



*New York State
Association of County Clerks
Judith M Hunter, President*

December 31, 2018

Jeffrey Carucci, State Wide Coordinator for E-filing
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Mr. Carucci:

Thank you for inviting the New York State Association of County Clerks to comment on e-filing in New York State and to comment on proposed legislation affecting the e-filing program.

Electronic filing has transformed the way County Clerks in New York State handle, process, access, reproduce and preserve civil court records. More than half the County Clerk's Offices in NYS are now benefitting from the advantages of e-filing. Use of the NYSCEF system has facilitated the transfer of documents between the courts and the county clerk especially in those counties where those offices are in separate buildings. E-filing has reduced associated costs and enhanced document security. Many counties that started with consensual e-filing now eagerly await approval for mandatory e-filing.

E-filing provides a tremendous convenience for attorneys and submitters. Documents created on a computer are easily uploaded to the NYSCEF system, which eliminates the need for printing costs, paper, stamps and the time preparing to mail or deliver documents to the courthouse. Payment for fee documents can be made at the time of submission eliminating writing or printing and then mailing a check.

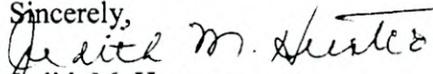
County Clerks are able to process the documents quicker and the documents are received in a timely manner. Since they are submitted electronically, there is no need to wait for the mail to come. The documents are pulled in electronically which eliminates the time previously spent scanning. The document submitted for filing is what the county clerk receives digitally so there is no need for verification of scanned documents. Since there was never a paper document in e-filing, the cost of shredding after scanning is eliminated.

Since a provision in law provides for pro se litigants to file in a hard copy format if they wish, they are not put at a disadvantage. Attorneys and submitters may even file in hard copy by completing a form requesting hard copy filing due to special circumstances.

At the end of the day, e-filing provides convenience to customers, saves both the submitters and the counties money, is easy to use with a very helpful resource center if needed, and is a successful "green" initiative by eliminating the use of paper!

The New York State Association of County Clerks strongly supports the expansion of e-filing in New York State. While the County Clerks support the elimination of consent for the civil cases currently excluded in statute, we feel very strongly that this should only be done after obtaining the agreement of the County Clerk.

Sincerely,

A handwritten signature in cursive script that reads "Judith M. Hunter".

Judith M. Hunter

NYSACC President



STATE OF NEW YORK
UNIFIED COURT SYSTEM
EIGHTH JUDICIAL DISTRICT

92 FRANKLIN STREET
BUFFALO, NEW YORK 14202-3902
(716) 845-9438
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LAWRENCE K. MARKS
Chief Administrative Judge

MICHAEL V. COCCOMA
Deputy Chief Administrative Judge
Courts Outside New York City

PAULA L. FEROLETO
District Administrative Judge
Eighth Judicial District

ANDREW B. ISENBERG, ESQ.
District Executive

January 11, 2019

Mr. Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street - Room 119M
New York, NY 10007
Via E-mail: efilingcomments@nycourts.gov

Re: Electronic Filing Program

Dear Mr. Carucci:

I am writing in full support of the continuation and expansion of the Electronic Filing Program. Our experience in the 8th Judicial District shows e-filing is a much more efficient way to file, organize and retrieve filed documents. This is especially true in mortgage foreclosure and consumer credit actions. The court is able to process these actions and communicate with the parties easily using the NYSCEF system. All pleadings and motion papers can be viewed remotely and are found in one spot. Since most motions in these actions are from counsel outside of the area, the e-filing system permits the court to be confident all papers meant for the court's review are before it. It also permits the court to quickly see if anyone has appeared in the action who might be entitled to notice of future proceedings. This is not an easy task in a paper filed system, especially if the County Clerk's Office is not in the same municipality as the court; this is the case in many of the counties of the 8th Judicial District. In addition, there is no prejudice to unrepresented parties as they are not forced to e-file. In fact, unrepresented litigants can appear either electronically or in paper. The choice is theirs and no formal opting out is necessary.

This ease of access to the documents and pleadings and ability to quickly communicate with all interested parties assists in our efforts to achieve the goals of the Excellence Initiative. For this reason, I am wholeheartedly behind the Electronic Filing Program.

Very truly yours,

Hon. Paula L. Feroleto,
Administrative Judge, Eighth Judicial District

PLF:ks

From: Terry Torres , County Clerk's Office – Bronx County on Behalf of County Clerk Luis Diaz
Sent: Friday, January 11, 2019 12:21 PM
Subject: Re: Request for comments re: New York State Courts Electronic Filing Program

I support the proposal for electronic matrimonial cases via e-file. Currently, for documents filed in Bronx County, to view a case a litigant must access two separate websites based on case type. NYSCEF should be the County Clerk's Offices sole operating system. Having one website where documents can be accessed, regardless of case type, streamlines and facilitates the process.

COUNTY CLERK'S OFFICE – CORTLAND COUNTY

ELIZABETH LARKIN
County Clerk

TAMMY L BARRIGER
Deputy County Clerk

BROOKE KEMAK
Deputy County Clerk

Sonia Ganoung
Director, Motor Vehicles

Courthouse
46 Greenbush Street, Suite 105
Cortland NY 13045
(607) 753-5021
Fax (607) 753-5378

Motor Vehicle (607) 753-5023
Fax(607) 758-5500

elarkin@cortland-co.org



December 20, 2018

Jeffrey Carucci, State Wide Coordinator for E-filing
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Me Carucci,

Thank you for offering this opportunity to comment on the e-filing program and upcoming legislation affecting the e-filing program.

We began consensual e-filing for all cases allowed by statute in 2014. As more and more attorneys and submitters began using the e-filing system and my staff became proficient handling electronically filed documents, we made the transition to mandatory e-filing in February of 2018. This was a seamless transition because it required electronic filing for attorneys already familiar with the system but allowed pro se filers or attorneys with special circumstances to still file in hard copy if requested.

Although, matrimonial actions are not mandatory per statute, the only submitters of hard copy documents in matrimonials that we have received since February of 2018 are pro se applicants and one attorney. (I am working on that attorney) We also explain to the pro se submitters about e-filing but many do not have the ability to electronically file and prefer the paper documents that are date stamped. Since there is a procedure in place to provide for those who can't electronically file or those without an attorney who do not choose to file electronically, I strongly urge the legislature to allow the Administrative Judge to remove the option of consent in ALL civil cases. The authority for the Administrative Judge to require mandatory e-filing in civil cases should, however, be coordinated with the agreement of those who must actually process the electronic filings which would be the County Clerk Offices.

In Cortland County, mandatory e-filing has saved the county money, created a more secure avenue to file, store and access records and increases the preservation of important court documents.

Sincerely,


Elizabeth Larkin
Cortland County Clerk

From: Deb Goodrich
Sent: Tuesday, December 18, 2018 8:35 AM
To: Jeffrey Carucci <
Subject: e-filing

Hi Jeff,

First and foremost I think e-filing is the greatest thing for the court system, I would love to see Delaware County in the mandatory stage as soon as possible. I think it would be nice if there was a training section for the County Clerks and Court Personnel on how to file papers and what to do if there was something filed wrong (how to correct the mistake). One thing we had a little trouble with was the accounting part of it and I think I'm getting used to it now. We have a few Attorneys that have said they don't like it but I think if they would just try it they would change their minds.

Please let me know if I be of any further help.

Have a great Holiday.

Debra A Goodrich
Delaware County Clerk
PO BOX 426
DELHI, NY 13856
(607)- 832-5700



Jefferson County Clerk's Office
175 Arsenal Street
Watertown, NY 13601

Gizelle J. Meeks
County Clerk/RMO
gmeeks@co.jefferson.ny.us

Jaimie S. Thompson
Deputy County Clerk
jthompson@co.jefferson.ny.us

January 16, 2019

Jeffrey Carucci, State Wide Coordinator for E-filing
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Mr. Carucci,

Thank you for inviting the New York State County Clerks to comment on e-filing in New York State and to comment on proposed legislation affecting the e-filing program.

Electronic filing has transformed the way our office handles, processes, accesses, reproduces and preserves civil court records. Jefferson County began mandatory e-filing in January of last year, and it has been one of the greatest undertakings of my career as County Clerk. Below I have outlined a multitude of benefits from beginning the process in our office, though I am sure there are some that I haven't thought of yet!

Benefits of E-Filing:

- Ease of access for submitters, County Clerks, Supreme Court and the general public.
- Reduces our carbon footprint by eliminating large volumes of paper. Our Supreme Court also does NOT require working copies, which further promotes going "Green".
- Increased Efficiency for County Clerks
 - Eliminates time clerks spent scanning.
 - Eliminates the need for page by page verification of each document.
- Cost Savings:
 - Submitters save costs on staff, supplies and postage.
 - County Clerks save costs on shredding.



Jefferson County Clerk's Office
175 Arsenal Street
Watertown, NY 13601

Gizelle J. Meeks
County Clerk/RMO
gmeeks@co.jefferson.ny.us

Jaime S. Thompson
Deputy County Clerk
jthompson@co.jefferson.ny.us

Even with all of the benefits mentioned above, there is always room for improvement. I strongly support the expansion of mandatory e-filing to include **all** case types, beginning with all documents filed in residential foreclosures and consumer credit actions. To only require commencement documents be e-filed with these two case types seems, in my opinion, to be counterproductive. It would also be nice to set a date, sometime in the future, at which time attorneys may no longer opt-out of e-filing.

I also recently heard about a pilot program regarding Criminal Records. I am very excited by this idea, and hope that Jefferson County may be considered for any pilot program in the future.

Please do not hesitate to reach out to me should you have any questions or concerns regarding this letter.

Sincerely,

Gizelle J. Meeks
Jefferson County Clerk

GJM/jst

State of New York



Nancy T. Sunshine
County Clerk, Kings County

360 Adams Street
Brooklyn, NY 11201

January 4, 2019

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
VIA EMAIL jcarucci@nycourts.gov

Dear Mr. Carucci:

As Kings County Clerk, I enthusiastically support the mandatory expansion of e-filing in civil cases, including matrimonial cases.

In the current digital world, citizens purchase goods and services, pay bills, electronically file both court and non-court documents in both state and federal government offices, and receive real-time notice of newsworthy events happening in the world. There is no better time than now for the New York State Courts to mirror the digital world by expanding mandatory e-filing of court documents into more case types, including matrimonial actions.

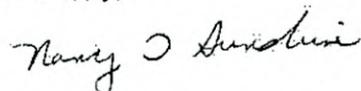
The success of NYSCEF in the office of the Kings County Clerk is established beyond question by the digital filing of court documents via NYSCEF as the preferred and dominate method, far exceeding hard copy/paper filings. As the digital world benefits the day-to-day lives of citizens, so too can the expansion of NYSCEF into more civil case types benefit all court users, filing parties, attorneys, the media and the public. Notably, there are appropriate safeguards in the law to permit self-represented litigants, who have not embraced the digital world, to file court documents in hard copy/paper format. Expanding e-filing does not disadvantage or harm those citizens who choose to proceed in traditional paper filings of court documents.

Significantly, NYSCEF, as designed and improved with the input of stakeholders including County Clerks, implements the confidential treatment of cases as required by law and the sealing of court files or portions of court files pursuant to court order. Accordingly, the issue of proper safeguarding of confidential cases such as matrimonial cases, already exists in NYSCEF.

