

ORANGE COUNTY SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Ninth Judicial District, the Surrogate of Orange County, and the Chief Clerk of the Orange County Surrogate's 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 Orange County Surrogate's 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 probate, administration, small estate, accounting and miscellaneous proceedings that are commenced in this court on or after February 16, 2021. 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.

Consensual E-Filing: E-filing is consensual for all guardianship proceedings. All such proceedings may be commenced by filing with the Court electronically through NYSCEF and, except in limited circumstances, all subsequent documents filed by participating parties must be e-filed.

Hybrid Proceedings: The NYSCEF System will allow a filer to E-file a document in a non-E-Filed Estate in accordance with Uniform Rule 207.4-a (e) (1). The party first filing electronically in a hybrid proceeding, shall serve all other parties with a Notice Regarding Availability of Electronic Filing (See NYSCEF Form SC-1).¹ Proof of service of such Notice shall be promptly filed with the Court. Attorneys who do not consent to the use of e-filing in a hybrid proceeding should file a declination of consent with the Court and serve the declination on all parties. Non-participating attorneys must attach a Notice of Hard Copy Submission – E-Filed Proceeding to all hard copy filings (See NYSCEF Form SC-11)¹.

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), 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

¹All 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>

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 form with the Clerk. Attorneys also may be exempted by the court for good cause shown. Unrepresented litigants are exempt from e-filing, but may choose to participate. (see Uniform Rule 207.4-aa(e)(1); see also CPLR § 2111)

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 Form SCM-3). Attorneys who are exempt from e-filing are required to attach this form to all hard 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: In addition to e-filing the death certificate, a hard copy, certified if required, must be filed within two (2) business days of e-filing.
- Wills: The original Will is required to be e-filed by the filer. Do not remove staples from the original Will. Once scanned, file the original Will with the Court within two (2) business days of e-filing.

When submitting certified death certificates and/or original Wills, a copy of the thank you page or e-filing receipt should be attached.

- 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 (or Court order, if there is one). 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: E-file proposed decrees and orders through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF and notify all consenting parties that the decree or order has been signed and posted. Users who have requested a certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy by regular mail.
- Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed. If the court requires a working copy, the filer must attach proof that the stipulation has been e-filed (e.g., the thank you page or the e-mail notification) to the back of the stipulation when it is submitted to the Court.
- 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: The court may require submission of hard copies of e-filed documents, also known as working copies. The filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail notification) to the back of all working copies submitted to the court. 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.

- 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. 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. Review by the Court may result in a modification of the fees initially anticipated or charged in connection with this transaction. In the event of any such modification, the Court will contact the filing user by e-mail with the proper amount and request an additional fee, if applicable. Some courts will not allow the filing of additional documents by the filer if the filer owes an outstanding fee in that proceeding. **Using the filing fee schedule in SCPA § 2402, verify that you have selected the correct filing fee prior to finalizing your submission in NYSCEF.**

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 two (2) business days after e-filing.

- 5) **Notifications:** Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Be sure to include contact information.
- 6) **Return of Requested Documents:** To ensure rapid return of documents you have requested from Surrogate’s Court, be sure to include a pre-paid self-addressed envelope when you submit the hard copy of the death certificate.
- **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.
 - **General Correspondence:** All general correspondence, adjournment requests and conference requests shall be electronically filed. In addition, please email adjournment requests to the Court using VirtualOrangeSurrogatesCourt@nycourts.gov.
- 7) **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).
- 8) **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.)

- 9) **Decrees, Orders, and Judgments**: 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]). Court issued Letters and Certificates of Appointment will be provided in hard copy to the filer via the usual means (SASE, USPS mailing, messenger). The preferred method of contact/return should be included on the Request for Surrogate's Court Action form.