Electronic Filing in Family Court Article Three and Article Ten Proceedings:

A REPORT TO

THE GOVERNOR, LEGISLATURE AND CHIEF JUDGE

eFiling

THE NEW YORK STATE
UNIFIED COURT SYSTEM

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Report on Electronic Filing in Family Court Article Three and Article Ten Proceedings

I. INTRODUCTION

IN HIS STATE OF THE JUDICIARY ADDRESS delivered to the Legislature, Judiciary and Bar on February 14, 2012, Chief Judge Lippman restated his commitment to improving the efficiency of the courts by harnessing the power of technology, particularly with regard to electronic filing ("e- filing").

> "Every year, the attorneys and litigants in our courts purchase hundreds of millions of pieces of paper, serve a mountain of paper on opposing parties, and file it with the courts. All this paper has to be transported, stored, retrieved as needed, and, ultimately, disposed. The waste, inefficiencies, and cost are enormous."

Chief Judge Lippman estimated that the overall savings to the courts, litigants, the Bar and county clerks from universal e-filing eventually will exceed $300 million a year. In his words, "In the year 2012, this is not a pipe-dream; it is the very least that we should do to move the courts boldly and efficiently into the 21st Century."

In enacting Chapter 543 of the Laws of 2011, empowering the Chief Administrative Judge to expand consensual and mandatory e-filing throughout the state in a wide variety of civil matters, the Legislature called for a formal study and report to the Legislature, Governor and Chief Judge containing the Chief Administrative Judge's recommendations for legislation authorizing development of an e-filing program for the origination of juvenile delinquency proceedings (Family Court Act Article 3) and abuse or neglect proceedings (Family Court Act Article 10), and the filing and service of papers in such pending proceedings. Chapter 543 also directed the Chief Administrative Judge to create an Advisory Committee representing the full spectrum of the state's family justice community to consult with her and provide "input from those who would be affected by such electronic filing programs." The Chief Administrative Judge's report is required to evaluate the impact of e-filing on litigants, including unrepresented parties, practitioners and the courts, reflect the input received from affected entities and individuals, and contain the recommendations of the Advisory Committee. A copy of Chapter 543 is attached as Appendix A to this report.

Chief Administrative Judge A. Gail Prudenti has established an Advisory Committee consisting of 23 members representing all of the affected constituencies listed in the legislation.[1] The Advisory Committee met four times to exchange views, discuss concerns, and provide input and recommendations regarding e-filing in the New York State Family Court. The Committee was provided with extensive information about the history and current status of e-filing in the New York courts. Members participated in one of four online visual demonstrations of the New York State Courts Electronic Filing System ("NYSCEF") where they had the opportunity to observe how documents are e-filed and ask questions of the presenters. The Advisory Committee had the opportunity to review and comment on preliminary and proposed final versions of this report, including the recommendations and legislative proposal set forth herein.

The Advisory Committee's invaluable input, summarized in section IV of this report, is closely reflected in the final recommendations contained in section V. The Committee supports gradual expansion of e-filing to Family Court, beginning with pilot programs for Article 3 and Article 10 proceedings in a limited number of counties around the state. The Committee brought a number of important issues and concerns to the attention of the court system, as described in section IV. Most of these concerns were expressed in response to earlier drafts of this report. As a result of the Committee's input, the recommendations contained in this report have evolved over time to where they now fairly reflect the Committee's consensus on how New York State should proceed with the introduction of e-filing in Family Court. In particular, the legislation proposed by this report provides that pilot programs for mandatory e-filing will be established only with the consent of the affected presentment agencies and child protective agencies in each county.

Subject to the safeguards and concerns discussed in this report, e-filing will be a beneficial and cost-saving development for all who participate in and comprise the family justice system in New York. In this age of e-banking, e-commerce and electronic submission of income tax returns, and seven years after the federal courts mandated e-filing in all civil and criminal cases, it is time for New York State to redouble its commitment to e-filing of court documents. Based on the proven track record of e-filing in New York's courts of civil jurisdiction, and to afford the entire justice system the cost-savings and other benefits of e-filing, this report urges the legislature to give the Chief Administrative Judge authority to authorize mandatory and consensual e-filing in the state's family courts for juvenile delinquency and abuse and neglect proceedings, in the manner and to the extent described in section V. The elements of a legislative proposal are described in detail in section V of this report, and a draft legislative proposal is included as Appendix B to this report.

1- Chapter 543 specified an Advisory Committee consisting of representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal service providers, public defenders, attorneys assigned pursuant to article 18-B of the County Law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program, and other interested persons.

II. HISTORY OF E-FILING IN NEW YORK

E-FILING WAS FIRST AUTHORIZED IN NEW YORK IN 1999 for a small class of cases in a limited number of venues. No cases were e-filed in 1999. Thirteen years later, as the Legislature has gradually expanded authorization for the use of e-filing, much progress has been made. More than 1.3 million documents have now been e-filed in the New York courts in approximately 350,000 cases by more than 21,000 registered users of the New York State Courts Electronic Filing System ("NYSCEF").

Since its inception in New York, e-filing has proven to be reliable, efficient, convenient and secure. The NYSCEF program allows court papers to be filed and served, virtually instantaneously, at any time and from anywhere, without the need to travel to the courthouse. Attorneys can access their case files online at any time of the day or night, from any location with an internet connection. E-filing has the potential to dramatically reduce record storage, retrieval and reproduction costs, largely eliminates the burden and expense of serving papers on opposing parties, and eliminates the valuable time lost in traveling to the courthouse to file or retrieve documents. E-filing promises significant cost savings for litigants, attorneys, the courts, and county clerks. It is estimated that universal e-filing could eventually reduce litigation costs by hundreds of millions of dollars a year for the individuals, businesses and state and local governments who litigate in the New York courts. E-filing also embodies a greener, more environmentally responsible approach by our justice system, eliminating the thousands of tons of paper filed and served each year.

The organized Bar has recognized these significant benefits and supports expansion of e-filing in the state courts. The New York State Bar Association's House of Delegates adopted a resolution in March 2007 noting that e-filing offers "significant advantages over paper filing, including savings of cost and time to clients and attorneys."[2] The New York City Bar Association issued a report in 2008 "wholeheartedly support[ing]" e-filing .[3]

CONSENSUAL E-FILING PROGRAMS

Over the years, the Legislature enacted a series of amendments authorizing consensual e-filing on a pilot basis in a growing number of courts and case types. After a decade of experience, e-filing ceased to be a pilot program with the enactment of Chapter 416 in 2009, empowering the Chief Administrative Judge to issue rules authorizing a program of consensual electronic filing and service of documents in cases in the Supreme Court, the Court of Claims, the Surrogate's Court, and the New York City Civil Court. Consensual e-filing is authorized today by rule in the Supreme Court

2- Resolution of the NYSBA House of Delegates, March 31, 2007, at 1.

3- Association of the Bar of the City of New York, *Comments by the Association of the Bar of the City of New York on the Report and Recommendations of the Task Force on Electronic Filing of Court Documents of the New York State Bar Association*, March 5, 2008, at 2.

in 15 counties in a variety of case types, primarily in commercial, tort, and tax certiorari cases; in Surrogate's Court in 11 counties; in the Court of Claims in the 12-county Albany District; and in one type of case in New York City Civil Court. The table in Appendix C presents an up-to-date picture of all e-filing programs in New York State.

MANDATORY E-FILING PROGRAMS

The pace of paperless litigation is accelerating in New York. In 2009, Chapter 416 for the first time authorized a pilot program in the use of mandatory e-filing in a limited number of venues and classes of cases: certain commercial actions in New York County; tort actions in Westchester County; and in any classes of actions in a county outside New York City (except matrimonial actions, and CPLR Article 78, Mental Hygiene Law Article 81 and Election Law proceedings). Chapter 528 of the Laws of 2010 modestly expanded the mandatory e-filing program, empowering the Chief Administrative Judge to adopt rules authorizing its use in certain commercial cases in Westchester County and in Livingston, Monroe, Rockland and Tompkins Counties.

Last year's legislative authorization, Chapter 543, expanded mandatory e-filing to more case types in additional counties in the state. As of March 1, 2012, mandatory e-filing will be in place for a wide variety of civil matters in Supreme Court in New York, Westchester, Rockland, Kings and Bronx counties, and for certain Surrogate's Court proceedings in Chautauqua, Erie and Monroe counties. A table setting forth all active consensual and mandatory e-filing programs in New York is included with this report as Appendix C.

In 2010 and 2011, the Administrative Board of the Courts authorized the Chief Administrative Judge to implement mandatory e-filing programs as follows:

- New York County Supreme Court. Mandatory e-filing began in May 2010 for certain newly-filed commercial cases, and now applies to commercial contract and tort actions without regard to the amount in controversy.

- Westchester County Supreme Court. Mandatory e-filing of commercial and tort cases was introduced in stages, from February to June 2011, and now applies to all civil actions, except those expressly excluded by statute (CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).

- Rockland County Supreme Court. Mandatory e-filing began in June 2011 in all case types, except those expressly excluded by statute.

- Kings County Supreme Court. Commercial actions where the amount in controversy equals or exceeds $75,000, effective February 27, 2012.

- Bronx County Supreme Court. Medical malpractice actions, effective February 27, 2012.