The benefits of NYSCEF in providing unrestricted access to view a clear list of all filed documents, immediate access to non-confidential filed documents, quick and efficient filing of documents, notice to all parties of documents filed in a case, promotes transparency, accountability and confidence in the court system. These benefits of NYSCEF provide compelling reasons to authorize the mandatory expansion of e-filing in civil cases, including matrimonial cases.

A final point, as Kings County Clerk, there is nothing more gratifying than helping people from all walks of life who seek assistance in filing documents authorized to be filed by law. NYSCEF provides an additional tool for the Kings County Clerk to assist filers digitally by the quick notification features in NYSCEF, as well as the opportunity to assist filing parties in my office with NYSCEF related questions, assistance in digitally filing documents at designated e-file kiosks located in the Kings County Clerk's Office, or filing in hard copy/paper format when authorized by law.

Sincerely,

A handwritten signature in cursive script that reads "Nancy T. Sunshine".

Hon. Nancy T. Sunshine
County Clerk, Kings County

Good afternoon:

Thank you for offering me the opportunity to comment on existing and continuing legislation on e-filing.

I do not have any comments.

I will take this time to say we are very happy with e-filing and the system is working very well!

Thank you to all for giving us a well performing system.

Have a great night!!

Merry Christmas and Happy New Year!!

Mary

*Mary F. Strickland
Livingston County Clerk
6 Court Street
Room 201
Geneseo, New York 14454
(585) 243-7010*

MAUREEN O'CONNELL
County Clerk



OFFICE OF THE COUNTY CLERK

240 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501-4249
TELEPHONE: 516 571-2661
FAX: 516 742-4099

January 4, 2019

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street
New York, New York 10007

Dear Mr. Carucci,

Please allow this correspondence to serve as a reply to your request seeking comments evaluating our experience at the Nassau County Clerk's Office with the NYSCEF e-filing program and seeking comments on proposed legislative changes. It is my hope that this information will assist the Chief Administrative Judge as he prepares his annual report on electronic filing for submission to the Legislature, the Governor and the Chief Judge.

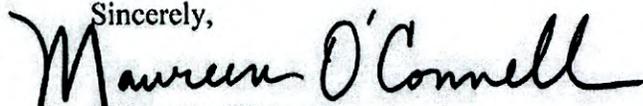
As one of the pilot counties for the NYSCEF program, my office was the first statewide to work with your staff and the Department of Technology for the purpose of implementing electronic filing of Small Claims Assessment Review (SCAR) petitions. Since e-filing of SCARs launched in 2009, more than 125,000 Nassau County SCAR petitions have been filed electronically through NYSCEF. The response to e-filing has been so positive that last year we expanded our consensual e-filing cases to include matrimonial cases. Currently, the majority of our civil filings have been comprised of mandatory cases mostly in torts, contracts, commercial and commercial foreclosures, civil forfeiture, and tax certiorari case types, as well as consensual cases in consumer credit transactions, residential foreclosures and matrimonials. In fact, in 2018, e-filings accounted for approximately 75% of our total filings for civil and matrimonial cases.

Your efforts in providing training to court staff, county departments and members of the Nassau County Bar Association with a view toward making enhancements and programmatic changes necessary to participate, have been a model to follow as we expand mandatory e-filing in our county to include as many case types as possible. To that end, we would welcome and encourage the expansion of mandatory e-filing to include matrimonial cases.

This program consistently improves each year as a result of your efforts in continuing to dedicate the necessary resources. This has been a collaborative effort, and I am appreciative of your commitment to enhance the system, streamline filing requirements, and be responsive to the

needs of practitioners, while reducing paper consumption. I hope the relationship that has developed between Nassau County and NYSCEF may continue to serve as a model throughout the state.

Sincerely,

A handwritten signature in black ink that reads "Maureen O'Connell". The signature is written in a cursive style with a large, sweeping initial "M".

Maureen O'Connell
Nassau County Clerk



PUTNAM COUNTY CLERK'S OFFICE

County Office Building
40 Gleneida Avenue
Carmel, New York 10512
Tel. (845) 808-1142
Fax (845) 225-3953

MICHAEL C. BARTOLOTTI
County Clerk

JAMES J. McCONNELL
First Deputy County Clerk

January 17, 2019

VIA ELECTRONIC MAIL

Jeffrey Carucci
Statewide Coordinator, E-Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119M
New York NY 10007

Dear Mr. Carucci:

In 2018, 2,658 civil actions were commenced in Putnam County. Putnam County instituted mandatory electronic filing of all permitted actions on May 3, 2017. We also allowed for permissive e-filing on all other case types. Of the actions filed in 2018, 1,689 representing 64% were electronically filed.

On October 17, 2018 Putnam County expanded mandatory commencement via e-filing for Residential Mortgage Foreclosure and Consumer Credit Transactions. Since permitting the mandatory commencement of the aforementioned actions, the percentage of actions commenced via NYSCEF increased to 77%.

We are extremely pleased with the efficiency that electronic court filing has brought to this office. The NYSCEF system is a comprehensive, fully functional and secure means to electronically file court documents. We feel extremely comfortable with the controls within the system and are ecstatic with the amount of participation from the members of our local bar. As such, we fully support any initiative to expand the powers of the Chief Administrative Judge to expand mandatory electronic filing to all case types upon consultation with the respective County Clerk.

Thank you very much.

Sincerely,

Michael C. Bartolotti
Putnam County Clerk



Queens County Clerk
Clerk of the Supreme Court
Commissioner of Jurors



Audrey I. Pheffer
*Queens County Clerk
Clerk of the Supreme Court &
Commissioner of Jurors*

Alexis Cuffee
First Deputy County Clerk

Jo Ann Shapiro
Second Deputy County Clerk

January 7, 2019

Francis K. Kenna, Esq.
Chief Deputy County Clerk

Kevin J. Rothermel
Administrator

Jeffrey Carucci
Office of Court Administration
60 Centre Street
New York, NY 10007

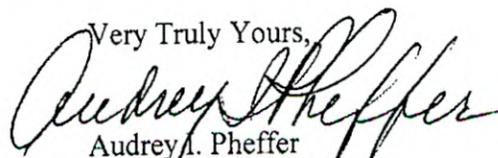
Dear Mr. Carucci,

Queens County has been very satisfied with the implementation of mandatory electronic filing in foreclosure, medical malpractice, commercial matters, and torts. This has been very successful for court staff and the public. Queens County also looks forward to the further expansion of electronic filing with the hope of adding consensual matrimonial actions in the coming year, as well as other case types in the near future. Mandatory electronic filing has proven to be very cost-effective. It has greatly reduced the number of paper filings in the system, conserving staff time, storage, paper and printing costs.

Additionally, electronic filing promotes greater convenience to its users and the public. It provides instant access to court records without the need to come into the courthouse. Users and the public are able to access case files and file documents 24hours a day from their own computers.

There is a constant collaboration between our county and the New York State Courts Electronic Filing Resource Center (NYSCEF) to continuously improve and enhance the system. NYSCEF is always willing to address any concerns and provide improvements to the system. We look forward to continually working with NYSCEF to expand mandatory and consensual electronic filings in all case types in Queens County.

Very Truly Yours,


Audrey I. Pheffer
Queens County Clerk

EXECUTIVE OFFICE: 88-11 Sutphin Boulevard, Room 105, Jamaica, New York 11435, (718) 298-0601
89-17 Sutphin Boulevard, Room 244, Jamaica, New York 11435, (718) 262-7223
120-55 Queens Boulevard, Room CJ1, Kew Gardens, New York 11415, (718) 298-0621
25-10 Court Square, Room B58, Long Island City, New York 11101, (718) 298-0624

COUNTY OF SUFFOLK



JUDITH A. PASCALE
COUNTY CLERK

December 21, 2018

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Mr. Carucci:

Thank you for the opportunity to provide comments on Suffolk County's experience with electronic filing ("E-filing") through the New York State Courts Electronic Filing ("NYSCEF") System.

March, 2019 will mark the beginning of the seventh year that Suffolk County has truly been an active E-filing county. Mandatory E-filing of Commercial Division and medical malpractice cases began in March, 2013. Tax certiorari, foreclosure actions and other commercial and tort actions were consensual. Foreclosure actions became mandatory at the end of March, 2014. Effective December 15, 2015, the scope of mandatory case types was expanded significantly to include most case types which could be made mandatory. With additional mandatory expansions in October, 2016, January, 2017 and May, 2018, seventy-nine percent (79%) of all new cases filed in Suffolk County are filed electronically. In July, 2018, Suffolk County also became an authorized county for the filing of appeals electronically with the Second Department.

Operationally, we continue to modify and enhance our minute system and use NYSCEF functionality where possible to simplify the processing of documents. Resource Center staff continues to be a tremendous asset to Suffolk County in testing our system, fixing errors that occur and implementing Suffolk County specific functions based on our local requirements. For example, NYSCEF created multiple Notice of Pendency document types to address the local real property verification fee structure and is expanding the available daily transaction reporting information to allow automatic bookkeeping of document fees.

Civil Practice Law and Rules 2111, was amended in 2018 extending the grandfathering of Suffolk and a small number of other counties allowing them to continue mandatory E-filing for residential foreclosures. Unfortunately, this permission sunsets on September 1st of this year. Neither I nor my staff have received any comments, calls, letters or other information suggesting any defendants have not received proper notice, that any due process rights have been violated

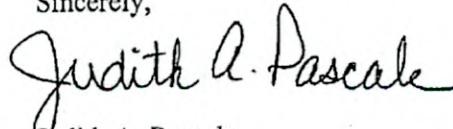
which prompted the decision to sunset this authorization. This is in fact the most common case in which we receive hard copy submissions from defendants.

It is my hope that not only will residential foreclosures and consumer credit cases be made mandatory on a permanent basis, but that the consensual only cases referred to in CPLR Article 21-A will be authorized to be filed on a mandatory basis. In this way, each county can choose for itself how and what it wants to file electronically. It is our experience in Suffolk County that mandatory, rather than consensual, authorization significantly reduces the rate at which opt-outs are filed. Our experience also shows that consensual, rather than mandatory, authorization also significantly reduces the rate of initial filing electronically. In fact, E-filing has become such an everyday part of practitioner's lives in Suffolk County we must frequently reject filings of cases which are not authorized E-filing matters.

Suffolk County is eager to further expand mandatory electronic filing and build on the great progress already made. I also look forward to serving as a member of the committee tasked to implement criminal E-filing in County Court and becoming a pilot county.

Thank you again for the opportunity to allow this Office to share its experience with E-filing.

Sincerely,

A handwritten signature in cursive script that reads "Judith A. Pascale". The signature is written in black ink and is positioned above the typed name and title.

Judith A. Pascale
Suffolk County Clerk

Please know that Warren County totally supports the E-filing initiative undertaken in NYS, most especially that of our 4th Judicial District Administrative Judge Vito C. Caruso, which for Warren County began May 23, 2018! We are likewise entirely grateful for the professional partnering with our friends in the NYS Court System...again, especially, NYSCEF.

