

# **Supreme Court**



**Joint Protocols for  
New York State Courts E-Filing (NYSCEF)  
Cases Filed in Supreme Court  
Herkimer County**

## **I. Introduction:**

Consensual e-filing will begin in Herkimer County Supreme Court for certain civil matters as of November 18, 2020. See Administrative Order AO-247-20

**All applicable Legislation, Rules and Administrative Orders can be viewed at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) under the “Rules and Legislation” tab on the Supreme Court login page.**

The Administrative Judge of the Fifth Judicial District and the Herkimer County Clerk hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”), implemented in the Herkimer County Supreme Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (hereinafter “Uniform Rules” and, in particular 22 NYCRR§202.5-b) and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website ([www.nycourts.gov/efile](http://www.nycourts.gov/efile)) as well as the appropriate IAS Courts’ Part Rules to ensure compliance with all regulatory and Court requirements. These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

**A. Effect of Joint Protocols:** Protocols promulgated herein, as well as any additions or amendments thereto, do not change applicable rules or statutes with respect to civil practice as defined by the New York State Civil Practice Law and Rules (hereinafter “CPLR”), the Uniform Rules or the Commercial Division Rules (22 NYCRR §202.70)

**B. Official Case Record:** The official case record for any action or proceeding, and the filing or entry of documents therefore, shall be the records maintained by the Office of the Herkimer County Clerk via its electronic database, online images and hard copy filings as per the constitutional authority vested as the Clerk of the Supreme and County Courts. In addition, as Clerk of the Supreme and County Courts, the Herkimer County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention, and dissemination of court records within Herkimer County.

**C. Getting Started:** Prior to utilizing the NYSCEF system, an attorney, party, or filing agent must register to become an authorized user of the NYSCEF site at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) All attorneys admitted to practice in New York State can log into NYSCEF using their Attorney Registration Number and their Attorney Online Services account password.

Attorneys who have not created an Attorney Online Services account (usually done when renewing one’s bar registration) can use the “Create Account” link under the Supreme Court Login page on the NYSCEF homepage at [www.nycourts.gov/efile](http://www.nycourts.gov/efile). An individual seeking to act as filing agent must submit an EF1 application form to obtain an id for NYSCEF and in addition the agent must file a *Statement of Authorization for Electronic Filing* form, (also accessible on the NYSCEF Supreme Court homepage under “FORMS”) for each case in which an attorney authorizes the agent to file on the attorney’s behalf.

**D. Unrepresented Litigants:** A Party to an action who is not represented by Counsel is exempt from e-filing in either a consensual or a mandatory program. Such unrepresented individuals may participate to e-filing if they wish. Any such party who wishes to participate in e-filing utilizing the NYSCEF system must obtain an id by visiting our website [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and clicking on the Home Unrepresented Litigants Link.

If an unrepresented party chooses NOT to participate in e-filing through the NYSCEF program, they must file their pleadings in hard copy and shall serve and be served in hard copy on or by any other

parties involved in the action. Documents presented by unrepresented litigants will be uploaded to NYSCEF by the County Clerk. However, participation of an unrepresented litigant will not be presumed without the litigant recording their consent in the NYSCEF System.

**E. ALL CASE TYPES** may be electronically filed (E-filed) on a consensual basis: All Civil Matters

**II. Identifying E-filed Cases:** Cases that are initially commenced by the electronic filing through the NYSCEF system are identified as e-filed cases by assignment of an Index Number that has an “EF” prior to the index number (for ex. EF2020-xxxxxx). Upon filing of the commencement pleadings and payment of the statutory fee, the Herkimer County Clerk will assign a NYSCEF designated Index Number and the filer shall be notified via the NYSCEF system of the number assigned and filing date. Such Index Number must be affixed to all document submissions, filings, and communications to the Herkimer County Clerk and the Court.

### **III. Filing of Documents and Pleadings**

**A. Commencing an action in NYSCEF:** to commence an action, go to the NYSCEF home page at [www.nycourts.gov/efile](http://www.nycourts.gov/efile), Click the court you wish to file to.

