

# STATE OF NEW YORK

Hon. Craig J. Doran  
Supreme Court Justice



Seventh Judicial District  
Ontario County Courthouse

December 27, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, NY 10004

Dear Judge Amaker,

I write as Chair of the Pandemic Practices Working Group, charged by the Commission to Reimagine the Future of NY Courts to examine Pandemic-Related Practices. The Working Group held a series of public hearings around the state to solicit input from stakeholders of the Courts regarding the technology practices and policies utilized during the pandemic. As a result of these hearings, a consensus has been reached among the members of the Working Group regarding recommendations which strongly support the expansion of technology generally and more specifically the expansion of the New York State Courts E-Filing System (NYSCEF). NYSCEF is a most reliable platform which allows remote filing/service of legal papers and remote access to court filings, in essence, it keeps courts "open" and accessible. This endorsement will be reflected in the Group's final Report to be issued and distributed within the next weeks. Particularly, the Working Group supports legislation being proposed by the OCA to give the Chief Administrative Judge (CAJ) the authority to expand and make e-filing available to all courts in all case types.

Moreover, the hearings established, and the Working Group "heard" loudly, clearly, and repeatedly, that the public is more than ready for this expansion and welcomes the efficiencies and convenience of e-filing. As indicated, the proposed legislation permits the CAJ to implement e-filing – on either a consensual or mandatory basis – in all of the State's trial courts and in any class of cases. The current legislative safeguards will remain in place, unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate, and attorneys would continue to be able to opt out of e-filing if they lack the equipment or knowledge to participate.

Clearly, the Working Group considers the proposed legislation critical to promote efficiency and improve access to the Courts. The impact of the pandemic made exceedingly obvious that the implementation of NYSCEF to courts throughout the state should not be delayed. Thank you for considering the Pandemic Practices Working Group's observations and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig J. Doran', written over a horizontal line.

Craig J. Doran  
New York State Supreme Court Justice  
Chair, Surrogate's Court Advisory Committee on E-Filing  
Chair, Pandemic Practices Working Group of the  
Commission to Reimagine the Future of New York's Courts

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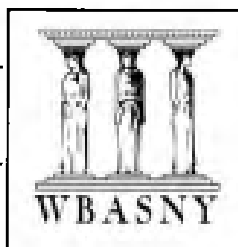
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# Women's Bar

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OF THE STATE



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# Association

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OF NEW YORK

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November 30, 2022

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Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Dear Mr. Carucci:

I am the President of the Women's Bar Association of the State of New York ("WBASNY"), which is the second largest statewide bar association in New York State. In accordance with your request for comments regarding the New York State Courts Electronic Filing System ("NYSCEF"), we sent a request to the Presidents of our 20 local chapters, our committee chairs and our membership and received the following comments for your review and inclusion in the Office of Court Administration's report to the Legislature, the Governor and the Chief Judge.

Generally, our members support e-filing and consider the system to work well. For solo and small law firm practitioners, any way to help them spend less time and/or money to file something is considered a positive development. Our members appreciate that the clerks apparently assure the legitimacy of the docket and that there are ample filing names to select for various documents. We also appreciate that documents, such as mechanics liens can be e-filed with county clerks in the City of New York, which also saves resources.

Notwithstanding the foregoing, our members pointed out areas for improvement. WBASNY members feel that e-filing should be adopted in all of the Courts of New York universally. Some courts, in particular some Surrogate's Courts, do not accept e-filing for motions or accountings. Each court should not have the option to opt out of certain proceedings. In addition, our members have noticed that file size uploads are different in different Supreme Courts throughout the State. We believe the same standards should apply in similar courts throughout New York State.

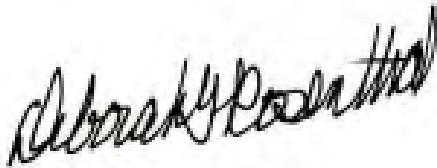
In addition, for attorneys on a matter who have already e-filed, e-filing attorneys should be able to opt in to e-filing as the means of service, so those parties who do not want to receive duplicate paper filings will not receive them.

Jeffrey Carucci, Director  
OCA Division of E-Filing  
November 30, 2022  
Page 2

Finally, some of our members expressed concern about making e-filing mandatory for *pro se* litigants. Self-represented litigants may not be able to navigate e-filing if it is mandatory because of disability, poverty or other issues. The OCA memo addresses this issue, but we want to make certain this exception to e-filing continues.