While the Clerks are presenting a combined, very positive commentary to your call for views and input through our NYSACC court committee, I would like to take a personal moment to especially commend Jeff and his wonderful NYSCEF staff- NYC and Albany - who have been tremendously supportive to our efforts...training, report generation, problem resolution, financial management. Kudos to the entire staff...most especially, Veronica "Ronnie" Schmactenberg! She is a fantastic, dedicated, committed individual with great knowledge of the e-filing process, a joy to work with! As well, Joe Dacchille has successfully guided us in our credit card/financial setup and reconciliation efforts. While not possible to use all of the information provided in the system, we have, together - my staff, Ronnie, Joe, and our system vendor, IQS,- identified those reports that are most helpful to us in our daily and monthly accounting. A true team effort!

The Warren County Clerk's Office – myself as Clerk and my awesome staff - will continue to work diligently to ensure a most successful e-filing program for our judiciary, legal community, our public record, and, most importantly, the public whom we are honored to serve.

Thank you...And please do not hesitate to call on us at any time!

Happy New Year!

Pamela J. Vogel, Warren County Clerk



WESTCHESTER COUNTY CLERK

Timothy C. Idoni
County Clerk

January 18, 2019

*Mr. Jeffery Carucci
Statewide Coordinator for Electric Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119
New York, New York 10007*

Dear Mr. Carucci:

Having just entered my fourteenth year as Westchester County Clerk, I can unequivocally state that the New York State Courts E-Filing System (NYSCEF) has been one of the greatest achievements in county government over that period of time. All those involved should be incredibly proud of this achievement in the modernization of our court administration.

We here in Westchester are proud that we have achieved an e-filed participation rate of eighty-five percent (85%) of all documents filed in our office, with hopes that it will increase with criminal files and mandated Matrimonial cases adding to the total in the year 2019.

I want to applaud the proposed changes in the law currently being considered. Once again there is a wish to expand mandatory e-filing in such previously prohibited civil case categories in the Supreme Court such as Article 70, Article 78, Election Law, Matrimonial and Mental Hygiene cases. I strongly recommend especially the inclusion of Matrimonial cases in this year's legislation.

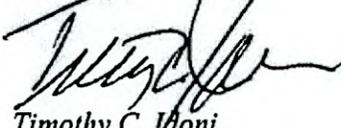
E-filing in matrimonial cases is currently allowed consensually in thirty-three (33) counties throughout New York State. Westchester is one of those counties and it has been embraced by all parties involved.

The current legislation, to be continued, would call for consultation with the Bar, legal services providers, and county clerks.

E-filing standards currently in place should be continued. Unrepresented persons should continue to be exempt from e-filing unless they affirmatively choose to participate in a particular case. Likewise attorneys lacking the appropriate training or equipment to e-filing may opt out.

I want to thank you for taking our comments under consideration. Mandatory e-filing has been a wonderful success. It saves time, money and is environmentally sensitive.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy C. Itoni', written in a cursive style.

*Timothy C. Itoni
Westchester County Clerk*

UM

MANAGING ATTORNEYS AND CLERKS ASSOCIATION, INC.

John D. Bové, *President*
Peter McGowan, *Vice-President*
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RECEIVED
DEC 17 2018
OCA Executive Office

December 14, 2018

Hon. Janet DiFiore
Chief Judge of the State of New York
Court of Appeals
20 Eagle Street
Albany, NY 12207

Hon. Lawrence K. Marks
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

2019 Budget for NYSCEF and Statewide Electronic Filing Resource Center

Dear Judge DiFiore and Judge Marks,

We write on behalf of the Managing Attorneys and Clerks Association, Inc. to urge that the 2019 Judiciary Budget include adequate funding for further development of NYSCEF and for the Statewide Electronic Filing Resource Center.¹ As you may recall, MACA is comprised of more than 125 litigation-based law firms in and around New York City as well as the Attorney General's Office. Managing attorneys' and managing clerks'

¹ Please note that we also urged these points in our Association's testimony at a hearing of the Assembly Judiciary Committee on November 16, 2018.

positions within our respective firms and our concomitant responsibilities afford us a breadth of understanding of the day to day operations of the various state and federal court systems. In particular, our members have extensive experience with e-filing in the New York State Court Electronic Filing system, as well as in the federal e-filing system and other states' e-filing systems. In a majority of our member firms, the actual filing of litigation papers in NYSCEF is performed by managing attorney/managing clerk staff. We are very frequent users of NYSCEF and of the Statewide Electronic Filing Resource Center.

As a preliminary note, we find the NYSCEF system to be an effective tool for the service and filing of court papers and repository of courts' official records of proceedings before them. It is simple and user-friendly, both in terms of its user interface and the event codes e-filers select to identify their filings. NYSCEF is somewhat more stable than its federal counterpart, the CM/ECF system, insofar as it almost never "freezes" mid-filing and is less frequently off line. The convenience of being able to file after hours and without a visit to the courthouse on the filing deadline cannot be overstated—especially for e-filers who are located at some distance from the court in which they are filing.

Notwithstanding these great strengths, development resources need to be devoted to NYSCEF both (i) to update its basic programming to meet the standards of current operating systems and keep it functional, and (ii) to develop new functionality that the bar needs in order for the system to work optimally. Some of the programming of the present system dates back years, and the nature of programs and the operating systems on which they run is that they need to be upgraded regularly in order to maintain their existing functionality. New functionality could, for example, integrate the eCourts' calendaring system with NYSCEF and greatly improve now-cumbersome procedures for sealed filings, eliminate the need to enter information to create a NYSCEF file in the Appellate Division version of NYSCEF at the outset of an appeal by importing that information from the lower court file, and greatly simplify the lawyer's work in preparing the record on appeal allowing one to compile it from the lower court NYSCEF file in a manner similar to how one compiles the judgment roll in NYSCEF. We know from our collective experience with our firms' technology management that keeping technology current and developing new functionality requires the commitment of resources; in our experience, "do more with less" does not lead to success in these areas.

We also find that the Statewide Electronic Filing Resource Center provides effective support for lawyers and their staff who use their system. Resource Center staff are a "deep bench" with decades of combined experience supporting NYSCEF. They are very knowledgeable about their system and are very helpful in response to every day "help desk" calls. They also have been very responsive when we occasionally raise a concern about some particular functionality in NYSCEF. But with the expansion of NYSCEF to new courts and new case types, this group of approximately a dozen staff members needs to grow in order to provide affected courts and members of the bar with the same high

quality of support the Resource Center provides to the courts and members of the bar they support today. In addition, being a deep bench means that a majority of Resource Center staff are closer to retirement than to the start of their careers, such that more junior staff need to be joining the group and getting experience so they can be in place to succeed more experienced staff when they leave the Unified Court System.

*

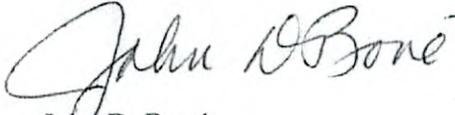
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We recognize that there are many competing, meritorious priorities that must be addressed in the Judiciary Budget and appreciate that the task of prioritizing them is one of great magnitude and difficulty. We believe NYSCEF and the staff who support it warrant special consideration in the budget process, however, because of their centrality to the exchange between litigants and the bench of case filings and the storage of the record, and because we believe their cost is relatively low in comparison to the great value they contribute to the Unified Court System and to litigants in New York courts.

As always, the Managing Attorneys and Clerks Association is grateful for the Unified Court System's receptiveness to our observations under Your Honors' leadership. If further elaboration on any of the foregoing would be useful or if we can help in any other way, please do not hesitate to contact us.

Respectfully yours,



John D. Bové
MACA President
Managing Clerk
Mound Cotton Wollan & Greengrass LLP

Directors

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Legal Aid Society

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President Executive Director Deputy Director Deputy Director

January 3, 2019

Jeffrey Carucci
Statewide Coordinator for
Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119 M
New York, New York 10007

VIA ELECTRONIC MAIL

Re: Requested Comments re Electronic Filing

Dear Mr. Carucci:

Thank you for requesting comments with respect to the proposed expansion of electronic filing in New York State courts.

The attorneys who provided me with their experiences have all used e-filing in some form, even if it was only to enter a limited appearance.

Generally, attorneys who have used e-filing have found the system generally helpful. One attorney noted that it is easy to use and allows for greater access to opposing counsel's filings. It also helps her track deadlines. She believes, however, that pro se litigants should retain the option to file hard copies, as they often do not have the equipment to file electronically or are too frightened to do so. Another attorney also noted the convenience of being able to review filings from his desk. Other attorneys also noted the convenience of the system for lawyers and would like to see it expanded.

However, many of the other comments on e-filing were negative. One attorney noted that the help line is insufficient. Specifically, it takes a long time to get a response, and the responses are often inadequate or nonresponsive. This is of particular concern since time is often of the essence when filing. Similarly, this attorney described the training as "insufficient" and the website as difficult to navigate. In particular, she noted that there is not a back button, so that a filer sometimes has to start from scratch if s/he makes a mistake, and that not all options are on the dropdown menu. She found the process quite time consuming and believes that it would be particularly difficult in matrimonials, as they are already time consuming and paper intensive.

Another attorney echoed these comments. While she did say that e-filing can be convenient in that it makes it easier to see what's been filed and allows for later filing, she also said that it is



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difficult to see what attachments go with which filing. It is also not always clear when something has been filed or served. She believes it would be particularly problematic in a family law and matrimonial setting, and while there is the opt out procedure for pro se litigants that is not an easy proceeding.

A foreclosure attorney who often accepts cases for limited representation is concerned about the effects of electronic filing in this type of case. For example, if he appears for the limited purpose of representing a client in a settlement conference and the case proceeds to litigation, he is still in the system as the attorney of record and believes it would be difficult to remove himself as a representative. (This would be true in any case where we accepted a case for limited scope representation.)

Other attorneys noted issues both with pro se litigants' access to the system and with paper filings in cases that have been commenced by e-filing. There are some major barriers for pro se litigants, including the reading level of the instructions, the opt out process, and access to the equipment. Finally, they would prefer that orders were issued electronically as opposed to mailing. Even though this does not relieve counsel of the responsibility of serving the order on the other party, it would at least put the other party on notice that the order has been issued.

In sum, while our attorneys have found the system well adapted to professionals in some contexts, other experiences have been problematic. Those who have commented say that they this would not adapt well or be helpful in the family law/matrimonial context. In particular, they have expressed concerns about pro se litigants despite the opt out provision and about the effects of this system on limited scope representation.

We very much appreciate the opportunity to comment on this initiative and hope this is helpful to you. I may be reached at (518) 375-3468 if you have any questions.

Very sincerely yours,
/s/Victoria M. Esposito
Victoria M. Esposito
Advocacy Coordinator



January 3, 2019

Re: New York State Courts Electronic Filing Program

Honorable Judge Marks,

On behalf of our member organizations, we are writing in response to your request for comments on electronic filing for your annual report. The New York Legal Services Coalition, formed in 2014, is a nonprofit organization that consists of 51 civil legal service organizations serving every county in New York State. Passionate about ensuring access to civil legal assistance, our member organizations range from large multi-service, multi-county organizations, to pro bono programs, or smaller neighborhood-based organizations that address the needs of specific populations. The Coalition is concerned with the accessibility of e-filing to low income, middle income, and *pro se* litigants. In particular, we urge you to continue three practices that have been successful.

1. We want to emphasize the importance of the “opt-in” instead of “opt-out” system for unrepresented parties, making e-filing an active decision on the part of litigants.
2. We urge the continuation of the exclusion of foreclosure and consumer debt cases from mandatory e-filing and the exclusion expanded to other high-volume practice areas with low rates of representation.
3. We urge the continual inclusion of the legal services community in regularly scheduled reviews and ongoing analysis of the system.

