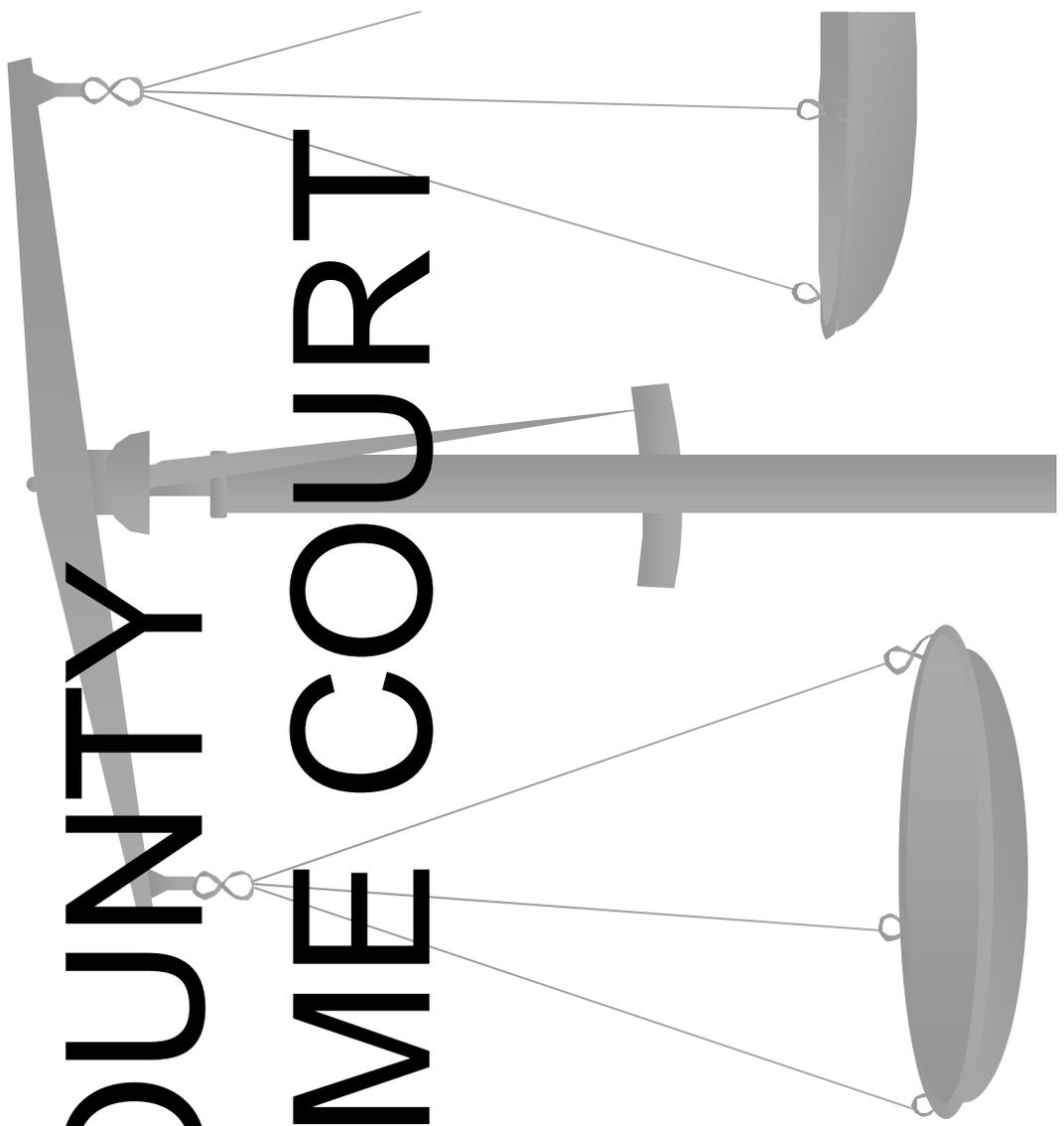


**E-FILING IN ERIE**

**COUNTY**

**SUPREME COURT**



# E-FILING IN ERIE COUNTY SUPREME COURT



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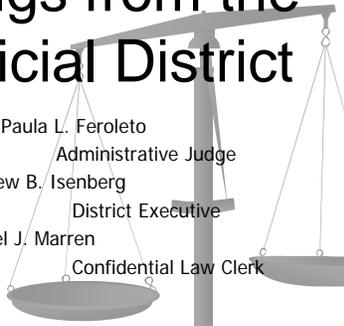
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## Greetings from the 8<sup>th</sup> Judicial District



Hon. Paula L. Feroletto  
Administrative Judge  
Andrew B. Isenberg  
District Executive  
Daniel J. Marren  
Confidential Law Clerk



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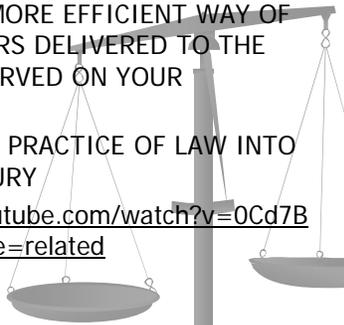
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## E-Filing

- A DIFFERENT MORE EFFICIENT WAY OF GETTING PAPERS DELIVERED TO THE COURT AND SERVED ON YOUR ADVERSARY
- IT BRINGS THE PRACTICE OF LAW INTO THE 21<sup>st</sup> CENTURY
- <http://www.youtube.com/watch?v=0Cd7Bsp3dDo&feature=related>



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## NYSCEF

- New
- York
- State
- Courts
- Electronic
- Filing



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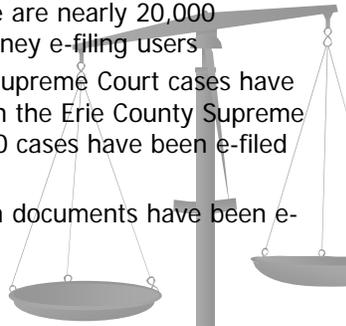
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## NEW BUT NOT SO NEW

- Currently, there are nearly 20,000 registered attorney e-filing users.
- Over 353,000 Supreme Court cases have been e-filed. In the Erie County Supreme Court over 1000 cases have been e-filed since 2007.
- Over 1.3 million documents have been e-filed.



