



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

September 16, 2016

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Various Proposed Amendments to the Rules Governing Electronic Filing

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The Administrative Board of the Courts is seeking public comment on various proposed amendments to the Unified Court System's rules governing electronic filing (22 NYCRR §202.5-b) (Exh. A). Several proposed amendments, proffered by the NYSCEF Statewide E-Filing Resource Center (Exh. B), address processing and entry of orders and judgments, county clerk handling of documents in or being converted from hard copy format; and language clarifications necessary for consistency with current NYSCEF practices.

In addition, a new section 202.5-b[1]) is proposed (Exh. A, p. 10) to authorize a NYSCEF program for redaction of social security numbers in documents filed electronically, in a manner consistent with Public Officers Law §96-a.

Finally, a new section 202.5-b(d)(3)(iii) is proposed (Exh. A, p. 6) to permit filers who have mistakenly included unredacted personal confidential information or other confidential material, or have otherwise filed in error, to request that the errant filing be placed by a clerk in a temporary "restricted" status, accessible only to the parties and the court, pending an application to the court within three business days for a redaction or sealing order or other relief.

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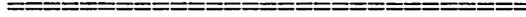
Persons wishing to comment on the proposed rules should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than November 15, 2016.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

**Proposed Amendments of 22 NYCRR §202.5-b of the Rules of the Chief
Administrative Judge Relating to Electronic Filing**

Submitted for Public Comment
September 13, 2016



202.5-b. Electronic Filing in Supreme Court; Consensual Program.

(a) Application.

(1) On consent, documents may be filed and served by electronic means in Supreme Court in such civil actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section.

(2) Definitions. For purposes of this section:

(i) “electronic means” shall mean any method of transmission of information between computers or other machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

(ii) “NYSCEF” shall mean the New York State Courts Electronic Filing System and the “NYSCEF site” shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile;

(iii) “e-filing”, “electronic filing” and “electronically filing” shall mean the filing and service of documents in a civil action by electronic means through the NYSCEF site;

(iv) an “authorized e-filing user” shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an “action” shall include a special proceeding and an “e-filed action” shall mean an action in which documents are electronically filed and served in accordance with this section;

(vi) “hard copy” shall mean information set forth in paper form;

(vii) “working copy” shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section;

(viii) “party” or “parties” shall mean the party or parties to an action or counsel thereto;

(ix) “unrepresented litigant” shall mean a party to an action who is not represented by counsel;

(x) "expedited processing" shall mean the expedited registration of a person as an authorized e-filing user; and

(xi) "Resource Center" shall mean the NYSCEF Resource Center, the e-filing help center available at 646-386-3033 or efile@nycourts.gov and through the NYSCEF site.

(b) E-filing in Actions in Supreme Court. Except as otherwise provided in section 202.5-bb of these rules, the following shall apply to all actions in Supreme Court:

(1) Commencing an action by electronic means. A party may commence any action in the Supreme Court in any county (provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph (1) of subdivision (a) of this section) by electronically filing the initiating documents with the County Clerk through the NYSCEF site. When so authorized, a petition to commence a proceeding for review of a small claims assessment pursuant to Real Property Tax Law § 730 may be e-filed, including as follows: the petition, in the form prescribed by the Chief Administrator in accordance with such section, shall be completed and signed in hard copy as provided in that section and shall be e-filed by transmission to the NYSCEF site, in conformity with procedures established by the site, of a text file containing all of the information set forth in the completed and executed hard copy petition (exclusive of the signature(s)). Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party's failure to consent to participation in electronic filing and service shall not bar any other party to the action from filing documents electronically with the County Clerk and the court or serving documents upon any other party who has consented to participation. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

(ii) Consent to e-filing; how obtained. Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice [regarding availability] of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing. ~~[A party who seeks to use e-filing in a pending action shall serve said notice upon all other parties. Whenever such a notice is served, proof of service thereof shall be transmitted to the court. Service of such a notice shall constitute consent to e-~~

~~filing in the action by the party causing such service to be made.]~~ Except for an unrepresented litigant, a party served with such a notice shall promptly **record his or her consent electronically in the manner provided at the NYSCEF site** or file with the court and serve on all parties of record ~~[either a consent or]~~ a declination of consent. ~~[An authorized e-filing user may file a consent electronically in the manner provided at the NYSCEF site. Consent may also be obtained by stipulation.]~~ An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate. Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action **under CPLR 320.**

(iii) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice.

(iv) Conversion of pending actions. Where procedurally permitted, upon court direction, an application by a party, or a stipulation among the parties, a pending action may be converted to electronic form. Such direction, application, or stipulation must be served on all parties to the action and filed with proof of service. The County Clerk may request the parties to furnish previously filed hard copy documents in electronic form.