- Chautauqua, Erie and Monroe County Surrogate's Courts. Probate and administration proceedings and miscellaneous proceedings related thereto, effective March 1, 2012.

In each of these locations, the Chief Administrative Judge consulted extensively with the affected county clerks and local bar associations, all of whom enthusiastically welcomed e-filing, and the transition to a mandatory system, though still in its early stages in some areas, has gone smoothly for all concerned. Since the May 2010 commencement of mandatory e-filing in New York County, a total of more than 68,000 new cases have been commenced electronically in the counties and case types subject to mandatory e-filing.

NEW YORK CITY FAMILY COURT E-SHARING PILOT

In February 2010, the New York City Family Court and the New York City Administration for Children's Services ("ACS") announced a pilot program for the electronic sharing of all abuse and neglect petitions filed in Family Court, marking the first cooperative effort of its kind to be undertaken in a large urban jurisdiction nationally. Approximately 12,000 originating petitions are being filed and shared electronically by ACS and the New York City Family Court. Under this program, petitions are personally served on the parties and subsequent papers in pending proceedings are filed in paper form. E-sharing of ACS petitions has enabled them to reach judges earlier in the day, allowing for more time for critical initial hearings. Early evaluations reveal that this program has reduced the overall time it takes to get a petition before a judge by two hours on average. Moreover, data previously entered manually by court and ACS staff is now being shared electronically. Data sharing has improved coordination between ACS and the Family Court and helped expedite permanency planning for vulnerable children. The program has been expanded to enable the Family Court to transmit information electronically to ACS regarding docket entries, court orders and notification of court dates. E-sharing of abuse and neglect petitions has been implemented smoothly and has benefitted both the New York City Family Court and ACS.

III. THE NYSCEF SYSTEM

OVERVIEW OF NYSCEF

The NYSCEF program allows attorneys and self-represented litigants to file and serve court papers at any time of day and from any location, without the need to travel to the courthouse. NYSCEF also allows counsel with internet access to view the case file at any time from any place. NYSCEF requires no special hardware or software. Rather, the equipment needed for e-filing is now standard in virtually every law office: a computer, basic software (a web browser and a PDF/A reader/writer such as Adobe), internet access, and a scanner. In order to file documents, an attorney or self-represented litigant must obtain a user ID and password, a simple process that takes place online. A single user ID and password allows an attorney registered in New York to file in any county, court, or case type that is authorized for e-filing.

A user ID and password are not required to view non-secure and non-sealed documents in civil case files in NYSCEF as a guest online (such public access would not be available for e-filed documents in family and criminal court cases). Aside from the normal court filing fees, there is no charge to use NYSCEF.

NYSCEF is exceptionally user-friendly. Documents to be e-filed are first converted into PDF/A format either by software conversion immediately after the document has been created or through a scanner — a simple process familiar to most attorneys today. The e-filer then signs onto NYSCEF with a user ID and password and, by following the instructions on a series of clearly designed and easily understandable screens, transmits the document to the NYSCEF system. For those documents that require payment of a fee (such as a commencement document or a notice of motion), NYSCEF offers secure online payment options via credit and bank cards.

After the document is transmitted, NYSCEF automatically generates an email notification of receipt that is sent to the e-filer and to all other e-filing parties in the case. These notifications, containing a secure link to the newly-filed document, generally constitute service of that document on the participating users. Except for the initiating papers, which still must be personally served in hard copy format even in a case that has been commenced electronically, the parties thereafter generally are relieved of the burden of serving papers on opposing parties — NYSCEF automatically performs that function and records that it has done so.

SECURITY

The system provides several layers of security — an issue of obvious concern in the family and criminal law contexts. After nearly thirteen years of use and experience, there is good reason to be confident about the security of NYSCEF itself and its ability to protect the confidentiality of e-filed documents containing personal and sensitive information. Indeed, e-filing provides a level

of security far greater than what prevails now for documents in paper form. E-filed documents are much less susceptible to loss or destruction by human error, flood, fire or other natural or man-made disasters. Unlike paper, electronic documents can be copied readily. In fact, the NYSCEF system is protected by back-up file servers, so even if one file server fails, all affected data are preserved elsewhere and available for prompt use. The NYSCEF system has extensive protections against hackers and other malicious actors, with state-of-the-art encryption upon receipt of all e-filed data. NYSCEF only accepts files in PDF/A format, which, unlike word processing files, cannot be altered.

In addition to existing statutory protections, such as General Business Law § 399-dd(6) providing that attorneys shall not, with narrow exceptions, file documents with the clerk of the court revealing social security numbers, NYSCEF also provides strong protections for confidential information in e-filed documents. When e-filing a document containing confidential information, such as information about a person's health, the e-filer has the option of filing the document as "secure," an easy step under NYSCEF that does not require court approval. A document e-filed in secure status is accessible online only to the attorneys or other filers participating in the e-filed case.[4] Further, NYSCEF readily allows the court clerk or the county clerk to "seal" specific documents or entire case dockets as required pursuant to statute, rule or court order.

OPT-OUT PROVISION

While NYSCEF is very user-friendly, some attorneys, particularly solo and small firm practitioners, may lack the technical knowledge or equipment necessary to e-file. Therefore, e- filing legislation and implementing rules in New York have provided that attorneys may "opt out" of any mandatory e-filing program through a simple, straightforward procedure. Any attorney may opt out without court action by filing a form with the clerk of the court certifying that he or she lacks the equipment and/or the technical knowledge required to e-file. Alternatively, the court can exempt an attorney from e-filing where good cause is shown. As a practical matter, there have been very few instances in which attorneys have felt the need to opt out. To date, less than one percent of attorneys have chosen to opt-out of mandatory e-filing programs in New York.

TRAINING AND OUTREACH

The NYSCEF Resource Center is a statewide help center that offers e-filing training programs for attorneys several times a week in New York County and around the state. Participating attorneys receive two hours of CLE credit offered at no cost. Various jurisdictions, such as Westchester County (in a collaboration between the County Clerk there, Hon. Timothy Idoni, and the Supreme Court),

4- However, as with any document in paper form, it would be available for inspection at the courthouse or county clerk's Office via a computer, unless it has been "sealed" pursuant to court order.

and bar associations working with local court and county clerk staff, also provide training in e-filing. Attorneys can register to take training courses on the NYSCEF web site. Many attorneys have begun using NYSCEF without formal training, as the system is intuitive and easy to use. The NYSCEF web site offers a "sandbox" system where users can practice e-filing in a simulated setting. The NYSCEF system resembles the Federal Electronic Case Filing ("ECF") system, so those attorneys with e-filing experience in the federal courts have little difficulty adapting to NYSCEF. Any registered or prospective e-filer can get live or online assistance by calling the NYSCEF Resource Center or visiting its web site, which contains a wealth of resources, from a User's Manual to an online demonstration visually explaining how documents are e-filed.

E-FILING IN OTHER JURISDICTIONS

E-filing has moved more rapidly in the federal courts than in New York. Implementation in the U.S. District Courts commenced in 2002 and in the appellate courts in 2005. E-filing is mandatory in the federal courts and has become a basic and accepted component of federal court operations and federal law practice. The ECF system is now in use in all District Courts for civil and criminal cases, Bankruptcy Courts nationwide, all regional Courts of Appeal, the Court of Federal Claims, and the Court of International Trade. Over six million documents are e-filed every month in the federal courts, and over 500,000 attorneys use the e-filing system.

E-filing is becoming the norm in state courts nationwide. It is now authorized in 41 states, and is contemplated in most of the rest.[5] Since most of the state trial courts in the United States are administered locally, implementation of e-filing in those courts is a county-by-county process — usually accompanied by statutory authorization for pilot programs with implementing court rules. These pilot programs abound; some encompassing all civil cases, some with selected categories of civil cases. Those with selected cases generally include commercial cases, mass torts and mortgage foreclosures, and some include domestic relations, probate, family, and criminal cases. E-filing is expanding, for instance, to probate proceedings, family and domestic relations cases (Vermont and Colorado), and to criminal matters (Alabama, Arizona, Florida, Nebraska, and Vermont). Significantly, of those states that have operating e-filing programs, more than one-third have mandatory filing, including states such as Connecticut, where all civil cases must be e-filed.

5- Report of the Chief Administrative Judge to the Governor, the Chief Judge, and the Legislature, *e Filing in the New York State Courts*, June 2011, at 10.

IV. ADVISORY COMMITTEE COMMENTARY

THE ADVISORY COMMITTEE SUPPORTS THE INTRODUCTION OF E-FILING IN FAMILY COURT Article 3 and Article 10 proceedings in New York, believing it will improve the efficiency of the family justice system if implemented gradually, as described below. In the future, e-filing has the potential to produce significant cost-savings for state and local governments, especially presentment and child protective agencies, legal representation providers, the courts and others.

While generally supportive of e-filing in juvenile delinquency and abuse/neglect proceedings in Family Court, members of the Advisory Committee raised several issues of particular importance to them. Most of these issues and concerns were raised in response to earlier drafts of this report, with the final recommendations and legislative proposal evolving significantly to reflect the Committee's views and input. The Committee was concerned about moving forward with e-filing programs in counties where the key stakeholders are not prepared to do so from the standpoints of funding or technology, adopting effective procedures to insure that e-filed documents containing sensitive information are properly sealed and protected from public view, and providing adequate technical support to county-funded stakeholders, particularly in addressing any incompatibilities between the NYSCEF system and local technology systems.