E-filing has the potential to minimize barriers for New Yorkers to access justice and is long overdue. We believe the system should be deployed in a manner that will maximize access regardless of income, technological competency, language ability, or familiarity with the justice system. Our concerns and recommendations are based on the experience of legal services providers throughout New York State. Mandatory e-filing program effect low income, elderly, low English proficiency, and rural New Yorkers disproportionately who make up many of those who do not have access to legal representation.

We applaud the enactment of the August 31st, 2015 amendments to Section 212 of the Judiciary Law that make e-filing an “opt-in” process for unrepresented parties. We also support that foreclosure and consumer credit actions were excluded from new mandatory e-filing pilot projects. **We support and encourage the continuation of e-filing as an “opt-in” process for unrepresented parties.** This amendment was a result of feedback from legal service providers who raised issues regarding clients’ barriers to accessibility. **We hope for the continued involvement of legal**

Maha Syed,
Executive Director
New York Legal Services
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Western New York Law Center

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Secretary*
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Adriene Holder
Legal Aid Society

Robert Elardo
Erie County Bar Association
Volunteer Lawyers Project, Inc.

Tina Foster
Volunteer Legal Services
Project of Monroe County, Inc.

Paul Lupia
Legal Aid Society of Mid New
York

Mark O'Brien
Pro Bono Net, Inc.

Raun Rasmussen
Legal Services NYC

Rodrigo Sanchez-Camus
Northern Manhattan
Improvement Corporation

service providers in ironing out the kinks of mandatory e-filing programs.

Legal service providers have shared experiences with clerks and court staff in Suffolk County who have been very well informed and helpful with the e-filing pilot project. Southern Tier courts have designated individuals who are in charge of fixing problems and have been easy to get in contact with. This has ensured a much smoother rollout of mandatory e-filing and provided streamlined and efficient troubleshooting.

Unfortunately, not all court systems have adopted these best practices. We are concerned that there is still insufficient buy-in to the e-filing program from many court staff and judges and limited resources for low English proficiency litigant or those with limited technologically competency or access. The system is designed more for attorneys than for *pro se* litigants. There have been many cases of uninformed court staff and plaintiff's council wrongfully representing to defendants that they have no option to opt out of mandatory e-filing. In some courts in New York City, court staff have expressed hostility to those who do not opt-in to e-filing and sometimes pressured legal service providers assisting *pro se* litigants to convince the litigants to opt-in. Clients with low English proficiency find e-filing hard to navigate as there is a lack of resources in the clerk's offices to assist with language access. Unlike Federal Court, the state court system the does not have adequate resources to assist with the e-filing process. Federal courts have a *pro se* clerk's office and materials on the Court's website, providing details and extensive information for *pro se* litigants who want to opt-in to e-filing. This is something we hope you will factor in when considering the extension of mandatory e-filing across the board.

We are concerned about the possible reversal of the existing exclusion for consumer debt and foreclosure cases from mandatory e-filing. We are also concerned that e-filing will be expanded to vulnerable, high volume, and underrepresented categories of cases. This will cause greater risk to already vulnerable populations and can become a barrier to access to justice. The systems use language that is designed for attorneys and can present challenges and confusion to *pro se* litigants. This would be particularly challenging for the elderly, those with low English proficiency, and those without access to broadband internet.

An estimated 1.8 million litigants come into civil courts across New York each year without representation¹. And those are the individuals and families that actually make it to court. Thousands undoubtedly give up before they ever get to the courthouse door. **We urge the limitation of mandatory e-filing to the cases with the highest rates of representation in small volume practice areas**, where the consequences of defects in the e-filing rollout will not be so devastating. Foreclosure cases alone represent approximately 26% of the civil legal services cases in the New York Supreme Courts².

¹ 2017 Report of the Permanent Commission on Access to Justice to the Office of Court Administration. <http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/2017-ATJ-Commission-Report.pdf>

² 2016 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, State of New York Unified Court System. <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/ForeclosureAnnualReport2016.pdf>

We urge all rollout of mandatory e-filing programs comply with best practice standards³ and ask that this is done by including the civil legal services community in the discussion so that we can all continue to make strides toward access to justice for all New Yorkers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maha Syed', with a long horizontal flourish extending to the right.

Maha Syed

Executive Director

New York Legal Services Coalition

³ Electronic Filing and Access to Justice Best Practices Project, and Richard Zorza. 2013. *Principles and best practices for access-friendly court electronic filing.*

January 4, 2019

efilingcomments@nycourts.gov

Mr. Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119M
New York, New York 10007

Re: December 7, 2018 Request for Comments on Electronic Filing Program

Dear Mr. Carucci:

Thank you for the opportunity to comment about electronic filing by the New York State Courts. In response to the request for comments, attached please find a copy of recent testimony presented on behalf of Legal Services NYC, at hearings held on November 16, 2018 by the Judiciary Committee of the New York State Assembly, which outlines many of the issues our advocates have observed concerning electronic filing.

We appreciate the ongoing dialogue we have had with your office concerning the impact of e-filing on the judicial foreclosure and consumer debt collection processes, especially the large number of unrepresented litigants, many of whom are elderly or of limited English proficiency ("LEP"). In addition to the concerns raised at the recent hearings, and some of the technical issues experienced by attorneys using the e-filing system that we have brought to your attention with respect to individual cases in recent months, we offer the following observations and recommendations:

1. Mandatory e-filing programs should be prohibited in categories of cases characterized by vulnerable or senior defendant populations, and high percentages of defendants lacking access to counsel, which are prosecuted by debt buyers and high-volume plaintiffs' law firms with histories of engaging in sewer service and filing robo-signed pleadings, such as consumer credit collections, student loan or medical debt collections, residential foreclosures and actions on mortgage notes, and tax, water and sewer lien foreclosures and collection actions. They should also be prohibited in other categories of cases with high percentages of defendants lacking access to counsel, and cases in which serious privacy concerns are implicated, such as matrimonial and family law matters.

2. Grandfathered mandatory e-filing pilot projects in categories of cases flagged in #1 which had commenced prior to the legislation barring mandatory e-filing in those categories of cases should terminate as those counties have had more than three years to wind those projects down subsequent to

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Raun J. Rasmussen, Executive Director, Susan L. Kohlmann, Board Chair

the 2015 legislation embodying the legislative determination that residential foreclosure actions and consumer debt collections should be excluded from mandatory e-filing in light of the history of abusive debt collection practices, sewer service and robo-signed documents and pleadings in those categories of cases.

3. The presumption of manual filing, and a requirement to opt in to, rather than being required to opt out of, e-filing for the unrepresented in *all* categories of cases should be enshrined in the law and inviolable.

4. Unrepresented litigants seeking to opt in to e-filing should be required to undergo a training equivalent to that required by unrepresented litigants in federal courts before they opt in to e-filing, and opting in should require making a motion in which attendance at such training is certified.

5. Materials provided to litigants concerning opting in to e-filing should provide candid information about why e-filing could be *less* convenient to those without access to printers and scanners, seniors or those who are LEP, and should make it clear that papers and notices from the court will *only* be received by e-mail. Materials should be translated into the top six non-English languages, just as is required for RPAPL 1304 notices. Some current court-provided information touts the benefits of e-filing without providing candid information about how e-filing could be harmful and inconvenient to many vulnerable populations.

6. Courts should be required to devote more resources to assisting homeowners with e-filing: e-filing stations in the clerks' offices should have clear instructions posted in multiple languages, should include seating and be placed in quiet areas to facilitate accurate e-filing, should have information concerning available civil legal services posted conspicuously, and dedicated staff to assist unrepresented litigants scan and file papers, who should be required to undergo training about interacting respectfully with members of the public of diverse backgrounds (this would be beneficial for all court staff, not just those dealing with e-filing). The courts should emulate the practices prevailing in federal courts, insofar as unrepresented litigants are concerned, with highly-qualified law clerks available to assist unrepresented litigants.

7. Serving/filing of false notices of "actions subject to mandatory e-filing" in actions statutorily excluded from such mandatory e-filing should be policed by the courts: clerks' offices should reject their filing and attorneys making such filings should be sanctioned.

8. Provision should be made to allow for payment of court filing fees with cash, and should not be limited to credit cards (or checks, for that matter), because many low and moderate income litigants are "un-banked" and will be unable to access the e-filing system if it is restricted to credit card users. Paper filing should be possible *whenever* court clerks' offices are open, and should not be restricted to certain times because only certain staff members accept e-filing.

9. The e-filing system should be adjusted to allow for greater flexibility and additional categories of papers for filings so that filings are not improperly rejected. For example, a category should be created for combined answers with third party complaints, which some courts are now rejecting and demanding that litigants separate out into duplicative and wasteful separate pleadings, defeating the efficiencies that e-filing is supposed to provide. Moreover, provision should be made to

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ensure that the e-filing system is administered consistently, without idiosyncratic practices in individual courts at the whims of local personnel, which is often the case now.

10. Provision should be made to extend the deadline for a responsive pleading's filing automatically if a clerk's office rejects the filing of a responsive pleading for technical e-filing reasons.

11. The e-filing system should make provision for limited representation in accordance with un-bundled legal services and for substitution of counsel when a previously pro se litigant opted in to e-filing, and later secures counsel (and vice versa). Under the existing practices, advocates have experienced difficulties substituting in as counsel of record when a previously-self-represented litigant had opted in to e-filing. The newly-released form for use when limited representation terminates upon conclusion of foreclosure settlement conferences is much improved, but is still confusing insofar as it seems to suggest that it must be manually served on "non-participating" parties. Inasmuch as the typical foreclosure action has many non-appearing, nominal defendants, requiring service of this form on parties who have not appeared is burdensome and serves no purpose; it should suffice to e-file the notice and serve it manually only if there are appearing parties who are not e-filers.

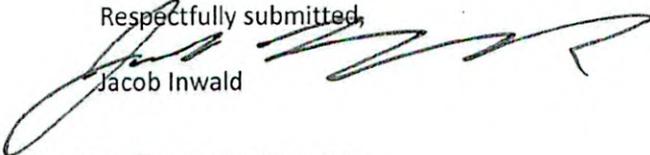
12. Judges and IAS parts should not require duplicative and environmentally unfriendly paper submissions of e-filed papers, and should be prohibited from adjourning or bouncing motions submitted electronically on the grounds that the judge was not provided a wasteful paper copy of the papers, as this defeats the purpose of e-filing.

13. E-Filing of appellate papers should be designed to reduce, not increase, barriers to access to the appellate courts, and to reduce paper printing and the need for costly appellate printing services. A system should be designed so that in an e-filed case the record on appeal could be generated by designating the relevant papers in the trial court's electronic docket, saving litigants thousands of dollars in appellate printing expenses. Moreover, appellate division rules concerning e-filing of briefs should not make the system *more* difficult for unrepresented parties, for example, by requiring hyperlinks to decisions cited in briefs, which the new rules require, and which effectively perpetuates the need to pay for costly appellate printing services.

14. The judiciary should ensure that e-filed documents are properly characterized and that exhibits are filed separately: in the federal system, error messages are generated to parties when a filing is mislabeled or has some other clerical error, such as if it is filed under the name of the wrong party. Additionally, the system should generate a warning message when an e-filing plaintiff fails to file an affirmation of hard copy service of motion papers where there are unrepresented parties in the case who have not opted in to e-filing.