We hope you find these comments helpful in your review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Deborah G. Rosenthal". The signature is written in a cursive, flowing style.

Deborah G. Rosenthal  
President, WBASNY

**From:** Jonathan Feldman <jfeldman@plsny.org>  
**Sent:** Tuesday, November 29, 2022 11:23 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Cc:** kmurtagh@plsny.org; Krin Flaherty <kflaherty@plsny.org>  
**Subject:** PLS comments on NYSCEF proposal

Dear Mr. Carucci,

Here are our comments on the NYSCEF proposal:

When Prisoners' Legal Services (PLS) polled its attorneys, everyone who responded supported the proposed legislative amendments to expand e-filing. PLS therefore lends its support to this important initiative. In our view, e-filing makes it easier both to file and manage cases. At the same time, we support the continuing exemption for unrepresented litigants, and the opt-out for attorneys who lack the requisite technology. Preserving those common-sense exceptions, combined with the overall expansion of e-filing, would help to promote access to justice in New York.

Thank you very much for your consideration.

Best regards,

Jonathan Feldman

Jonathan Feldman, General Counsel  
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To: Jeffrey Carucci, OCA Division of E-Filing  
From: Nancy Thomson, Associate Commissioner *NT*  
Date: November 30, 2022

Re: Comments on Electronic Filing

On behalf of the Administration for Children's Services (ACS), I am submitting our comments on the implementation of the electronic filing program.

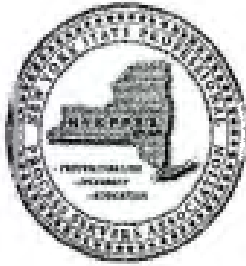
The Administration for Children's Services is the petitioner for all child protective filings in New York City Family Courts. Each year, ACS files 8-10,000 petitions. We currently electronically file our Article 10 neglect and abuse petitions through a data share MOU with New York City Family Court and receive court hearing information from UCMS. ACS attorneys also appear on post-dispositional hearings on Article 3 matters in which a child is placed with ACS under Close to Home. In those cases, our attorneys may file extension of placement petitions, permanency reports and other motions.

The pandemic has demonstrated the need for the New York State Court System to expand electronic filing in all the courts. Our staff have filed motions and other documents through the EDDS system and found that electronic transmission of court papers and reports to be an efficient way of disseminating documents. However, EDDS has limited functionality and is not considered a filing system. Expansion of NYSCEF to Family Court would allow electronic filing of pleadings, motions, documents. As ACS is already electronically filing our Article 10 petitions with New York City Family Court and due to the complexity of the data exchange, would prefer to continue to use the current system for the filing of initial Article 10 petitions.

I understand that any expansion of electronic filing to Family Court would involve consultation with the local court system and attorney groups. Our office has a couple of concerns about how NYSCEF notifies attorneys of new filings and also of the level of access to a particular case by all ACS attorneys. These details can be discussed as the system is rolled out.

Thank you for considering our concerns and we look forward to working on the implementation.

# NEW YORK STATE PROFESSIONAL PROCESS SERVERS ASSOCIATION



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November 30, 2022

**Via Email: [efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)**

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, NY 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci:

Thank you for the opportunity to offer comments on the proposed legislative amendments to expand e-filing. As means of an introduction, I am a New York State licensed attorney as well as the President of the New York State Professional Process Servers Association. In my daily tasks, I work closely with members of our team who handle e-filing, from case commencement until judgment. Additionally, I have spoken with many people in the legal industry, such as attorneys, paralegals and those in the legal services realm regarding the e-filing program. Thus, the suggestions and comments are based upon these discussions and research.

One item that would assist legal services providers greatly is the ability to have a directory as to who to call and the contact information to place the call. For instance, at times, it is unclear whether a question should be directed to the NYSCEF team or if it is a question that needs to be addressed to the County Clerk. It would seem that perhaps items that are pending and have a question should be directed to NYSCEF but once the document is filed, then the County Clerk should now handle any questions however it appears as though that is not the case and many are confused as to who to call for proper protocol.

