

SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the 9th Judicial District, the Surrogate of Dutchess County, and the Chief Clerk of the Dutchess County Surrogate Court 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 Dutchess County Surrogate Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules 207.4a and 207.4aa 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). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

1) Cases Types Eligible for E-Filing:

Mandatory E-Filing: E-filing is mandatory in all administrations, probates, and related matters there to, including Small Estate Proceedings, that are commenced in this court on or after October 17, 2018. Except in limited circumstances, all such proceedings must be commenced by filing with the Court electronically through NYSCEF and all subsequent documents in such proceedings must be e-filed.

Proceedings involving Lifetime Trusts, Guardianships and Adoptions are currently exempt from the E-filing program.

Hybrid Proceedings: E-filing is consensual in proceedings that were previously commenced in paper. Previously hard filed estate record will not be uploaded to the NYCEF system, unless determined necessary.

Working copies of the documents must be filed with the Court in these instances. Once an estate is e-filed or becomes an e-filed matter (hybrid), then all subsequent document filings and proceedings should be further e-filed. Exception to this would be a hard copy submission to the Court.

In the event of a hard filing to an e-filed case (i.e. verified claim, GAL report, etc), the Court staff will scan and upload the hard filing document(s) to the NYSCEF record, and all consented filer in the case will receive notification of the uploaded document(s).

Documents Must Be E-Filed: Unless otherwise provided in the e-filing rules, this protocol, or where a special exemption is granted (e.g., Oversized Exhibits in Section 3, below or hard copy submission accompanied by a Hard-Copy Submission form- NYSCEF Form SC-1) all documents to be filed with the court in a NYSCEF case must be filed with the NYSCEF system.

2) Non-Participation in E-Filing:

- Exemptions from Mandatory E-Filing: An attorney who certifies in good faith that he or she lacks the equipment or knowledge needed to e-file and has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of e-filing in each mandatory proceeding by filing an opt out form¹ with the Clerk. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing. (Uniform Rule § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing, but may choose to participate. (CPLR § 2111)

- Declination of Consent (Consensual Cases): Attorneys who do not consent to e-filing in a consensual proceeding should file a declination of consent with the court and serve the declination on all parties. Non-participating attorneys in a consensual proceeding must attach a Notice of Hard Copy Submission – E-Filed Proceeding (see NYSCEF forms page) to all hard copy filings.

Unrepresented litigants in a consensual proceeding are not required to decline consent or to attach the Notice of Hard Copy Submission – E-Filed Proceeding to any of their hard copy filings.

3) E-Filing Documents in Surrogate’s Court:

- Essential Step Prior to E-Filing: Prior to entering any information into an initial filing, you should run an inquiry on the decedent’s last name, using the first initial, to determine if a file is already open. Due to the numbering system in Surrogate’s Court, an inquiry based on the file number alone may not produce accurate results. In addition, you must contact the Court to ascertain whether there may be another will for the decedent on file with the Court (e.g., filed for safekeeping).

- Initial Entering of Case Information: Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select the same county as is shown on your papers.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will
- If the name on the death certificate is different, that becomes an “AKA”
- If the name on the will does not match the signature, that becomes an “AKA”
- No punctuation or spaces should be used when entering the name or “AKA”

- Notice of Hard-Copy Submission: Where, within the e-filing rules, an attorney or an unrepresented litigant who is participating in e-filing submits a document in hard copy, the document must bear a Notice of Hard Copy Submission – E-Filed Proceeding (see NYSCEF Forms page). Attorneys who are exempt from e-filing are required to attach this form to all hard

¹ All forms referred to in the Protocol are available on the Forms page of the NYSCEF website at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>

copy filings, while unrepresented litigants who are not participating in e-filing are not so required.

- Request for Surrogate's Court Action: This court requires the Request for Surrogate's Court Action (see NYSCEF Forms page) as the first document uploaded with each filing. This is to be filed as a stand-alone document. Do not scan any other documents with the Request.

For subsequent filings, do not re-use the original Request form. Prepare a new form for each filing with the appropriate information entered. If requesting court certified documents or Certificates of Appointment, use a Request for Surrogate's Court Action Non-Proceeding Relief (p.2 of the Request form). Do not submit a blank Request for Surrogate's Court Action form.

- Death Certificates: The certified copy of the original death certificate should be e-filed (both sides). Original death certificates must be submitted directly to the Surrogate's Court within two (2) business days of e-filing.

- Wills: The ORIGINAL WILLS/CODICILS are required to be scanned. Once the original is scanned and the proceeding, but DO NOT UNSTAPLE, file the original paper will within two (2) business days of e-filing. Do not e-file an attorney certified copy, as this is not required.

- Citations: Submit a proposed citation electronically through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. If your proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt of the notification, print the citation and serve it, in accordance with the SCPA. Service of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site.)

- Decrees and Orders: Decrees, orders, and judgments will be signed in hard copy by the Surrogate and forwarded to the Clerk for filing and scanning into the NYSCEF system, which will then transmit notification to all parties. However, the notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]).