In response to these concerns, the proposed legislation authorizing e-filing in Family Court Article 3 and Article 10 proceedings specifically provides that a mandatory e-filing program can be established only with the consent of the affected presentment agencies in a county. This approach ensures that e-filing will not be introduced in a county where the key stakeholders presently lack the technological or fiscal wherewithal to pursue it at this time.

The Advisory Committee's commentary was particularly helpful in identifying a number of important practical and technical issues that will need to be addressed as part of the implementation process. It is critical that the court system continue to consult and work closely with the Advisory Committee and all affected stakeholders to make sure that important "nuts and bolts" issues are resolved before local e-filing programs are commenced. The Advisory Committee believes that implementation challenges can be met based on the gradual approach to e-filing reflected in the legislation recommended by this report, and if all parties work together cooperatively to develop effective court rules and protocols.

AUTHORIZATION OF E-FILING AND RESOURCE ISSUES

The Advisory Committee recommends providing the Chief Administrative Judge with authority to authorize e-filing in Family Court Article 3 and Article 10 proceedings in up to six counties within the state where child protective and presentment agencies consent to participate in such a program. Where these stakeholders agree to participate, the Chief Administrative Judge would es-

tablish e-filing programs in those counties by rule, with the approval of the Administrative Board of the Courts.[6] The Chief Administrative Judge also should be authorized, with the Administrative Board's approval, to promulgate court rules permitting participation in e-filing in Family Court on a voluntary basis upon consent of the parties in any county where affected stakeholders are interested in and capable of successfully pursuing e-filing. This gradual approach to the expansion of e-filing to Family Court is consistent with how most e-filing programs have been tested and instituted in New York.

The Committee recommends that enabling legislation provide the Chief Administrative Judge with discretion to identify the specific counties interested in establishing e-filing programs. The Chief Administrative Judge is in the best position to assess local conditions and make determinations regarding those counties that are ready to consent to and adopt e-filing successfully. In implementing e-filing programs, the Advisory Committee highlights the need for flexibility to accommodate the diversity of local court practices prevailing around the state.

The Advisory Committee emphasized the need for the Office of Court Administration ("OCA") to work closely with presentment agencies, child protective agencies, institutional providers of legal representation, and 18-B assigned counsel panels to provide training and technical assistance in the development of e-filing programs. Consistent with past expansions of e-filing, the Chief Administrative Judge should start with a consensual program in a locality before phasing into a mandatory program when essential participants have expressed consent, demonstrated their readiness, and technical issues have been worked out. Committee members opined that the readiness for e-filing in a particular county will depend heavily on the interest and status of presentment and child protective agencies, which are responsible for virtually all Family Court filings in Article 3 and Article 10 matters. The Advisory Committee believes the Legislature acted wisely in identifying Article 3 and Article 10 proceedings as suitable for e-filing inasmuch as the vast majority of court filings in such matters are originated by institutional litigants and the frequency of unrepresented parties is minimal.

The Committee endorses e-filing in Article 3 and Article 10 proceedings because it generally agrees that it could be implemented without significant disruption or added resources. However, e-filing may still present challenges for some institutional litigants, possibly requiring modifications to office case management systems, additional support staff, more modern scanners/copiers, and greater technology resources to handle scanned imaging. As a practical matter, the court system should not implement e-filing in a county unless all affected parties are ready from the standpoints of technology, training and resources.

6- The Administrative Board of the Courts consists of the Chief Judge and the four Presiding Justices of the Appellate Division.

E-FILING OF SENSITIVE AND CONFIDENTIAL DOCUMENTS

The Committee believes that originating petitions and motions are the only documents that should be required to be e-filed in Article 3 and Article 10 proceedings. Given the sensitive nature of these matters, the Advisory Committee understandably is concerned about ensuring that provisions of law governing the confidentiality of Family Court records continue to be fully respected, both in e-filing legislation and by the NYSCEF system. Committee members pointed out that Family Court records are confidential by law and, with rare exception, unavailable for public inspection. Therefore, by definition, all papers e-filed in Family Court matters will be nonpublic records, unavailable for public viewing online or at the courthouse. To protect the privacy of children and the safety of domestic violence victims, e-filing legislation must preserve this approach and not permit or facilitate any broader access to information in Family Court records than is now permitted in the paper context.

The Committee urges that e-filing legislation or implementing court rules contain language specifying that where a Family Court record or part of a record is sealed by statute, rule or court order, such record, where e-filed, shall also be "sealed" in NYSCEF. The Committee recommends that the parties not be required to e-file certain documents that are subject to sealing by law, such as orders for HIV testing or judges' *in camera* interviews of children in Article 10 matters. The Committee believes the parties should retain the option of e-filing such papers. If the parties opt to file such documents in paper form instead, the court will take appropriate steps to make sure the documents become part of the official electronic case file. The Committee was informed that NYSCEF can accommodate these concerns and permit documents to be e-filed as sealed documents that are not viewable by anyone, including the parties to the case, as the court's order may direct.

The Advisory Committee believes that while there are advantages to giving the parties the option of e-filing sealed documents, this approach risks the creation of a hybrid court file consisting of both digital and paper documents. This would be inconsistent with one of the overall goals of e-filing, which is to have a single official electronic court file for each case. Thus, the Committee recommends that implementing court rules address the manner by which paper documents filed with the court eventually become part of a single electronic file for each case. The Committee looks forward to working with the court system to develop court rules addressing these and other important implementation issues, with the goal of striking a balance between promoting uniformity of policy and allowing some flexibility to accommodate existing local approaches and procedures.

The Advisory Committee also recommends that e-filing legislation or implementing court rules specify that a requirement to e-file a document will not affect any statutory obligations relating to personal service of that document. Any document now required by law to be personally served on a party in an Article 3 or Article 10 proceeding shall continue to be personally served under an e-filing system.

Regarding the security of the NYSCEF system, discussions with OCA Information Technology

directors and staff made clear that documents filed with NYSCEF are highly secure, containing the same level of security against hackers, such as 128 bit encryption, now utilized by internet banking web sites and electronic commerce sites like Amazon.com. All traffic between e-filers and NYSCEF servers, and between OCA's servers, is encrypted. Data in the NYSCEF system is backed up by multiple secure servers. Even if one server fails, the data is preserved elsewhere and still available for prompt use. In addition, OCA's data center uses an extensive series of firewalls, including web application firewalls and virus-checking programs, as further security layers. The number of OCA personnel with access to NYSCEF data and programs on the servers is limited. All PDF documents are checked to insure they are not infected with "malware," and all programs written by OCA are subjected to software designed to prevent virus attacks. All NYSCEF users are provided with a unique username and password.

PRACTICAL ISSUES

The Advisory Committee also expressed concern about the practical difficulties that e-filing may present for agencies and institutional litigants where multiple attorneys often work together on the same matter. A potential challenge created by e-filing will be the routing of lawyer workflow in large presentment agencies and legal representation offices. NYSCEF needs to be robust enough to smoothly and efficiently handle the transfer of cases between attorneys in large offices. The Committee was informed that, upon notification to NYSCEF, the necessary changes, including insuring that the departing attorney no longer has access to cases, ordinarily can be effectuated within a matter of hours. Even where hundreds or thousands of cases are involved, it should not take more than one or two days to provide new attorneys with complete access to the cases. In addition, NYSCEF permits multiple attorneys in a law office to have access to the electronic files in any given case. NYSCEF also permits multiple attorneys to receive email notifications each time a document is e-filed in a particular case, with secure links provided to each document. Such notifications will be sent to the attorneys of record and/or to a specific email address that serves as a general "intake" for the entire office. Some institutional litigants who currently use NYSCEF rely on just such a general "intake" email address to receive e-filing notifications of documents pertaining to new case filings and to documents e-filed in cases involving the agency's attorneys. This greatly facilitates case assignments to attorneys. Offices may, if they choose, establish "rules" that will automatically forward filings in the special e-mail box to designated attorneys. In addition, NYSCEF allows paralegals to obtain a Filing Agent User ID and Password so that they can e-file documents on behalf of attorneys in an office who do not wish to do the e-filing themselves. The Committee believes that the flexibility built into the NYSCEF system will ensure a smooth transition to e-filing by institutional litigants, and OCA has expressed its readiness to work with such litigants at the technical level to accommodate office needs and preferences.

The Advisory Committee recommends that legislation authorizing e-filing in Family Court Article 3 and Article 10 proceedings contain the same "opt-out" provisions for attorneys as have been enacted in prior e-filing legislation for courts of civil jurisdiction. Under this provision, attorneys may be exempted from e-filing without court action by certifying to the clerk of the court that they lack the equipment and/or the technical knowledge required to e-file. In addition, the legislation should provide that lawyers may be exempted from e-filing by the court upon demonstrating good cause. However, as to unrepresented litigants, the Committee believes they should be automatically exempt from e-filing, unless they choose to participate in e-filing.

The Advisory Committee urged that the court system take steps to ensure that the computer capabilities of assigned counsel practicing in Family Court are adequate to participate in e-filing. Similarly, in those counties where e-filing programs are established, the court system should ensure that there are enough public access computers in affected courthouses to accommodate unrepresented litigants given court permission to e-file.