Unless otherwise stated in these Protocols, each document, including any exhibits, must be uploaded as a separate .pdf file and the correct document type must be selected under the Document Type menu.

**B. Response to Electronic Filing:** In order to receive notification *of any e- filings made* in a case filed in NYSCEF, you must record your representation on the NYSCEF Website. Please note recording your “Consent/Representation” in NYSCEF does not constitute a Notice of Appearance for jurisdictional purposes; **Unrepresented** Litigants **who wish to participate in** E-filing, must also record their Consent/Representation.

#### **C. Responsibilities of Parties NOT participating in E-Filing:**

- a. Any non-participating party is responsible for filing all paper documents with the County Clerk.
- b. Paper documents must be presented unbound. Papers that are bound may delay the processing of the document.
- c. The Court will not assume the responsibility of filing or serving of any papers. A party that is not participating must serve the documents on all other parties in paper form and file an Affidavit of Service with the County Clerk and/or Court. Hard Copy (Paper Format) filings by Attorneys must always include the *Notice of Hard Copy Submission – E-filed Case* form.

#### **D. Converting a paper matter to E-filing pursuant to 202.5-b(b)(2)(iv):**

1. If all parties consent to have the matter converted from paper to e-filing – they are required to complete and submit a Stipulation and Consent to E-filing Form (EF-10). This form is available on the NYSCEF website under the Forms menu and can be sent via EDDS to the appropriate Supreme Civil Court, **OR**,
2. A party may apply directly to the court to order such conversion – by **Letter Application to Convert a Pending Action to E-Filing Form**. (EF-28). This form can also be sent via EDDS to the appropriate Supreme Civil Court.

Posted on the NYSCEF website, under the Forms menu, are two “new” forms provided to assist a

party requesting the court order the conversion of a paper matter to e-filing:  
EF-28 – Letter Application to Convert a Pending Action to E-filing  
EF-28a – Notice of Conversion to Electronic Filing

The *Letter Application to Convert a Pending Action to E-Filing, (EF-28)*, is a simple no fee application/form requesting the court order the conversion. Once it is completed, it must be served on all parties by mail and may be sent to the court via EDDS together with proof of service. If the court approves the application, the Court will notify the County Clerk to convert the matter, and the County Clerk will notify you once the conversion process is completed. Thereafter, you must serve all parties with a *Notice of Conversion to Electronic Filing Form, (EF-28a)* – advising them of their available filing and service options – and you must then e-file proof of service of this notice in the newly converted matter. (If the court does not approve the application, the Clerk will notify you).

3. Once the matter has been converted and is available in NYSCEF parties will receive an email notification.

**E. Rejection of Hard Copy Filings:** In accordance with Uniform Rule §202.5-b(d), the County Clerk shall refuse to accept for filing any hard copy papers filed to an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules and the papers bear a completed *Notice of Hard Copy Submission - E-filed Case* form or

**F. Payment of Fees:** On a temporary basis, until online credit card payment is made available by the County Clerk, the payment of statutory filing fees shall be made to the Herkimer County Clerk's Office via check or cash, mail or deliver to: 109 Mary Street, Herkimer, New York, 13350.

**No Fee Authorization Letter:** When a “No Fee Authorization Letter” is e-filed it is to be a written request on the letterhead of the attorney or filer that an action or particular document type will be accepted with no fee required and include the basis for the exemption.

