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December 5, 2023

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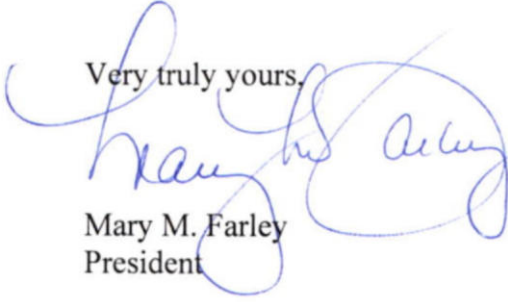
Via Email Only:  
David Nocenti, Esq.  
(rulecomments@nycourts.gov)  
Counsel  
NYS Office of Court Administration  
25 Beaver Street, 10<sup>th</sup> Floor  
New York, NY 10004

RE: Request for Public Comment on a Proposal for a New Matrimonial Rule  
202.16-c and new NYSCEF Appendix to Ensure Compliance with NY DRL §235  
Regarding Access to NYSCEF by Attorneys in E-Filed Matrimonial Actions

Dear Mr. Nocenti:

The Association of Justices of the Supreme Court of the State of New York has no objection to the proposal creating a new Rule 202.16 and NYSCEF Appendix, harmonizing existing Domestic Relations Law with the New York State Courts Electronic Filing system (NYSCEF) and its use by court-appointed Attorneys for Child(ren).

Very truly yours,

  
Mary M. Farley  
President

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December 18, 2023

Mr. David Nocenti, Esq.  
Counsel  
New York Unified Court System  
Office of Court Administration  
25 Beaver Street, 10<sup>th</sup> Floor,  
New York New York, 10004

Re: Request for public comment on the proposal for a new Matrimonial Rule  
202.16-c & a new NYSCEF Appendix to ensure compliance with Domestic Relations  
Law 235 regarding access to NYSCEF by attorneys in E-Filed actions

Dear Mr. Nocenti:

On behalf of the New York State Association of County Clerks, I am writing you to express our support for the adoption of the above-referenced proposed court rule and new NYSCEF Appendix.

After careful review and consideration, we believe the proposed changes would enhance the overall procedures and better represent the best interest of all parties and stakeholders.

The proposed changes would provide an effective mechanism to facilitate the removal of the attorney or non-party from the case once the action is concluded, which is not currently available through NYSCEF. This places the obligation on the attorney for the party or non-party to remove themselves and their access from NYSCEF.

Furthermore, the proposed rule changes will also clarify the attorney appointed for the child(ren) in a matrimonial action may register and consent to e-file, granting them same access as attorneys for the parties.

In conclusion, it is our belief that the proposed rule and appendix changes above will provide practical solutions for current issues and that they will strengthen the confidentiality of matrimonial cases in NYSCEF by ensuring access is provided to authorized attorneys. Therefore, we are in full support of the proposed changes.

As a key stakeholder, we appreciate and thank for the opportunity to comment on any proposed changes to the rules governing e-filing actions.

Respectfully Yours,

Craig A. Hayner  
President, New York State Association of County Clerks

December 28<sup>th</sup>, 2023

**VIA EMAIL: RULECOMMENTS@NYCOURTS.GOV**

David Nocenti, Esq.  
Office of Court Administration  
25 Beaver Street, 10<sup>th</sup> Floor  
New York, NY 10004

***Re: Request for Public Comment on a Proposal for a New Matrimonial Rule  
202.16-c and new NYSCEF Appendix to Ensure Compliance with Domestic Relations Law  
§ 235 Regarding Access to NYSCEF by Attorneys in E-Filed Matrimonial Actions***

To Whom It May Concern:

I am writing you as the Chair of the Family Law Section of the Brooklyn Bar Association in connection with the proposed New Matrimonial Rule 202.16-c and the new NYSCEF Appendix to Ensure Compliance with Domestic Relations Law § 235. On behalf of the Members of the Family Law Section, I would like to voice our support of the Proposed New Rule and new NYSCEF Appendix.

