

SUPREME COURT, NIAGARA COUNTY PROTOCOL ON PROCEDURES FOR ELECTRONICALLY FILED CASES

Attorneys seeking information about how the court's filing by electronic means system (E-filing) works are advised to consult the *User's Manual* and *FAQ's*, both available on-line at the E-filing website (see "E-Courts" at www.nycourts.gov). What follows is an outline of the steps that will be used in e-filed cases to satisfy traditional courthouse requirements for the processing of cases. The steps outlined here seek, to the maximum extent possible, to integrate e-filing capabilities with normal courthouse procedures in ways that will save attorneys time, trouble and trips to the courthouse while meeting the needs of Judges and the court.

Please note: The Niagara County Clerk's Office is located in Lockport, NY which is 22 miles away from the Supreme Court Courthouse in Niagara Falls. All forms for E-filing in Niagara County are available on the 8th Judicial District Website by accessing the following link, <http://www.nycourts.gov/courts/8jd/Niagara/efile.shtml>.

A. Identifying E-Filed Cases:

All authorized Torts, Commercial and Tax Certiorari cases may be commenced by e-filing, however, all parties need to consent for the action to continue as an e-filing case.

1) **Cases Commenced via E-Filing:** Cases that are commenced by filing of the initial papers with the E-filing system are identified as e-filed cases by assignment of an index number prefixed with the letter "E".

2) **Cases Converted to E-Filing:** Cases originally commenced in hard-copy form but later converted to E-filing status will bear the original index number, the **E** prefix will be added by the Niagara County Clerk. Court staff will add the prefix in the court's data base system. **Attorneys must use the prefix on all papers filed with the court in electronically-filed matters.**

B. Filing of Papers Generally

1) **Fees:** Court fees (e.g., RJI fee, motion fee) in E-filed cases may be paid for on-line using a credit card. Papers may also be filed with the E-filing System and the fee may be paid at the County Clerk's Office. **The paper is not considered to have been filed until payment of the fee has been tendered (see CPLR 304).** Payment of fees on-line can save an attorney from having to make a trip to the County Clerk's Office in many situations.

2) **Papers to Be Filed to the System:** All papers to be filed with the court in an E-filed case shall be filed on-line with the E-filing System (except where a special exemption is granted (e.g., oversized maps, photographs) or as directed by the court). Papers that attorneys would not ordinarily file with the county clerk in a hard-copy case need not be filed in an E-filed matter.

3) **Courtesy Hard Copies of Papers for Judicial Review:**

(a) Unless otherwise directed by the court or as described below, in all cases in the court's E-filing System in which an RJI has been filed, **the court requires that courtesy hard copies of motion papers and other papers *intended for review by a Justice* be submitted.** These papers shall also bear the following marking conspicuously placed on the front page: **"Courtesy Copy. Original Papers Filed with E-filing System."** Again, filings in E-filed cases should bear the index number with the "E" prefix.

(b) On any motion or order to show cause, if the court permits any party to submit additional papers, the attorney must be sure to file those papers on line with the E-filing System as well as submitting courtesy copies to the court.

4) **Filing With the System First; Deliver Courtesy Hard Copies Thereafter:**

Generally speaking, unless otherwise directed or authorized by the court, counsel should file papers with the E-filing System first and thereafter deliver any required courtesy copy to the court. Filing with the system permits counsel to serve the papers electronically pursuant to Section 202.5-b (g) of the Uniform Rules for the Trial Courts once the consent to E-filing has been filed on-line. Proof of service should be filed on-line. Thereafter, the courtesy copy of the paper can be delivered to the court with appropriate proof of service attached. As to proposed orders to show cause, see Par. F.

C. Requests for Judicial Intervention

A Request for Judicial Intervention ("RJI") in an E-filed case shall be submitted via the E-filing System. When the RJI is filed and paid for on-line, the Niagara County Clerk's Office will forward the RJI and any accompanying documents to the relevant back office (Supreme Court) for random assignment of the case and processing of the document. Notification of judge assignment and date will be sent to all consenting parties via e-mail. Counsel need not appear.