**G. Confidential Personal Information:** An attorney or unrepresented party filing a document via the NYSCEF system must comply with the requirements of 22 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing Social Security Numbers. **It is the sole responsibility of counsel or the unrepresented person filing to be aware of and to comply with existing laws requiring non-disclosure of confidential personal information contained in any document e-filed in NYSCEF.**

**A. Exhibits:** In the NYSCEF system, each exhibit must be uploaded as a separate .pdf file. When filing an exhibit, please choose the document type “Exhibit” and enter the appropriate number or letter and a brief description of the exhibit in the additional document information field; each exhibit should bear a separate cover sheet clearly marked as “Exhibit A,” “Exhibit B,” etc. Where exhibits or other documents are impractical to file electronically, cannot be scanned to .pdf (video, oversized map, etc.), such exhibit may be filed in hard copy and must be accompanied by the *Notice of Hard Copy Submission - E-filed Case (EF-21)*. The *Notice of Hard Copy Exhibit Filing* form should be uploaded to NYSCEF as a placeholder.

**B. Affidavits of Service:** In the NYSCEF system, each Affidavit of Service must be uploaded as a separate .pdf file. Document type “Affirmation/Affidavit of Service” should be selected and the name of the party served should be entered as Additional Document Information.

**C. Errors in Submissions:** Submission of documents which, upon examination, require

correction or addition will result in notification to the filer advising that the document has been returned for correction. The filer shall make the required corrections and/or additions as indicated in the e-mail transmission. The corrected documents may be resubmitted using the "Re-file this document" link highlighted in the filer's document list for the respective case.

- D. **Technical Failures:** When filing by electronic means is hindered by a technical failure, please refer to Uniform Rules. List 2025(b)(i).
- E. **Discovery Materials:** In the absence of the Court's permission or stipulation of the parties, no party shall file electronically any discovery materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the Court. Refer to Uniform Rule 202.5-b(j).
- F. **Notice of Entry:** The Part Clerk shall upload decisions and orders electronically. The NYSCEF system will provide notice that the decision/order has been posted, however the entry of such decision/order shall be effectuated thereafter upon the County Clerk affixing the "Filed Stamp" on the electronically filed document.
- G. **Working Copies:** Electronically filed documents subject to review and processing by the Part Clerk do not require a working copy unless otherwise directed or provided for in IAS Part Rules. Pursuant to the Uniform Rules, any working copy submitted shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice generated by the NYSCEF site at the time of filing. Please consult the individual Justice's Part Rules and/or consult with the chambers to determine whether and how working copies are to be provided. Working copies will not be printed or delivered to chambers by the Herkimer County Clerk or the Chief Clerk of the Courts or any of their personnel. The official record of a document in an electronically filed case is the document filed via the NYSCEF system. Working copies are intended only for use by the Justice. The Court will discard all working copies after the Justice has finished with them. Thus, in the event that counsel fails to file a document via the NYSCEF system, the document will not be part of the court record.

**IV. Requests for Judicial Intervention (RJIs):** An RJI in a NYSCEF case shall be filed via the NYSCEF system:

**A. NYSCEF-eligible Actions and Proceedings:** NYSCEF permits the filing of an RJI electronically. NYSCEF will require particular information about your case type and filing that will assist you in creating an appropriate addendum. The filer will have the option of having the NYSCEF system generate the RJI and appropriate addendum using the information provided by the user or they may scan and upload their previously prepared RJI.

**B. Residential Foreclosure Actions:** In a Residential Foreclosure Action,

The Plaintiff is required to simultaneously file the following four (4) documents, unless previously filed, as separate pdf files:

1. Proof of Service of the Summons, Complaint, Summons with Notice, or Summons and Complaint;
2. *Request for Judicial Intervention;*
3. *Foreclosure Addendum (attached to the RJI, if a prepared RJI is filed);* and
4. Depending on the commencement date of the action, either (a) or (b), below:

a. If the action was commenced on or after August 30, 2013, *Certificate of Merit* pursuant to CPLR §3012-b(a) or:

b. If the action was commenced prior to August 30, 2013, *Affirmation of Accuracy* pursuant to Administrative Order 431/11 or *Certificate of Merit* pursuant to Administrative Order 208/13

Further, if the matter is NOT eligible for settlement conference, Plaintiff must file the *Foreclosure - Settlement Conference Ineligible Affirmation* stating such and the reason why the matter is not eligible for Settlement Conference pursuant to Administrative Order dated March 3, 2010. If the reason is that premises is vacant, not owner-occupied/not intended to be owner-occupied, the Affirmation must also state the efforts that were taken to determine same. The mere fact that the homeowner was served at a location other than the property address is not sufficient.