These proposals are absolutely necessary to protect the confidentiality of our clients in e-filed matrimonial actions. The rationale behind the New Rule and Appendix is sound and compelling. As attorneys, putting the onus on us to remove ourselves from matters that have concluded allows us the flexibility to monitor our cases as opposed to being automatically shut out of the NYSCEF system upon the execution and entry of a Judgment of Divorce.

If you require any other comments, please do not hesitate to contact me.

Very truly yours,

  
RoseAnn C. Branda

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**From:** Jodi Ann Donato <jodi@jodianndonatolaw.com>  
**Sent:** Friday, November 17, 2023 2:52 PM  
**To:** rulecomments  
**Subject:** Fwd: Proposed Matrimonial Rule  
  
**Categories:** Matrimonial

Dear Mr. Nocenti,

In additional to the proposed rule changes, there should be a way for attorneys to remove their consent after the case is over. The way the system currently works, if a new attorney is hired for a post-judgment action the attorney that handled the underlying matrimonial is emailed every time something is filed in connection with the post-judgment action.

Because representation terminates upon the entry of the judgment of divorce, there is no need for the new attorney to obtain a consent to change attorney.

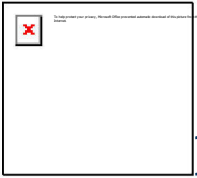
The current NYSCEF system doesn't allow for removal of consent just because the case is over.

Jodi

--

**Jodi Ann Donato, Esq.**

President - Suffolk County Women's Bar Association  
SCBA Matrimonial & Family Court Committee  
Suffolk County Matrimonial Bar Association  
Mentor - East Islip School Business Partnership  
Coordinator Grade 1 Religious Education Program at Church of St. Mary



## DONATO LAW

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### Jodi Ann Donato, Esq.

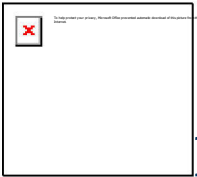
President - Suffolk County Women's Bar Association

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**From:** Wrubel, Eric <ewrubel@wbny.com>  
**Sent:** Wednesday, December 27, 2023 11:39 AM  
**To:** rulecomments  
**Cc:** Hon. Jeffrey S. Sunshine  
**Subject:** New Matrimonial Rule 202.16-c

**Categories:** Matrimonial

Dear Mr. Nocenti:

During a Special Meeting called by the President of the NY Chapter of the AAML on December 27, 2023, the Board of Managers voted in favor of supporting the proposal amending the Matrimonial Rules 202.16-c. In addition, the Board of Managers voted in favor of an exception (limited in scope) to the proposal as follows:

“Notwithstanding the foregoing, counsel shall not be required to remove their representation if they have a pending application or an order of the court for the recovery of legal fees and expenses, including but not limited to a charging lien, fee award, security interest, judgment, or other judicially recognized acknowledgment of such fees and expenses owed to counsel.”

The NY Chapter of the AAML requests that the exception be considered by the proponents of the proposal.

Thank you

Eric Wrubel



Eric Wrubel · Partner  
Warshaw Burstein, LLP  
575 Lexington Avenue · New York, NY 10022 · [www.wbny.com](http://www.wbny.com)  
Direct Telephone: 212-984-7735 · Cell: 917-846-2259  
E-Mail: [ewrubel@wbny.com](mailto:ewrubel@wbny.com)  
President—American Academy of Matrimonial Lawyers, New York

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December 27, 2023

Via US MAIL and Email

[rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov)

David Nocenti, Esq. Counsel  
Office of Court Administration  
25 Beaver street  
10<sup>th</sup> Floor  
New York New York 10004

**Re: NYSBA Family Law Section**

Dear Mr. Nocenti:

I am writing as Chair of the New York State Bar Association Family Law Section and to deliver our comments regarding the proposal to create a new rule 202.16-c and a new NYSCEF appendix regarding access to NYSCEF by attorneys in E – filed matrimonial actions.