It has also been suggested to me that the document selection type could be expanded, as many times the type of document one could choose is not actually

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what the document represents. I have heard from some court service providers that it appears as though the court staff have additional document categories that are not available to those filing through the system. Is it possible, if this is accurate, to allow the E-filing system for those handling the filing to mirror what is available to the court personnel? If not, perhaps there can be a "miscellaneous" document type that is used for those documents that do not fit within the pre-established choices?

One option that is not currently available is a "Notice of Discontinuance." The addition of that document option would be extremely helpful.

I appreciate that "unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate." I feel this is very important as there are many pro se litigants who either do not possess the technology or the skillset to adequately use the technology. Access to the system is important and one should not be hindered by either not having the technology or the skillset to gain access to the court system.

I believe there are more seasoned, senior attorneys who may not be as familiar with the expansion of technology and thus the e-filing process may be cumbersome to them. There is a risk of mistake if one does not understand the technology or platform. Thank you for continuing to allow "attorneys in cases in which e-filing would otherwise be mandatory ... to be able to opt out of e-filing."

I am concerned, however, and would like to point out that the electronic systems may still malfunction. A loss of data might occur. Also, there could be an attack on the E-file system by malware. My main concern, in light of what has happened in Suffolk County this fall, is a ransomware scheme where access is disabled. If paper is no longer kept, if such an "attack" on the system occurs, how does one retrieve what was "lost?"

Lastly, I know that the current platform allows for Wills to be uploaded but the original Will must be produced within a specific time frame to Surrogate's Court. It would seem that the original paper will should always be presented, regardless of

# NEW YORK CITY BAR

November 30, 2022

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver St., 9<sup>th</sup> Floor  
New York, NY 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

On behalf of the New York City Bar Association, attached please find our submission in response to your October 28, 2022 memorandum requesting comments on electronic filing in the New York State Courts. The enclosed testimony was delivered to the Pandemic Practices Working Group of the Commission to Reimagine the Future of New York Courts in November and reflects our latest comments on electronic filing.<sup>1</sup>

We hope this information can be helpful. If you have any questions or would like to discuss further, please let us know.

Respectfully,



Elizabeth Kocienda  
Director of Advocacy

**Contact**

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org  
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org

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<sup>1</sup> Available online at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-to-pandemic-practices-working-group-of-the-commission-to-reimagine-the-future-of-new-york-courts>.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*





NEW YORK  
CITY BAR

WRITTEN TESTIMONY OF THE COUNCIL ON JUDICIAL ADMINISTRATION

PUBLIC HEARING OF THE PANDEMIC PRACTICES WORKING GROUP OF THE  
COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK'S COURTS

SUBMITTED NOVEMBER 7, 2022

The New York City Bar Association's Council on Judicial Administration ("CJA") collected anecdotal data and input from various court committees, practitioners, judges, court attorneys and court personnel regarding the impact of the pandemic court practices and which should be continued or discontinued post pandemic.<sup>1</sup> While the practices in and opinions about the different courts varied, there were some universal observations and comments, **the most prevalent of which was that there needs to be more uniformity of rules and protocols within each court, at a minimum countywide if not citywide, and especially in the areas of efilng and virtual or in person appearances.** For the most part there seemed to be agreement that some conferences and appearances might or should continue to be conducted virtually or to be available virtually, but that most hearings and trials -- and all jury trials -- should be conducted in person. There was also agreement that the nycourts.gov website needs to be updated and revamped. And finally, the loss of highly trained clerical staff, both before and during the pandemic, needs to be addressed and ameliorated. A large number of senior clerks from the County Clerk's Office and from the individual court's clerk's offices retired during the pandemic, and at present many of the clerk's offices are operating with an insufficient number of clerks and in particular, highly trained senior clerks. The loss of so many clerks is undoubtedly a contributing factor in the backlogs and longer delays in the processing of cases, judgments and orders.

One further uniform observation: virtual appearances fared the best in the Commercial Division, and there is widespread enthusiasm for retaining virtual appearances in conferences and in many instances, for hearings and some bench trials. The virtual appearances have been cost effective for represented litigants and practitioners. In other courts, however, virtual appearances and other pandemic practices have had mixed results and reviews.