If the matter is eligible for Settlement Conference, no further documents need be filed. The Court will schedule a mandatory settlement conference pursuant to CPLR §3408 and Uniform Rule §202.12-a. No motions or ex parte applications should accompany the RJ if the matter is subject to a mandatory settlement conference. No motions are to be filed until the settlement conference phase is completed.

**C. Commercial Foreclosure Actions:** All foreclosure actions involving commercial property, commercial loans, or between commercial entities require the Plaintiff to file, as a separate .pdf document, a *Foreclosure-Settlement Conference Ineligible Affirmation* detailing the reason that the action is deemed commercial. If the Plaintiff is also seeking assignment to the Commercial Division, the *Commercial Division Addendum* form must be filed with a prepared Request for Judicial Intervention. If the RJ is prepared by the e- filing system, the NYSCEF system will automatically prepare the required Addendum.

**D. Notice of Motions and Petitions:** Submission of motions, including cross motions, shall comply with all relevant provisions of the CPLR, the Uniform Rules of the New York State Trial Courts (NYCRR) and Part Rules.

**E. General:** A motion on notice or a notice of petition in a NYSCEF case shall be filed through the NYSCEF system and must be accompanied by a Request for Judicial Intervention if the motion is being filed upon commencement of the action or if the matter has not yet been assigned to an IAS Justice. In addition, cross motions with the appropriate filing fees and opposition and reply papers must be submitted via the NYSCEF system.

**1. Residential Foreclosure Actions:** Except where indicated otherwise in the Part Rules of the individual IAS Justice, if no defendant served an Answer to the Complaint, the Plaintiff may apply ex parte for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. If a defendant served an Answer and did not waive further notice, the Plaintiff must move on notice for Summary Judgment for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. Applications for the appointment of a referee to compute must include a proposed Order of Reference submitted as document type: *Ex Parte Order (Proposed)*, if ex parte, or document type: *Order (Proposed)* simultaneously with a separate document type *Notice of Motion*, if on notice.

Similarly, applications for a Judgment of Foreclosure and Sale must include a proposed judgment submitted as document type: *Ex Parte Order (Proposed)*, if ex parte, or as document type: *Judgment to Court (Proposed)* with a separate document type: *Notice of Motion*, if on

notice. In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the Settlement Conference Part.

a. **Calendaring of Motions and Petitions:** Refer to individual Justice's Part Rules.

b. **Adjournments:** Refer to individual Justice's Part Rules.

c. **Exhibits:** Please see Section III (H) above regarding the submission of exhibits.

d. **Working Copies:** Please see Section III (G) above regarding working copies.

e. **Affidavits of Service:** Affidavits of Service are required in an e-filed case only when documents have been served in hard copy or pursuant to the directive of the Court. Refer to the Uniform Rules of the New York State Trial Courts (NYCRR) for additional information (. refer to rules).

f. **Proposed Orders:** Proposed orders shall be submitted through the NYSCEF system and a working copy provided to the IAS Justice for signature, if Part Rules so require.

g. **Decisions and Orders:** Decisions and/or Orders issued will be scanned by Chambers staff into the NYSCEF system, which will immediately transmit notice of the event and a link to the decision and/or order via the NYSCEF system to all participating parties. The posting of the Decision and/or Order by Chambers staff does not constitute entry thereof. The entry of such Decision and/or Order shall be effectuated thereafter, upon the County Clerk affixing a "Filed" stamp. [See Section III(M) for more information regarding Notice of Entry or Uniform Rule 202.5-b(h)(3)]

**F. Orders to Show Cause (OTSC):** Proposed Orders to Show Cause (hereinafter "OTSC") shall comply with all relevant provisions of the CPLR, the Uniform Rules including Commercial Division Rule (22 NYCRR 202.70) and Uniform Rule 202.7(f), and any other applicable provision of the law, regarding notice of the application to the opposing party. Scheduling of return dates is coordinated through chambers, pursuant to posted Part Rules.