V. RECOMMENDATIONS – for Legislation and Court Rules Authorizing e-Filing in Family Court Article 3 and Article 10 Matters

A. The Judiciary recommends the enactment of legislation to permit e-filing, until September 1, 2015, as follows:

- The Chief Administrative Judge should be authorized to promulgate court rules, with the approval of the Administrative Board of the Courts, permitting participation in e-filing in Family Court on a voluntary basis upon consent of the parties.

- The Chief Administrative Judge should be authorized to promulgate court rules, with the approval of the Administrative Board of the Courts, providing for mandatory e-filing in Family Court Article 3 (juvenile delinquency) and Article 10 (abuse and neglect) proceedings in up to six counties where the presentment agency and child protective agency in such counties consent to participate in such a program.

- E-filing would apply to a petition originating a juvenile delinquency proceeding filed by a presentment agency under Article 3 of the Family Court Act and to the filing and service of papers in pending proceedings; and to a petition originating a proceeding to determine abuse or neglect filed by a child protective agency under Article 10 of the Family Court Act and to the filing and service of papers in pending proceedings.

- No paper or document filed by electronic means in a Family Court proceeding shall be available for public inspection online.

- Authorization for e-filing should expire on September 1, 2015.

- The Chief Administrative Judge should issue a report to the Legislature by January 1, 2015, evaluating the progress of e-filing in Family Court Article 3 and Article 10 proceedings, containing the recommendations of the Advisory Committee, and recommending additional legislation.

- Safeguards and restrictions currently existing in e-filing programs in courts of civil jurisdiction should be preserved and extended to new e-filing programs authorized in Family Court.

- Legislation should contain an opt-out provision permitting a lawyer to be exempted from e-filing without court action by certifying to the clerk of the court that the lawyer lacks the necessary computer hardware, software or technical knowledge to e-file. The legislation should also provide that a lawyer may be exempted from e-filing by the court upon a showing of good cause.

- Unrepresented parties should be automatically exempt from e-filing, unless an unrepresented party requests, and the court grants, permission to e-file.

- Prior to implementing voluntary or mandatory e-filing in the Family Court in any county the Chief Administrative Judge shall, in addition to any consent requirements, consult with local bar associations, each authorized presentment agency and child protective agency within the county, assigned counsel programs, institutional providers of legal representation in juvenile delinquency proceedings and abuse/neglect proceedings, and other interested members of the family justice community.

- The Chief Administrative Judge should maintain and continue to consult with the Advisory Committee to develop court rules implementing e-filing legislation.

B. Upon enactment of legislation as set forth above, the Judiciary recommends promulgation of implementing court rules addressing the following issues:

- Sealing of records. Parties should not be required to e-file documents that are subject to sealing pursuant to statute, rule or court order. Where a record or part of a record is sealed by statute, rule or court order, such record, where e-filed, shall also be "sealed" in NYSCEF.

- Any document or instrument, such as an originating petition or order of protection, required by law to be served personally on a defendant shall continue to be so served in addition to being e-filed.

VI. CONCLUSION

THE NEW YORK STATE UNIFIED COURT SYSTEM IS FULLY COMMITTED to a future in which the electronic filing of court records becomes the norm in all of the state's trial and appellate courts. The most responsible way to achieve this essential vision for the future of New York's courts is to expand e-filing in an incremental but steady manner that does not cause disruption to litigants, attorneys, state and local governments, and the courts themselves. Indeed, the history of e-filing in New York has been characterized by the Legislature's measured expansion of e-filing, and by the court system's commitment to consultation and cooperation with the practicing bar, county clerks, institutional litigants and others affected by the ongoing transition to e-filing.

With the legislative authorization proposed in this report, permitting e-filing in critical proceedings comprising a large segment of Family Court dockets, the Chief Administrative Judge will be able to move forward significantly in exploring the benefits of e-filing for our state. The legislation proposed in this report will allow the Chief Administrative Judge to focus on those localities where essential stakeholders have demonstrated a strong interest in e-filing. As in the past, development of e-filing programs will take place in close consultation with the affected and interested parties.

After 13 years of growing success in the New York State courts, the great potential offered by e-filing is becoming increasingly clear. In an era in which government is asked to make ever wiser and more efficient use of limited public resources, the courts must not fail to take much greater advantage of this powerful cost-saving technology. The legislation proposed in this report will enable the court system to take an important step in this direction. It allows the Chief Administrative Judge to establish Family Court e-filing programs that will provide a reliable basis for evaluating the long-term benefits of e-filing for litigants, attorneys, the courts and state taxpayers. The recommendations in this report are consistent with the ongoing efforts to expand e-filing at a steady, measured pace that enables us carefully to work through the unique issues and problems presented by different courts and areas of the law. As in the past, the court system will seek the consent of essential stakeholders where necessary and continue to consult and work closely with all affected constituencies — government agencies, the practicing bar, legal representation providers, and others — knowing that they are equally interested in realizing the benefits of e-filing.

The success of existing e-filing programs in the New York State courts supports not only the legislation proposed in this report but, ultimately, the broader vision of full-scale implementation of e-filing in the New York courts. In the year 2012, in a state that historically has been a leader in the administration of justice, the time has come for all New Yorkers to embrace this vision with boldness and common sense.

APPENDIX A:

Chapter 543 of the Laws of 2011

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8368A

SPONSOR: Weinstein

TITLE OF BILL: An act to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to specifying courts and actions in which pilot programs will be authorized to permit use of electronic means to commence an action or proceeding; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to the establishment of advisory committees to implement laws to effect service of papers by electronic means

This measure is proposed by the Chief Judge of the State to improve the efficiency of the trial courts and the administration of justice in this State.

This measure would effectuate a further expansion of the use of electronic means for the filing of certain papers in judicial proceedings ("e-filing"). First authorized by the Legislature as a pilot project 12 years ago for civil cases in Supreme Court in certain counties, see L. 1999, c. 367, over the next decade the Legislature revisited the experiment several times, expanded case categories and venues in which e-filing could be used on a voluntary basis, and repeatedly extended sunsets for the program. In 2009, on the program's 10th anniversary, the Legislature made the voluntary e-filing program permanent while, for the first time, authorizing a pilot program in mandatory e-filing in certain case types and venues, subject to automatic opt-outs for pro se litigants and for attorneys without the equipment or technical wherewithal to participate in the program. See L. 2009, c. 416. Based partly on successful experience with the 2009 statute, in 2010 the Legislature further expanded mandatory e-filing to additional classes of civil proceedings in certain counties. See L. 2010, c. 528.

To date, the Legislature has authorized mandatory e-filing in commercial cases over $100,000 in New York and Westchester Counties; in tort cases in Westchester County; and in any class or classes of civil cases (other than CPLR Article 78 proceedings, Mental Hygiene Law Article 81 cases, matrimonial actions and Election Law proceedings) in Supreme Court in Livingston, Monroe, Rockland and Tompkins Counties. In practice, and in accordance with this authorization, mandatory e-filing is now operational in New York, Westchester and Rockland Counties. In this measure, we seek a modest expansion of mandatory e-filing in Supreme Court civil cases, and introduction of mandatory e-filing in Surrogate's Court and the New York City Civil Court. We also seek legislative sanction to begin exploring introduction of e-filing in criminal and Family Courts.

PROPOSED E-FILING EXPANSION

The expansion of e-filing proposed in this measure is as follows:

SUPREME COURT, CIVIL

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions - in any of the following: (i) commercial cases and other breaches of contract without regard to the amount of damages sought in the counties of New York City; (ii) tort cases in the counties of New York City; and (iii) one or more classes of cases in Livingston, Monroe, Rockland, Tompkins, Allegany, Essex, Onondaga and Westchester Counties, subject to exceptions for CPLR Article 78, MHL Article 81, matrimonial and Election Law proceedings. The Chief Administrative Judge must consult with the bar and get the approval of the local County Clerk before mandatory e-filing may be implemented in counties outside New York City.

SURROGATE'S COURT

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions in Surrogate's Court in any county and in any class of cases (at present, consensual e-filing is authorized in Surrogate's Court throughout the State). The Chief Administrative Judge must consult with the bar of a county before mandatory e-filing is required in Surrogate's Court in such county.

NEW YORK CITY CIVIL COURT

Proposal:

Mandatory e-filing may be required by the Chief Administrative Judge - for both commencement of actions and filing/service in pending actions - in no-fault medical provider cases (at present, e-filing is permitted in such cases but only upon consent).

SAFEGUARDS

While we here describe it as "mandatory e-filing"{2}, the new e-filing programs sought in this measure nonetheless have strong built-in safeguards to insure that no litigant or lawyer can be prejudiced for lack of the equipment or technical understanding needed to e-file. These safeguards are the same as those established as part of the limited Supreme Court civil mandatory e-filing program authorized by chapter 416 of the Laws of 2009 and expanded by chapter 528 of the Laws of 2010. Specifically, any pro se litigant in any class of cases in any court in which mandatory e-filing is established is entitled to claim an absolute exemption from having to e-file. No court approval is required. All the litigant need do to secure the exemption is to indicate on a short form to be filed with the court that he or she chooses to opt out of e-filing. Similarly, any attorney in any class of cases in any court in which mandatory e-filing is established is automatically (i.e., with no court approval required) entitled to claim an absolute exemption from having to e-file provided he or she lacks the requisite computer skills or equipment; and he or she so indicates on a form filed with the court. Where a party or lawyer opts-out of e-filing, he or she files papers

with the court and exchanges papers with his or her adversaries by the traditional hard copy means.