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<sup>1</sup> In addition to at-large members who practice across a wide variety of courts, the Council on Judicial Administration includes representatives of the following City Bar committees, all of whom contributed views and anecdotal data to this report: Civil Court, Family Court, Housing Court, Criminal Court, State Courts of Superior Jurisdiction, and Litigation.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

This testimony is presented in sections, with each section focusing on a particular court and issues relevant to that court. Our intent is to highlight the issues that arose most often during our information-gathering phase; therefore, some topics may appear in one section, but not another. We also have included an Appendix that lists the City Bar's prior statements, letters and reports addressing pandemic-related court practices, along with some highlighted recommendations that are incorporated herein.

## **I. SUPREME COURT, MATRIMONIAL PARTS AND OTHER CIVIL TERM PARTS**

### **a. Efiling in Matrimonial Cases**

In the Supreme Court Matrimonial Parts, the feedback regarding efilings through NYSCEF generally has been positive, with some backlog issues which are now being addressed by the courts and the County Clerk. Prior to the pandemic, all papers in matrimonial actions were filed in person, including uncontested divorce papers. In New York County for example, the time from filing uncontested divorce papers through receipt of a signed judgment was approximately 2-4 months. Before filing final divorce papers, matrimonial clerks reviewed papers and litigants and attorneys had the opportunity to make necessary corrections prior to the papers being submitted to a judge or referee for signature. That process shortened the time from filing through judgment. During and since the pandemic, papers have been efiled, without prior clerical review to correct errors and omissions, and the length of time from filing the final papers through a signed judgment increased to one year or more. The County Clerk is now working to address the backlog, and lengths of time from filing through judgment are lessening but the problems inherent with efilings without preliminary clerical review remain. The same is true of filing Orders to Show Cause: pre-pandemic, an Order to Show Cause would be reviewed first by clerks prior to submission to a judge, and attorneys or litigants had the opportunity to make corrections or provide additions before submission, making the process more efficient. The pre-filing review no longer takes place.

### **b. Virtual / In Person Appearances in Matrimonial and Other Civil Term Parts**

During the pandemic, appearances in matrimonial cases were virtual, with some courts requiring the parties to appear in person in certain instances (especially where there was disagreement between the parties and where there were settlement opportunities), but now more appearances seem to be in person again. While it is still too soon to assess the ultimate impact of more in person appearances, it seems that where litigants are either not working together or productively, or where a case appears to be near a settlement, in person appearances may be preferable and useful, while for routine court check-ins or control dates, virtual appearances may be more efficient. There is still a backlog of decisions on motions and delays in getting preliminary or other conferences.

In other Supreme Court Civil Term Parts there are still lengthy delays to get a discovery conference or a decision on submitted motions due to the backlogs, and some courts continue to conduct virtual appearances while others are doing a hybrid of remote and in person. The consensus is that some remote appearances are still preferable such as for conferences, especially

discovery conferences, while there is a preference for in person hearings and trials, particularly jury trials, and settlement conferences.

In addition, many practitioners believe that public access to view court proceedings should be easier and that NYSCEF and E-Track should be linked.

## **II. CRIMINAL COURT AND SUPREME COURT, CRIMINAL TERM**

### **a. Virtual/In Person Appearances**

In Criminal Court and Supreme Court Criminal Term, most if not all appearances are now taking place again in person. Some practitioners would prefer defendants to have the option to appear virtually, especially for brief routine court appearances, where they are at risk of losing jobs due to having to take off a whole day to appear in court, or do not have child care, for example. One suggestion is to have a day set aside each week for virtual appearances which could be staggered with a specific time frame assigned for a number of cases (e.g. a 9:30-11:15 am call, 11:15-1 pm call, 2:15-3:30 pm call and 3:30-4:30 pm call) with hearings and trials to take place in person. Defense attorneys or defendants who test positive for Covid should appear remotely.<sup>2</sup> In other instances, a defendant in a criminal matter may prefer to appear in person. Accordingly the default procedure should be to give defendants the choice of type of appearance.

Where the defendants are incarcerated, however, the responses to remote appearances are mixed: they may be preferable in some instances provided (a) the technology is available at the defendant's location; and (b) the defendant does not need to meet with his/her attorney on the same day as the court appearance. The trip from prison or jail to the courthouse is often arduous and lengthy and may be unnecessary for routine court appearances where the defendant's interactions with the court and counsel is limited. But if the defendant needs to see counsel in person and/or discuss or take a plea, or see family who may be appearing in court to view the proceedings, then in person is preferable. Finally, sentencings, hearings and trials should be conducted in person.