Except as provided in the following paragraphs, a proposed OTSC and supporting documents must be submitted by filing with the NYSCEF system. Original paper documents will not be accepted by the County Clerk unless specifically permitted by the Uniform Rules or these Protocols.

a. **OTSC Concurrent with Commencing an Action:** Where the action is being commenced and an Order to Show Cause (hereinafter OTSC) is submitted simultaneously with the purchase of an Index Number, a Summons and Complaint, a Petition or a Summons with Notice, and the filing of an RJJ, the filer must select the document type: *Order to Show Cause with Accompanying Commencement Doc(s) (Proposed)* to file the proposed OTSC.

b. **OTSC and Temporary Restraining Order Concurrent with Commencing an Action:** Where the action is being commenced and an application for an OTSC with an Ex-Parte Temporary Restraining Order (hereinafter TRO) is being made simultaneously, an Index Number must be obtained at the County Clerk's Office and the documents (with Index Number affixed) presented to the Chief Clerk's Office in hard (paper) copy with the *Notice of Hard Copy Submission – E-filed Case* form and the payment receipt. An IAS Justice will be assigned to the matter and the OTSC with TRO should be submitted to the Justice. That same hard (paper) copy of the proposed OTSC shall be signed by the Justice and retained by the Court. All other documents, including a

conformed **copy** of the OTSC, will be returned to attorney/party by the Court Part Clerk. The Attorney or party shall immediately file the commencement document(s), RJI, and proposed order to show cause as follows:

- A. Choose "Start a New Case;"
- B. File the appropriate Commencement Document(s) RJI, and choose document type: *Order to Show Cause with Accompanying Commencement Doc(s) (Proposed)* to file the proposed OTSC; and either simultaneously or within 3 business days of service, e- file the supporting documents or exhibits.
- C. On Payment Screen, choose "Fee Previously Paid," complete required fields, note in COMMENTS REGARDING the PAYMENT, "Index Number has been assigned" and provide the assigned Index Number.
- D. Once the county clerk has assigned the index number in NYSCEF of notice of filing of the proposed OTSC in NYSCEF, the Court Part Clerk shall upload the signed OTSC with TRO.

**c. OTSC in Existing Action:**

- 1. If there is no prejudice or emergency, the proposed OTSC and supporting papers should be uploaded to NYSCEF as separate .pdf files. A paper copy of the OTSC may be required by the Justice for signature. Refer to Part Rules for such requirements.
- 2. Where the filer is submitting an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Uniform Rule 202.7(f)), or where a party seeks to submit documents in an emergency in accordance with the Uniform Rules, the motion fee for the OTSC must be paid to the County Clerk's Office and the proposed OTSC may then be presented to the IAS Justice in hard (paper) copy with completed *Notice of Hard-Copy Submission – E-filed Case* form and payment receipt affixed to the proposed OTSC.

That same hard (paper) copy of the proposed OTSC shall be signed by the Justice and all documents, including a **conformed** copy of the OTSC, will be returned to attorney/party by the Court Part Clerk. Attorney/filer shall immediately file the proposed OTSC as follows:

- a. Choose document type: *Order to Show Case (Proposed)* to file the proposed OTSC; and either simultaneously or within 3 business days of service, e-file the supporting documents or exhibits;
  - b. On Payment Screen, choose "Fee already Paid," complete required fields.
- 3. Filer will advise notice of filing of the proposed OTSC, the Court Part Clerk shall upload the signed OTSC.

**G. Documents with Confidential Information:**

An attorney or unrepresented party filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of document containing social security numbers. It is the sole responsibility of counsel or unrepresented litigant to be aware of and to comply with existing



laws requiring nondisclosure of confidential personal information contained in any document e-filed in NYSCEF.