NOTE: All Court documents requiring a court seal, including Letters, Certificates of Appointment or certified copies, will be sent out in hard copy, as well as any e-filed requests for exemplification and/or certified copies **(with appropriate payment and a self-addressed stamped envelope, with adequate postage, for the return.)**

Hard copies of Decrees/Decisions/Orders will only be sent upon written request and **a self-addressed stamped envelope, with adequate postage, for the return.**

- Correspondence: All general correspondence, adjournment requests and conference requests shall be electronically filed, with a working copy delivered to the Chief Clerk's Office. E-mail or Facsimile of this document is acceptable.

- **Stipulations:** Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed, then one original be filed with the Court for the Judge’s signature.

- **Oversized Exhibits:** If an exhibit or attachment is unsuited for electronic filing (e.g., a large map or a videotape), it shall be submitted to the court and served on the other parties in hard copy. Attach a Notice of Hard Copy Submission – E-Filed Proceeding. In addition, a Notice of Hard Copy Exhibit must be completed and electronically filed. (See Forms page on the NYSCEF site.)

- **Working Copies:** Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed by chambers at the disposition of the case. The following working copies are **required:**

1. Miscellaneous Proceedings (except Petitions to Open a Safe Deposit Box);
2. Motions;
3. Contested matters (i.e: objections and related proceeding/filings); and
4. Accounting proceedings.

If submitting working copy, the filer must attach proof that the document had been e-filed by attaching either the NYSCEF Thank you page or e-mail notification.

- 4) **Payment:** This court accepts payment of fees required by the SCPA by credit card payments made via NYSCEF or by payments made at the court. There are no fees to use the NYSCEF System. Fees are calculated in accordance with SCPA § 2402 based on the documents filed with NYSCEF and the representation of the filing user regarding the size of the estate.

If choosing to pay by credit card at time of filing on NYSCEF website, enter credit card information directly on website. You must insert the credit card information with each filing; your credit card will be charged at the time of filing. Make sure credit limit is large enough to cover anticipated filings.

If choosing to pay at the court, be aware that documents are not “filed” until payment is received. The court cannot process the filing until payment is received in full and will delete the filing if payment is not made within a specified amount of time after e-filing.

NOTE: Review of a filing by the Court may result in a modification of the fees initially anticipated or charged in connection with the transaction. In the event of any such modification, the Court will contact the filing user as to the proper amount needed and request an additional fee. The NYSCEF system will not allow the filing of additional documents by the filer if there is an outstanding fee requested. Additional Payment can be made via the NYSCEF system by going to the Main Menu and selecting Submit Additional Payment.

- 5) **Notifications:** Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Clerks/staff are available for consultation during regular business hours.

- **Return of Requested Documents:** To ensure rapid return of documents you have requested from Surrogate’s Court; the court will keep your pre-paid self-addressed envelopes on file. When

filing your Request for Surrogate's Court Action, you should indicate that the item should be returned to you in the self-addressed envelopes located at the Court. If self-addressed stamped envelopes are not provided, the court will place the documents into the attorney pick-up bin drawer located in our office.

- Envelopes: Self-addressed stamped envelopes with at least 2 ounces of postage or adequate postage for the return of any requested documents **is required**. The Court will not mail documents back to the filer without proper stamped envelopes.
 - Certificates and Letters: Upon request made via NYSCEF, the court will mail out Certificates and Letters. Users must request and pay for certificates in advance in any e-filed proceeding. The Court will not mail documents back to the filer without proper stamped envelopes.
- 6) Signatures: Documents requiring signatures shall be considered to be signed under the circumstances outlined in Uniform Rule §207.4-a(f). When e-filing a document bearing an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to Uniform Rule 207.4-a(f)(2).
- 7) Sealed Documents, Sealed Cases; Documents Presented for In Camera Review:
- Applying for a Sealing Order: A party who wishes to file a document under seal must file a hard copy of the document, along with the "Notice of Hard Copy Submission" with the Surrogate's Court. Unless the document is being filed ex parte, the filing party shall serve all parties with hard copies of the document, along with the "Notice of Hard Copy Submission" form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court grants the sealing request, the Surrogate Clerk will then file the documents in the appropriate manner, as directed. If the application is denied, an order will be issued that directs the party to file the document electronically.

- In Camera Documents: Documents submitted to the Court for in camera review should be delivered to the Court in a sealed envelope conspicuously marked "FOR IN CAMERA REVIEW BY THE COURT" with a Notice of Hard Copy Submission form attached. (See Forms page on the NYSCEF web site.)

PROBLEM FILINGS AND NOTIFICATIONS:

If it is determined that there is an issue with e-filing, the filer will be notified by court staff either by phone or e-mail notification (via the NYCEF system).

Filers are welcome to call the Court directly for any needed assistance or the E-filing Resource Center at 646-386-3033 or efile@nycourts.gov.