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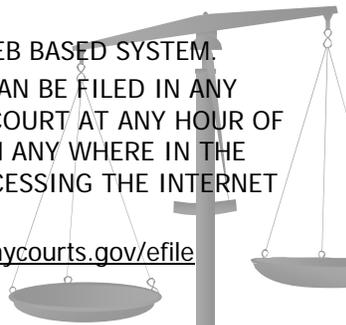
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## ADVANTAGES AND CONVENIENCES

- E-FILING IS WEB BASED SYSTEM.
- DOCUMENTS CAN BE FILED IN ANY AUTHORIZED COURT AT ANY HOUR OF ANY DAY FROM ANY WHERE IN THE WORLD BY ACCESSING THE INTERNET WEBSITE:

[www.nycourts.gov/efile](http://www.nycourts.gov/efile)



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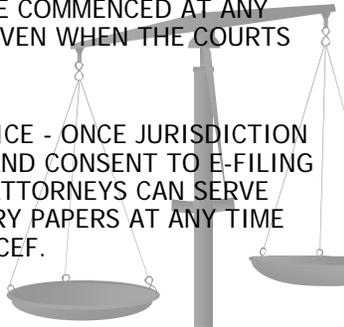
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### ADVANTAGES AND CONVENIENCES

- ACTION MAY BE COMMENCED AT ANY TIME OF DAY EVEN WHEN THE COURTS ARE CLOSED.
- INSTANT SERVICE - ONCE JURISDICTION IS OBTAINED AND CONSENT TO E-FILING IS OBTAINED ATTORNEYS CAN SERVE INTERLOCUTORY PAPERS AT ANY TIME THROUGH NYSCEF.



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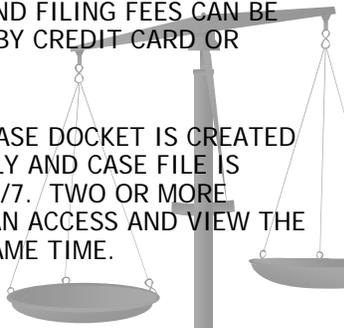
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### ADVANTAGES AND CONVENIENCES

- COURT FEES AND FILING FEES CAN BE PAID ON-LINE BY CREDIT CARD OR DEBIT CARD.
- ELECTRONIC CASE DOCKET IS CREATED AUTOMATICALLY AND CASE FILE IS ACCESSIBLE 24/7. TWO OR MORE ATTORNEYS CAN ACCESS AND VIEW THE FILE AT THE SAME TIME.



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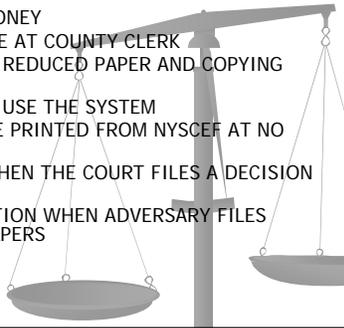
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### ADVANTAGES AND CONVENIENCES

- SAVES TIME AND MONEY
- NO WAITING IN LINE AT COUNTY CLERK
- NO POSTAGE FEES. REDUCED PAPER AND COPYING EXPENSES.
- NO ADDED FEES TO USE THE SYSTEM
- DOCUMENTS CAN BE PRINTED FROM NYSCEF AT NO CHARGE
- INSTANT NOTICE WHEN THE COURT FILES A DECISION AND ORDER
- INSTANT NOTIFICATION WHEN ADVERSARY FILES INTERLOCUTORY PAPERS



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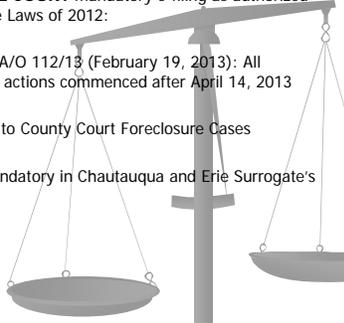
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## Mandatory E-Filing

- In Erie County **SUPREME COURT** mandatory e-filing as authorized under Chapter 184 of the Laws of 2012:
  - Administrative Order A/O 112/13 (February 19, 2013): All mortgage foreclosure actions commenced after April 14, 2013
  - Note: does not apply to County Court Foreclosure Cases
  - E-Filing is already mandatory in Chautauqua and Erie Surrogate's Courts.



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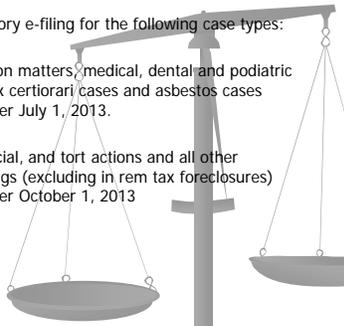
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## Mandatory E-Filing Anticipated Dates & Cases

Anticipated mandatory e-filing for the following case types:

- All Commercial Division matters, medical, dental and podiatric malpractice cases, tax certiorari cases and asbestos cases commenced on or after July 1, 2013.
- All contract, commercial, and tort actions and all other foreclosure proceedings (excluding in rem tax foreclosures) commenced on or after October 1, 2013



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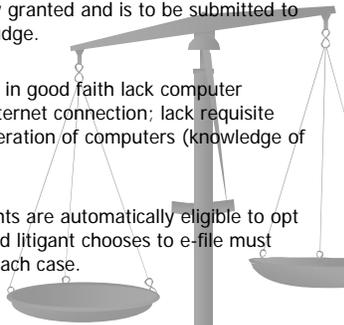
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## Am I Really Going to Have to Do This?

- Opt out will be rarely granted and is to be submitted to the Administrative Judge.
- 202.5-bb(e) – certify in good faith lack computer equipment and/or internet connection; lack requisite knowledge in the operation of computers (knowledge of staff imputed)
- Unrepresented litigants are automatically eligible to opt out. If unrepresented litigant chooses to e-file must obtain approval for each case.



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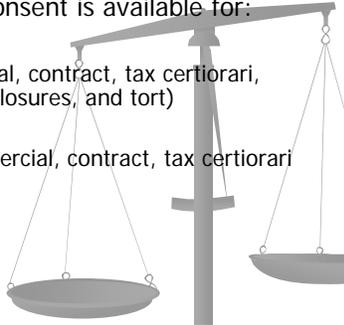
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## E-Filing By Consent

- E-Filing upon consent is available for:

- Erie (commercial, contract, tax certiorari, mortgage foreclosures, and tort)
- Niagara (commercial, contract, tax certiorari and tort)



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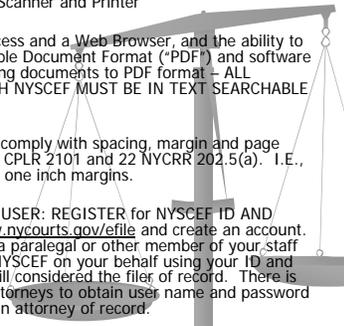
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## GETTING STARTED

- **HARDWARE:** Computer, Scanner and Printer
- **SOFTWARE:** Internet Access and a Web Browser, and the ability to read documents in Portable Document Format ("PDF") and software to convert word processing documents to PDF format – ALL DOCUMENTS FILED WITH NYSCEF MUST BE IN TEXT SEARCHABLE PDF-A FORMAT.
- All papers filed must still comply with spacing, margin and page requirements set forth in CPLR 2101 and 22 NYCRR 202.5(a). I.E., all documents must have one inch margins.
- **BECOME A REGISTERED USER:** REGISTER for NYSCEF ID AND PASSWORD – go to [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and create an account. Note you may authorize a paralegal or other member of your staff to file a document with NYSCEF on your behalf using your ID and password, but you are still considered the filer of record. There is now a process for non-attorneys to obtain user name and password as authorized agent for an attorney of record.