Thank you for your consideration of these comments.

Respectfully submitted,


Jacob Inwald

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Legal
Services NYC
DEMAND JUSTICE

November 16, 2018

New York State Assembly Standing Committee on Judiciary
250 Broadway
New York, NY 10007

Re: Electronic filing of court papers

My name is Catherine Isobe. I am a Staff Attorney in the Foreclosure Prevention Project at Brooklyn Legal Services, a program of Legal Services NYC (LSNYC). I present this testimony on behalf of LSNYC regarding electronic filing of court papers in New York Supreme Court. First, I would like to thank the Committee for inviting LSNYC to testify at this hearing.

LSNYC is the largest provider of free civil legal services in the country, with offices in the Bronx, Brooklyn, Queens, Staten Island, and Manhattan. For fifty years, LSNYC has provided critical legal help to low-income residents of New York City. Our organization works to reduce poverty by challenging systemic injustice and helping clients meet basic needs, including housing, education, health care, family stability, and income and economic security.

LSNYC is also the oldest and largest provider of foreclosure prevention legal services in New York City. Approximately 40 LSNYC advocates provide hundreds of NYC homeowners each year with *pro se* advice and assistance, limited representation in court-mandated settlement conferences and full representation in defense of foreclosure and in affirmative litigation to combat predatory and discriminatory lending and abusive mortgage servicing practices. In Brooklyn, our organization has challenged abusive and discriminatory lending and home sale schemes for two decades. Since 2009, LSNYC has assisted over 12,000 homeowners. We have an informed perspective on the challenges homeowners face in all aspects of the judicial foreclosure process. We also are particularly sensitive the needs of the large numbers of low and moderate income clients, who confront a range of legal issues landing in our civil justice system, whom we are unable to represent, whether in foreclosure cases,



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consumer debt cases, or other areas of the law where the need outstrips the available resources.

While e-filing is of course a valuable tool for those represented by counsel, it is important for this committee to be cognizant of the fact that e-filing presumes litigants' familiarity with the internet and access to related resources. This is decidedly not the case for many *pro se* litigants, especially the elderly or those with low to moderate incomes or limited English proficiency. It's a real concern, especially for elderly litigants who have not grown up with this technology and are the least familiar with it.

Even the consensual e-filing program introduced in Kings County Supreme Court for foreclosure matters has confused court personnel, lenders' attorneys and *pro se* homeowners, resulting in the rejection of timely filed hard copy answers, service by the plaintiffs' bar of erroneous notices informing homeowners that their cases were subject to mandatory e-filing and the failure by plaintiffs to serve hard copy motion papers to *pro se* homeowners where required under the current rules. We observed these problems before the 2015 legislation, when courts put the onus on unrepresented litigants to "opt-out" of e-filing, and even afterwards, when the law permitted unrepresented litigants to participate in e-filing only after "opting-in." Recent examples of forms erroneously notifying homeowners of the applicability of "mandatory" e-filing to their Kings County foreclosure cases are attached to this testimony as Exhibit A.

Pro se litigants have been unable to obtain help in clerks' offices and have even been subject to hostile behavior from court personnel while seeking to navigate the e-filing process, or even just opting out of the e-filing process. In a foreclosure case where a family home (and much of its accrued wealth) is at stake, these obstacles can prove disastrous for the unrepresented. In expanding mandatory e-filing programs in 2015, the legislation struck an appropriate balance in excluding consumer debt cases and residential foreclosure cases (except for a few grandfathered counties in which mandatory e-filing projects were already operating) from mandatory e-filing.

Both consumer debt and foreclosure practice areas affect vulnerable populations with high percentages of self-represented litigants, and perhaps even more importantly, are practice areas where cases have historically been prosecuted by high-volume plaintiffs' "mill" law firms notorious for resorting to "sewer service" and "robo-signed" paperwork and pleadings. The legislature appropriately concluded that mandatory e-



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filing should not be imposed on unrepresented parties defending those sorts of cases, where so much is at stake. Low income defendants in consumer debt cases (including the ever increasing numbers of student loan cases) have little to no access to legal services and face the same technology and language access issues as those in the foreclosure and matrimonial contexts. Consumer debt cases filed in Supreme Court have a default rate of approximately 90 percent. Those few consumer debt defendants who try to navigate the consensual e-filing system in Supreme Court have experienced the same problems as foreclosure defendants—*i.e.*, an unhelpful system that thwarts the efforts of *pro se* litigants to have their day in court.

Needless to say, similar concerns apply to other categories of cases in which abuse of e-filing can easily be imagined. As demonstrated by LSNYC's experience representing low income individuals and victims of domestic violence in matrimonial cases in the five boroughs of New York City, these litigants experience one of the highest rates of unmet need for free legal assistance. Mandatory e-filing in the matrimonial context presents multiple challenges due to the litigants' lack of technical knowledge or access to computers, and often because of limited English proficiency.

Matrimonial litigants have serious cause to be concerned about privacy in their court filings—they are required to share very personal and sensitive information such as their date of birth, social security number and in some circumstances their bank and credit card account history and other financial information. The privacy concerns of *pro se* litigants over sharing such information in a mandatory e-filing system could result in filing delays or simply not filing papers at all. Matrimonial actions can be time sensitive due to issues surrounding grounds, property and support, so filing delays could cause serious harm to *pro se* litigants.

In contrast with New York State courts, e-filing procedures in the federal court system go much further to insure due process; all e-filed papers must also be mailed to *pro se* litigants.¹ Before participating in federal e-filing, *pro se* litigants must affirmatively opt in by making a motion, which must include proof that the litigant has attended at least an introductory course in federal e-filing.² Federal courts also have well-resourced

¹ See, e.g., U.S. District Court, Southern District of New York, *Electronic Case Filing Rules and Instructions*, (Oct. 9, 2018), § 9.2, available at: <http://www.nysd.uscourts.gov/ecf/ECF%20Rules%20100918%20Final.pdf>

² *Id.*



Legal Services NYC

DEMAND JUSTICE

pro se clerks' offices to assist litigants with e-filing. As a result the federal court system can balance the efficiencies of e-filing with the rights of unrepresented litigants.

New York State courts offer a lone, unstaffed scanner for use by *pro se* litigants attempting to e-file their papers at the courthouse. No assistance or instruction is provided. State courts are simply unequipped to handle tens of thousands of *pro se* litigants needing assistance with e-filing.

During and after the Great Recession of 2008, plaintiffs' foreclosure and debt collection law firms engaged in rampant "sewer service" and the flouting of court rules. These firms, whose profit depends on the volume of cases filed in relation to firm overhead and staffing, routinely exhibit carelessness with regard to the filing and content of their court papers, in an effort to deprive homeowners of due process and inflate the law firms' earnings.³

In this environment, it is crucial to protect the rights of the most vulnerable litigants: the elderly; those without access to a computer or knowledge about its use and those with limited English proficiency. Many litigants may have access to email through their cellphones, but without a desktop computer, a printer and a scanner, these litigants will be unable to easily file documents or print them out in hard copy. E-filing programs for the types of cases where the unrepresented make up the majority of defendants must take these defendants' needs into account to insure equal access to justice. Mandating e-filing in the foreclosure, matrimonial and consumer debt contexts could easily prove harmful to some of our communities' most vulnerable members, and will encourage the sort of abusive litigation tactics that our judiciary has worked hard to curtail these last several years. Consensual e-filing programs currently in place for these categories of

³ See, e.g., *Sykes v. Mel S. Harris and Associates, LLC*, 780 F.3d 70 (2d Cir. 2015); Administrative Order 2011-431 of the Chief Administrative Judge of the Courts of the State of New York (annexed to this testimony as Exhibit B); *Bank of New York v. Silverberg*, 86 A.D.3d 274, 283 (2nd Dep't 2011); *Manhattan U.S. Attorney Announce Agreement with New York Foreclosure Law Firm to Overhaul its Practices and Pay \$2 Million Fine*, United States Attorney for the Southern District of New York, press release, October 6, 2011, available at: <http://www.appellate-brief.com/images/stories/PDF/10-6-11USAttyPR.pdf>; *Deutsche Bank National Trust Company v. Tanibajeva*, 132 A.D.3d 140 (1st Dep't 2015); *Manhattan U.S. Attorney Announces Law Suit Against Foreclosure Law Firm for Systematically Overbilling Fannie Mae for Foreclosure Expenses*, United States Attorney for the Southern District of New York, press release, March 28, 2018, available at: <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-lawsuit-against-foreclosure-law-firm-systematically>.



cases should remain “opt-in” for *pro se* litigants and the courts should provide plain language, multi-lingual forms to explain e-filing procedures. Moreover, the courts should aggressively enforce existing e-filing notice procedures against plaintiffs’ firm so that these law firms in pursuit of profit will not spread misinformation or mislead vulnerable New Yorkers.

The Office of Court Administration has promulgated forms which promote the benefits of e-filing without mentioning its potential pitfalls for the unrepresented: receiving no hard copies of notices or papers from the court or from adversaries; the inconvenience associated with e-filing for those without access to both a printer and a scanner; or the lack of convenience to those without bank accounts (which include many defendants in consumer debt cases) due to the requirement that any filing fees be paid by credit card. In summary, while e-filing is more efficient for parties represented by attorneys, it imposes unreasonable burdens on hundreds of thousands of unrepresented litigants, many of whom already have limited access to justice due to advanced age, low income, limited English proficiency or unfamiliarity with advanced technology. Mistakes and mistreatment of *pro se* litigants in the e-filing context can lead to the loss of homes and property by the very citizens our courts should be designed to protect. The legislature should therefore place consideration of the rights of unrepresented litigants before the efficiencies provided to the courts and represented litigants by e-filing if there is to be a truly level playing field in foreclosure, consumer debt and matrimonial cases in New York State. Thank you for allowing LSNYC to share our experience in this area and to describe the impact of e-filing on the communities we serve to the Standing Committee on the Judiciary.

EXHIBIT A

FILED - KINGS COUNTY CLERK 08/29/2018 05:42 PM
NYSCEF C. NO. 4

INDEX NO. [REDACTED] 2018
RECEIVED NYSCEF: 08/29/2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- x
SELENE FINANCE, LP

Plaintiff(s),

INDEX NO. [REDACTED] 5/2018
DATE FILED: 08/29/2018

-against-

[REDACTED]

MORTGAGED PROPERTY:

[REDACTED]

"JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants; persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants(s).
----- x

NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County REGISTER, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County REGISTER and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(d) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF

Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: August 28, 2018

Joshua Sherer
690 Jericho Turnpike, Suite 240
Syosset, NY 11791-4420
Peter T. Roach and Associates, P.C.
(516) 938-3100
foreclosure@roachlawfirm.com

To:

[REDACTED]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

STATEMENT OF AUTHORIZATION FOR
ELECTRONIC FILING

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----x
M&T BANK

Plaintiff/Petitioner,

- against -

Index No. [REDACTED] 2017

[REDACTED]
Defendant/Respondent.
-----x

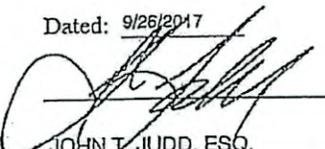
NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment or (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Dated: 9/26/2017



(Signature)

JOHN T. JUDD, ESQ.