The NYSBA Family Law Section **supports** New Matrimonial Rule 202.16 – c and a new NYSCEF Appendix to Ensure Compliance With Domestic Relations Law Section 235 regarding access to NYSCEF by attorneys in e – filed matrimonial actions.

Our Section had several substantive comments and points to raise which we ask to be considered. They are:

- If an attorney has a charging lien or outstanding fees earned in the case, they should be permitted to stay on pending satisfaction of their fees or arbitration or litigation concerning their fees. We suggest an exception to allow a former attorney to monitor a case if outgoing counsel is owed fees. We understand the exception will likely need to be limited in scope.
- We raised the issue of how enforcement of noncompliance is addressed. We respectfully suggest there could be a possibility of writing to the assigned Judge to request a conference to address enforcement.

If you have any questions or need anything further, please contact me.

Very truly yours,  
J. ADAMS & ASSOCIATES, PLLC

Joan Casilio Adams, Esq.  
[jadams@adamspllc.com](mailto:jadams@adamspllc.com)

JCA/



December 18, 2023

David Nocenti, Esq., Counsel  
Office of Court Administration  
25 Beaver Street, 10th Floor  
New York NY 10004

Dear Mr. Nocenti:

The Schenectady County Bar Association appreciates the opportunity to comment on the proposal to create a new Rule 202.16-c (22 NYCRR § 202.16-c) and a new NYSCEF Appendix regarding access to NYSCEF by attorneys in e-filed matrimonial actions.

After consultation with the appropriate committee and the board of directors, the Association supports these proposals as important measures to ensure consistency in e-field matrimonial actions with DRL 235 in restricting access to matrimonial files only to the parties and their attorneys and to avoid violations of the confidentiality. The proposals provide clarification and process for attorneys in such circumstances.

Should you have any questions, please contact me at your convenience.

Respectfully submitted,  
Schenectady County Bar Association

A handwritten signature in black ink, appearing to read "Lauren E. Sharkey".

Lauren E. Sharkey, President



# Clayton & Bergevin

Attorneys at Law

H. James Clayton  
Michele G. Bergevin\*

Associates

Mark C. Murphy

Legal Assistants

Jennifer M. Jackson  
Karen M. Smith  
Evonne Holstrom

\* also admitted in Florida

12/1/23

David Nocenti, Esq., Counsel  
Office of Court Administration  
25 Beaver Street, 10th Floor  
New York, New York 10004


To Mr. Nocetti and the Administrative Board of the Courts:

My law office has a busy matrimonial practice in Niagara County. I have read the proposed New Matrimonial Rule 202.16-c and New NYSCEF Appendix, together with the accompanying Memorandum. I support the proposed amendments.

My legal staff and I believe that the proposed changes would streamline our practice and make use of NYSCEF more efficient. We have noticed many of the problems that the modifications seek to rectify.

If you or the Board require further comment or information, please do not hesitate to contact me.

Very truly yours,  
Clayton & Bergevin



Michele G. Bergevin

MGB/jmj



THE OFFICE  
*of the*  
RICHMOND COUNTY CLERK

STEPHEN J. FIALA  
County Clerk & Commissioner of Jurors

December 15, 2023

Mr. David Nocenti, Esq.  
Counsel  
New York State Unified Court System  
Office of Court Administration  
25 Beaver Street, 10th floor,  
New York New York 1004

Via email: [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov)

Re: Request for Public Comment on the Proposal for a new Matrimonial Rule 202.16-c & a new NYSCEF Appendix to Ensure Compliance with Domestic Relations Law 235 Regarding Access to NYSCEF by Attorneys in E-Filed Actions

Dear Mr. Nocenti:

I write on behalf of the undersigned County Clerks of the City of New York to express our enthusiastic support for the adoption of the above-referenced proposed court rule and new NYSCEF Appendix.