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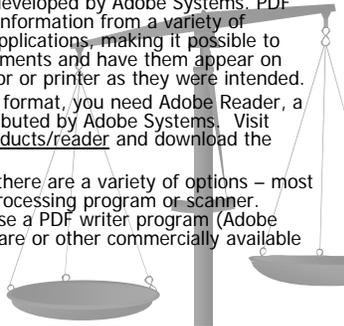
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## GETTING STARTED - PDF

- PDF is a file format developed by Adobe Systems. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer as they were intended.
- To view a file in PDF format, you need Adobe Reader, a free application distributed by Adobe Systems. Visit [www.adobe.com/products/reader](http://www.adobe.com/products/reader) and download the software for free.
- To create a PDF file there are a variety of options – most common use word processing program or scanner. Alternatively, purchase a PDF writer program (Adobe Acrobat Writer software or other commercially available software)



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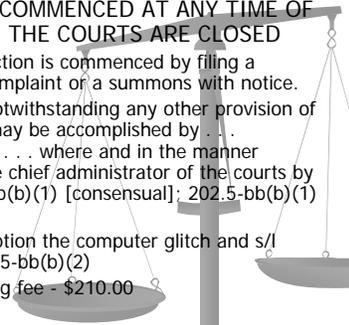
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### COMMENCEMENT OF E-FILE ACTION

- ACTION MAY BE COMMENCED AT ANY TIME OF DAY EVEN WHEN THE COURTS ARE CLOSED
  - CPLR 304 - An action is commenced by filing a summons and complaint or a summons with notice.
  - CPLR 304(b) - Notwithstanding any other provision of law, such filing may be accomplished by . . . electronic means . . . where and in the manner authorized by the chief administrator of the courts by rule. See 202.5-b(b)(1) [consensual]; 202.5-bb(b)(1) [mandatory].
  - Emergency exception the computer glitch and s/l nightmare – 202.5-bb(b)(2)
  - Must pay the filing fee - \$210.00



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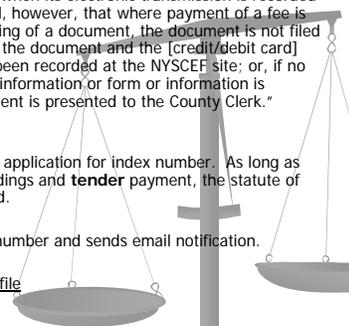
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### COMMENCEMENT OF E-FILE ACTION

- "A document is filed when its electronic transmission 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 [credit/debit card] information . . . has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, until payment is presented to the County Clerk." 202.5-b(d)(3)(i)
- Not necessary to file application for index number. As long as file appropriate pleadings and tender payment, the statute of limitations is satisfied.
- Clerk assigns index number and sends email notification.
- [www.nycourts.gov/efile](http://www.nycourts.gov/efile)



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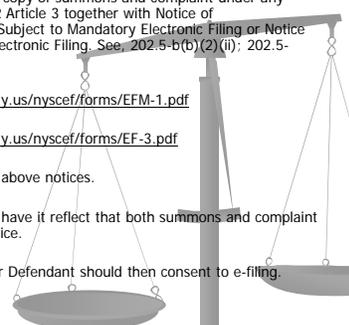
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### COMMENCEMENT OF E-FILE ACTION

- Upon filing, serve the hard copy of summons and complaint under any method authorized in CPLR Article 3 together with Notice of Commencement of Action Subject to Mandatory Electronic Filing or Notice Regarding Availability of Electronic Filing. See, 202.5-b(b)(2)(ii); 202.5-b(f)(1); 202.5-bb(b)(3)
- <https://iapps.courts.state.ny.us/nyscef/forms/EFM-1.pdf>
- <https://iapps.courts.state.ny.us/nyscef/forms/EF-3.pdf>
- Not necessary to E-file the above notices.
- E-File Proof of Service and have it reflect that both summons and complaint were served and Court Notice.
- For consensual attorney for Defendant should then consent to e-filing.
- Demonstration



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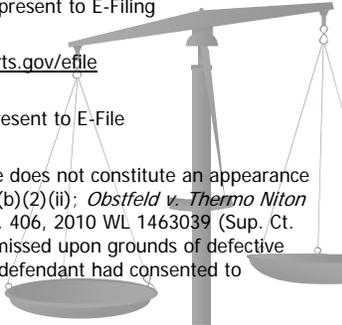
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## CONSENT TO E-FILING

- How Do I consent/represent to E-Filing
- Login to [www.nycourts.gov/efile](http://www.nycourts.gov/efile)
- Click on consent/represent to E-File
- Note consent to e-file does not constitute an appearance in the case. 202.5-b(b)(2)(ii); *Obstfeld v. Thermo Niton Analyzers*, 910 N.Y.S. 406, 2010 WL 1463039 (Sup. Ct. 2010)(Complaint dismissed upon grounds of defective service even though defendant had consented to electronic filing)



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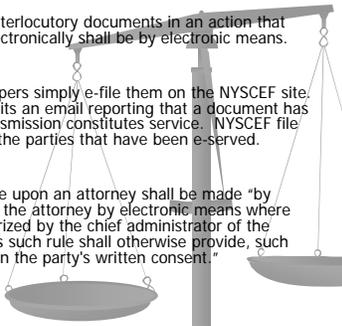
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## Service of Interlocutory Papers

- Filing and service of all interlocutory documents in an action that has been commenced electronically shall be by electronic means. 202.5-bb(c)(1)
- To serve interlocutory papers simply e-file them on the NYSCEF site. Site automatically transmits an email reporting that a document has been received. That transmission constitutes service. NYSCEF file will maintain a record of the parties that have been e-served. 202.5-b(f)(2)(ii)
- CPLR 2103(b)(7) – service upon an attorney shall be made “by transmitting the paper to the attorney by electronic means where and in the manner authorized by the chief administrator of the courts by rule and, unless such rule shall otherwise provide, such transmission shall be upon the party’s written consent.”



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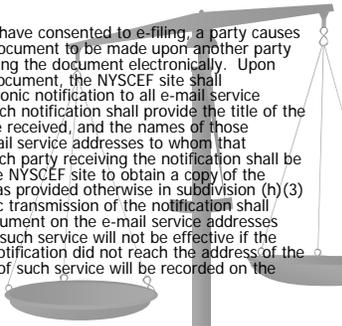
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## Service of Interlocutory Papers

- 202.5-b(f)(2)(ii) – Service of interlocutory documents –

“Where parties to an action have consented to e-filing, a 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)(3) 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.”