(Name)

Schiller, Knapp, Lefkowitz, & Hertzof, LLP

(Firm Name)

950 New Loudon Rd, Ste 950

(A ddress)

Latham, NY 12110

(518) 786-9069

(Phone)

(E-Mail)

To: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
CIT BANK, N.A.,

Plaintiff/Petitioner,

- against -

Index No. [REDACTED] /2017

[REDACTED]
-----X
Defendant/Respondent.

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 7/7/2017



Signature

Sean K. Monahan, Esq.

Name

Windels Marx Lane & Mittendorf, LLP

Firm Name

56 W. 156th Street

Address

New York, NY 10019

212-237-1000

Phone

smonahan@windelsmarx.com

E-Mail

To:



United States of America
a/b/o Internal Revenue Service
135 High Street, STOP 155
Hartford, CT 06103

Mortgage Electronic Registration Systems, Inc.
as nominee for IndyMac Bank, FSB
1010 Library St
Suite 300
Reston, Virginia 20190

New York City
Department of Finance
Parking Violations Bureau
210 Joralemon Street, First Floor
Brooklyn, New York 11201

New York City
Environmental Control Board
235 Schermerhorn Street, 11th Floor
Brooklyn, New York 11201

EXHIBIT B

ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge of the State of New York and with the consent of the Presiding Justices of the Appellate Divisions, I hereby order and direct that, effective November 18, 2010, nunc pro tunc, plaintiffs' counsel in residential mortgage foreclosure actions shall file with the court in each such action an affirmation, in the revised Form A attached hereto, at the following times:

- In cases commenced after the effective date of this Order, at the time of the filing of the Request for Judicial Intervention.
- In cases pending on such effective date, where no judgment of foreclosure has been entered, at the time of filing either the proposed order of reference or the proposed judgment of foreclosure.
- In cases where judgment of foreclosure has been entered but the property has not yet been sold as of such effective date, five business days before the scheduled auction, with a copy to be served on the referee.

This revised form affirmation shall replace the affirmation previously required pursuant to AO/548/10. However, a filing by counsel of that earlier form affirmation shall satisfy the requirement of this order.

In conjunction with the filing of Form A, a representative of plaintiff may file a supporting affidavit as set forth in Form B attached hereto, in addition to such other information as the court may require.



Chief Administrative Judge of the Courts

Dated: March 2, 2011

AO/431/11

FORM A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

Plaintiff,

AFFIRMATION

v.

Index No.: _____

Defendant(s)

Mortgaged Premises:

N.B.: During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities, including failure to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits which falsely attest to such review and to other critical facts in the foreclosure process; and "robosignature" of documents.

* * *

_____, Esq., pursuant to CPLR §2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of New York and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.
2. On [date], I communicated with the following representative or representatives of Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents and records relating to this case for factual accuracy; and (b) confirmed the factual accuracy of the allegations set forth in the Complaint and any supporting affidavits or affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith.

Name

Title

3. Based upon my communication with [person/s specified in ¶2], as well as upon my own inspection and other reasonable inquiry under the circumstances, I affirm that, to the best of my knowledge, information, and belief, the Summons, Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law. I understand my continuing obligation to amend this Affirmation in light of newly discovered material facts following its filing.

 4. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.
-

DATED:

N.B.: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose.

[Revised 11/18/10]

application have been personally reviewed by the signatory; that the notary acknowledging the affiant's signature followed applicable law in notarizing the affiant's signature.

D ___ I am unable to confirm or deny that the underlying documents previously filed with the Court have been properly reviewed or notarized.

E ___ Inasmuch as the underlying mortgage loan has been transferred prior to commencement or during the pendency of this action, I am unable to confirm or deny that the underlying documents filed with the Court have been properly reviewed or notarized by the prior servicer.

F ___ (other) _____

N.B.: Affiants may augment this affidavit to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose.

WHEREFORE, it is respectfully requested that the Court grant the proposed relief requested herein together with such other relief as the Court deems just and proper

(Affiant)

STATE OF _____) SS:
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the personal upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the .

Notary Public

ST. LAWRENCE COUNTY BAR ASSOCIATION

OFFICERS

NICOLE M. DUVÉ, Canton, New York
President

EFSTATHIA KYRIAKOPOULOS, Massena, New York
Vice President

MICHELLE H. LADOUCEUR, Canton, New York
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Term Expires 2020

AMY DONA, Canton, New York
Term Expires 2021

LLOYD G. GRANDY II, Ogdensburg, New York
Past President

January 4, 2019

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, NY 10004

Re: New York State Courts Electronic Filing Program

Dear Judge Marks:

Thank you for the opportunity to provide feedback on the Unified Court System's electronic filing system. At the last meeting of the St. Lawrence County Bar Association, those of our members who have had the opportunity to use the e-filing system shared their experiences and offered input on both its useful and more vexing aspects. Those comments and insights are set forth below.

1. Court system employees, specifically Chambers staff and Court Clerks, would benefit greatly from a user manual.
2. The frequent experience of those who have contacted the help line when issues arise has been to receive inadequate or non-responsive answers including "we've never seen that before," or "we don't know." Slow help line response time has also been a problem in circumstances when time is of the essence.
3. Users describe the website as difficult to navigate and subject to "freezing." Some practitioners avoid using the system at all costs due to the time burden involved. In St. Lawrence County, we have begun to see an inclination to shift civil filings to County Court to avoid e-filing where jurisdictional limits allow.
4. More training sessions are needed.

5. The process of e-filing is quite time consuming and the inability to go back to a prior screen to fix any errors is particularly troubling. If a mistake is made, the process must be restarted from the beginning.
6. The drop-down box to select the type of proceeding does not include all types of proceedings that could be filed.
7. On one occasion the program itself, or someone other than the e-filer, manipulated the caption on the e-filed RJI thereby renaming Defendants with variations of the properly named and sued Defendants. This resulted in the wrong appearances being noted for both the sued Defendants and the improperly named fictional Defendants. Chambers staff had to search filed Answers and Notices of Appearance, as well as reach out to Plaintiff's counsel to correct the defective information. Had the error not been noticed and addressed, default judgments could have been improperly entered and/or parties and counsel could have been left off correspondence sent using the NYSCEF portal. Help line staff were unable to explain how this occurred or who/what could have manipulated the e-filed RJI information, other than to suggest it was the e-filer, which was not the case in this instance.
8. Significant Court time was dedicated to establishing local protocols for e-filing (i.e. counsel to submit working copies). These protocols were supposed to translate into automated notices to be included in the e-filing receipt generated by the NYSCEF program. When e-filing went live in St. Lawrence County, the expected automated notices were absent from the receipt and the Court was not advised. Because the e-filing receipt is not part of the case file (which it should be), the Court cannot view the receipt and cannot verify the presence or content of any automated notices. No one has been able to explain why the automated notices are missing from the receipt, nor have they been able to confirm that the notices are now included. Because the Court cannot see the receipt and cannot verify whether the automated notices are set forth in it, Court staff have shouldered the added burden of sending out a separate notice on each case to make parties aware of local protocols.
9. There has been no instruction for counsel on how to obtain a refund in errant filing situations. This is especially problematic since payment must be made prior to a NYSCEF submission, and any amended filings or rejected filings will, incorrectly, require the NYSCEF user to pay another fee.
10. NYSCEF instructions to assist entities which are exempt from paying filing fees are insufficient. Instead of receiving a prompt or option to go back to a prior screen or drop-down menu, the entire filing is rejected, requiring the NYSCEF user to start the filing process over from the beginning.
11. E-filing implementation in St. Lawrence County was purposely delayed for the explicit purpose of allowing pilot programs in other counties to establish workable protocols,

identify weaknesses and correct program and operational errors. It appears the expansion of e-filing may have been premature.

12. On a positive note, most agree that service of papers has been made easier by the system.

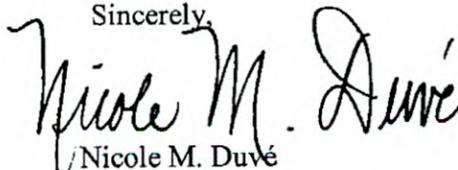
Regarding the expansion of e-filing to other areas, the consensus is to advise a cautious approach. There is great concern that expansion to include matrimonial matters would place volumes of sensitive and confidential information at risk. For this reason, in addition to the notably frustrating experiences mentioned above, our membership was generally opposed to e-filing being expanded to matrimonial matters.

While no one expressed any reservations about extending the time to test e-filing programs for Criminal and Family Court matters, members generally agreed that serious consideration of the troubling experiences outlined herein should be had, and solutions addressed, before any rush to expand e-filing beyond that which the system and staff are presently capable of supporting, and before increasing the level of confidence in its use.

Lastly, no one expressed any reservations about the current use of e-filing in residential foreclosure matters or in consumer credit transactions, though it was observed that those matters frequently involve pro se defendants, who are not e-file participants.

Thank you again for the opportunity to provide feedback on the rollout of this initiative in St. Lawrence County. It is hoped these frank observations will assist in enhancing the e-filing experience for all involved and to help the program reach its time and resource-saving potential.

Sincerely,


Nicole M. Duvé
President

NMD/ps

ST. LAWRENCE COUNTY BAR ASSOCIATION

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Term Expires 2020

AMY DONA, Canton, New York
Term Expires 2021

LLOYD G. GRANDY II, Ogdensburg, New York
Past President

January 11, 2019

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, NY 10004

Re: New York State Courts Electronic Filing Program

Dear Judge Marks:

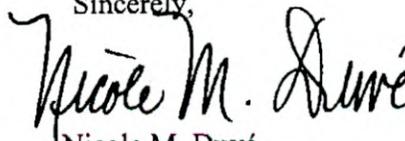
Upon the receipt of additional feedback, please allow this letter to serve as a follow up to the St. Lawrence County Bar Association comments submitted on January 4, 2019, regarding the New York State Courts Electronic Filing Program. For ease of reference, the order of the issues outlined in the Association's prior correspondence is duplicated here.

1. Court employee user manual - No further comments.
2. Help Line - Previously identified issues with the responsiveness of the help line have been clarified and are being addressed or appear limited to isolated incidents related to unusual circumstances that are unlikely to be repeated.
3. Navigability of the website – This appears to be a new user issue and others who more recently shared their experience and have accessed the system with more frequency have not reported the same problem.
4. Additional training – Because the initial training was so well publicized it appears the online training links may be getting overlooked. Efforts have been and will continue to be made to raise awareness and remind users about the continuing online training opportunities through NYSCEF.
5. Inability to return to a prior screen – This also appears to have been a new user issue and can be addressed with additional use and/or training.

6. Drop-down box selection – The user with this issue clarified the problem experienced was not with the drop-down box for the type of proceeding, but rather for the type of pleading being filed. The filing pertained to a petition in an ex parte proceeding. An attempt to file the petition without a corresponding notice of petition was the basis for this comment.
7. Altered caption – This appears to have been an isolated incident and is currently under review.
8. Notice of local protocols – This issue has been resolved.
9. Refunds – It has been suggested a link be added to the website to facilitate access to the form needed to apply for a refund
10. NYSCEF instructions for entities exempt from paying filing fees - No further comments.
11. E-filing implementation – While a number of the previously shared experiences of the Association's membership with NYSCEF appear connected to the program's infancy in St. Lawrence County, those that were not have been swiftly resolved or are being reviewed.
12. Service of papers made easier – No further comments.