(c) Authorized E-filing Users, Passwords and Registration.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter "filing agent") may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business as

required by the jurisdiction in which the business is operated (hereinafter "small claims assessment review filing agent") may also register as an authorized e-filing user, but solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.

(ii) How to register. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form.

(3) Identification and password. Upon registration, an authorized e-filing user shall be issued a confidential User Identification Designation ("User ID") and a password by the Unified Court System ("UCS"). An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) User ID and password; use by authorized person. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) Electronic Filing of Documents.

(i) Electronic filing required; format of e-filed documents; statement of authorization. In any action subject to e-filing, all documents required to be filed with the court by an e-filing party ~~[that has consented to such e-filing]~~ shall be filed and served electronically, except as provided in this section. All e-filed documents shall [be e-filed in text-searchable portable document format (PDF-A) and shall otherwise] comply with the technical requirements set forth at the NYSCEF site.

(ii) Filing agent; statement of authorization. A filing agent (other than one employed by a governmental entity) shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel.

(iii) [(##)] Emergency exception; other hard copy filings. Documents that are required to be filed and served electronically in accordance with this section or paragraph (1) of subdivision (c) of section 202.5-bb of these rules may nevertheless be filed and served in hard copy where required by statute or court order, where the document is an application that may by statute be presented without notice, or provided the document is accompanied by the affirmation or affidavit of the filing attorney or

~~[party]~~ **unrepresented litigant** stating that: (1) ~~[(#)]~~ a deadline for filing and service fixed by statute, rule or order of the court will expire on the day the document is being filed and served or on the following business day; and (2) ~~[(#)]~~ the attorney, ~~[party or]~~ filing agent therefor, **or unrepresented litigant** is unable to file and serve such document electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this **subparagraph**, each such document shall include the notice required by ~~[this]~~ **the immediately following subparagraph**, and the filer shall file those documents with the NYSCEF site within three business days thereafter.

(iv) [(#)] Form of notice required on hard copy filing. Where an action is subject to e-filing and a party **(other than an unrepresented litigant who is not participating in e-filing)** or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, **that states the reason why the document is being filed in hard copy form.** ~~[that the party or attorney: (A) is authorized to and does withhold consent to e-filing, (B) is exempt from having to e-file, or (C) is authorized or required to file such document in hard copy pursuant to an exception provided in these Rules or other provision of law.]~~

(2) Payment of Fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: (i) such credit card information as shall be required at the NYSCEF site to permit a card to be charged by the County Clerk; or (ii) the form or information required by the County Clerk to permit him or her to debit an account maintained with the County Clerk by an attorney or law firm appearing for a party to the action; or (iii) such information as shall be required at the NYSCEF site to permit an automated clearing house debit to be made; or (iv) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk.

(3) Filing and receipt of documents; notification.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the NYSCEF site. A document **other than an order or judgment** is filed when its electronic transmission or, in the case of a petition that is e-filed by submission of a text file as provided in subdivision (b)(1) of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in (i), (ii) or (iii) of paragraph (2) of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk.

(ii) Notification. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief

Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and **the e-mail service addresses of all other participating parties in such action.** ~~[all other parties participating in e-filing.]~~ When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.

(iii) Correction. If a document filed electronically is subsequently discovered to contain confidential data – including but not limited to trade secrets, information protected by confidentiality agreement, or personal confidential information as defined by court rule – or otherwise to have been filed in error, the filer or another party or affected person may (1) notify all parties of the confidentiality issue or other error raised by the filing, and of his or her intention to seek judicial relief to correct the filing; (2) following such notification, request that the appropriate County Clerk, exercising his or her administrative discretion, place the document temporarily in “restricted” status on the NYSCEF site, to be made available for viewing by court staff and the parties but not the general public; and (3) file a motion or application to correct the filing by order to show cause within three business days of such notification (or such time as the court may direct), including a request for preliminary injunctive relief limiting interim disclosure of the document at issue. Unless otherwise directed by the court, any document placed in restricted status in response to such a request shall be returned to public view upon expiration of this three-day period. The Chief Administrator of the Courts shall promulgate forms to implement this process.

(4) Official record; maintenance of files~~[-working copies]~~. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those documents in hard copy form. All documents **separately** maintained by the County Clerk as the official electronic record shall also be **reflected** ~~[filed]~~ in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. **A County Clerk who maintains documents in hard copy form shall so indicate in the NYSCEF record.**

(5) **Working copies.** The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.

(6) ~~[(5)]~~ Decisions, orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in

hard copy to the court. **Except where [Unless]** the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk.

(7) ~~[(6)]~~ Exhibits and other documents in hard copy. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrator, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically.

(e) Signatures.