To provide further assurance that the mandatory e-filing pilots established by this measure go forward efficiently and without jeopardizing the rights of any parties to litigation, the measure requires that the Chief Administrative Judge consult with affected stakeholders before putting any pilot into effect. The measure continues the existing requirement that the Chief Administrative Judge maintain an advisory committee at least one-half of whose members are County Clerks to assist her in the implementation of mandatory e-filing programs in civil parts in Supreme Court; and further directs that the Chief Administrative Judge create additional advisory committees to assist her in implementing e-filing in Surrogate's Court and the New York City Civil Court. Finally, as was required by the Legislature as part of the first rollout of mandatory e-filing in Supreme Court civil cases in 2009 and 2010, no mandatory e-filing in civil cases in Supreme Court may go forward in any county outside New York City without the agreement of its County Clerk. This requirement is continued and will apply to mandatory e-filing in all of the new counties authorized by this measure as well.

The Chief Administrative Judge's current duty to report to the Legislature, the Governor and the Chief Judge on the e-filing program (i.e, on April 1, 2011 and every April 1st thereafter) would be continued and, in the preparation of such report, the Chief Administrative Judge must continue to be required to consult with the County Clerk in each county in which an e-filing program is implemented for Supreme Court civil cases. Also, all mandatory e-filing programs, existing and newly-proposed, would remain subject to sunset - on September 1, 2015.

Lastly, the measure would direct the Chief Administrative Judge to establish advisory committees to study the potential use of e-filing in criminal and Family Courts. With the assistance of these committees, the Chief Administrative Judge is directed to report findings to the Governor, the Legislature and the Chief Judge of the State by January 1, 2012 and to recommend appropriate legislation.

SUMMARY:

As described above, this measure would modestly enlarge the mandatory e-filing pilot in civil cases in Supreme Court. It also would extend the significant programmatic benefits of mandatory e-filing to cases in Surrogate's Court and a limited class of cases (i.e, no-fault cases involving medical providers) in the New York City Civil Court. E-filing in such cases would inure to the benefit of bench, bar and the litigating public, and promote the administration of justice at a time when all levels of government, particularly the Judiciary, are striving to do more with less. At the same time, this measure would continue New York's longstanding assurance that nothing in the e-filing program -neither voluntary nor mandatory - would impair the substantive rights of any party, with the benefit of the Judiciary's and the bar's now 12 years of experience with exemptions and protections to guarantee access to justice compatibly with technological modernity. Finally, this measure would explore the feasibility of extending e-filing to other courts where it has not yet been applied.

This measure, which would have no fiscal impact, would take effect immediately.

2011 LEGISLATIVE HISTORYOFF: SENATE 5635-A (BONACIC)
JUDICIARY

ASSEMBLY 8368 (M. OF A. WEINSTEIN)
PASSED

FOOTNOTES

{1} The very positive experience in New York to date in the use of e-filing in civil actions in Supreme Court is well-documented in the Chief Administrative Judge's recent report to the Governor, the Chief Judge and the Legislature. A copy of this report ("e-filing in the New York State Courts, June 2011") has been delivered to each member of the Legislature. The report also is available for viewing on line at www.courts.state.ny.us under "What's New".

{2} In the text of the legislation, the term "mandatory e-filing" is not used. Instead, the legislation speaks of the Chief Administrative Judge "eliminating the requirement of consent to participation in the e-filing program." This is to distinguish cases in which e-filing will be necessary from e-filing as it has largely operated since its inception, i.e., as a voluntary program.

STATE OF NEW YORK

8368--A

R. R. 354

2011-2012 Regular Sessions

IN ASSEMBLY

June 14, 2011

Introduced by M. of A. WEINSTEIN, P. RIVERA -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to specifying courts and actions in which pilot programs will be authorized to permit use of electronic means to commence an action or proceeding; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to the establishment of advisory committees to implement laws to effect service of papers by electronic means

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislature finds and declares that use of electronic
2 means to commence judicial proceedings and to file and serve papers in
3 pending proceedings ("e-filing") can be highly beneficial to the state,
4 local governments and the public. Accordingly, it is the purpose of this
5 measure to enable a further controlled expansion of e-filing in the
6 civil courts of the state; and to lay the groundwork for an anticipated
7 future introduction of e-filing in criminal and family courts.
8 § 2. The first unnumbered paragraph and clauses (i), (iv), (v), (xi)
9 and (xii) of subparagraph 1, and subparagraphs 2 and 3 of paragraph (B)
10 of subdivision (b) of section 6 of chapter 367 of the laws of 1999,
11 amending the civil practice law and rules and the judiciary law relating
12 to authorization of pilot programs permitting use of facsimile trans-
13 mission or electronic means to commence an action or special proceeding,
14 the first unnumbered paragraph of subparagraph 1, subparagraph 3 as

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD11953-09-1

amended by chapter 528 of the laws of 2010 and clauses (i), (iv), (v), (xi) and (xii) of subparagraph 1 and subparagraph 2 as amended by chapter 416 of the laws of 2009, are amended and a new clause (xiii) is added to subparagraph 1 to read as follows:

The supreme court [~~of~~] **in counties within the city of** New York [~~and Westchester counties~~] in the following classes of cases [~~provided that the amount in controversy (exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed) is over $100,000~~]:

(i) Breach of contract [~~(regardless of amount in controversy)~~] or fiduciary duty, fraud, misrepresentation, business tort (including but not limited to actions involving claims of unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (including but not limited to sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(iv) Shareholder derivative actions[~~, without consideration of the monetary threshold~~];

(v) Commercial class actions[~~, without consideration of the monetary threshold~~];

(xi) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures[~~, without consideration of the monetary threshold~~]; [~~and~~]

(xii) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to article 75 of the civil practice law and rules involving any of the foregoing enumerated commercial issues[~~, without consideration of the monetary threshold~~]**; and**

(xiii) Breach of contract cases other than those specified in clause (i) of this subparagraph.

2. Tort cases in supreme court in [~~Westchester county~~] **counties within the city of New York**, and

3. One or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, election law proceedings, proceedings brought pursuant to article 78 of the civil practice law and rules, and proceedings brought pursuant to the mental hygiene law) in supreme court in Livingston, Monroe, Rockland [~~and~~]**,** Tompkins**, Allegany, Essex, Onondaga and Westchester** counties[~~.~~]**, and**

§ 3. Paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, is amended by adding two new subparagraphs 4 and 5 to read as follows:

4. One or more classes of cases in surrogate's court in such counties as the chief administrator shall specify, and

5. Actions in the civil court of the city of New York brought by a provider of health care services specified in paragraph (1) of subsection (a) of section 5102 of the insurance law against an insurer for failure to comply with rules and regulations promulgated by the superintendent of insurance pursuant to subsection (b) of section 5108 of such law.

§ 4. The closing paragraph of paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of

pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, as amended by chapter 528 of the laws of 2010, is amended to read as follows:

Notwithstanding the foregoing, the chief administrator may not eliminate the requirement of consent until after he or she shall have consulted with members of the organized bar and with the county clerk in any county in which such elimination shall apply **(where the affected court is the supreme court of a county outside the city of New York)**, have afforded them the opportunity to submit comments with respect thereto, have considered any such comments and, in the instance of the counties specified in subparagraph three of this paragraph, have obtained the agreement thereto of the respective county clerks thereof.

§ 5. Section 6 of chapter 416 of the laws of 2009 amending the civil practice law and rules relating to service of papers by electronic means, as amended by chapter 528 of the laws of 2010, is amended to read as follows:

§ 6. (a) Not later than April first in each calendar year, commencing in the year 2011, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with [~~the program~~] **programs** in the use of electronic means for the commencement of [~~civil~~] actions and proceedings and the service of papers therein as authorized by [~~this act~~] **law** and containing such recommendations for further legislation as he or she shall deem appropriate, including, in particular, legislation to enable broader use of [~~the program~~] **such programs** without the requirement of consent to participation [~~in the counties specified in subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law, relating to the authorization of pilot programs permitting the use of facsimile transmission or electronic means to commence an action or special proceeding, as amended, and in counties not now specified in subparagraph 3 of such paragraph (B)~~]. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county [~~the~~] **a** program has been implemented **in civil cases in the supreme court**, **the advisory committees established pursuant to subdivisions (b), (c) and (d) of this section, the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article 18-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and** afford [~~him or her~~] **them** an opportunity to submit comments with respect to such implementation for inclusion in the report and [~~consider~~] **address** any such comments.

(b) **(1)** The chief administrator of the courts shall create an advisory committee to consult with him or her in the implementation of [~~this act~~] **laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein** in the supreme court. This committee shall consist of such number of members as the chief administrator shall designate, [~~no~~] **among which there shall be representatives of the organized bar including but not limited to city, state, county and women's bar associations;**

institutional legal service providers; not-for-profit legal service providers; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the supreme court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator. No fewer than half [~~to~~] of the members of this advisory committee shall be upon the recommendation of the New York State Association of County Clerks.