D. Motions on Notice

1) **Service:** With regard to service of motion papers, CPLR 2214 (b) applies. Proof of service shall be filed on-line.

2) **Exhibits:** It is recommended that, whenever possible, attorneys submitting exhibits to the court in E-filed cases make each exhibit a separate attachment to an affidavit/affirmation in the system.

3) **Calendaring of Motion/Petition and Notice by Court Staff:** After a motion/petition and notice are filed with the E-filing System, the Niagara County Clerk will assign an index number and e-mail the back office support staff in Supreme Court for assignment to a part and scheduling a return date for the motion/petition. Consenting parties will be notified via e-mail.

4) **Cross-Motions and Other Motion Papers to be Filed On-Line:** Cross-motions and opposition and reply papers must be submitted on-line. A fee must be paid on cross-motions and may be paid on-line.

5) **Adjournments on Motions:** Motions cannot be adjourned generally. The first adjournment can be obtained by consent of all counsel, by contacting the IAS Judge's court clerk by telephone or letter at least 24 hours prior to the return date of the motion. **All other adjournments must be by consent of the court.**

6) **Scanning and Transmission of Decisions:** After the court issues a decision on a motion in an E-filed case, it will obtain an entry stamp from the County Clerk and promptly scan it into the E-filing System. The system will transmit notice of this event via e-mail.

E. Long Form Orders on Motions

If the court directs that an order be settled on a motion in a E-filed case, the proposed order and any proposed counter-order shall be filed with the court on-line with proof of service. The back office support staff in Supreme Court will then print out and/or transmit the proposed order and any proposed counter-order to the Judges chambers, which will process the papers in the customary manner. The E-filing Rules provide that any paper that requires a judicial signature must be submitted in hard-copy form; this requirement will be satisfied by the printing of hard copies by the back office for the judge. **No appearance by counsel is required.** After an order/counter-order has been signed, the Supreme Court Clerk will scan it, with County Clerk entry stamp, into the E-filing System, which will immediately transmit notice of this event via e-mail, including a link to the entered document, to all parties who have consented on-line in the case.

F. Orders to Show Cause

1) **Proposed OSC's and Supporting Papers to be Filed On-Line; Alternative Submission by E-Mail:** Proposed orders to show cause and supporting papers in an E-filed case must be filed with the system by the applicant. Generally, it is expected that the proposed order and supporting papers will be filed on-line prior to review by the law clerk. There may, however, be instances in which a party, because of exigent or other circumstances, does not wish to provide advance notice to the adversary of a proposed order by filing it and supporting papers with the E-filing System (which generates an e-mail message to all parties). In those cases, the proposed order to show cause and supporting papers may be submitted to the law clerk personally or by regular e-mail (i.e., outside the E-filing System). In such instances, the applicant must file the proposed order and supporting papers with the E-filing System after signature.

2) **Review of Proposed OSC's Will be Done On-Line:** Absent unusual practical difficulties, a proposed order to show cause and supporting papers will be reviewed for form on-line in the E-filing System or as an e-mail attachment outside the E-filing System by the IAS Judge's law clerk. If there are difficulties with the form of the papers, the submitting attorney will be promptly contacted by the court.

3) **Courtesy Hard Copies; Delivery by Counsel; Receipt and Review of Papers On-Line by Some Justices:** Since a proposed order to show cause requires a judicial signature and a courtesy hard copy is required of all papers intended for judicial review, a proposed order to show cause and, unless otherwise directed, the supporting papers must also be submitted to the Judge in hard copy. Thus, after the proposed order to show cause has been transmitted to the court, approved for form, and the motion fee paid, the court will print out a hard copy of the proposed order to show cause, but, in addition, courtesy hard copies of the supporting papers must be delivered by the applicant to the Court.

4) **Posting the Signed Order to Show Cause to the E-Filing Site:** In all instances, the Court Clerk will promptly post the order to the site. In the event that any supporting papers were not previously posted, counsel will be directed to make such posting.

