

SUPREME COURT, ERIE COUNTY

PROTOCOLS ON COURTHOUSE PROCEDURES FOR CASES FILED ON THE NEW YORK STATE ELECTRONIC FILING SYSTEM (NYSEF)

Attorneys seeking information concerning the New York State Electronic Filing System (otherwise known as NYSEF) are advised to consult the User's Manual and FAQs, both available on-line at the NYSEF website (www.nycourts.gov/efile).

In addition, attorneys should consult the Uniform Rules for Supreme and County Courts, at 22 NYCRR 202.5b, for rules that currently govern e-filing.

What follows is an outline of the steps that must be taken in e-filed cases to satisfy traditional courthouse requirements for the processing of cases, such as the submission of orders to show cause. To the maximum extent possible, the steps outlined here seek 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 Justices and of the Court.

A. What Cases May Be E-filed

1) All authorized cases may be commenced by e-filing; however, all parties need to consent for the action or proceeding to continue as an e-filed case.

2) Cases authorized for e-filing in Erie County at this time are Commercial Cases (as defined by 22 NYCRR 202.70); proceedings filed pursuant to Article 7 of the Real Property Tax Law (i.e., tax assessment cases, 22 NYCRR 202.59), and all tort cases.

B. Identifying E-Filed Cases

1) Cases Commenced via NYSEF:

Cases that are commenced by filing of the initial papers with the NYSEF system are identified as e-filed cases by assignment of an index number beginning with the number 8 (i.e., 800001-2007).

2) Cases Converted to NYSEF:

Cases originally commenced in hard-copy form but later converted to NYSEF status will bear a regular index number initially. When a case is converted to e-filing, the letter "E" will be placed after the index number by the County Clerk's office to designate the matter

as an e-filed case (i.e., 000123-2007E). The “E” suffix must appear on all documents following the conversion of the case.

It will be the filing party’s responsibility to scan all papers previously filed in hard-copy form on to the NYSEF system.

C. Summons and Complaint/Notice of Petition and Petition

1) How Filed:

Papers commencing an action or special proceeding may be filed on-line with NYSEF. Fees shall be paid by MasterCard or Visa, or by choosing the “Pay at the County Clerk’s Office” option. **However, until all parties (including the plaintiff or petitioner) have consented to e-filing, service of initiating papers must be in hard copy pursuant to the CPLR. To obtain consent of opposing parties, the commencing party should include with the papers a Notice Regarding Availability of Electronic Filing.** A sample copy of the Notice Regarding Availability can be found on the Eighth Judicial District website, and is also available on the NYSEF Home Page under “Forms”, as Form # EF-3. Although all filings to the system generate automatic e-mail notifications to e-mail addresses on record, such automatic e-mails do not constitute service by a party (*see infra*, section E).

2) Consent By All is Required:

According to 22 NYCRR 202.5b (b) (2), “[p]arties who consent to participate in [e-filing] shall promptly file with the court and serve on all parties of record a consent to [e-filing], in hard copy, in conformance with [22 NYCRR 202.5b(c)]. A party represented by an attorney who has already registered as a filing user pursuant to subdivision (d) of this section may instead file and serve the consent * * * electronically by checking the designated box and following the instructions” on page 16 of the User’s Manual, which is available on the NYSEF Home Page (www.nycourts.gov/efile).

3) Commencing Party Must Also Consent:

The NYSEF system does not assume that the commencing party has consented to e-filing. Thus, the commencing party must also consent on line. *See* the User’s Manual at page 14.

4) Return Dates on Petitions:

The Part Clerk will assign a return date to petitions that have been e-filed, and notify counsel by e-mail or, if no consents have yet been filed, by mail or telephone, or otherwise as per the individual Justice’s Part Rules.

D. Filing of Papers Generally

1) Fees:

Court fees (e.g., RJI fee, motion fee) in NYSEF cases may be paid for on-line using a Visa or MasterCard. Alternatively, documents may be filed on NYSEF and the fee(s) paid in person at the County Clerk's Office. **However, the document is not considered to have been filed until payment of the fee has been tendered** (see CPLR 304; 22 NYCRR 202.5b [e] [3], [4] [i]).

2) Papers to Be Filed to the System:

All papers to be filed in a NYSEF case shall be filed on-line with the NYSEF system, unless a special exemption is granted (e.g., for oversized maps, photographs) or as directed by the Court. Papers that attorneys would not ordinarily file with the court in a hard-copy case need not be filed in a NYSEF matter (e.g., Notice to Produce Documents, Notice of Deposition).

3) Signatures:

Papers filed or served electronically shall be deemed to be signed by the signatory when the paper identifies the person as such, in compliance with 22 NYCRR 202.5b (f). Please see the specific rules regarding signing of affidavits and affirmations (see 22 NYCRR 202.5b [f] [Signatures]).

4) Courtesy Hard Copies of Papers for Judicial Review:

Absent request by an individual Justice, counsel should NOT provide hard copies of any documents.

