

Niagara County Supreme and County



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

I. Introduction:

The previously consensual e-filing program in Niagara County Supreme Court for certain civil matters will be made mandatory as of December 15, 2015.

See Administrative Order 145/15 (hereafter AO/145/15)

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

These Joint Protocols are applicable to those matters previously filed under the consensual e-filing program and those matters required to be e-filed under the mandatory program.

The Administrative Judge of the Eighth Judicial District and the Niagara 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 Niagara 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-bb and §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) as well as the appropriate IAS Courts’ Part Rules to insure 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: The NYSCEF system does not change the rules applicable to civil litigation. As such, the 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 Niagara 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 Niagara County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention, and dissemination of court records within Niagara 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 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. An individual seeking to act as filing agent must submit an EFI 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 are parties to an action who are not represented by Counsel. Such unrepresented individuals **may elect to participate in e-filing**. Any such party who wishes to participate in e-filing utilizing the NYSCEF system must obtain an ID by visiting the NYSCEF website at www.nycourts.gov/efile and clicking on the UNREPRESENTED LITIGANTS link.

If an unrepresented party chooses NOT to participate in e-filing, they must file their pleadings in hard copy and shall serve and be served in hard copy on or by any other non-participating parties in the action. Documents presented by unrepresented litigants will be uploaded to NYSCEF by the County Clerk.

For an explanation of your **options as an unrepresented party**, please contact the **8th Judicial District Help Center at (716)845-1816, or the NYSCEF Resource Center at 646-386-3033 or efile@nycourts.gov**

E. Case Type Eligibility for E-Filing:

A) MANDATORY: All actions **except** for the following:

- CPLR Article 70 Proceedings,
- CPLR Article 78 Proceedings
- Election Law Proceedings,
- Matrimonial Actions
- Mental Hygiene Law Matters,
- In Rem Tax Foreclosure actions
- Real Property Tax Law §730 proceedings

B) MANDATORY IN PART: (E-Filing of commencement documents is mandatory, e-filing of subsequent documents is consensual/voluntary)

- Consumer Credit Actions, as defined in CPLR §105(f)
- Residential Foreclosure Actions, as defined in RPAPL §1304.

C) CONSENSUAL/VOLUNTARY:

- CPLR Article 70 Proceedings
- CPLR Article 78 Proceedings
- In rem Tax foreclosures
- RPTL §730 Proceedings

II. Identifying E-filed Cases: Cases that are initially commenced by the electronically filing through the NYSCEF system are identified as e-filed cases by assignment of an Index Number that has the letter “E” immediately preceding the Index Number (i.e. E12345/2015). Upon filing of the commencement pleadings and payment of the statutory fee, the Niagara 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 Niagara 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 homepage at www.nycourts.gov/efile

-Click on **Login-Appellate Court, Civil Court, Court of Claims and Supreme Court**

-Log in

-From the e-file menu options, select “Supreme Court” then “Start a new case”.

-Thereafter the system will direct you.

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 notifications of any filings made in a case filed in NYSCEF, you must record your representation on the NYSCEF website. Please note that recording your “Consent/Representation” in NYSCEF does not constitute a Notice of Appearance for jurisdictional purposes. Unrepresented litigants who wish to participate in Electronic Filing must also record their consent/representation in the NYSCEF system.

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.** An original and one copy of the paper documents must be provided to the County Clerk. The original must be presented unbound and the copy must be bound.
- c.** The Court will not assume the responsibility of filing or serving any papers. A party that is not participating in electronic filing 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 Case to Electronic Filing: Cases originally commenced in hard-copy (paper) format may later be converted to NYSCEF status by delivering an original *Stipulation and Consent to E-file* form signed by all parties (with limited exceptions) to the Office of the Niagara County Clerk (and a copy to the Part Clerk if assigned to an IAS Justice). Such cases will initially bear a regular Index Number.

The County Clerk will upload the commencement documents (Summons/Complaint, Petition), RJI, and the minutes of those documents remain in paper format at the Clerk's Office.

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 Confirmation notice.

Equipment is made available for use by filers at:

- **Chief Clerk's Office**, 775 Third Street, Niagara Falls, New York;
- **Niagara County Law Library**, 175 Hawley Street, Lockport, New York; and
- **The 8th Judicial District Court Help Center** presently located at 77 West Eagle Street, Buffalo, New York.

F. Payment of Fees: Payment of statutory filing fees may be made online via credit card (American Express, MasterCard or Visa) at the time of submission.

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

H. Confidential Personal 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 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.**

I. 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 letter or number, 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, such exhibit may be filed in hard copy and must be accompanied by the *Notice of Hard Copy Submission-Efiled Case* form. The *Notice of Hard Copy Exhibit Filing* form should be uploaded to NYSCEF as a place holder.