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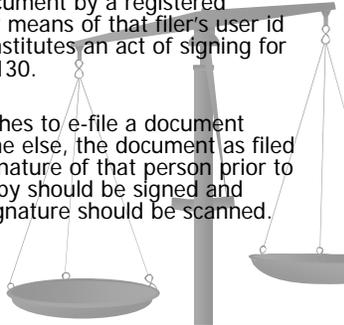
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## Signatures

- The filing of a document by a registered attorney e-filer by means of that filer's user id and password constitutes an act of signing for purposes of Part 130.
- If an attorney wishes to e-file a document signed by someone else, the document as filed must bear the signature of that person prior to filing. IE Hard copy should be signed and document with signature should be scanned.
- 202.5-b(e)



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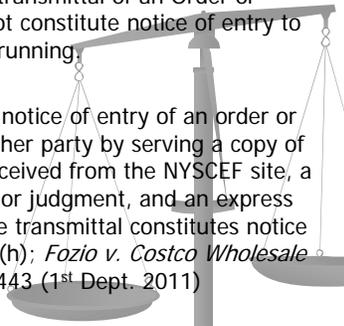
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## Order and Notice of Entry

- The NYSCEF Site transmittal of an Order or Judgment does not constitute notice of entry to start appeal time running.
- A part shall serve notice of entry of an order or judgment on another party by serving a copy of the notification received from the NYSCEF site, a copy of the order or judgment, and an express statement that the transmittal constitutes notice of entry. 202.5-b(h); *Fazio v. Costco Wholesale Corp.*, 85 A.D.3d 443 (1<sup>st</sup> Dept. 2011)



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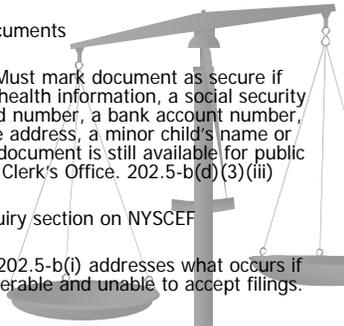
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## ADDITIONAL PRACTICE TIPS

- System allows for documents to be sealed.
- Secure v. Sealed Documents
- Secure Documents: Must mark document as secure if contains identifiable health information, a social security number, a credit card number, a bank account number, date of birth, a home address, a minor child's name or trade secrets. Note document is still available for public inspection at County Clerk's Office. 202.5-b(d)(3)(iii)
- There is a public inquiry section on NYSCEF
- Technical Failures – 202.5-b(l) addresses what occurs if NYSCEF System inoperable and unable to accept filings.



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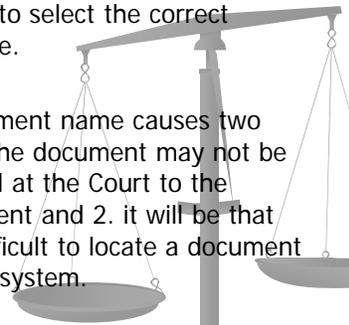
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## ADDITIONAL PRACTICE TIPS

- It is important to select the correct document name.
- Incorrect document name causes two problems: 1. the document may not be properly routed at the Court to the intended recipient and 2. it will be that much more difficult to locate a document in the NYSCEF system.



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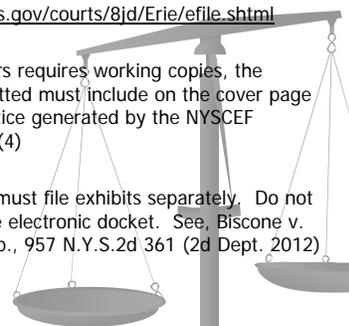
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## Erie County Protocols

- <http://www.nycourts.gov/courts/8jd/Erie/efile.shtml>
- If a Judge's chambers requires working copies, the working copy submitted must include on the cover page the confirmation notice generated by the NYSCEF system. 202.5-b(d)(4)
- When filing motion must file exhibits separately. Do not simply reference the electronic docket. See, *Biscione v. Jetblue Airways Corp.*, 957 N.Y.S.2d 361 (2d Dept. 2012)



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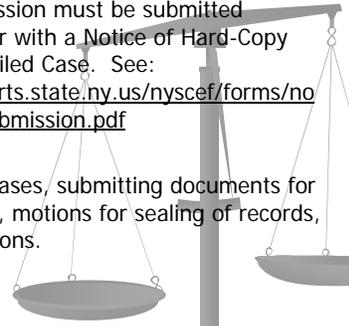
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## Erie County Protocols

- Hard copy submission must be submitted unbound together with a Notice of Hard-Copy Submission – E-Filed Case. See: <https://iapps.courts.state.ny.us/nyscef/forms/notice-hard-copy-submission.pdf>
- Used for pro se cases, submitting documents for in camera review, motions for sealing of records, ex parte applications.



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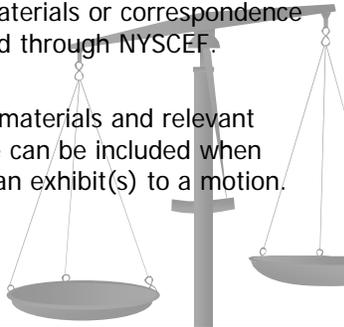
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## Erie County Protocols

- No discovery materials or correspondence should be e-filed through NYSCEF.
- Note discovery materials and relevant correspondence can be included when appropriate as an exhibit(s) to a motion.



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## HELP/TRAINING/SUPPORT

- E-Filing Resource Center (646) 386-3033
- Erie Supreme and County Chief Clerk's Office (716) 845-9301. Ellis Bozzolo, Chief Clerk. Kevin Kelley, Deputy Chief Clerk. Deborah Drake, Associate Court Clerk.
- Email [EFile@nycourts.gov](mailto:EFile@nycourts.gov)



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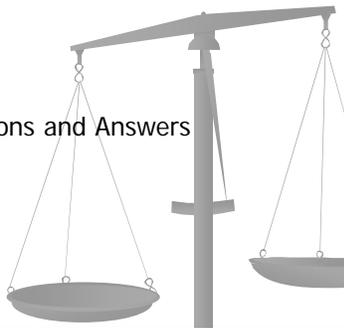
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## THE END!!

Questions and Answers



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# Joint Protocols for New York State Courts E-Filing (NYSCEF) Cases Filed in Supreme Court, Erie County

## I. Introduction:

The previously consensual e-filing program in Erie County Supreme Court for certain civil matters is in the process of becoming a mandatory program. It is anticipated this process will be complete and all such cases will be subject to mandatory e-filing before the end of the calendar year 2013. These Joint Protocols are applicable to both programs.

The Administrative Justice of the Eighth Judicial District and the Erie County Clerk as Clerk of the Supreme and County Courts hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”) implemented in the Erie County Supreme Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (hereinafter “Uniform Rules” and, in particular, § 22 NYCRR 202.5-bb and 202.5-b) and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website ([www.nycourts.gov/efile](http://www.nycourts.gov/efile)) as well as the appropriate IAS Courts’ Part Rules to insure compliance with all regulatory and Court requirements. These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence over the Protocols.