#### H. Sealed Documents:

a. **Application for a Sealing Order:** Requests to seal a document or file shall comply with all relevant provisions of the CPLR, the Uniform Rules, and any other applicable provision of the law. To seal a document or file in a NYSCEF case, a party/counsel must apply to the Court for a “sealing” order pursuant to Uniform Rule 216.1 directing the County Clerk to seal the document or case file. The Court DOES NOT accept Stipulations of Confidentiality.

##### 1. Sealing document(s) previously filed in NYSCEF:

To seal a document that was previously e-filed or an entire case file in a pending e-filed case, a party or counsel must apply for a sealing order. Application may be made through the NYSCEF system and, upon issuance of an Order directing the sealing of an existing e-filed document or case file, the Part Clerk shall upload and file the signed Order. Counsel/party must file the Notification for Sealing form to effectuate the order. The County Clerk shall seal the document(s) or the file identified in the sealing Order as directed by the court. No further action by counsel is required.

##### 2. Sealing Document(s) Not Yet filed in Existing NYSCEF case:

a. Where a party/counsel seeks to obtain an order in an existing efiled case for document(s) not yet filed, application may be made through the NYSCEF system.

If the motion/application is filed in the NYSCEF system, the motion and any accompanying documents will be open to public view until a sealing order is issued.

b. Alternatively, in the event that a party/counsel wishes the motion/application and/or documents be unavailable on the NYSCEF system, counsel may file a motion to seal in hard copy form, as follows: Following payment of any fees due, application may be made in hard copy with the NYSCEF document type *Notice of Hard-copy Submission – E- Filed Case (EF-20)* form attached, to the IAS Justice. Any opposition or reply papers shall likewise be submitted in hard copy form, with said Notice attached. Upon receiving the signed Order directing the sealing of a document that has not yet been e-filed, the Part Clerk shall upload the Order giving notice to the filer that the order for sealing is granted.

Upon notification that the order for sealing is granted, counsel should provide the document(s) covered by the sealing order to the County Clerk so that the documents may be uploaded in the NYSCEF system and appropriately sealed.

c. **If the court decides the RECORDS ARE NOT GOING TO BE SEALED**, all documents presented in connection with the sealing application that have not yet been e-filed must be e-filed within three business days after the order denying the Sealing Order has been uploaded.

##### 3. Sealing the Entire File:

In the event that an Order shall direct the sealing of an existing case in its entirety, the County Clerk shall seal the entire file upon filing of the Sealing Order by the Court Clerk.

**I. Note of Issue:** The case will be deemed ready for trial once a NYSCEF document type *Note of Issue- With Jury* or *-without Jury* has been uploaded to the NYSCEF system.

**J. Consolidation or Joint Trial:** Consolidation or joint trial of proceedings shall be at the discretion of the Court as permitted under the CPLR and case law. The Court DOES NOT accept Stipulations to Consolidate. Upon filing of a document type "*Order Directing Consolidation*", (which will be uploaded into the NYSCEF System by Court Staff once it is signed by the Judge) all subsequently filed pleadings/papers shall be filed in the case bearing the lower Index Number assigned, unless specifically directed otherwise by the Court. An order directing a joint trial of proceedings will not result in the consolidation of cases. The previously active case will be closed to e-filing by the County Clerk

### **K. Judgments**

**a. General Procedures for Money Judgments:** Filers must submit proposed judgments through the NYSCEF system as single documents and not combined with any other unrelated filings or documents. The filer may choose from document types:

- *Judgment – to County Clerk (Proposed)*
- *Judgment – to Court (Proposed), or*
- *Clerk Default Judgment (Proposed),*
- *Judgment by Confession (Proposed)*

The Filer may file a statement for judgment, prior to the filing of an RJJ, as either document type:

- *Judgment – to County Clerk (Proposed) or*
- *Judgement - Clerk Default (Proposed)*
- *Judgment by Confession (Proposed)*

An additional *Bill of Costs* may be required and uploaded as a separate document.