Thank you for the opportunity to further clarify the feedback of our membership.

Sincerely,



Nicole M. Duvé
President

NMD/ps

From: Linda Markowitz <linda@rosemarklaw.com>
Sent: Wednesday, December 12, 2018 10:48 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

Efiling is great except for the necessity to send working copies to various judges. Efiling should be either filing or not. It is burdensome to both e-file and send working copies. As well, it is not clear if e-filing is service on the other side or not and this should be clarified by court rule or changes to the CPLR.

Thank you for this opportunity to air my pet peeve.

Linda Markowitz, Esq.
Partner, Rosenthal & Markowitz, LLP
399 Knollwood Road Suite 107
White Plains, New York 10603
914 347-1292 Telephone
914 347-1293 Facsimile
Linda@RoseMarkLaw.com

From: Romano Law Office <romanolegal@gmail.com>
Sent: Wednesday, December 12, 2018 11:11 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: romanolaw@optonline.net
Subject: NYS Courts Electronic Filing Program

We had an disturbing experience with a Surrogate's Court Chief Clerk who was deleting pleadings we e-filed without informing us that she was deleting them.

I would hope there will be a system in place and advise an Attorney when a Clerk deletes a file and was e-filed with the Court.

Daniel P. Romano, Esq.
2168 Central Park Avenue
Yonkers, New York 10710
(914) 779-7222
(914) 779-7716 - Fax

From: David Bliven <davidbliven@msn.com>

Sent: Wednesday, December 12, 2018 12:57 PM

To: eFiling Comments <efilingcomments@nycourts.gov>

Subject: Re: Notice - 2019 Annual Report on Electronic Filing - Request for Comments

My comment is that there should be an easier method to convert cases to e-filing if they were first commenced by a paper filing. My experience is with matrimonials in Westchester, and the clerk's office doesn't allow cases filed on paper to be converted to e-filing.

Additionally, if part of the purpose is to cut down on unnecessary use of paper, then attorneys needing to provide the Judges "working copies" seems to defeat one of the rationales for converting to e-filing. Perhaps it can be gracefully explained to the Judges that they should be discouraged from requiring working copies in e-filed cases.

Finally, our office has had some issues with uploading PDFs into the system, as it doesn't seem to take certain PDF files. In comparison, I've used the federal ECF system for over 15 years & rarely had any issue uploading documents.

Thank you for your consideration.

David I. Bliven

Law Offices of David I. Bliven

Main Office & Mailing/Service Address:

445 Hamilton Ave., Ste 607

White Plains, NY 10601

(914) 468-0968

Bronx Satellite Office:

3174 Riverdale Ave, Ste 1

Bronx, NY 10463

(718) 725-9600

Website: www.blivenlaw.net

Follow us on [Twitter](#) | Like us on [Facebook](#)

From: Deborah Miller <deborahwolfmiller@gmail.com>
Sent: Thursday, December 13, 2018 12:52 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: comments on eFiling

As a solo practice attorney serving a fairly rural and partially indigent population in civil matters (very rarely matrimonial or criminal), I can say that e-filing has allowed me to more quickly and efficiently get court filings completed, after a significant learning curve and investment in PDF-creating software. The system works well, but like all electronic things these days, is subject to downtime on the end of the court system and within our solo offices. Sometimes the equipment is just not working the way it should, and there isn't always time or money to fix or replace it. As much as I like electronic filing, I still don't want to see non-electronic filing options extinguished. So, my vote is to continue to expand electronic filing options, but to avoid making it "mandatory."

Thank you!

Deborah Wolf Miller, Esq.
Mailing Address: P.O. Box 538, Ithaca, NY 14851
Office Address: 104 N. Cayuga St.- Suite 7, Ithaca, NY 14850
(607) 794-1194 office
(607) 277-0272 direct line
(607) 319-4253 fax
DeborahWolfMiller@gmail.com

From: Dana Navins <dana@knlawny.com>
Sent: Wednesday, December 19, 2018 4:24 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

Hello,

You asked for comments; I love efilng. Could anything be easier and more efficient? I am a matrimonial/family law attorney who practices primarily in Westchester County. When I deal with NYC or Brooklyn filings I want to kill myself.

It should be widespread in other counties and certainly in Family Court.

Regards,

Dana Forster-Navins, Esq.
Kass & Navins, PLLC
220 White Plains Road, 3rd Floor
Tarrytown, NY 10591
Tel: (914) 618-4377, (845) 228-8505
Fax: (845) 875-9085

From: Jane Harrington
Sent: Thursday, December 20, 2018 4:07 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: mixed cases

Dear Jeffrey

One problem we have been experiencing with e-file is when two cases are consolidated and only one was e-filed. Attorneys will partially file motion by e-file and partially by hard copy. It becomes a nightmare trying to render decisions on them, especially when there are cross-motions. Perhaps some procedural guidance should be posted for the attorneys to see.

Thanks,

*Jane P. Harrington, Principal Court Attorney
Hon. Maria S. Vazquez-Doles, J.S.C.
285 Main Street
Goshen, New York 10924
(845-762-5931)*

From: Scott Leemon <scott@leemonlaw.com>
Sent: Monday, December 24, 2018 3:18 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Efile

The program should be started for all criminal matters immediately.

It works great in federal court.

It makes life so easy and there is no need these days to use paper copies.

—Scott

SCOTT E. LEEMON, ESQ.
Law Offices of Scott E, Leemon, PC
41 Madison Avenue, 31st Floor
New York, NY 10010
(212) 696-9111—Office
(917) 238-0880—24 Hour Mobile
(800) 856-9712—Fax
scott@leemonlaw.com—Email
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From: Deborah A. Summers <DASummers@kslnlaw.com>
Sent: Friday, December 28, 2018 10:21 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: two comments

Generally, I find NYSCEF very easy to use. I can think of two things I'd like to see changed:

1. It would be helpful if one could easily remove oneself from the e-mail distribution list for a particular case (the opposite of the "Consent/Represent" feature). This would be useful when there's been a substitution of counsel, or even when a file is transferred to another attorney within a firm. (If the system already includes a way to do this, I'd be grateful if you'd tell me how.)
2. It would be helpful if one could remove (or archive) cases on the "My Cases/Appeals" list. There are many cases on my list that have been dismissed, settled or otherwise resolved, and it would be nice not to have to scroll past them to reach other cases. (Again, if there's already a way to do this, I'd appreciate your letting me know.)

Thanks,
Debbie Summers



Deborah A. Summers

Kenney Shelton Liptak Nowak LLP
50 Main Street | 10th Floor | White Plains, New York 10606
914.682.6888 x302 (Phone) | 716.853.0265 (Fax) | dasummers@kslnlaw.com | www.kslnlaw.com

Offices in Buffalo, Corning, Erie PA, New York City, Rochester, Syracuse and White Plains

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Friday, December 28th, 2018

FROM:

Ms. Sherry Elaine Sherrill
422 Moselle Street (Upper)
Buffalo, New York 14215-4032
(716) 605-6696 | **Cellular**
SherrySherrill@Outlook.Com | **Email**

TO:

Mr. Jeffrey Carucci, Statewide Coordinator For E-Filing
NEW YORK STATE UNIFIED COURT SYSTEM
New York County Courthouse
60 Centre Street-Room 119M
New York, New York 10007

RE: My Electronic-Filing Public Comment(s)

Dear: Sir,

I am writing to express my (general) comments concerning the proposal to expand e-filing of court Documents, within the (great) US State Of New York. I (sincerely) hope the (outstanding) US County Of Erie i.e. Western New York might lead the rest of our State in such (due) endeavor. Moreover, as an (former) Computer Skills Instructor, I wish to volunteer my service(s), during Instances in which Training to utilize the e-Filing System is to become implemented.

I am an (disabled) SUNY student whom is (otherwise) retired, although my (most) recent community participation was as an (Year 2012-2013) board member of the (ad hoc) Erie/Buffalo. Safe Neighbourhoods Initiative Committee. A family-member, (The Honourable) Betty Jean Grant, (then) 7th District Legislator, convened the board to address inner-city Crime Issues.

I aspire to become an Environmental and/or Immigration Law: Attorney.

That stated, I hope the State's e-filing Initiative will be available in Surrogate's, Supreme, Family and Claims Court- and in all Matters heard thereat. I also hope there will be an (permanent) Training Room and/or Location, for public and legal profession: Training(s). To my way of thinking, the e-Filing Training and Service Offering(s), should not omit:

1. Online Safety
2. Confidentiality
3. Courthouse Protocol(s) i.e. Screening, Hours of Operation, etc.
4. Using & Safeguarding Logon Credentials
5. Introduction to Basic Computer Skills
6. Basic Technical 'Troubleshooting'
7. Using Microsoft Apple, and Linux-based Word Processor Applications
8. Working with PDF Documents & Files
9. Using 'Browser' Software
10. Introduction to 'Browsing' the Internet
11. Requesting an e-File Account
12. Filing Court Papers (e-Filing)
13. Video-chatting
14. Using Email
15. Working with Files (Attaching, Detaching, Forwarding, Receiving, Deleting)
16. Keeping Records (Archiving Important Information)
17. Online File Storage Services & Utilities ('Cloud' Computing)
18. Contacting the Court
19. Connecting to the County Clerk's Office
20. Online Research
21. Using a Cellular Telephone
22. Mobile Apps
23. Using a Printer
24. Using a Photocopy Machine
25. Using a Scanner
26. Using a Fax Machine
27. (An) ADA Accommodation Programme
28. Assigning an e-Filing Proxy Individual (For: Pro Se and Represented: Litigants)
29. Making Suggestions, Reporting Problems, Filing Complaints, Requesting Assistance
30. 12-Hour/7-Day (e-filing) Technology 'Help Desk' and '866'/'877' Number
31. Digitized Records (Storage) Programme
32. Advertising Campaign (Print, Radio, TV, Social Media, 'Community' and Legis. TV)
33. College-University i.e. Law School Course: Impact(s) ('Mock' e-filing, etc.)
34. Bar Association Training

I am Founder of a nonprofit Organization, whose specialty has been teaching Basic Computer Skills and promoting Digital Literacy to minority and/or disadvantaged:

- Youth
- Adults
- Parents,
- Professionals
- (The) Disabled
- Neighbourhood Clubs
- Community Groups; and,
- Senior citizens.

In fact, according to the Founders and Operators of the Buffalo Free-Net- which ceased functionality within the past decade, my (personal) initiative was the (very) first (private) community Individual advocating Computer and Internet Technology Utilization, here in Western New York (during the early 1990's).

As a member of another community Organization, in 1996 I coordinated the City Of Buffalo, New York's *first ever* Minority i.e. (Black) African-American Business Summit. It was a resounding success, attracting well over 100 (aspiring) entrepreneurs from Western New York State. It was also attended by the Canadian Consulate du General. He spoke with me concerning Nation Of Canada's (then) expanding immigration population(s).

In my graduate Programme Studies, I hope to attend Quebec's McGill University, in (beautiful) Montreal.