**A. Effect of Joint Protocols:** The NYSCEF system does not change the rules applicable to civil litigation. As such, the protocols promulgated herein, as well as any additions or amendments thereto, do not change applicable rules or statutes with respect to civil practice as defined by the New York State Civil Practice Law and Rules (hereinafter “CPLR”), the Uniform Rules or the Commercial Division Rules (22 NYCRR 202.70) ([www.nycourts.gov/rules/trialcourts/202.shtml](http://www.nycourts.gov/rules/trialcourts/202.shtml)).

**B. Official Case Record:** The official case record for any action or proceeding, and the filing or entry of documents therefore, shall be the records maintained by the Office of the Erie County Clerk via its electronic database, online images and hard copy filings as per the constitutional authority vested as the Clerk of the Supreme and County Courts. In addition, as Clerk of the Supreme and County Courts, the Erie County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention, and dissemination of court records within Erie County.

**C. Getting Started:** Prior to utilizing the NYSCEF system, an attorney, party, or filing agent must register to become an authorized user of the NYSCEF site at [www.nycourts.gov/efile](http://www.nycourts.gov/efile). All attorneys admitted to practice in New York State can log into NYSCEF using their Attorney Registration Number and their Attorney Online Services account password.

Attorneys who have not created an Attorney Online Services account (usually done when renewing one's bar registration), can use the "Create Account" link at [www.nycourts.gov/efile](http://www.nycourts.gov/efile). An individual registered and seeking to act as filing agent must file a *Statement of Authorization for Electronic Filing* form, accessible at [www.nycourts.gov/efile](http://www.nycourts.gov/efile), for each case in which an attorney authorizes the agent to file on the attorney's behalf.

All pro se parties utilizing the NYSCEF system must register and may use the "Create Account" link at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

All NYSCEF Users shall immediately contact the NYSCEF Resource Center if they have reason to believe their user identification or password may have been compromised, and may request a new user identification or password.

**D. Cases Eligible for E-Filing:** Case types currently eligible and accepted for e-filing include: Commercial; Contract; Tort; Tax Certiorari proceedings; and, foreclosure actions addressing real property and mechanics' liens. This list is subject to change. All other case types must be commenced and proceed in hard copy.

**II. Identifying E-filed Cases:** E-filed cases must be readily identifiable and marked as such. If counsel presents papers to the Office of the Erie County Clerk or the Chief Clerk's Office in a NYSCEF matter, where authorized, counsel should alert the Clerk that the case is a NYSCEF matter. Further:

**A. When commenced via NYSCEF:** Cases that are initially commenced by the filing of papers with the NYSCEF system are identified as e-filed cases by assignment of an Index Number that has "800-899" as the first three digits of the index number (i.e. 802391/2012). Upon filing of the commencement pleadings and payment of the statutory fee, the Erie County Clerk will assign a NYSCEF designated Index Number and the filer shall be notified via the NYSCEF system of the number assigned and filing date. Such Index Number must be affixed to all document submissions, filings, and communications to the Erie County Clerk and the Court.

**B. When converted to NYSCEF:** When a case is converted to e-filing, the letter “E” will be placed after the Index Number previously assigned by the County Clerk’s office to designate the matter as an e-filed case (i.e., 000123/2007E). The suffix “E” must appear on all documents following the conversion of the case.

A converted case will contain both the pre-conversion papers and electronic versions of any documents filed post-conversion. The remaining paper documents will remain on file at the County Clerk’s Office.

### III. Filing of Papers

**A. Commencing an Action in NYSCEF:** To commence an action, login to the NYSCEF System at [www.nycourts.gov/efile](http://www.nycourts.gov/efile), choose the court in which you wish to commence your action, and then choose the type of action.

Unless otherwise stated in these Protocols, each document must be uploaded as a separate document and the correct document type must be selected under the Document Type menu.

**B. Consenting to Electronic Filing: Consent by counsel is not required in the mandatory e-filing program. Limited exemptions and exceptions for counsel and pro se litigants are contained in 22 NYCRR §202.5-bb and will be strictly enforced in Erie County.**

In the very brief continuation of the present consensual program, the procedure for obtaining consent for electronic filing is set forth in Uniform Rule §202.5-b(b)(2), and may be found at [www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml). A party which commences a case electronically consents to e-filing. For parties responding to an E-filed case, consent shall be obtained by stipulation or by electronically registering consent. Any party not consenting to e-filing must indicate his/her/its non-consent in writing. Please note that filing papers in hard copy, along with the Notice of Hard Copy Submission – E-filed Case, is not sufficient to register non-consent. By logging in at your earliest convenience to register your consent, you will be assured of promptly receiving all notifications of documents electronically filed to the case.

Any party not consenting to e-filing is responsible for filing all paper documents with the County Clerk or the Court. Papers filed manually must be presented unbound. Papers that are bound will be returned to the party or attorney. The Court will not assume the responsibility of filing any papers. **Self-represented parties will be referred to the Court Help Center to assist with uploading the document into NYSCEF. Although NYSCEF will notify the consenting parties that a**

**document has been filed, any party that has opted out must also serve the documents on the opposition in paper format and file an Affidavit of Service with the County Clerk and/or Court.**

**C. Converting a Case to Electronic Filing:** Cases originally commenced in hard-copy format but later converted consensually to NYSCEF status by delivery of an original *Stipulation and Consent to E-file* signed by all parties (with limited exceptions) to the Office of the Erie County Clerk with a copy to the Part Clerk if assigned to an IAS Justice will initially bear a regular Index Number. If the case is converted prior to the filing of a Request for Judicial Intervention (RJI), the County Clerk will upload the County Clerk's docket and any initiating documents (Summons, Complaint, Petition) into NYSCEF. If the case is converted subsequent to the filing of an RJI, the Part Clerk will upload the County Clerk's docket and any initiating documents. **The attorney must provide the initiating documents to the County Clerk / Part Clerk in .pdf format.**

**D. Paper Documents Not Accepted:** All documents required to be filed with the Court in any e-filed case must be electronically filed unless otherwise provided by the Uniform Rules or this Protocol.

Any document that is submitted in hard copy form in an e-filed case must bear a *Notice of Hard Copy Submission – E-filed Case* attached as a cover sheet. Any hard copy document not bearing this form will not be accepted by the Clerk. The documents will be returned and deemed filed when properly submitted.

**E. Rejection of Hard Copy Filings:** In accordance with Uniform Rule §202.5-b(d) ([www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml)), the County Clerk shall refuse to accept for filing hard copy papers filed in an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules and the papers bear a *Notice of Hard Copy Filing Submission - E-filed Case*.

Equipment available for use by filers will be available at: the Chief Clerk's Office, 25 Delaware Avenue, Buffalo, New York; the 8<sup>th</sup> Judicial District Court Help Center presently located at 77 West Eagle Street, Buffalo, New York; and, the Erie County Clerk's Office, 92 Franklin Street, Buffalo, New York. Hard copy submissions may be electronically filed as long as the party has a User I.D. and Password.