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed);

(v) in a small claims assessment review proceeding, it is a petition recorded by the NYSCEF site upon the filing of a text file as provided in subdivision (b)(1) of this section, provided that prior to filing, the document was signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings in the matter, including article 78 review and any appeals, and must be made available during the proceeding upon request of the respondent or the court); or

(vi) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130. A document shall be considered to have been signed by an attorney or party in compliance with section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR §130-1.1-a) if it has been signed by such attorney or party as provided in paragraph (1) of this subdivision and it bears the signatory's name.

(3) Certification of Signature. A judge, party or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a

Certification of Signature for such document in a form prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision (b)(1) of this section, a hard copy of the petition, fully completed and signed as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section 730 of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(2) Service of interlocutory documents in an e-filed action.

(i) E-mail address for service. **The e-mail service address recorded at the time of registration is the** ~~[Each party in an action subject to electronic filing that has consented thereto shall identify on an appropriate form an]~~ e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site ~~{(hereinafter the "e-mail service address")}~~. **It is the responsibility of each filing user [shall] to monitor that address and** promptly notify the Resource Center in the event of a change in his or her e-mail service address.

(ii) How service is made. ~~[Where parties to an action have consented to e-filing, a]~~ **An e-filing** party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date received, and the names of those appearing on the list of e-mail service addresses to whom that notification is being sent. Each party receiving the notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision (h) (2) of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. Proof of such service will be recorded on the NYSCEF site. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically.

(g) Addition of Parties [~~or Proposed Interveners~~] in a Pending E-Filed Action.

A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice [~~regarding availability~~] of e-filing. [~~specified in paragraph (2)(ii) of subdivision (b) of this section, to which response shall be made as set forth in that paragraph. A proposed intervenor or other non-party who seeks relief from the court in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent If an added party or intervenor does not consent to e-filing, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.~~]

(h) Entry of Orders and Judgments and Notice of Entry.

(1) Entry; date of entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically **and enter them.** [~~which shall constitute entry of the order or judgment.~~] **The County Clerk may affix a filing stamp to orders or judgments by stamping the original hard copy document before filing it electronically or by affixing a stamp to the document after it has been electronically filed. The filing stamp shall be proof of the fact of entry and the date and time thereof.** The date of entry shall be the date **shown on the stamp, except that** [~~on which transmission of the order or judgment is recorded at the NYSCEF site. Notwithstanding the foregoing,~~] if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp.

~~[(2) Notice requesting entry of judgment. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk, in a form specified by the County Clerk, a request for entry of judgment.]~~

(2) [~~(3)~~] Notification; service of notice of entry by parties. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.

(i) Technical Failures.

The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.

(j) Electronic Filing of Discovery Materials.

In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

(k) Copyright, Confidentiality and Other Proprietary Rights.

(1) Submissions pursuant to e-filing procedures shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to e-filing, any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. ~~[Unless otherwise permitted by the court, a motion for such an order shall be filed not less than ten days before the materials to which the motion pertains are due to be produced or filed with the court.]~~

(l) Public view of documents containing social security numbers.

NYSCEF administrators shall take steps to identify and restrict public view of portions of filed documents that display an individual's social security number.

EXHIBIT B

Supporting Memorandum of the NYSCEF Statewide E-filing Resource Center

Proposed changes to the e-filing rules:

Uniform Rule 202.5-b – Supreme Court Consensual rules:

Subsection (b) E-filing in Actions in Supreme Court

We propose several changes to this subsection.

Some of these changes are proposed so that the rules more accurately reflect current NYSCEF processes.

(b)(2)(ii) – The words “regarding availability” are removed from the name for the notice that is to accompany service of commencement documents in a consensual case. We believe that the current language mandates that “notice regarding availability of e-filing” be the name for the form. This rather long name, which we have been using for several years, runs counter to the direction in the 2015 legislation that options for e-filing, especially with regard to unrepresented litigants, be stated in plain language. As you know we have been working with Judge Fisher’s office to simplify our screens and forms so this would be in conformity with that objective. By making this change, we would re-name the notice as the “notice of e-filing”.

We propose to delete the next block of bracketed language, which relates to conversion of pending hard copy cases into This original language was the process in the past but is no longer the process to convert paper cases to e-filed cases. A new subparagraph iv is added to address this issue.

As to recording consent or declining consent, this language also was a prior process which is no longer utilized. The proposed additional language (in bold) and the proposed deletions (in brackets) reflect current NYSCEF processes.

At the end of this subparagraph we propose adding “under CPLR 320” to clarify that the term “appearance” is used in the same sense as in CPLR 320. We believe this was the original intent of that statement.

(b)(2)(iv) – We propose this as a new subparagraph, devoted to the conversion of hard copy cases to e-filed cases. Rather than preserve the language removed from (b)(2)(ii), above, it has been drafted to reflect the current conversion process.

Subsection (d) Electronic Filing of Documents

We propose several changes to this subsection.