G. Procedures Regarding Service On-Line

1) **Service; Notice of Filing; Procedure:** An interlocutory paper is served as follows. The party files it with the E-filing site. Then, on the same day, the filer must, according to the E-filing Rules (Section 202.5-b (g) (2)), send to all e-mail addresses of record a Notice of Filing, which shall set forth the title of the paper filed, the number of the paper as shown on the E-filing System docket (List of Papers Filed), and the date and time filed. The Rules provide (*id.*) that the electronic transmission of the Notice of Filing shall constitute service on the addressee(s).

2) **Proof of Service to be Posted On-Line:** In contrast with the Federal system, the E-Filing System Rules (Section 202.5-B (g) (2)), require that, in addition to making the electronic transmission of the Notice of Filing, the filing attorney must file proof of service on-line. That is, the fact that the filing attorney served the Notice of Filing by means of the E-filing System does not suffice. Thus, the serving party must file with the E-filing System an Affidavit or Affirmation of Service which recites the electronic transmission of the Notice of Filing and to which is appended a copy of the Notice of Filing. This proof of service need not itself be served on the parties.

3) **Other Methods of Service:** The Rules authorize service by other methods permitted by the CPLR. If an attorney serves another party or parties with a paper filed with the E-filing System by mail or in person, the attorney may file an affidavit/affirmation of service on-line.

H. Sealing of Documents

1) **Sealing - Compliance with Part 216:** As with hard copy files, in order to seal a paper in an E-filed case, a party must proceed in accordance with Part 216 of the Uniform Rules for the Trial Courts.

2) **Secure Documents:** Documents may, however, be designated “secure” by the filing user without an order of the court. The effect of such designation is that the document may be viewed outside of Court in the E-filing System only by the consenting parties of record and by the court. The electronic file, however, remains open for public inspection

via computer at the Niagara County Clerk's Office (unless sealed in accordance with Part 216).

3) **Sealing: Procedures:** To obtain a sealing order, a motion/stipulation can be filed with the E-filing System, but it will be open to the public unless it is filed as a "secure" document. Or, the motion/stipulation may also be filed with the system but without the attachment of any exhibits that would disclose confidential information. If the file is sealed in whole or in part, the exhibits can be filed with the E-filing System after the fact. Or the parties may make a motion or submit a stipulation without filing it to the system until after the court rules on the sealing issue if such filing would disclose confidential information.

4) **Execution of Sealing Order:** If the court issues an order directing the sealing of an electronic file in whole or in part, the party seeking the sealing should file with the E-filing System a Certificate Requesting Sealing of Document in Electronically-Filed Case, together with a copy of the court's order. If such a request is properly made, the County Clerk will seal the file or the document(s) in question as directed by the court, both in the E-filing System and, if any of the covered documents are found therein, in the hard copy file.

5) **Previously Sealed File:** If a case that was previously sealed pursuant to court order is converted to E-filing status, counsel for the parties should promptly alert the Supreme Court Clerk's Office that an order sealing the file was issued. Counsel are advised to contact Supreme Court by telephone and must submit a copy of the sealing order by posting it to the E-filing System. Upon such submission, Supreme Court will contact the County Clerk and the e-file will be sealed.

I. Preliminary Conferences in Electronically Filed Cases

In lieu of making an appearance at a scheduled preliminary conference and with consent of the Court, all parties in an E-filing case may agree upon a discovery schedule and submit an appropriate preliminary conference form, stipulated to by all parties, including medical malpractice actions. The discovery schedule therein set forth must be in compliance with the disclosure guidelines for a case of the type in question as set forth in Uniform Rule 202.19. The stipulated form must be filed on-line with the E-filing System at least two days prior to the conference date. Counsel should contact the Court by phone (at the number listed below) to inform it of the filing so that the clerk's office can take expeditious action. The Court will promptly forward the form to the Part in question. No further action by counsel is required. The signed form will be posted on the E-filing site and counsel will be notified by e-mail. If the court perceives a problem with the contents of the form submitted, counsel will be contacted. See Uniform Rule 202.12 (b).