**1. Submission:** A party seeking the entry of a money judgment must submit papers in compliance with statutory requirements including, but not limited to, submission of a document type *Bill of Costs* with attorney affirmation, if applicable, including interest calculation, proof of additional mailing. The NYSCEF system will ask the filer to select any supporting documents to be included in the judgment roll.

The Proposed Judgment or Bill of Costs must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Clerk and failure to include the addresses will result in the document being returned to the filer for correction.

**2. Examination:** County Clerk Staff will examine the submission for entry. If the submission is deficient, the documents will be returned for correction and deficiencies will be communicated to the filer via the NYSCEF system.

**3. Notification of Entry:** Once the judgment is entered, notification will be sent via the NYSCEF

system to all consenting parties. “Entry” by the Clerk constitutes entry as defined by CPLR §5016(a). Such notification via the NYSCEF system shall not constitute service of Notice of Entry, but only notification that the judgment has been entered. It shall be the responsibility of the party to serve the Notice of Entry, which may be done in the NYSCEF system or in hard copy (202.5(b)(h)(3)). Any parties not participating in e-filing must be served in hard copy accordingly.

b. **Entry of Default Judgments:** A party seeking the entry of a default money judgment by **the Clerk** shall choose the following document type *Clerk Default Judgment (Proposed)*. The statutory filing fee required and a statement for judgment and *Bill of Costs* may be submitted as the document type *Clerk Default Judgment (Proposed)* as one .pdf file.

1. **Entry of Judgment Based on Stipulation of Settlement:** A party seeking the entry of a money judgment by the County Clerk pursuant to a Stipulation of Settlement or Release shall choose the following document type: *Judgment (Proposed)*. If the Stipulation of Settlement on which the judgment is based has not yet been filed or is being filed simultaneously with the judgment, the filer shall choose the following NYSCEF document type: *Stipulation of Settlement* and pay the required fee. If the Release on which the judgment is based has not yet been filed, the original or a copy must be filed.

2. **Entry of Judgment Based on Decision and/or Order:** If the entry of the judgment is based upon a previously signed decision and/or order, the filer shall choose the following document type *Judgment - to County Clerk (Proposed)*. There is no fee to enter said judgment. See also Paragraph C, below.

c. **(Money) Judgment Signed by the Court:** A party seeking the entry of a money judgment signed by the Court shall choose the following document type: *Judgment – To Court (Proposed)*. Upon notification that the Order has been uploaded by the Court, the filer shall upload the statement of judgment with complete calculations of costs, disbursements, interest, and attorney fees, if applicable, unless included in the signed Judgment, as document type: *Judgment - to County Clerk (Proposed)*. The judgment shall comply with statutory requirements and failure to include the addresses of the debtor(s) or creditor(s) will result in the judgment being returned to the filer for correction. Notification of entry will be transmitted by the NYSCEF System to all consenting parties.

In the event no *Bill of Costs* is submitted, the filer must affirmatively indicate his/her intent that a Money Judgment be docketed in the public records of the County Clerk as a result of the Order and pursuant to CPLR §5018(a) by uploading document type *Notice to County Clerk CPLR 8019(C)*. A copy of the order directing the County Clerk to enter a money judgment must be included as part of the attached .pdf file.

d. **Judgment of Foreclosure - Entry by the County Clerk.** A party seeking the entry of a Judgment of Foreclosure shall first upload document type: *Oath (of Referee)* and NYSCEF document type: *Bill of Costs* for approval by the County Clerk. Applications for a Judgment of Foreclosure and Sale should be delayed until the County Clerk has reviewed and granted costs. Filer, when submitting the application for Judgment of Foreclosure, may use either document type: *Ex Parte Order (Proposed)*, if ex parte, or document type: *Judgment to Court (Proposed)* with a separate document type: *Notice of Motion*, if on notice. In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the Settlement Conference Part.