E. Service On-Line

1) Generally:

In cases authorized for e-filing, a party may commence an action by filing the initiating papers on the NYSEF system, but until all parties (including the plaintiff or petitioner) have consented to e-filing, service of initiating papers must be in hard copy pursuant to the CPLR, along with a Notice Regarding Availability of Electronic Filing. A sample copy of a Notice Regarding Availability can be found on the Eighth Judicial District website - www.nycourts.gov/courts/8jd/Erie/efile.shtml.

2) Interlocutory Papers:

Once all parties have consented to e-filing a particular case, papers are served as follows. A party shall file the document on the NYSEF site. On the same day, the party shall send to all e-mail addresses of record for that case a Notice of Filing, setting forth the title of the paper filed, its sequence number on the NYSEF docket, the date and the time filed (see 22 NYCRR 202.5b [g] [2]). Electronic transmission of the Notice of Filing constitutes service on the addressees (see *infra*, section 3). A sample form of a Notice of Filing can be found on the Eighth Judicial District website - www.nycourts.gov/courts/8jd/Erie/efile.shtml.

3) Proof of Service to Be Posted On-Line:

After service of interlocutory papers by e-mail Notice of Filing, the filer shall file an Affidavit or Affirmation of service on the NYSEF system. However, proof of service need not be served on opposing parties. A sample form of Affidavit of Service can be found on the Eighth Judicial District website - www.nycourts.gov/courts/8jd/Erie/efile.shtml.

4) Other Methods of Service Permitted:

The rules authorize service by other methods permitted by the CPLR (*see* 22 NYCRR 202.5b [g] [2]).

F. Requests for Judicial Intervention

1) How Made:

A Request for Judicial Intervention (“RJI”) in a NYSEF case shall be filed electronically on NYSEF. When the RJI is filed and paid for, either on-line by Visa or MasterCard, or by the “Pay at the County Clerk’s Office” option, the Erie County Clerk’s Office will forward the RJI and any accompanying documents to the Chief Clerk’s Office to be reviewed and processed. Once processed, the RJI will be randomly assigned by the Chief Clerk’s Office.

2) RJIs in Commercial Cases:

If a party seeks assignment of a case to the Commercial Division, that party must file on-line on NYSEF the Request for Judicial Intervention and the Commercial Division Certification, indicating that the case falls within the standards for assignment of cases to the Commercial Division (*see* 22 NYCRR 202.70 [a], [b]). A copy of the Commercial Division Certification form can be found on the Eighth Judicial District website - www.nycourts.gov/courts/8jd/Erie/efile.shtml.

G. Motions on Notice

1) Filing of Motions on Notice:

A motion on notice in a NYSEF case shall be filed on-line and the motion fee paid for either on-line by MasterCard or Visa or by the “Pay at the County Clerk’s Office” option. The motion will be calendared by the Part Clerk once the fee is paid. Consenting parties will be notified of the return date via e-mail.

2) Service; Time for Service:

With regard to service of motion papers, the moving party shall send e-mail notifications to all consenting parties’ counsel of record or, in the case of consenting pro se parties, directly to the parties. CPLR 2214 (b) and 2215 apply. Proof of service shall be filed on-line.

3) Filing of Exhibits:

It is recommended that, whenever possible, attorneys filing exhibits in a NYSEF case make each exhibit a separate attachment to an affidavit /affirmation. In other words, each

exhibit should be scanned and uploaded as a separate document, and separate from the affidavit or affirmation to which it is attached.

4) Sequence Number for NYSEF Motions:

As in a hard-copy case, each document/motion filed on-line in a NYSEF case is assigned an identifying number (a “Sequence Number”, i.e. Seq. No. 006). In other words, the Clerk will tag each new motion, document or separate exhibit with a sequence number. Cross motions should have the same sequence number as the original motion sequence number.

5) Cross Motions, Responses and Replies:

Cross motions, responses and replies shall be e-filed on NYSEF. Fees shall be paid for cross motions, as for motions.

6) Adjournments on Motions and Cross Motions:

Please consult the rules of the IAS Justice to whom the case has been assigned.

7) Decisions and Orders of the Court:

When the Court signs a decision or an order in a NYSEF case, the document will be stamped “Filed” with the filing date, scanned and filed by the Part Clerk on the NYSEF system. The system will immediately transmit notice of the filing of the decision or order by e-mail to all parties who have consented on-line in the case, with a link to the document(s) so filed.

H. Proposed Orders

If the Court directs that an order be settled on a motion in a NYSEF case, the proposed order and any proposed counter-orders shall be filed in the NYSEF system, together with proof of service, and served on all counsel of record.

I. Orders to Show Cause

1) Commercial Cases: Proposed Orders to Show Cause and Supporting Papers to be E-Mailed to Commercial Division

Proposed Orders to Show Cause and supporting papers in a NYSEF case should not be filed with the NYSEF system until after their review by the Commercial Division. Instead, the papers should be emailed to the Commercial Division. Unless otherwise ordered, the Commercial Division will not require courtesy copies of any documents.

