999; amds. filed: Oct. 23, 2000; Jan. 6, 2003 eff. Jan. 2, 2003. Amended (a)-(e), (h), (k).

Amended on May 16, 2008

Amended on Apr. 26, 2010

Amended on May 18, 2011

Amended on June 18, 2012

Amended on April 15, 2013

Amended on May 24, 2013

Amended on August 31, 2015

EXHIBIT D

202.5-bb. Electronic Filing in Supreme Court; Mandatory Program.

(a) Application.

(1) Except where otherwise required by statute, all documents filed and served in Supreme Court shall be filed and served by electronic means in such classes of actions and such counties as shall be specified by order of the Chief Administrator of the Courts and only to the extent and in the manner prescribed in this section.

Except to the extent that this section shall otherwise require, the provisions of section 202.5-b of these rules shall govern electronic filing under this section.

(2) Notwithstanding the foregoing, the Chief Administrator shall not eliminate the requirement of consent to participate in electronic filing in the following classes of cases:

- (i) matrimonial actions as defined by the civil practice law and rules;
- (ii) election law proceedings;
- (iii) proceedings brought pursuant to article 70 or 78 of the civil practice law and rules;
- (iv) proceedings brought pursuant to the mental hygiene law;
- (v) residential foreclosure actions involving a home loan as such term is defined in section 1304 of the real property actions and proceedings law other than actions commenced prior to September 1, 2017 in Erie, Essex, New York, Queens, Rockland, Suffolk and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed; and
- (vi) proceedings related to consumer credit transactions as defined in subsection (f) of section 105 of the civil practice law and rules other than proceedings commenced prior to September 1, 2017 in Erie, New York, Onondaga, Rockland and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed.

(b) Commencement of Actions Under this Section.

(1) Mandatory commencement in general. Except as otherwise provided in this section, every action authorized by subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the County Clerk through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, an action otherwise required to be commenced electronically may or shall be commenced by the filing of initiating documents in hard copy where permitted or required by statute or court order, and may be so commenced provided such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter. For purposes of this section, such an action shall be deemed to have been commenced electronically.

(3) Service of initiating documents. Personal service of initiating documents upon a party in an action that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Civil Practice Law and Rules, or the Real Property Tax Law, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of

service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) Filing and Service of Documents After Commencement in Actions Under this Section.

(1) All documents to be filed and served electronically. Except as otherwise provided in this section, filing and service of all documents in an action that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Addition of parties after commencement of action. Notwithstanding any other provision of this section, a party to be added in an action that has been commenced electronically in accordance with this section shall be served with initiating documents in hard copy together with the notice specified in paragraph (3) of subdivision (b) of this section. A proposed intervenor or other non-party who seeks relief from the court in such an action shall make his or her application for such relief by electronic means as provided by the NYSCEF system.

(3) Emergency exception; other hard copy filings. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy where permitted by paragraph (1) of subdivision (d) of section 202.5-b of these rules. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b, and the filer shall, as required, file those documents with the NYSCEF site within three business days thereafter.

(d) County Clerk and Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. As provided in section 202.5(d)(1) of these Rules, a County Clerk and a Chief Clerk of Supreme Court, as appropriate, shall refuse to accept for filing hard copies of documents sought to be filed in actions where such documents are required to be filed electronically.

(e) Exemptions From the Requirement of Electronic Filing.

(1) *Exemption of unrepresented litigants.* Notwithstanding the foregoing, an unrepresented litigant or a proposed intervenor or other non-party seeking relief from the court who is unrepresented is exempt from having to file and serve documents electronically in accordance with this section. No such party shall be compelled, directly or indirectly, to participate in e-filing. As to each unrepresented litigant, the clerk shall explain his or her options for e-filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the e-filing program only upon his or her request, which shall be documented in the case file, after he or she has been presented with sufficient information in plain language concerning the program. Where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.

(2) *Exemption of represented parties.* Notwithstanding the foregoing, an attorney or a representative of a property owner designated as such as provided in Real Property Tax Law § 730 ("small claims assessment filing agent"), shall be exempt from having to file and serve documents electronically in accordance with this section upon filing with the County Clerk and the clerk of the court in which the action is or will be pending a form, prescribed by the Chief Administrator, on which the attorney or small claims assessment filing agent certifies, in good faith that he or she:

(i) lacks the computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney).

(3) *Exemption of counsel upon a showing of good cause.* Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

(4) *Procedures applicable to exempt attorneys and small claims assessment filing agents.* Where an attorney or small claims assessment filing agent is exempt from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules. The County Clerk or the court, with the approval of the Chief Administrator, may require an exempt attorney or small claims assessment filing agent to submit an additional, unbound hard copy of documents being presented in hard copy to the court.

(5) *Procedures applicable to e-filing attorneys and other persons.* In any action in which an attorney or other person is exempt pursuant to this subdivision, all other attorneys, small claims assessment filing agents, unrepresented litigants, proposed intervenors, or others participating in e-filing and seeking relief from the court shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.

Added on Apr. 26, 2010

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