**F. Payment of Fees:** Payment for fee-bearing NYSCEF documents may be made online via credit card (American Express, MasterCard or Visa) at the time of submission. Alternatively, payment may be made at the Erie County Clerk's Office by cash, check, credit card (Discover and Mastercard), or debit from an existing escrow account with the Erie County Clerk. If payment is not made at the Erie

County Clerk's Office within 2 business days of filing with NYSCEF, the papers(s) will be rejected and returned. Documents uploaded to NYSCEF are not "filed" until payment is received.

**G. Filing a Document where Size, Consistency or Context Prevent E-filing:** Please contact the supervisor of Actions & Proceedings, Erie County Clerk's Office by calling (716) 858-6662 or the Deputy County Clerk - Legal at (716) 858-6348 for information.

**H. Social Security Numbers:** An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of General Business Law §399-dd(6).

**I. Exhibits:** In the NYSCEF system, each exhibit must be uploaded as a separate .pdf file. After uploading a primary document, please choose the document type "Exhibit" and enter the appropriate number or letter; each exhibit should bear a separate cover sheet clearly marked as "Exhibit A," "Exhibit B," etc.

**J. Errors Upon Submission:** Submission of documents which, upon examination, require correction or addition will result in notification to the filer advising that there is a problem with a document. The filer shall make the required corrections and/or additions as indicated in the e-mail transmission sent by the County Clerk through the NYSCEF site. The corrected documents may be resubmitted using the "Re-file this document" link highlighted in the document list for the respective case. Please note that in the case of multiple submissions, all related documents filed at the same time will be removed from the case record and returned until all documents are properly submitted.

**K. Technical Failures:** When filing by electronic means is hindered by a technical failure, please refer to the Uniform Rule §202.5-b(1) ([www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml)).

**L. Discovery Materials and Correspondence:** In the absence of the Court's permission or stipulation of the parties, no party shall file electronically any correspondence or discovery 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.

**M. Notice of Entry:** The Part Clerk shall file orders electronically and such filing shall constitute entry of the order. The NYSCEF system will provide notification that the order has been entered. Such notice does not constitute service of notice of

entry by any party. Notice of Entry must be made pursuant to the Uniform Rules and the CPLR.

**N. Working Copies:** Electronically filed documents subject to review and processing by the Part Clerk do not require a working copy unless otherwise directed or provided for in IAS Part Rules. Pursuant to Uniform Rule §202.5-b(d)(4) ([www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml)), any working copy submitted shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice generated by the NYSCEF site at the time of filing. Please consult the individual Justice's Part's Rules and/or consult with the Judge's chambers to determine whether and how working copies are to be provided. Working copies will not be printed or delivered by the Erie County Clerk or the Chief Clerk of the Courts or any of their personnel to chambers. The official record of a document in an electronically filed case is the document filed via the NYSCEF system. Working copies are intended only for use by the Justice. The Court will discard all working copies after the Justice has finished with them. Thus, in the event that counsel fails to file a document via the NYSCEF system, the document will not be part of the court record.

**IV. Requests for Judicial Intervention (RJIs):** An RJI in a NYSCEF case shall be filed via the NYSCEF system. Any attachments to an RJI, with the exception of a motion or order to show cause, shall be submitted along with the RJI as one .pdf file.

**A. Tort, Contract and other NYSCEF-eligible Actions and Proceedings:** If an RJI requests a Preliminary Conference, the filer should choose document type *RJI re: Request for Preliminary Conference* and it must be uploaded in the NYSCEF system. In a medical malpractice action, if an RJI is accompanied by a Notice of Medical Malpractice, the filer should choose document type *RJI re: Notice of Medical Malpractice* and both documents must be uploaded as one .pdf file in the NYSCEF system.

**B. Commercial Division Assignments:** In the case of an RJI seeking assignment to the Commercial Division, the filer must submit, as required by the standards for assignment of cases to the Commercial Division (Uniform Rule 202.70 (d)(2)) ([www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml)), the *Commercial Division Addendum (840C)* and ensure that all pleadings have been electronically filed. The RJI and Addendum must be uploaded as one .pdf file in the NYSCEF system.

**C. Residential Foreclosure Actions:** The plaintiff is required to file proof of service of the summons and complaint with NYSCEF and, at the same time, file an RJI with an Affirmation of Accuracy as one .pdf document in the NYSCEF system

(pursuant to Justice Pfau's Administrative Order 431/11. See Order and Affirmation forms here: [www.nycourts.gov/attorneys/pdfs/AdminOrder\\_2010\\_10\\_20.pdf](http://www.nycourts.gov/attorneys/pdfs/AdminOrder_2010_10_20.pdf)) Additionally, the *Foreclosure Addendum (840F)* is required and must be uploaded as a separate document.

**1. Settlement Conference Eligible Actions:** The Court will schedule a mandatory settlement conference pursuant to CPLR § 3408 and Uniform Rule § 202.12-a. No motions or ex parte applications should accompany the RJI if the matter is subject to a mandatory settlement conference.

**2. Settlement Conference Ineligible Actions:** In foreclosure actions NOT entitled to a residential mortgage settlement conference, Plaintiff must file a *Foreclosure-Settlement Conference Ineligible Affirmation (8<sup>th</sup> Judicial District)* (pursuant to Justice Feroletto's Administrative Order dated March 3, 2010). This affirmation must provide a specific reason (i.e. mortgagor is deceased/estate, tax or mechanic's lien foreclosure, reverse mortgage, vacant property, premises not intended to be owner-occupied, etc.) that the action is not entitled to a settlement conference. If the reason is that the premises are not owner-occupied/not intended to be owner-occupied, the Affirmation must also state the efforts that were taken to determine same. The mere fact that the homeowner was served at a location other than the property address is not sufficient.

**D. Commercial Foreclosure Actions:** All foreclosure actions involving commercial property, commercial loans, or between commercial entities require the Plaintiff to file, as a separate document, a *Foreclosure-Settlement Conference Ineligible Affirmation (8<sup>th</sup> Judicial District)* detailing the reason the action is commercial. If the Plaintiff is also seeking assignment to the Commercial Division, the Commercial Division Request for Judicial Intervention Addendum must be filed with the RJI (see section B above).

**V. Motions and Petitions:** Submission of motions, including cross motions, shall comply with all relevant provisions of the CPLR, the Uniform Rules of the Court (NYCRR) and part rules.

**A. General:** A motion on notice or a notice of petition in a NYSCEF case shall be filed through the NYSCEF system and, except regarding a notice of petition commencing a Tax Certiorari Action, must be accompanied by a Request for Judicial Intervention if the motion is being filed upon commencement or if the matter has not yet been assigned to an IAS Justice. In addition, cross motions and

opposition and reply papers with the appropriate filing fees must be submitted via the NYSCEF system.