Having reviewed the proposal and given due consideration to the practical impacts implementation the proposed changes would have on all stakeholders; we conclude that adoption of the same would be in the best interests of all parties and provide a necessary and welcome enhancement to existing procedures. In matrimonial actions, once the matter is concluded, under the law, the attorneys for the party and non-parties are no longer authorized to access the file. Yet, there has been no effective way to facilitate the removal of the attorney or nonparty from the case in NYSCEF.

The proposed rule and appendix amendment remedies this issue by placing the obligation on the attorney for the party or the non-party to remove themselves from NYSCEF. Further, it provides a mechanism in NYSCEF for the attorney for the party and/or the non-party to remove their access in

NYSCEF. The additional issue in the proposed rule clarifies that an attorney appointed as an attorney for the child(ren) in a matrimonial action may register and consent to e-file, and then be granted the same access as attorneys for the parties.

We conclude that the proposed rule and appendix changes provides an easy remedy to a current problem and ensures that access to confidential matrimonial files in NYSCEF are provided to authorized attorneys only. Therefore, we fully support the measure and urge its adoption.

Thank you for the opportunity to comment on this proposal and participate in the process of improving the rules governing filing by electronic means in matrimonial actions.

Respectfully submitted,



---

Hon. Stephen J. Fiala  
Richmond County Clerk

(on behalf of)

Hon. Nancy T. Sunshine  
Kings County Clerk

Hon. Audrey I. Pheffer  
Queens County Clerk

# GOLDSCHMIDT & GENOVESE, LLP

ATTORNEYS AT LAW

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*By Appointment:*

\_\_\_\_\_  
New York City  
Rockland County

\_\_\_\_\_  
HELEN H. WU

Not for Service of Papers

\_\_\_\_\_  
HON. SONDRRA MILLER (ret.)  
Chief Counsel

† FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS  
\* FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS

January 24, 2024

## **VIA EMAIL**

Hon. Jeffrey S. Sunshine, J.S.C.  
Statewide Coordinating Judge  
For Matrimonial Matters  
360 Adams Street  
Brooklyn, NY 11201

Re: Proposal for a New Matrimonial Rule 202.16-c

Dear Justice Sunshine:

It has recently come to my attention that via a memo dated November 16, 2023, OCA sought public comment on a proposal for an amendment to Rule 202.16 and a new NYSCEF appendix regarding access to NYSCEF by attorneys in matrimonial actions. I regret that I did not learn of the memo until after the end of the comment period. Nevertheless, I respectfully request that MPARC consider my comment on the proposal.

I suggest that any new Rule consider the following: I represented the defendant husband in a matrimonial case commenced in Supreme Court, Westchester County in or about April 2021. In July 2021, I moved to (i) be relieved as the defendant's attorney; and (ii) enforce a charging lien in the amount of \$24,427.85. On the return date, August 30, 2021, my motion was granted in its entirety; the charging lien was so-ordered on September 1, 2021. I was removed from NYSCEF by the County Clerk shortly thereafter. I had to file the charging lien in person at the County Clerk's office because I no longer had access to the NYSCEF file.

By sheer coincidence, I learned from my former adversary that the case was tried in the spring of 2023. A decision and order was issued sometime in the fall. Because I no longer have access to the NYSCEF filings, I do not have a copy of the decision and order. Neither counsel has provided me with a copy, despite my request therefor. I have reminded counsel of my charging lien, but have repeatedly been told that the terms of the decision and order have yet to be effectuated.

Hon. Jeffrey S. Sunshine  
January 24, 2024  
Page 2

My removal from NYSCEF has resulted in the precise situation that Judiciary Law §475 was designed to prevent: defendant has been able to avoid his contractual obligation to my firm.<sup>1</sup>

I respectfully suggest that the foregoing situation, in which former counsel seeks to collect on a charging lien, should be an exception to a Rule requiring removal of that attorney from NYSCEF. Such removal should be required only after the charging lien matter is resolved.

I am happy to discuss the foregoing with you further if you wish. Thank you for considering my request.

Respectfully yours.

*s/ Dolores Gebhardt, Esq.*

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<sup>1</sup> I also personally served the defendant with a fee arbitration packet. He failed to respond.