J. Entry and Notice of Entry

1) **Entry:** Pursuant to the E-Filing Rules (Section 202.5-b (j)), the Clerk shall file orders electronically and such filing shall constitute entry of the order. The Clerk is required to and will transmit an e-mail message to all filing users on the case notifying that the order has been entered. Such notice does not constitute service of notice of entry by any party.

2) **Notice of Entry:** Notice of entry is served by a party as follows: the party simply transmits electronically to the parties to be served the notification received from the court, along with an express statement that the transmittal constitutes notice of entry.

K. Judgments and the Judgment Roll

1) **Entry of Judgment; Procedures:** If the court in an order directs entry of judgment by the County Clerk, the party seeking entry shall submit a proposed judgment with a bill of costs, interest calculations and supporting information to the County Clerk, together with a Certificate Requesting Entry of Judgment. If the judgment is in proper form, it will be printed out by the Judgment Clerk and submitted to the County Clerk for signature. The Judgment Clerk will scan the judgment once signed and post it to the system, along with the supporting information, at which time notification will be sent via e-mail to all consenting users.

2) **Default Judgment; Entry by Clerk:** The fee for filing a default judgment is \$45.00. If the plaintiff in an E-filed case seeks entry of a default judgment by the Clerk pursuant to CPLR 3215, the attorney should transmit to the E-filing System a Clerk's Default Judgment with bill of costs, etc. and the Certificate Requesting Entry of Judgment. The Judgment Clerk will promptly enter the judgment or will communicate with the filer by phone or e-mail if a problem is detected. To enter the judgment the Clerk will print out the judgment from the E-filing System, have it signed, and scan it to the system.

3) **Judgments Signed by Court:** In some instances, the court itself may sign the judgment. See above L (1).

4) **Judgment Roll:** Counsel shall submit the Certificate Requesting Entry of Judgment and shall identify therein, by title of the paper, number of the paper on the E-filing System List of Papers Filed, and date filed, all e-filed documents that should form part of the judgment roll. Any documents that were filed in hard-copy form only, that are to be included in the judgment roll, should be scanned into the system by counsel and included in the Certificate. The County Clerk will post the Certificate on-line, once approved, and this will constitute the judgment roll.

5) **Entry of Judgment:** Once the County Clerk has taxed costs and disbursements and calculated interest and has in hand a signed judgment, the Clerk will stamp the judgment with the County Clerk file stamp and scan the judgment to the system. This constitutes entry. The Clerk is required to and will transmit an e-mail message to all filing users on the case notifying that the judgment has been entered. This notice does not constitute service of notice of entry by any party. As to notice of entry, see Par. L (2) above.

L. Notices of Appeal and Appeal Papers

1) **Notice of Appeal; Payment of Fee:** A notice of appeal shall be filed on-line in an E-filed case. The fee therefore must be paid by credit card on-line or by means of the "Pay at the County Clerk's Office" option. In the latter situation, the notice will not be considered "filed" until payment of the fee is tendered to the County Clerk at the office.

2) **Notice of Appeal; Procedures:** The notice shall be filed together with a pre-calendar statement and a copy of the judgment or order appealed from. The other parties to the case may be served on-line in the manner described above. Proof of service must also be filed on-line. The County Clerk will print a hard copy of any e-filed notice of appeal and include it in the County Clerk file.

3) **E-Filing System: Appellate Division:** At present, the Appellate Division, First Department does not handle appeals in E-filed cases by electronic means. Counsel are advised to consult the rules of that court and to confer with the County Clerk.

Dated: July, 2006

HON. SHARON S. TOWNSEND
ADMINISTRATIVE JUDGE

**ANY ATTORNEY WHO REQUIRES ASSISTANCE IN AN ELECTRONICALLY
FILED CASE IS ENCOURAGED TO CONTACT NIAGARA COUNTY
SUPREME COURT AT THE NUMBER LISTED BELOW:**

**SUPREME COURT
ANGELO A. DELSIGNORE CIVIC BUILDING
775 THIRD STREET
NIAGARA FALLS, NY 14302
(716)278-1800**