(2) The chief administrator shall create an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be chief clerks of surrogate's courts; representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional providers of legal services; not-for-profit legal service providers; attorneys assigned pursuant to article 18-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(3) The chief administrator shall create an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; representatives of the organized bar including but not limited to city, state, county and women's bar associations; attorneys who regularly appear in actions specified in subparagraph 5 of paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999; and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York; and any other persons as deemed appropriate by the chief administrator.

(c)(1) The chief administrator shall create an advisory committee to consult with him or her regarding the development of a program relating to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; not-for-profit legal service providers; public

defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3 of section 722 of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who would be affected by such electronic filing program, including district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3 of section 722 of the county law, institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program and other interested members of the criminal justice community.

(2) No later than January 1, 2012, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report of the evaluation including the entities or individuals consulted, the input received, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation authorizing the development of a program relating to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings.

(d) (1) The chief administrator shall create an advisory committee to consult with him or her regarding the development of a program relating to the use of electronic means for the origination of juvenile delinquency proceedings under article 3 of the family court act and abuse or neglect proceedings pursuant to article 10 of the family court act in family court and the filing and service of papers in such pending proceedings. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who would be affected by such electronic filing programs, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article 18-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who would be affected by such electronic filing program, including representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal

service providers, public defenders, attorneys assigned pursuant to article 18-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program, and other interested members of the criminal justice community.

(2) No later than January 1, 2012, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report of the evaluation including the entities or individuals consulted, input received, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation authorizing the development of a program relating to the use of electronic means for the origination of juvenile delinquency proceedings under article 3 of the family court act and abuse or neglect proceedings pursuant to article 10 of the family court act in family court and the filing and service of papers in such pending proceedings.

§ 6. Section 7 of chapter 416 of the laws of 2009 amending the civil practice law and rules relating to service of papers by electronic means is amended to read as follows:

§ 7. This act shall take effect on September 1, 2009; provided, however, that no rule adopted pursuant to paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, as added by section two of this act, shall take effect until at least one hundred eighty days have elapsed after such effective date, and provided that such paragraph (B) shall expire and be deemed repealed September 1, [~~2012~~] **2015**.

§ 7. This act shall take effect immediately; provided, however, that the amendments to paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made by sections two, three and four of this act shall not affect the repeal of such provisions and shall expire and be deemed repealed therewith.

APPENDIX B:

Legislative proposal authorizing e-filing in Family Court Article 3 and Article 10 proceedings, and in criminal actions and proceedings

Legislative Bill Drafting Commission
15304-02-2

S. --------
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

-------- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the Committee on

JUDI *Office of Court Administration 93 R-1*
(Authorizes pilot program permitting use of electronic means for commencing actions in certain criminal and family court proceedings)

Actions; electronic commencement

AN ACT

to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to authorization of pilot programs permitting use of electronic means in certain courts; and to amend chapter 416 of

IN SENATE_____

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gallivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-Thompson	s07 Martins	s56 Robach	s57 Young
s17 Dilan		s62 Maziarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espaillat	s04 Johnson	s18 Montgomery	s23 Savino	

IN ASSEMBLY_____

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a092 Abinanti	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a105 Amedore	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Sayward
a035 Aubry	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murray	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-Stokes	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares		a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Mayer	a178 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McEneny	a076 Rivera, P.	a103
a010 Conte	a028 Hevesi	a017 McKevitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	
a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal	

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

LBDC 03/22/12

the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to development of a program relating to the use of electronic means for the commencement of certain actions; and providing for the repeal of certain provisions of chapter 367 of the laws of 1999 upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Since 1999, the state has steadily expanded its program in
2 the use of electronic means for the commencement of actions and the
3 exchange of legal papers and other documents between parties in
4 proceedings in New York's civil courts. Throughout this expansion, this
5 program has consistently demonstrated success, measured by its reliabil-
6 ity, efficiency, convenience and savings in time and money for the liti-
7 gating public and for the courts.
8 Finding that use of electronic filing in judicial proceedings also is
9 expanding rapidly across the nation, and believing that the benefits
10 heretofore realized in New York through its use in civil proceedings can
11 likewise be realized through its expansion into criminal and family
12 court proceedings, the legislature enacts this measure to provide the
13 necessary authorization.
14 Introduction of electronic filing in the civil court proceedings was
15 begun slowly in New York. This was to ensure that important rights would
16 not be jeopardized as bench and bar gained experience with use of the
17 technologies involved in such filing. The legislature now finds that
18 proceedings in criminal and family courts can present their own unique
19 complications and that, whatever the hopes and expectations may be for a
20 successful deployment of electronic filing in the those courts, it is in
21 the public interest that bench and bar deliberately and carefully
22 explore its use. Accordingly, this act limits the initial authorization
23 for such use. This authorization, in the form of a three-year pilot
24 program, will permit a careful examination by all affected interests to
25 ensure that no rights are prejudiced and that the administration of
26 justice is not in any manner compromised. Under this pilot program,
27 electronic filing may be used in only a limited number of criminal supe-
28 rior courts and family courts, and then only where the chief administra-

1 tor of the courts is satisfied that the circumstances are right for such
2 use. To further ensure that all affected interests are ready and able to
3 participate in the pilot, this act also requires that, while the pilot
4 operates, the principal local interests to be affected -- district
5 attorney, criminal defense bar and county clerk is the criminal courts;
6 authorized presentment agencies and child protective agencies in the
7 family courts -- all acquiesce therein.

8 § 2. Chapter 367 of the laws of 1999, amending the civil practice law
9 and rules and the judiciary law relating to authorization of pilot
10 programs permitting use of facsimile transmission or electronic means to
11 commence an action or special proceeding, is amended by adding two new
12 sections 6-a and 6-b to read as follows:

13 § 6-a. (a) Notwithstanding any other provision of law, the chief
14 administrator of the courts, with the approval of the administrative
15 board of the courts, may promulgate rules authorizing a program in the
16 use of electronic means in the supreme court and in the county court
17 for: (1) the filing with a court of an accusatory instrument for the
18 purpose of acquiring jurisdiction in a superior court, as provided by
19 articles 195 and 200 of the criminal procedure law, and (2) the filing
20 and service of papers in pending criminal actions and proceedings.

21 (b)(1) Except as otherwise provided in this subdivision, participation
22 in this program shall be strictly voluntary and will take place only
23 upon consent of all parties in the criminal action or proceeding; except
24 that a party's failure to consent to participation shall not bar any
25 other party to the action from filing and serving papers by electronic
26 means upon the court or any other party to such action or proceeding who
27 has consented to participation. Filing an accusatory instrument by elec-
28 tronic means with the court for the purpose of conferring jurisdiction

1 over a criminal action upon such court shall not require the consent of
2 any other party.
3 (2) The chief administrator may eliminate the requirement of consent
4 to participation in this program in supreme and county courts of not
5 more than six counties provided he or she may not eliminate such
6 requirement for a court without the consent of the district attorney,
7 the criminal defense bar (as represented by the head of a legal aid
8 society, public defender or president of a local bar association, as
9 appropriate) and the county clerk of the county in which such court
10 presides.
11 (c) Where the chief administrator eliminates the requirement of
12 consent as provided in paragraph (2) of subdivision (b) of this section,
13 he or she shall shall afford counsel the opportunity to opt out of the
14 program, via presentation of a prescribed form to be filed with the
15 court where the criminal action is pending. Said form, which shall not
16 be part of the case record, shall permit an attorney to opt out of
17 participation in the program under any of the following circumstances,
18 in which event, he or she will not be compelled to participate:
19 (1) Where the attorney certifies in good faith that he or she lacks
20 the computer hardware and/or connection to the internet and/or scanner
21 or other device by which documents may be converted to an electronic
22 format; or
23 (2) Where the attorney certifies in good faith that he or she lacks
24 the requisite knowledge in the operation of such computers and/or scan-
25 ners necessary to participate. For the purposes of this paragraph, the
26 knowledge of any employee of an attorney, or any employee of the attor-
27 ney's law firm, office or business who is subject to such attorney's
28 direction, shall be imputed to the attorney.

1 Notwithstanding the foregoing: (i) where a party is not represented
2 by counsel, he or she may not participate in the program except upon
3 permission of the court; and (ii) a court may exempt any attorney from
4 being required to participate in the program upon application for such
5 exemption, showing good cause therefor.
6 (d) For purposes of this section, "electronic means" shall be as
7 defined in subdivision (f) of rule 2103 of the civil practice law and
8 rules.
9 (e)(1) Nothing in this section shall affect or change any existing
10 laws governing the sealing and confidentiality of court records in crim-
11 inal proceedings, nor shall this section be construed to compel a party
12 to file a sealed document by electronic means.
13 (2) Notwithstanding any other provision of this section, no paper or
14 document that is filed by electronic means in a criminal proceeding in
15 supreme court or county court shall be available for public inspection
16 on-line; provided, however, that this paragraph shall not prohibit the
17 chief administrator, in the exercise of his or her discretion, from
18 posting papers or documents that have not been sealed pursuant to law on
19 a public website maintained by the unified court system where: (i) the
20 website is not the website established by the rules promulgated pursuant
21 to subdivision (a) of this section, and (ii) to do so would be in the
22 public interest.
23 § 6-b. (a) Notwithstanding any other provision of law, the chief
24 administrator of the courts, with the approval of the administrative
25 board of the courts, may promulgate rules authorizing a program in the
26 use of electronic means in the family court for: (1) the origination of
27 proceedings in such court, and (2) the filing and service of papers in
28 pending proceedings.