**1. Commercial Division:** Refer to the 8<sup>th</sup> Judicial District Commercial Division website ([www.nycourts.gov/courts/comdiv/](http://www.nycourts.gov/courts/comdiv/)).

**2. Residential Foreclosure Actions:** If no defendant served an answer to the complaint, the Plaintiff may apply ex parte for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. If a defendant served an answer and did not waive further notice, the Plaintiff must move on notice for Summary Judgment for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. Whether submitted ex parte or on notice, applications for the appointment of a referee to compute must include a proposed order of reference submitted as NYSCEF document type *Proposed Order*. Whether submitted ex parte or on notice, applications for a Judgment of Foreclosure and Sale must include a proposed judgment submitted as NYSCEF document type *Judgment – to Court (Proposed)*. In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the settlement conference part.

**B. Calendaring of Motions and Petitions:** Refer to individual Justice’s Part Rules.

**C. Adjournments:** Refer to individual Justice’s Part Rules.

**D. Exhibits:** Please see Section III (I) above regarding the submission of exhibits.

**E. Working Copies:** Please see Section III (N) above regarding working copies.

**F. Affidavits of Service:** Affidavits of Service are required in an e-filed case only when documents have been served in hard copy or pursuant to the directive of the Court. Refer to the Uniform Rules for additional information.

**G. Proposed Orders:** Proposed orders shall be submitted through the NYSCEF system and a working copy provided to the IAS Justice if Part Rules so require.

**H. Decisions and Orders:** Decisions and/or orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event and a link to the decision and/or order via the NYSCEF system to all consenting parties. This notice does not constitute service of Notice of Entry of an order by any party (See Section III (M) for more information regarding Notice of Entry).

**VI. Orders to Show Cause:** Proposed Orders to Show Cause (hereinafter “OTSC”) shall comply with all relevant provisions of the CPLR, the Uniform Rules, Commercial Division Rule (22 NYCRR 202.70), Uniform Rule 202.7(f) and any other applicable provision of the law, regarding notice of the application to the opposing party. Counsel must contact Chambers to schedule a return date.

**A. General:** Except as provided in the following paragraph, a proposed OTSC and supporting documents in a NYSCEF case must be submitted by filing with the NYSCEF system. Original documents will not be accepted by the County Clerk unless specifically permitted by the Uniform Rules or these Protocols.

**1. OTSC Commencing Action:** Where the action is being commenced and the commencement filing includes an OTSC or an OTSC with Temporary Restraining Order (hereinafter TRO) submitted simultaneously with the purchase of an Index Number, a Summons and Complaint or Notice of Petition and Petition and the filing of an RJI, the filer must select the document type *Proposed Order to Show Cause Accompanying Commencement Doc(s)*.

The Proposed OTSC must be presented to the Chief Clerk’s Office in hard copy. Once the Order has been executed, the Order alone will be uploaded and filed to NYSCEF by the Part Clerk. Thereafter, the rest of the papers will be returned to counsel or the party and it shall be the obligation of counsel or the party to file all supporting papers in the NYSCEF system.

**2. OTSC in Existing Action:** Where counsel or the party seeks to file an OTSC in an existing action, the Proposed OTSC may be presented to the IAS Justice in hard copy. A completed *Notice of Hard-Copy Submission – E-Filed Case* must be affixed to the Proposed OTSC. Upon notice to counsel or the party that the Order has been executed, he or she shall make payment to NYSCEF by uploading and filing the Proposed OTSC and paying the appropriate fee. Payment by the filer shall be confirmed by the Part Clerk and the signed Order will be uploaded and filed to NYSCEF by the Part Clerk. Thereafter, the rest of the papers will be returned to counsel or the party and it shall be the obligation of counsel or the party to file all supporting papers in the NYSCEF system.

**B. Working Copies:** Counsel or the party should consult relevant Part Rules to determine whether a working copy of the proposed OTSC and the supporting documents must be submitted to the IAS Justice.

**VII. Secure Documents:** A filer must indicate that a document filed electronically contains any of the information set forth in Rule 202.5-b(d)(3)(iii) ([www.courts.state.ny.us/rules/trialcourts/index.shtml](http://www.courts.state.ny.us/rules/trialcourts/index.shtml)). NYSCEF will then designate the document as “Secure” pursuant to the Uniform Rules. If a document is designated as “Secure,” access to it in the NYSCEF system will be restricted to consenting parties to the action, the County Clerk and the Court and, if the filer is a filing agent, to the agent. The document will, however, be available for public inspection at the office of the County Clerk unless sealed by the Court. Please note the designation of “Secure” documents is subject to change and/or amendment of the applicable Uniform Rules.

### **VIII. Sealed Documents:**

**A. Application for a Sealing Order:** To seal a document or file in a NYSCEF case, a party/counsel must apply to the Court for a “sealing” order directing the County Clerk to seal the document or file. If the motion/application for a “sealing” order is filed with the NYSCEF system, the document or file that is the subject of the “sealing” order will be open to the public until a sealing order is issued.

**1. Sealing document(s) previously filed in NYSCEF:** Application may be made through the NYSCEF system and, upon issuance of an Order directing the sealing of an existing filed document(s), the Part Clerk shall upload and file the signed Order. The County Clerk shall seal the document(s) or file identified in the sealing Order as directed by the court, both in the NYSCEF system and, if any of the covered documents are found therein, in the hard copy file. No further action by counsel is required.

#### **2. Sealing Document(s) Not Yet filed in Existing NYSCEF case:**

**a.** Where a party/counsel seeks to obtain an order in an existing case for a document or document(s) not yet filed, application may be made through the NYSCEF system. If the motion/application is filed with the NYSCEF system, the motion and accompanying documents will be open to the public until a sealing order is issued. Upon execution of the Order, the Part Clerk shall upload and file the signed Order. The County Clerk shall seal the document(s) or file identified in the sealing Order as directed by the court, both in the NYSCEF system and, if any of the covered documents are found therein, in the hard copy file. No further action by counsel is required.

**b.** Alternatively, in the event that a party/counsel wishes the motion/application be unavailable on the NYSCEF system: Where a

party/counsel seeks to obtain an order in an existing case for a document or document(s) not yet filed, following payment of any fees due, application may be made in hard copy with the *Notice of Hard-copy Submission – E-Filed Case* form attached, to the IAS Justice. Upon receiving the signed Order, the Part Clerk shall upload the Order and then contact party/counsel directing the documents in question be e-mailed to the Part Clerk in a .pdf format at which time the Part Clerk will upload and seal the same. Thereafter, the rest of the papers, if any, will be returned to Counsel and it shall be Counsel’s obligation to file all supporting papers not sealed in the NYSCEF system.

**IX. Note of Issue:** The case will be deemed ready for trial once a *Note of Issue-With Jury* or *–without Jury* has been uploaded to the NYSCEF system.