I am willing to assist in any manner desired of I, including attending training(s) and/or events, taking of surveys and/or appearing for and/or within promotional advertisement(s). I am pursuing a court Matter, at Present, in Surrogate's Court:

Guardianship of my (developmentally) disabled child- (the latter) whom I taught to utilize a Windows and Mac OS computer(s), at Age: Two (2); and, *despite* her Autism diagnosis, at Age: Three (3).

In closing, I would also be available to assist in any recruitment and/or education Effort, whether targeting the general public and/or minority, and/or any other micro: Community. Thank You.

Respectfully,

Sherry E. Sherrill
Enclosure: One (1): Curriculum vitae
For Sherry E. Sherrill

From: hmiggreen@aol.com [mailto:hmiggreen@aol.com]

Sent: Wednesday, January 2, 2019 2:38 PM

To: Jeffrey Carucci <jcarucci@nycourts.gov>

Subject: electronic filing

I am a lawyer in Westchester County and I fully support electronic filing. helene greenberg

From: Marie Smith <msmith@npfslaw.com>
Sent: Thursday, January 03, 2019 3:15 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

I feel the site is very useful and informative. However, I wish hard copies did not have to also be mailed, it seems to defeat the purpose of trying to save on paper and postage.

Marie Smith

Legal Secretary to John R. Ferretti, Esq.
Nicolini, Paradise, Ferretti & Sabella
114 Old Country Road #500
Mineola, NY 11501
516-741-6355

CORAN OBER P.C.

STEVEN BEARD
ASSOCIATE ATTORNEY
SBEARD@CORANOBER.COM

January 3, 2019

VIA ELECTRONIC MAIL

Jeffrey Carucci, Statewide E-filing Coordinator
60 Centre Street, Room 119M
New York, New York 10007
Email: efilingcomments@nycourts.gov

Re: Comments on New York State Courts Electronic Filing (NYSCEF)

Dear Mr. Carucci:

I write in response to the request made on December 7, 2018 for comments on the NYSCEF program.

I am a big supporter of the NYSCEF program, in that it is very convenient and cost effective for this office and our clients to litigate matters in NYSCEF cases. Cases with electronic filing save all interested persons the time, cost and expense of having to travel to the Clerk's office to file papers. Such program is also great in ensuring that filed papers do not get lost or misdelivered, which is not an uncommon occurrence in hard copy matters.

However, there are things that New York should do to make the NYSCEF program more efficient. The first is to mandate that all Courts in New York State, including the lower courts (i.e. civil courts, district courts, town courts, city courts, etc.), become fully compliant with NYSCEF and that all cases be e-file cases (of course allowing for limited hard copy filings for pro se or attorneys unable to use electronic filing). The current piecemeal approach, in which some counties have e-filing while others remain hard copy, has resulted in an inconsistent and confusing system. For example, attorneys have to spend time (and thus client's money) determining whether a county is an efile county, or whether the subject matter of the action is the subject of mandatory e-filing, optional e-filing, or hard copy filing. Having a uniform, mandatory e-filing system will make it easier for attorneys to litigate all across the State of New York. Further, uniform mandatory electronic filing will make it easier for attorneys to litigate in counties that may be distant from their offices. What has been labeled the "Uniform Court System" has not been very unified, but it should be.

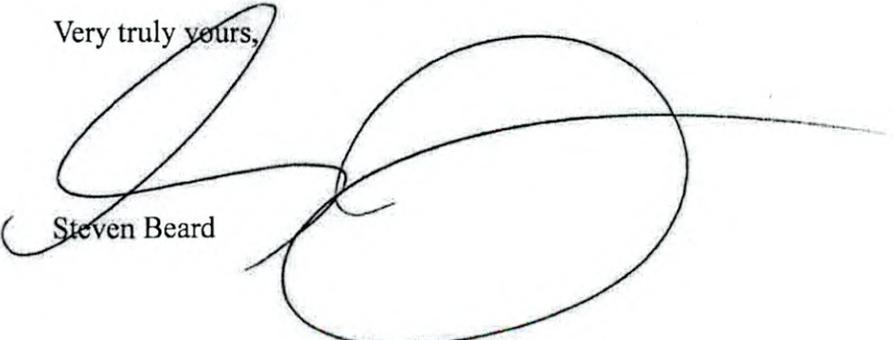
My second recommendation is that NYSCEF be consolidated with eCourts. It is a burden on counsel to have to actively sign up for eCourts on cases in which they are already participating in NYSCEF. Many attorneys will, once in a while, forget that even though they commenced their action via NYSCEF and have been filing motions by NYSCEF, that they still need to sign up for the case on eCourts. This results in attorneys inadvertently missing court appearances once in a while, as it not hard fort an attorney to forget that they did not sign up for eCourts in a NYSCEF

case. If we are already receiving status updates and calendar information via NYSCEF, why do attorneys also need to sign up for an entirely different system, eCourts. Courts and their Clerks should be compelled to place calendar appearances and other case information on NYSCEF, and eCourts should either be abolished or consolidated with NYSCEF. The fact that many attorneys have complied with this dual system does not excuse New York State from having this inefficient, unproductive, and unnecessarily burdensome system in which attorneys use one system for filings (NYSCEF) and another system for case management (eCourts). New York should be more efficient by having a single system for both filing purposes and case management purposes.

Lastly, NYSCEF should be used to make our Courts more environmentally friendly. Requiring working copies, as many Courts and Judges do, results in wasted paper, as it is well known that working copies get thrown out after a motion is decided. NYSCEF should be used as a means to avoid wasting paper, not as an excuse to waste even more. As suggested earlier, by making all lower courts, including civil, district, village, city, and county courts, subject to mandatory NYSCEF, the Courts would be helping limit the amount of paper wasted, as much paper is currently wasted in lower courts for cases involving smaller amounts of money.

I hope that New York State enacts these recommendations, which will help make the New York Court system more efficient, consistent, and actually unified.

Very truly yours,


Steven Beard

From: tcote@swartzlawfirmpc.com <tcote@swartzlawfirmpc.com>
Sent: Friday, January 04, 2019 10:00 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing comment

Good Morning,

Our e-filing experience has been a good one to say the least. We have one request if there is some way to add a request for a transcript judgment to file in a second county. A lot of times we have to e-file then send a paper check to the clerk and they send us a stamped copy of the transcript of judgment to file. If there is some way to add a request and then pay the fees online for a copy, even if it was more than the \$5 for the copy to cover the cost of an envelope and postage to our office.

Other than that we have had a wonderful experience e-filing and find the turn around time to be a lot quicker than doing everything by mail.

Thank you for your time and attention to this matter.

Swartz Law Firm, PC
200 Washington Street, Suite 301
Watertown, NY 13601
315.836.1549

From: E. Scott Brown
Sent: Friday, January 04, 2019 2:59 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Filing of Notice of Electronic Filing Form (EF-3/EFM-1/EFM-1A)

Dear Mr. Carucci:

Onondaga County Supreme Court has a consensual e-filing program for residential foreclosures.

Pursuant to § 202.5-b(b)(2)(ii), "A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing."

The notice on the login page for NYSCEF states "Reminder: When commencing a case electronically you must serve the appropriate Notice of E-Filing form in hard copy along with your commencement documents, all of which must bear full signatures. Proof of service of these documents must be e-filed as well."

We are discovering that especially with respect to the foreclosure proceedings, proof of service of "a" Notice of E-filing is being filed (with the Notice of E-Filing being listed as one of the documents served) but that no copy of the actual Notice of E-Filing is being filed.

Without the actual Notice of E-Filing form being filed, it is impossible to determine if the correct Notice of E-Filing has been filed. With respect to our cases, we have determined after the fact in several cases that the wrong Notice of E-Filing was served (indicating that e-filing was mandatory).

The rules should be amended to provide that the Notice of E-Filing must be filed separately from the Summons and Complaint and prior to the filing of the proof of service of the same.

Thank you,

E. Scott Brown, Jr.
Court Clerk to Hon. James P. Murphy, J.S.C.
Onondaga County Court House Room 302
401 Montgomery Street
Syracuse, NY 13202
Phone (315) 671-1040
Fax (315) 671-1186

From: Tom Taylor <ttaylor742@aol.com>
Sent: Friday, January 04, 2019 11:00 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: fradulent mortgage foreclosure filing

Dear Mr. Carucci,

It is much more difficult for corrupt law firms and/or attorneys to conceal fraud and deception in mortgage foreclosure filings due to the fact that NYSCEF is available for viewing by members of the general public.

There is a court filing on 11/14/18 in Nassau County electronically submitted by Houser and Allison under index #615431/2018. This was on behalf of US Bank National Association as Trustee, successor in interest to Wachovia Bank National Association, as trustee for AEGIS Asset Backed Securities Trust Mortgage Pass--Through Certificates, series 2005--4 v. Carol Ann Albi, et al. for the purpose of foreclosing on a mortgage dated 7/26/05. This mortgage was assigned to the plaintiff as shown in exhibit C, also dated 11/14/18.

This assignment of mortgage is not valid. It is unrecorded in Nassau County. The assignment does not reference any recording information on the mortgage. This includes the recording date and the book/page or instrument number.

The recording information on the mortgage is missing from the Notice of Pendency. It is also missing from the Complaint. Additionally, it does not appear in the Office of the County Clerk of Nassau County because the mortgage is unrecorded.

A wrongful foreclosure filing is tantamount to stealing a person's home. Although I am not related to, nor am I acquainted with Miss Albi; this matter is just so egregious. It has compelled me to call it to your attention.

I am thanking you in advance for your kind and careful consideration in this matter.

Yours truly,
Thomas M. Taylor
Taylor Information Service
856-524-1429

From: munsonlaw <munsonlaw@verizon.net>
Sent: Thursday, January 10, 2019 9:52 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: MunsonLaw <munsonlaw@verizon.net>
Subject: New York State Courts Electronic Filing Program

I think e-filing would be a mistake in Family Court. Often, the only time that an attorney can meet with an assigned client is at the Courthouse. Sometimes after meeting with such clients, it is necessary to fill out a handwritten petition and have it signed at the Courthouse because mailing it to the client will not result in it getting signed and returned. Sometimes attorneys learn that immediate relief is needed when they are there meeting with their clients for the first time at the Courthouse. E-filing would not be helpful in such cases.

Denise R. Munson, Esq.

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119 M
New York, New York 10007

Dear Mr. Carucci,

I am an older lawyer. When electronic filing was first proposed, like many others of my generation, I saw neither the need nor the utility of the program and figured that it was a make-work project for bureaucrats which would soon founder under its own technological weight.

As with cell phones and laptops, I now can no longer remember how we did without it. In my field, civil litigation, it has been an unqualified success. My only wish for the program would be that it expand to all civil proceedings (perhaps excluding filings in domestic relations case).

For working lawyers, the program's ease of use and ease of recovery of all case documents makes our lives much simpler and our service to our clients both easier and less expensive. My only quibble would be that many judges require paper filing to chambers in addition to e-filing, thus continuing the need to print out copies and have paralegals run up to court to file them.

Proceedings in court are presumptively open to all. Electronic filing has made that presumption a reality for anyone interested in a case.

I would like to see two things: (1) as mentioned above, an expansion of the program to all courts and all cases except domestic relations, and (2) an integration with the webcivil calendaring system so lawyers would only have to consult one database to see what has been done and what is scheduled.

Respectfully submitted,

s/Colin E. Kaufman

Colin E. Kaufman
ATTORNEY AT LAW
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New York, New York 10004
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