1 (b) (1) Except as otherwise provided in this subdivision, partic-
2 ipation in this program shall be strictly voluntary and will take place
3 only upon consent of all parties in the proceeding; except that a
4 party's failure to consent to participation shall not bar any other
5 party from filing and serving papers by electronic means upon the court
6 or any other party to such proceeding who has consented to partic-
7 ipation. Filing a petition with the court by electronic means for the
8 purpose of originating a proceeding shall not require the consent of any
9 other party.
10 (2) In the rules promulgated pursuant to subdivision (a) of this
11 section, the chief administrator may eliminate the requirement of
12 consent to participation in this program in family courts of not more
13 than six counties for:
14 (i) the filing with the court of a petition originating a juvenile
15 delinquency proceeding under article 3 of the family court act by a
16 presentment agency as defined in section 301.2 of such act;
17 (ii) the filing with the court of a petition originating a proceeding
18 to determine abuse or neglect pursuant to article 10 of the family court
19 act by a child protective agency, as defined in section 1012 of such
20 act; and
21 (iii) the filing and service of papers in proceedings specified in
22 subparagraphs (i) and (ii) of this paragraph where, pursuant to such
23 subparagraphs, such proceedings were originated in the court by elec-
24 tronic filing.
25 Notwithstanding the foregoing, the chief administrator may not elimi-
26 nate the requirement of consent to participation without the consent of
27 each authorized presentment agency and child protective agency of an
28 affected county.

1 (c) Where the chief administrator eliminates the requirement of
2 consent as provided in paragraph 2 of subdivision (b) of this section,
3 he or she shall afford counsel the opportunity to opt out of the
4 program, via presentation of a prescribed form to be filed with the
5 clerk of the court where the proceeding is pending. Said form, which
6 shall not be part of the case record, shall permit an attorney to opt
7 out of participation in the program under any of the following circum-
8 stances, in which event, he or she will not be compelled to participate:
9 (1) Where the attorney certifies in good faith that he or she lacks
10 the computer hardware and/or connection to the internet and/or scanner
11 or other device by which documents may be converted to an electronic
12 format; or
13 (2) Where the attorney certifies in good faith that he or she lacks
14 the requisite knowledge in the operation of such computers and/or scan-
15 ners necessary to participate. For the purposes of this paragraph, the
16 knowledge of any employee of an attorney, or any employee of the attor-
17 ney's law firm, office or business who is subject to such attorney's
18 direction, shall be imputed to the attorney.
19 Notwithstanding the foregoing: (i) where a party is not represented by
20 counsel, he or she may not participate in the program except upon
21 permission of the court; and (ii) a court may exempt any attorney from
22 being required to participate in the program upon application for such
23 exemption, showing good cause therefor.
24 (d) For purposes of this section, "electronic means" shall be as
25 defined in subdivision (f) of rule 2103 of the civil practice law and
26 rules.

1 (e) Notwithstanding any provision of this section, no paper or docu-
2 ment that is filed by electronic means in a proceeding in family court
3 shall be available for public inspection on-line.

4 § 3. Subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of
5 section 6 of chapter 367 of the laws of 1999, amending the civil prac-
6 tice law and rules and the judiciary law relating to authorization of
7 pilot programs permitting use of facsimile transmission or electronic
8 means to commence an action or special proceeding, are REPEALED, subpar-
9 agraphs 3, 4 and 5 of such paragraph (B) are renumbered to be subpara-
10 graphs 1, 2 and 3 and subparagraph 1, as amended by chapter 543 of the
11 laws of 2011 and as renumbered by this section, is amended to read as
12 follows:

13 1. One or more classes of cases (excluding matrimonial actions as
14 defined by the civil practice law and rules, election law proceedings,
15 proceedings brought pursuant to article 78 of the civil practice law and
16 rules, and proceedings brought pursuant to the mental hygiene law) in
17 supreme court in Livingston, Monroe, Rockland, Tompkins, Allegany,
18 Essex, Onondaga, Suffolk and Westchester counties and in the counties
19 within the city of New York, and

20 § 4. Subdivisions (c) and (d) of section 6 of chapter 416 of the laws
21 of 2009, amending the civil practice law and rules relating to service
22 of papers by electronic means, as added by chapter 543 of the laws of
23 2011, are amended to read as follows:

24 (c)(1) The [chief administrator shall create an] advisory committee to
25 consult with [him or her] the chief administrator regarding the develop-
26 ment of a program relating to the use of electronic means for the
27 commencement of criminal actions and the filing and service of papers in
28 pending criminal actions and proceedings is continued. The committee

1 shall consist of such number of members as will enable the chief admin-
2 istrator to obtain input from those who are or would be affected by such
3 electronic filing program, and such members shall include county clerks;
4 chief clerks of supreme, county and other courts; district attorneys;
5 not-for-profit legal service providers; public defenders; statewide and
6 local specialty bar associations whose membership devotes a significant
7 portion of their practice to assigned criminal cases pursuant to subpar-
8 agraph (i) of paragraph (a) of subdivision 3 of section 722 of the coun-
9 ty law; institutional providers of criminal defense services and other
10 members of the criminal defense bar; representatives of victims' rights
11 organizations; unaffiliated attorneys who regularly appear in
12 proceedings that are or would be affected by such electronic filing
13 program and other interested members of the criminal justice community.
14 Such committee shall help the chief administrator to evaluate the impact
15 of such electronic filing program on litigants including unrepresented
16 parties, practitioners and the courts and to obtain input from those who
17 are or would be affected by such electronic filing program, including
18 district attorneys, not-for-profit legal service providers, public
19 defenders, statewide and local specialty bar associations whose member-
20 ship devotes a significant portion of their practice to assigned crimi-
21 nal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3
22 of section 722 of the county law, institutional providers of criminal
23 defense services and other members of the criminal defense bar, repre-
24 sentatives of victims' rights organizations, unaffiliated attorneys who
25 regularly appear in proceedings that are or would be affected by such
26 electronic filing program and other interested members of the criminal
27 justice community.

1 (2) No later than January 1, [2012] 2015, the chief administrator of
2 the courts shall submit to the legislature, the governor and the chief
3 judge of the state a report of the evaluation including the entities or
4 individuals consulted, the input received, any recommendations of the
5 advisory committee to the chief administrator, along with recommenda-
6 tions for legislation [authorizing the development of a program relat-
7 ing] in relation to the use of electronic means for the commencement of
8 criminal actions and the filing and service of papers in pending crimi-
9 nal actions and proceedings. This report shall devote special attention
10 to the question whether such use of electronic means shall be authorized
11 in the local criminal courts of the state. In the report, the chief
12 administrator also shall address issues that bear upon the need for the
13 courts, district attorneys and others to retain papers filed with courts
14 or served upon parties in criminal proceedings where electronic means
15 can or have been used and make recommendations for such changes in laws
16 requiring retention of such papers as to the chief administrator may
17 seem appropriate.
18 (d) (1) The [chief administrator shall create an] advisory committee
19 to consult with [him or her] the chief administrator regarding the
20 development of a program relating to the use of electronic means for the
21 origination of juvenile delinquency proceedings under article 3 of the
22 family court act and abuse or neglect proceedings pursuant to article 10
23 of the family court act in family court and the filing and service of
24 papers in such pending proceedings is continued. The committee shall
25 consist of such number of members as will enable the chief administrator
26 to obtain input from those who are or would be affected by such elec-
27 tronic filing [programs] program, and such members shall include chief
28 clerks of family courts; representatives of authorized presentment and

1 child protective agencies; other appropriate county and city government
2 officials; institutional providers of legal services for children and/or
3 parents; not-for-profit legal service providers; public defenders;
4 attorneys assigned pursuant to article 18-B of the county law; and other
5 members of the family court bar; representatives of victims' rights
6 organizations; unaffiliated attorneys who regularly appear in
7 proceedings that <u>are or</u> would be affected by such electronic filing
8 program; and other interested members of the family practice community.
9 Such committee shall help the chief administrator to evaluate the impact
10 of such electronic filing program on litigants including unrepresented
11 parties, practitioners and the courts and to obtain input from those who
12 <u>are or</u> would be affected by such electronic filing program, including
13 representatives of authorized presentment and child protective agencies,
14 other appropriate county and city government officials, institutional
15 providers of legal services for children and/or parents, not-for-profit
16 legal service providers, public defenders, attorneys assigned pursuant
17 to article 18-B of the county law and other members of the family court
18 bar, representatives of victims' rights organizations, unaffiliated
19 attorneys who regularly appear in proceedings that <u>are or</u> would be
20 affected by such electronic filing program, and other interested members
21 of the criminal justice community.
22 (2) No later than January 1, [2012] <u>2015</u>, the chief administrator of
23 the courts shall submit to the legislature, the governor and the chief
24 judge of the state a report of the evaluation including the entities or
25 individuals consulted, input received, any recommendations of the advi-
26 sory committee to the chief administrator, along with recommendations
27 for legislation [authorizing the development of a program relating] <u>in</u>
28 <u>relation</u> to the use of electronic means for the origination of juvenile

1 delinquency proceedings under article 3 of the family court act and
2 abuse or neglect proceedings pursuant to article 10 of the family court
3 act in family court and the filing and service of papers in such pending
4 proceedings.

