

ESSEX COUNTY SURROGATE'S COURT LOCAL PROTOCOLS FOR ELECTRONIC FILING

The Surrogate of Essex County hereby promulgates these local Protocols to assist users of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”) when accessing NYSCEF to electronically file petitions and documents in Essex County Surrogate’s Court. E-filing exists in accordance with the program established by the Chief Administrator of the Courts pursuant to 22 NYCRR 207.4a and 207.4aa. Users should also review the NYSCEF website at www.nycourts.gov/efile.

These protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those provisions are controlling and take precedence.

1) **Case Types Eligible for E-Filing:**

Effective **May 26, 2021**, e-filing is **mandatory** for all types of proceedings commenced on or after the effective date, with the exception of adoption proceedings and lifetime trusts. These proceedings are *specifically exempted* from e-filing regardless of the commencement date. Guardianship proceedings, while not mandatory, may be e-filed on a consensual basis.

Documents that 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.

Hybrid Proceedings: A party must not use NYSCEF to electronically file documents in proceedings that were not commenced electronically. All proceedings, even those listed above which were commenced prior to May 26, 2021, must continue to conclusion as hard copy paper filings or filed with the Court through the Electronic Document Delivery System (“EDDS”), UNLESS all parties to the proceeding elect to opt-in to electronic filing.

2) **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. (22NYCRR § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing, but may choose to participate (CPLR § 2111).

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>

3) E-Filing Procedures 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).

• **Importance of Accuracy when Entering Initial Case Information:** Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select Essex County as the venue for your case.

The case name must be entered as follows:

- Initial entry must be identical to the name 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" form. **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.**

• **Filing by Facsimile or Email Transmission Prohibited:** No pleadings, papers, documents or communications may be transmitted to the Essex County Surrogate's Court for filing by facsimile or email, nor shall any such materials be accepted for filing by the Court.

• **Wills, Codicils and Death Certificates:** Original death certificates may not be electronically filed and instead must be submitted directly to the Surrogate's Court within five (5) business days of the filing of a petition. They also cannot be submitted by EDDS. Do not remove staples from the original will or codicil. The court will upload these documents to NYSCEF within two (2) business days after the filing of the hard copy original.

• **Citations:** Proposed citations in e-filed cases must be submitted electronically through NYSCEF. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. Should the proposed citation require amendment, the filer shall be notified by email from the Clerk's office. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt of the notification, the filer must print the citation and serve it, in accordance with the SCPA along with (1) the papers filed relating to the citation, and (2) as may be applicable

thereto, either a “Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing” form or a “Notice Regarding Availability of Electronic Filing” form.

- **Decrees and Orders**: Proposed decrees and orders in e-filed cases must be submitted electronically through NYSCEF. If the proposed decree or order requires amendment, the Court will advise accordingly. Otherwise, it will be uploaded to NYSCEF and the parties will be notified that it has been signed and posted. Those who have requested a certified copy and have paid the appropriate fee via NYSCEF (or at Court) will receive the certified copy by regular mail unless payment is made in advance for another delivery method.

- **Stipulations**: Stipulations submitted for purposes of being approved and ordered by the Court shall be electronically filed, and a separate order approving the stipulation shall also be filed. Upon execution of the order, it will be uploaded to NYSCEF.

- **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, along with a “Notice of Hard Copy Submission – E-Filed Proceeding” (Form EF-20). A “Notice of Hard Copy Exhibit Filing” (Form EF-21) should be filed in NYSCEF.

- **Working Copies**: The Court may, upon notice, require certain e-filed documents be submitted to the Court in hard copy, also known as working copies. In the event working copies are so authorized, the filer must (1) certify that the working copy is a true, complete and exact copy of the electronically filed document, and (2) attach to the back of each hard copy document proof that such document has been electronically filed (e.g., the thank you page from NYSCEF or the e-mail notification after a successful upload of the document to NYSCEF). Working copies do not become part of the official record and will be destroyed by the Court upon disposition of the case.

- 4) **Fee Collection in E-Filed Cases**: Required fees in e-filed cases may be paid either at Court (in person or through the mail) or via credit card directly through the NYSCEF system. Please be advised of the following if paying via credit card through NYSCEF: (1) your credit card will be charged at the time of filing, therefore please make sure credit limit is large enough to cover anticipated fee; (2) a 2.99% non-refundable service fee will also be charged; (3) fees are calculated automatically in accordance with SCPA §2402 based on the documents filed and the filer’s representation regarding the size of the estate; (4) once the papers are reviewed by the Court, there may be either an upward or downward modification of fees initially assessed via NYSCEF; (5) in such event, you will be contacted by the Court; (6) if an additional fee is due, the Court cannot permit any further documents to be filed until the additional fee is paid.

If the electronic filer opts to pay at Court, be advised 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 weeks after being electronically submitted through NYSCEF.

5) **Notifications:** Notification of defective and/or incomplete filings, adjournment or rescheduling of proceedings and appearances, and/or other matters, may be made in the form of a document electronically filed by the Court with NYSCEF, by email from EssexSurrogate@nycourts.gov, or by telephone, depending on the circumstances.

- **Return of Requested Documents:** To ensure rapid return of documents, please provide a stamped, self-addressed envelope with sufficient postage to permit them to be returned to you. If a self-addressed, stamped envelope is not provided, the Court will contact you and direct you to pick up the documents at the Clerk's Office during regular business hours.

- **Certificates and Letters:** Upon request made via NYSCEF, the court will mail out Certificates and Letters. Certificates must be requested and paid for in advance for all e-filed proceedings.

- **General Correspondence:** All general correspondence, adjournment requests and conference requests shall be electronically filed.

6) **Signatures:** Documents requiring signatures are deemed "signed" under the circumstances outlined in 22 NYCRR §207.4-a(f). When e-filing a document bears an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to 22 NYCRR §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 -E-Filed Proceeding" form 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-E-Filed Proceeding" form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court finds good cause and grants the sealing request pursuant to Uniform Rules 216.1(a), the documents will then be noted and filed by the Court accordingly. If the request is denied, an order will be issued directing that the document be filed 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". A "Notice of Hard Copy Submission-E-filed Proceeding" form must be filed electronically through NYSCEF and it should be attached to the outside of the envelope.

8) 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. Please be advised, the notification does not constitute service of notice of filing upon any party (22 NYCRR 207.4-a[h]).

Should you need assistance please contact:

Essex County Surrogate Court Clerk's Office at (518) 873-3384 or by email at essexsurrogate@nycourts.gov;

NYSCEF Resource Center, Monday through Friday from 8am to 6pm at (646) 386-3033, by email at nyscef@nycourts.gov or by fax at (212) 401-9146.