First, the proposed changes to (d)(1) are intended to make the existing long and dense paragraph easier to read by separating the three existing subparagraphs (i, ii, and iii) on the page.

Second, some of the language is streamlined or amended.

(d)(1)(i) – In the first sentence, the reference to “an e-filing party” rather than a “party that has consented to such e-filing” is an attempt to remove as many references to “consent” as possible in the consensual rules because, as the mandatory rules state, large portions of the consensual rules apply to mandatory e-filing where the two sets of rules are not in conflict.

Also, the specific reference to PDF-A is removed. Instead, the only reference to the technical specifications of e-filed documents is to “the technical requirements set forth at the NYSCEF site.” In the event of a substantial technological change – e.g., a new generation of PDF documents beyond PDF-A, it is easier and faster to change a NYSCEF web page than a rule.

The sentence regarding filing agents is separated from (d)(1)(i) and is placed in a newly created (d)(1)(ii) without any change. This makes the sentence easier to find and to read.

The subparagraph for the emergency exception is now renumbered as (iii) and physically separated from (ii) to make it easier to read. Minor changes involve the insertion of “unrepresented litigant” where appropriate to the context.

The subparagraph for the hard copy filing notice is now renumbered as new subparagraph (iv) and physically separated from (iii) to make it easier to read. Language that is cut from the existing subparagraph (iii) is either inconsistent with the new legislation (e.g., an unrepresented, non-participating party is not required to attached the form to paper filings) or unwieldy. We believe that the proposed language “in a form approved by the Chief Administrator that states the reason why the document is being filed in hard copy form” covers all of the many scenarios that are specified in the forms. Any concern about this “gap” in the rules should be alleviated by the fact that counsel’s office will vet the forms before the Chief Administrator approves them.

(d)(3)(i) – This is the “When documents are filed” subparagraph, which provides generally that documents are filed and served on participating parties when uploaded to NYSCEF. The proposed change specifies that this rule applies only to documents other than an order or judgment, (which are filed by court users) which are later addressed in subparagraph (h)(1) (see below).

(d)(3)(ii) – In this notification subparagraph, we propose minor changes to clarify that notifications that NYSCEF sends out upon the filing of the document are transmitted to the e-mail service addresses of all parties participating in the action.

(d)(4) – “Working copies” is removed from the title of this paragraph because working copies will be addressed in a new paragraph (d)(5). The changes proposed for (d)(4) address the completeness of the case records maintained by the County Clerk. First, it requires any County Clerk who separately maintains an official electronic record to reflect those documents in NYSCEF. Second, it requires any County Clerk who maintains hybrid files to indicate the existence of any each copy document in the NYSCEF case record. These two statements comply with one of the main principals, the Syncing of NYSCEF with any other maintained system.

(d)(5) – The newly re-numbered and separate paragraph for working copies does not change the existing language.

(d)(6) and (7) are the new numbers for the existing paragraphs (5) and (6).

The minor change in new (6) is semantic. We believe it more accurately reflects the implementation of e-signature pilot programs throughout the state.

Subsection (f) Service of Documents

(f)(2)(i) – We believe that the existing language implies that a party designates an e-mail service address on a case by case basis, when in fact the e-mail service address is designated at the time of registration. We believe the language clarifies both the process as it exists and the filing user’s obligations with respect thereto.

(f)(2)(ii) – This minor change is another attempt to remove as many references to “consent” as possible.

Subsection (g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action

First, we propose to remove “or Proposed Intervenors” from the title of the subsection since the text of the section does not apply to an intervenor but to parties who are brought into a case.

Consistent with the change proposed for subparagraph (b)(2)(ii), above, the words “regarding availability” are removed from the name for the notice that is to accompany service of commencement documents in a consensual case.

We think the bracketed language that immediately follows is not needed since the rules for obtaining consent for any party brought into a case are explained in (b)(2)(ii).

Subsection (h) Entry of Orders and Judgments and Notice of Entry

(h)(1) – This paragraph involves the entry and date of entry of orders and judgments. In the current version, the rule states that the filing of an order or judgment by the County Clerk or his or her designee constitutes entry. The proposed language is designed to reflect and anticipate procedural variations in counties around the state. The proposed version defines entry as the affixing of a stamp, either physically or electronically, by the County Clerk or his or her designee.

(h)(2) – The “notice requesting entry of judgment” was a specific form that no longer is used because NYSCEF has a specific process and document types that by their very nature allow a filer to request the entry of judgment.

(h)(3) – This is renumbered as (h)(2) due to the removal of existing (h)(2).

Subsection (k) Copyright, Confidentiality and Other Proprietary Rights

(k)(2) – We believe this subparagraph is not needed, especially in light of new Commercial Division procedures.

Uniform Rule 202.5-bb – Supreme Court Mandatory rules:

No proposed changes.