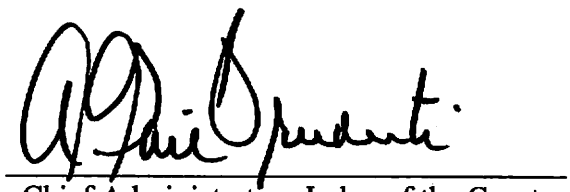
5 § 5. This act shall take effect immediately; provided, however, that
6 sections 6-a and 6-b of chapter 367 of the laws of 1999, as added by
7 section two of this act, shall expire and be deemed repealed September
8 1, 2015; and provided further that the amendments made to paragraph (B)
9 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made
10 by section three of this act shall not affect the expiration and repeal
11 of such provisions and shall be deemed to be repealed therewith.

APPENDIX C:

Consensual and mandatory e-filing programs in New York

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and in consultation with the Presiding Justices of the Appellate Divisions and, as appropriate, in consultation with or with the approval of County Clerks, I hereby establish or continue programs for the voluntary and mandatory use of electronic means for the filing and service of documents ("e-filing") in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, and L. 2011, c. 543, in the counties, courts, and cases, and upon the effective dates set forth in Appendix A (voluntary e-filing) and Appendix B (mandatory e-filing) attached hereto. Such programs shall be subject to sections 202.5-b, 202.5-bb, 206.5, 206.5-aa, 207.4-a, 207.4-aa, and 208.4-a of the Uniform Rules for the New York State Trial Courts.



Chief Administrative Judge of the Courts

Dated: January 12, 2012

AO/245/12

APPENDIX A
CONSENSUAL/VOLUNTARY CASES
(Effective January 17, 2012,
unless otherwise indicated)

County	Courts	Case Types
Albany, Niagara, and Suffolk	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; and foreclosure actions addressing real property and mechanics' liens.
Bronx, Erie, Kings, Queens, Richmond, and Westchester	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; foreclosure actions addressing real property and mechanics' liens; and Workers' Compensation applications for judgment.
Broome	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions; foreclosure actions addressing real property and mechanics' liens; Workers' Compensation applications for judgment; CPLR Art. 78 proceedings; CPLR Art. 75 proceedings; guardianship, matrimonial, and mental hygiene matters.

Nassau	Supreme Court	Commercial, Contract and Tort actions; proceedings under Section 730 of the Real Property Tax Law; and Workers' Compensation applications for judgment.
New York	Supreme Court	Commercial, Contract, Tort and Tax Certiorari actions, including proceedings under Section 730 of the Real Property Tax Law; foreclosure actions addressing real property and mechanics' liens; Workers' Compensation applications for judgment; and Department of Health applications for judgment.
Onondaga	Supreme Court	Commercial, Contract, Tort, and Tax Certiorari actions. **(Effective: 2/28/12).**
Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne, and Yates	Surrogate's Court	Probate and administration proceedings; miscellaneous proceedings related thereto; and such other types of proceedings as the court may permit.
Albany District (Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady, Ulster, Warren, and Washington Counties)	Court of Claims	Claims falling within a category or categories designated by the Presiding Judge of the Court of Claims.

New York City	Civil Court	Actions brought by a provider of health services specified in Insurance Law § 5102 (a) (1) against an insurer for failure to comply with rules and regulations promulgated by the Superintendent pursuant to Section 5108 (b) of such Law.

Cases listed in Appendix A do not include any cases that are covered by Appendix B.

APPENDIX B
MANDATORY CASES
(Effective January 17, 2012, unless otherwise indicated)

County	Courts	Case Types and Effective Dates
New York	Supreme Court	Commercial actions where amount in controversy exceeds $100,000. **(Effective through: 2/26/2012).** Commercial actions without regard to amount in controversy. **(Effective: 2/27/2012).** Contract actions. **(Effective: 2/27/2012).** Tort actions. **(Effective: 2/27/2012).**
Westchester	Supreme Court	All actions (except CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).
Rockland	Supreme Court	All actions (except CPLR Art. 78 and election law proceedings, and matrimonial and Mental Hygiene Law matters).
Kings	Supreme Court	Commercial actions where the amount in controversy equals or exceeds $75,000 (Commercial Division matters). **(Effective: 2/27/2012).**

Bronx	Supreme Court	Medical malpractice actions. **(Effective: 2/27/2012).**
Chautauqua, Erie, and Monroe	Surrogate's Court	Probate and administration proceedings and miscellaneous proceedings related thereto. **(Effective: 3/1/2012).**

DEFINITIONS APPLICABLE TO MANDATORY E-FILING OF COMMERCIAL, CONTRACT, AND TORT ACTIONS IN NEW YORK AND KINGS COUNTIES

On or after February 27, 2012, for purposes of mandatory e-filing in commercial, contract, and tort actions newly filed in New York County, or commercial cases newly filed in Kings County, the following definitions, restrictions, and conditions shall apply:[1]

(a) "Commercial actions" shall mean actions, not otherwise excluded in paragraph (b), which assert or address at least one of the following claims or transactions:

(1) breach of contract or breach of fiduciary duty, fraud, misrepresentation, business tort, or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (but excluding claims principally involving alleged discriminatory practices);

(2) transactions governed by the Uniform Commercial Code (excluding those concerning individual cooperative or condominium units) or involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(3) shareholder derivative and commercial class actions;

(4) business transactions involving commercial banks and other financial institutions, internal affairs of business organizations, or commercial or environmental insurance coverage;

(5) malpractice by accountants or actuaries, or by attorneys in commercial representations; and

(6) dissolution of business organizations and applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief involving any of the foregoing commercial issues.

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[1] If any definition, restriction or condition set forth in this Administrative Order conflicts with L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, or L. 2011, c. 543, or sections 202.5-b and 202.5-bb of the Uniform Rules for the Trial Courts, the statutory provision or Uniform Rule shall apply.

(b) "Commercial actions" shall not include the following: actions to collect professional fees actions seeking a declaratory judgment as to insurance coverage for personal injury or property damage; residential real estate disputes, and commercial real estate disputes involving the payment of rent only; proceedings to enforce any kind of judgment; first-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; or attorney malpractice claims not included in paragraph (a) (5) above.

(c) "Contract actions" shall mean actions, other than those listed in paragraphs (a) and (b), in which at least one claim of breach of contract is asserted, irrespective of the amount in controversy.

(d) "Tort actions" shall mean actions, other than those listed in paragraphs (a) and (b), that seek only monetary damages and assert at least one claim that arises out of or alleges:

(1) a motor vehicle accident, product liability, injury to person or property from tortious conduct, wrongful death, mass tort, and medical, dental or podiatric malpractice;
(2) other professional malpractice;
(3) damages to persons or property from environmental conditions; and
(4) negligence, defamation, intentional infliction of emotional distress or other intentional harm.

APPENDIX D:

Advisory committee members

ADVISORY COMMITTEE ON E-FILING IN FAMILY COURT

Co-Chairs

Hon. Michael V. Coccoma
Deputy Chief Administrative Judge, Courts Outside New York City

Ronald P. Younkins, Esq.
Chief of Operations New York State Office of Court Administration

Members

Hon. Rita Connerton
Supervising Family Court Judge, Broome County

Hon. Karen Lupuloff
Family Court, Bronx County

Catherine Brown, Esq.
Albany County Attorney's Office (for Hon. Criag Denning)

Kara Frank, Esq.
Albany County Attorney's Office (for Hon. Criag Denning)

Brian Dworkin, Esq.
Director, Family Law, Queens Office, Legal Services of New York (for Caroline Kearney, Esq.)

Barbara Finkelstein, Esq.
Executive Director, Legal Services of Hudson Valley, White Plains, NY 10601

Lisa A. Frisch, Esq.
Executive Director, Capital District Women's Bar Assn, Legal Project, Inc., Albany, New York

Barbara Handschu, Esq.
Dobrish Zeif Gross LLP, New York, New York

Susan R. Horn, Esq.
President/CEO, Hiscock Legal Aid Society, Syracuse, New York

Rebecca Horwitz, Esq.
Executive Director, Center for Family Representation, New York, New York (for Susan Jacobs)

Dorchen A. Leidholdt, Esq.
Director, Center for Battered Women's Legal Services, Sanctuary for Families, New York, New York

Susan Lindenauer, Esq.
Co-Chair NYSBA Task Force on Family Court, New York, New York

G. Foster Mills
Corporation Counsel of the City of New York, New York, New York (for Hon. Michael Cardozo)

MELISSA MILLS
Chief Clerk, Schenectady County Family Court

PAMELA NEUBECK
Legal Aid Bureau of Buffalo, Inc.

GEORGE E. REED, JR., ESQ.
Vice-chair, NYSBA, Committee on Children & Law, White Plains, New York

TAMARA STECKLER, ESQ.
Legal Aid Society, New York, New York

SUSAN SOVIE, ESQ.
Watertown, New York

JANET TULLO, ESQ.
Dutchess County Attorney's Office

PETER PASSIDOMO, ESQ
Chief Clerk, New York City Family Court

STAFF

ANTONIO GALVAO, ESQ.
Deputy Counsel, Office of Court Administration

JANET FINK, ESQ.
Deputy Counsel (Family Justice), Office of Court Administration

JEFFREY CARUCCI
Statewide E-Filing Coordinator