J. 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.

K. 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.

L. Technical Failures: When filing by electronic means is hindered by a technical failure, please refer to Uniform Rule 202.5(b)(i).

M. Discovery Materials and Correspondence: 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)

N. Notice of Entry: The Part Clerk shall upload decisions and orders electronically. The NYSCEF system will provide notification that the order has been posted, however the entry of such decision/order shall be effectuated thereafter when the County Clerk affixes the “Filed” stamp on the electronically filed document. NYSCEF will generate a second e-mail notification upon the completion of the entry process. This entered version of the order or judgement will be accessible via a link in the second e-mail notification. Upon entry of such order, a party shall file and serve the Notice of Entry in conjunction with Uniform Rule §202.5-b(h)(3).

O. 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 Niagara 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 an E-Filed 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 is commenced on or after August 30, 2013, a *Certificate of Merit* pursuant to CPLR §3012-b(a) (See *Certificate of Merit* form here: www.nycourts.gov/ATTORNEYS/foreclosures/CertificateOfMerit.pdf) must be filed;
OR:

b. If the action is commenced prior to August 30, 2013, *Affirmation of Accuracy* pursuant to Administrative Order 431/11 (hereinafter AO/431/11) or *Certificate of Merit*

pursuant to Administrative Order 208/13 (hereinafter AO/208/13) must be filed.

Further, if the matter is NOT eligible for settlement conference, Plaintiff must file the *Foreclosure – Settlement Conference Ineligible Affirmation* pursuant to Justice Feroletto's Administrative Order dated March 3, 2010. This Affirmation must provide a specific reason (i.e., mortgagor is deceased/estate, foreclosure is of tax or mechanic's lien foreclosure, or of reverse mortgage, premises is vacant, not owner occupied or not intended to be owner occupied, etc.) that the action is not entitled to a settlement conference. 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 RJI 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 RJI is prepared by the e-filing system, the NYSCEF system will automatically prepare the required Addendum.

V. Notice of Motion 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.

A. 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. Commercial Division: Refer to the 8th Judicial District Commercial Division website

2. 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.**

B. Calendaring of Motions and Petitions: Refer to individual Justice’s Part Rules.

C. Adjournments: Refer to individual Justice’s Part Rules.

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

E. Working Copies: Please see Section III (N) above regarding working copies.

F. 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 [202.5-b(f), 202.5-b(b)(2)(i)]) for additional information.

G. 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.

H. Decisions and Orders: Decisions and/or Orders issued will be scanned by court 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 court 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)]

VI. 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 RJI, 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 a 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 after service is directed in the OTSC, e-file the supporting documents or exhibits.

C. On Payment Screen, choose "Fee Already Paid," complete required fields, note in COMMENTS REGARDING the PAYMENT, "Index Number has been assigned" and provide the assigned Index Number.

Once the County Clerk has assigned the index number in NYSCEF, and the Filer has notified the Part Clerk that the proposed OTSC has been efiled, the Part Clerk shall upload the signed OTSC with the TRO.

C. OTSC in Existing Action:

1.

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," and complete the required fields.

3. Upon notice of filing by the Filer of the proposed OTSC, the Court Part Clerk shall upload the signed OTSC.

VII. 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.

VIII. 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 with a copy of the entered Order annexed 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. **When 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.

IX. 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.

X. 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*”, for all purposes (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 under the index number directed by the Court/Order. The previously active case will be closed to e-filing by the County Clerk.

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.

XI. 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*
- *Judgment - Clerk Default (Proposed),*
- *Judgment by Confession (Proposed)*

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

- *Judgment – to County Clerk (Proposed) or*
- *Judgment - 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 prompt 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 effected through the NYSCEF system or in hard copy pursuant to the rule (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 document type *Judgment - Clerk Default (Proposed)*. The statutory filing fee required and a statement for judgment and *Bill of Costs* may be submitted as the document type *Judgment - Clerk Default (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, if on notice, file a Notice of Motion followed by the document type *Judgment to Court (Proposed)*. 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 types: *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 *Judgment - Foreign [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)*.

XII. 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.

XIII. 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. All documents (Notice of Appeal, copy of Order of Judgment, and Proof of Service) shall be uploaded as a single document under the document type *Notice of Appeal*.

XIV. 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/>.

XV. Other:

A. Effect of Communication from the Office of the Niagara County Clerk or Chief Clerk’s Office: Any and all e-mail notifications generated from the NYSCEF system as a result of the Niagara County Clerk entering any order or Judgment, 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 NYSCEF System 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 Court part with questions about individual Part Rules. Contact the E-filing Resource Center at 646-386-3033 with any questions about the NYSCEF System. In addition, a computer and scanner will be made available by the Chief Clerk’s Office for the use of individuals who may need assistance in making filings in a NYSCEF case.

Dated: November 8, 2018