e. **Confession of Judgment:** A party seeking the entry of judgment by confession via the NYSCEF system shall choose the document type: *Confession of Judgment (Affidavit of Defendant)* as the Commencement Document and *Judgment by Confession (Proposed)* for submission of the judgment. A statutory fee for the assignment of an Index Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

f. **Foreign Judgment:** A party seeking entry of a foreign judgment shall choose the document type *Foreign Judgment [5402]* as the Commencement Document and document type *Judgment to County Clerk – (Proposed)* for submission with the *Bill of Costs*, and document type: *Affidavit* for submission of the Affidavit pursuant to CPLR Article 54. A statutory fee for assignment of an Index Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

g. **Subsequent Judgment or Order / Renewed Judgments:**

When a previously entered money, judgment is affected by a subsequent order or judgment (i.e., to amend or vacate), the attorney must obtain a Certified Copy of the Order affecting the docketed Judgment, and file same with the Registrar's Division (Land Records). County Clerk will make no notation to the docket entry, except as follows:

Where the application for a renewal judgment is made, the docket of the existing judgment will be updated if the Order clearly indicates that a Judgment is being renewed and if the recording information of the original judgment is provided therein. A statement of judgment, including costs and disbursements may be uploaded as the document type: *Judgment to County Clerk (Proposed)*.

L. **Discontinuing (Foreclosure) Actions and Cancelling Notices of Pendency/Lis Pendens:**

Discontinuances of Action and Cancellations of Notices of Pendency/Lis Pendens **cannot be combined into one document** and must be uploaded as two separate documents. Select document type: *Stipulation of Discontinuance (Post or Pre RJI)* or *Notice of Discontinuance (Post or Pre RJI)*, if applicable, as a separate document under the Accompanying Documents menu. If also cancelling the Notice of Pendency/Lis Pendens, select document type *Cancellation of Notice of Pendency/Lis Pendens* as a second document under the Accompanying Documents menu. The Affidavit required by CPLR §6514 must be attached to the document type: *Cancellation of Notice of Pendency/Lis Pendens* as one .pdf document, if applicable.

M. **Notice of Appeal:** A Notice of Appeal, in a e-filed case, shall be filed in NYSCEF and the appropriate fee paid. The Notice shall be filed in conformity with all pertinent statutory and regulatory requirements.

N. **Consumer Credit Card Transactions:** Actions commenced pursuant to 22 NYCRR 202.27-a must be filed under the appropriate case type, depending on the status of the Creditor. Choices include: "Consumer Credit (Card) Transaction Original Creditor," "Consumer Credit (Card) Transaction Debt Buyer," or "Consumer Credit (Card) Transaction Secondary Debt Buyer". The appropriate document choice is required in order to obtain access to specific document types required by the Rule. See Administrative Orders dated September 15, 2014 (AO/185/14) and December 23, 2014 (AO/337/14 and AO/338/14), Rules 202.27-a and -b, and forms at <http://www.nycourts.gov/rules/ccr/>.

O. **Other:**

a. **Effect of Communication from the Office of the Herkimer County Clerk or Chief Clerk's Office:** Any and all e-mail notifications from the Herkimer County Clerk or the Chief Clerk's Office shall not be construed or considered to be service of Notice of Entry for purposes of commencement of the statutory time to appeal or otherwise. Such communications from the County Clerk or Chief Clerk shall constitute and serve only as notification of receipt or entry in a ministerial capacity.

b. **Support:** Any attorney or self-represented litigant who requires assistance in a NYSCEF case is encouraged to contact the Supreme Court part at (315)-619-3414 with questions about individual Part Rules or contact the E-filing Resource Center at 646-386-3033 or [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov) with any questions about the NYSCEF System. In addition, a computer and scanner will be made available the Law Library in the Herkimer County Courthouse for the use of individuals who may need assistance in making filings in a NYSCEF case.

Dated: November 18, 2020