**X. Consolidation or Joint Trial:** Consolidation or joint trial of proceedings shall be at the discretion of the Court as permitted under the CPLR and case law. Upon filing of an *Order Directing Consolidation*, all subsequently filed pleadings/papers shall be filed in the case bearing the lower Index Number assigned unless directed otherwise by the Court. An order directing a joint trial of proceedings will not result in the consolidation of cases.

## **XI. Judgments**

**A. General Procedures:** Filers must submit proposed judgments through the NYSCEF system as single transactions, and not combined with any other unrelated filings or transactions. The filer may choose *Judgment – to County Clerk (Proposed)*, *Judgment – to Court (Proposed)*, or *Clerk Default Judgment (Proposed)*.

**1. Submission:** A party seeking the entry of a judgment must submit papers in compliance with statutory requirements including, but not limited to, submission of a Bill of Costs, with interest calculation, proof of additional mailing, and Statement of Judgment, if applicable; and any necessary supporting information or a judgment roll. The Statement for Judgment must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Clerk and failure to include the addresses will result in the document being returned to the filer for correction.

**2. Examination:** The Judgment Clerk will examine the submission for entry. If the submission is deficient, the deficiencies will be communicated to the filer via the NYSCEF system. Once corrected, the judgment should be resubmitted via the NYSCEF system.

**3. Notification of Entry:** Once the judgment is entered, notification will be sent via the NYSCEF system to all consenting parties. “Entry” by the Clerk constitutes entry as defined by CPLR §5016(a) and includes payment by the filer of any statutory fee. Such notification via the NYSCEF system shall not constitute service of Notice of Entry, but only notification of entry of the judgment. It shall be the responsibility of the submitting party to serve Notice of Entry on all parties, if required.

**B. Entry of Default Judgments:** A party seeking the entry of a default judgment by the Clerk shall choose the following NYSCEF document type: *Clerk Default Judgment (Proposed)*. The filing fee is forty-five dollars (\$45) and the Statement of Judgment, including costs, must be included as one .pdf file.

**1. Entry of Default Judgments Based on Stipulation of Settlement:** A party seeking the entry of a default judgment by the County Clerk pursuant to a Stipulation of Settlement or Release shall choose the following NYSCEF document type: *Clerk Default Judgment (Proposed)*. If the Stipulation of Settlement on which the judgment is based has not yet been filed or is being filed simultaneously with the judgment, the filer shall choose the following NYSCEF document type: *Stipulation of Settlement*, pay the required \$35.00 fee, and attach the Stipulation as one .pdf file. If the Release on which the judgment is based has not yet been filed, the original or a copy must be filed.

**2. Entry of Judgment Based on Decision and/or Order:** If the entry of the judgment is conditioned upon a previously signed decision and order, the filer shall choose the following NYSCEF document type: *Judgment - to County Clerk (Proposed)*. There is no fee to enter said judgment.

**C. Judgment Signed by the Court:** A party seeking the entry of a judgment signed by the Court shall choose the following NYSCEF document type: *Judgment – To Court (Proposed)*. The Part Clerk will upload the signed document into the NYSCEF site. Notification of such proposed judgment will be transmitted by the NYSCEF System to the filer. The filer shall then submit the necessary supporting documents, including a Bill of Costs with complete calculations of costs, interest, and attorney fees, if applicable, unless included in the Judgment. The judgment shall comply with statutory requirements and failure to include the addresses of the debtor(s) or creditor(s) will result in the judgment being returned to the filer for

correction. Notification of entry will be transmitted by the NYSCEF System to all consenting parties. In addition to statutory and regulatory requirements as well as these Protocols, individual Court Part Rules regarding the submission of judgments must be followed.

**D. Confession of Judgment:** Entry of judgment by confession shall adhere to statutory and regulatory requirements. A party seeking the entry of judgment by confession via the NYSCEF system shall choose the document types: *Confession of Judgment (Affidavit of Defendant)* and *Judgment - to Clerk (Proposed)* for submission of the Statement of Judgment as two separate .pdf files. A statutory fee of two hundred and ten dollars (\$210) for the assignment of an Index Number is required, unless the affidavit is executed in conjunction with an already existing Supreme Court action.

**E. Foreign Judgment:** Entry of a foreign judgment shall adhere to statutory and regulatory requirements. A party seeking entry of a foreign judgment via the NYSCEF system shall choose the document type: *Judgment to Clerk – (Proposed)*. A statutory fee of two hundred and ten dollars (\$210) for the assignment of an Index Number is required. The Statement for Judgment, including Bill of Costs, if applicable, and Affidavit pursuant to CPLR Article 54 must be attached and must be filed as one .pdf file. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

**F. Subsequent Judgment or Order:** When a previously entered judgment is affected by a subsequent order or judgment, the County Clerk will make the appropriate notation to the docket entry.

**1. New or Amended Judgments:** In instances wherein the change to an entered judgment is the result of a new (renewed) or amended judgment, the notation will be made simultaneously with the entry of the new (renewed) or amended judgment, and notification of same will be transmitted via the NYSCEF system to all consenting parties.

**2. Order:** In instances wherein the change to an entered judgment is the result of an order, notation of the docket will not be made until proper notice is given to the County Clerk. A party seeking the modification of a judgment by order shall choose document type: *Notice to County Clerk CPLR 8019(C)* that must include as part of the attached .pdf file a copy of the order directing the County Clerk to amend the docket.

**XII. Discontinuing Foreclosure Actions and Cancelling Notices of Pendency/Lis Pendens:** Discontinuances of Action and Cancellations of Notices of Pendency/Lis Pendens cannot be combined into one document and must be uploaded as two separate documents. Select *Stipulation of Discontinuance (Post or Pre RJI)* or *Notice of Discontinuance*, if applicable, as a separate document under the Accompanying Documents menu. If also cancelling the Notice of Pendency/Lis Pendens, select *Cancellation of Notice of Pendency/Lis Pendens* as a second document under the Accompanying Documents menu. The Affidavit required by CPLR §6514 must be attached to the *Cancellation of Notice of Pendency/Lis Pendens*, if applicable.

**XIII. Notice of Appeal:** A Notice of Appeal shall be filed online in a NYSCEF case and the appropriate fee paid. The Notice shall be filed in conformity with all pertinent statutory and regulatory requirements.

**XIV. Other:**

**A. Effect of Communication from the Office of the Erie County Clerk or Chief Clerk's Office:** Any and all e-mail notifications from the Erie County Clerk or the Chief Clerk's Office shall not be construed or considered to be service of Notice of Entry for purposes of commencement of the statutory time to appeal or otherwise. Such communications from the County Clerk or Chief Clerk shall constitute and serve only as notification of receipt or entry in a ministerial capacity.

**B. Support:** Any attorney or pro se litigant who requires assistance in a NYSCEF case is encouraged to contact the Court part with questions about individual Part Rules or contact the E-filing Resource Center at 646-386-3033 with any questions about the NYSCEF System. In addition, a computer and scanner will be made available by the Chief Clerk's Office for the use of individuals who may need assistance in making filings in a NYSCEF case.

Dated: January 24, 2013