After review, the Court will contact counsel with further directions. Once the Order to Show Cause has been executed, the order will be stamped “Filed” by the Erie County Clerk’s office, uploaded and filed to NYSEF by the Part Clerk. Thereafter, the rest of the papers will be returned to Counsel. Counsel shall thereafter file the supporting papers on the NYSEF system, and serve all counsel of record, as directed in the Order to Show Cause.

2) Other Justices:

In any case not assigned to the Commercial Division, please check the individual Justice's Part Rules.

J. Sealing of Documents; "Secure" Documents

1) Sealing Requires Compliance with Part 216 of the Uniform Rules of the Supreme and County Courts

As in all other cases, some or all of the documents in an e-filed case may be sealed, but only upon a written finding by the Court as required under 22 NYCRR Part 216.

2) Secure Documents

A "Secure" document in the NYSEF system is a document the party does not wish to be widely available on the Web, because it contains confidential information such as social security numbers, the names of minor children, bank account numbers and the like. Whenever a document is being filed, the system will prompt the filer to choose to "secure" the document due to the presence of such information. Counsel may secure documents without prior approval of the Court or opposing counsel or parties. However, the documents will still be available for on-line viewing by the court, counsel of record for the parties to the action or proceeding and to any pro se party to that action or proceeding who has registered as a consenting user. It will also be available for public inspection at the Courthouse unless otherwise sealed by the Court.

3) Sealing; Procedures:

If a party wishes to file and maintain papers under seal and no sealing order has been issued in the case, the party must, by motion, obtain a Court order directing the Clerk to seal the file. The Court will conduct a Part 216 analysis in deciding whether to issue such an order. If the motion is filed with the NYSEF system, it will be open to the public until a sealing order is issued. If this creates concern for the parties about the release of confidential information in the meantime, they may wish to consider filing the motion as a "secure" document if that is appropriate. Or, the motion may 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 NYSEF after the fact. Questions should be addressed to the individual Justice's Chambers to which the case has been assigned.

4) Execution of Sealing Order:

If the Court issues an order directing the sealing of a NYSEF file in whole or in part, the party seeking the sealing should file with the NYSEF system a Certificate Requesting Sealing of Documents in Electronically-Filed Case, together with a copy of the Court's order. This form is available on the Eighth Judicial District website. 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 NYSEF system and, if any of the covered documents are found therein, in the hard copy file.

K. Entry of Orders and Notice of Entry

1) Entry:

Pursuant to 22 NYCRR 202.5b [j], “the Clerk shall file electronically orders and judgments of the court in accordance with the procedures for [e-filing], which shall constitute entry of the order or judgment.” Simultaneously, the Clerk shall transmit by e-mail to the e-mail addresses of record a notification of the entry. However, these steps shall not constitute 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.

L. 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 file on the NYSEF system a proposed judgment with bill of costs, interest calculations and supporting information, together with a Certificate Requesting Entry of Judgment. The Judgment Clerk will promptly communicate with counsel by e-mail or phone in the event of any difficulties with the submission. Once 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

If the plaintiff in a NYSEF cases seeks entry of a default judgment by the Clerk pursuant to CPLR 3215, the attorney shall transmit to the NYSEF system a Proposed Clerk’s Default Judgment with bill of costs, etc. and the Certificate Requesting Entry of Judgment. When the submissions are made to NYSEF, the Judgment Clerk will promptly accept the fee and 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 NYSEF, have it signed and scan it to the system.

3) Judgments Signed by Court

In some instances, the Court itself may sign the judgment. Calculation of disbursements, costs and interest will generally be left to the County Clerk by the court. Papers supporting such calculation may be submitted to the County Clerk in the same manner as described above.

4) Judgment Roll

Whenever a judgment is to be entered, a judgment roll must be created by counsel or the clerk (CPLR 5017[a]). Counsel shall submit the Certificate Requesting Entry of Judgment and shall identify therein, by title of the paper, number of the paper on the NYSEF 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 review the Certificate on-line and, once it has been approved, sign the judgment and scan it to the NYSEF system.

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* section K(2) above.

M. Notice of Appeal and Appeal Papers

1) Notice of Appeal; Payment of Fee

A notice of appeal shall be filed on-line in a NYSEF 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 Erie County Clerk at the office.**

2) Notice of Appeal; Procedures

The notice of appeal shall be e-filed on the NYSEF system together with a copy of the judgment or order appealed from. The other parties to the case shall be served on-line in the manner described above (*see* section E[2]). Proof of service must also be filed on-line (*see* section E[3]). The County Clerk shall print a hard copy of any e-filed notice of appeal and include it in the County Clerk's file.

3) NYSEF; Appellate Division

At present, the Appellate Division, Fourth Department does not handle appeals in NYSEF cases by electronic means. Counsel are advised to consult the rules of the Appellate Division for its procedures (*see* www.nycourts.gov/ad4).

Dated: October 1, 2007

HON. SHARON S. TOWNSEND
ADMINISTRATIVE JUDGE
EIGHTH JUDICIAL DISTRICT
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Buffalo, NY 14202