For criminal cases being heard in the Appellate Division, the public has not been allowed to return to the courthouse for arguments and defendants in criminal matters wishing to attend arguments in their cases have been excluded. This should be rectified as it is an issue of basic fairness for a defendant to be able to attend.<sup>3</sup>

### **b. Efiling in Criminal Cases**

While reviews about e-service between prosecutors and defense counsel have been enthusiastic and therefore e-service should be adopted uniformly, e-filing in criminal matters requires further and fulsome discussion among judges, prosecutors, defense attorneys, OCA and the County Clerk about the pros and cons of doing so. There are privacy concerns (for example,

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<sup>2</sup> While this protocol is appropriate in other courts as well, it is particularly important to set it as a protocol in Criminal Court where a defendant's failure to appear may result in a bench warrant and a charge of bail jumping, and where defendants must have representation.

<sup>3</sup> This applies to other parties appearing before the Appellate Division as well.

once efiled, there are questions as to whether sealed matters due to dismissal or acquittal are truly sealed) and there need to be uniform protocols and instructions for e-filers. For example, in Supreme Court, Criminal Term, an efiled motion may take weeks to be delivered to the assigned court, and the best practice is for the efiler to deliver a courtesy hard copy to the court attorney for the assigned part. However, the efilings system does not notify the efiler that a hard copy should be filed as well, and it is difficult to find the information identifying the court attorney and where the hard copy should be delivered. Reworking the efilings system (EDDS, in criminal cases) to give efilers that information and instruction upon efilings a motion would be an important step to improve efficiency.

Finally, digitalization of criminal court records should be done contemporaneously so that records for appeal may be collected efficiently and in a timely manner.

### **III. CIVIL COURT**

Civil Court's pandemic practices have been bumpier, in part because Civil Court filings during the pandemic required emailing documents and using a system that was not as efficient as efilings, and each county handled cases differently. A more uniform and more consistent set of protocols would be helpful particularly in the area of exchanging documents. Remote proceedings did not do as well with unrepresented litigants, although they may still be preferable in many instances to ensure that pro se litigants who must appear do not risk losing jobs by sitting in court for hours waiting for their cases to be heard. In those instances, however, the pro se litigant must have access to the necessary technology. If access to technology is a barrier to participating remotely, then in person appearances become necessary, with the proviso that circumstances may change and the option to proceed remotely should remain available. Consumer debt cases were particularly challenging, having been very backlogged; returning to in person appearances might help move more cases in that area.

The pandemic did highlight the need to move forward with electronic filing in Civil Court. During the pandemic, the court utilized the electronic delivery service EDDS, which served its purpose over the past two years. However, its continued use is not being advocated and often documents served and filed through EDDS are not being brought to the court's attention. A more sophisticated and user-friendly electronic filing system should be developed and utilized. Accessibility to vital court documents is a necessity and a more efficient court requires more efficient systems, especially in high-volume courts.

### **IV. HOUSING COURT**

#### **a. Tenant's Right to Counsel**

Housing Court has had mixed experiences. While it was able to use technology throughout the pandemic to hold virtual conferences and trials, and the court filing system was able to update to online filing, once eviction proceedings were permitted to move forward, Housing Court became flooded with cases, more than the legal services providers were and are able to handle. The latest update is that almost all the legal services providers have stopped taking on new cases, and the

Court is allowing eviction cases to proceed without counsel, running directly afoul of New York City's right to counsel law.

In written testimony submitted for the Chief Judge's Statewide 2022 Civil Legal Services hearing in September (*see* Appendix #1, pp. 7-8), City Bar President Susan Kohlmann said this about the status of tenant's right to counsel post pandemic and offered four recommendations:

"While we understand that the entire judicial system has changed and that some court processes are returning thoughtfully and gradually, the perception is that RTC is fair game to be whittled away, as cases simply move forward without it. The consensus cannot be in favor of returning to the "cattle call" of old - this is precisely what Secretary Johnson warned against. Things can be different. The City Bar's Housing Court Committee, which is comprised of tenant and landlord lawyers, as well as Housing Court personnel, has suggested the following:

- Court calendars should be temporarily modified by first scheduling pre-pandemic cases that already have two attorneys; then, adjourned new cases that have two attorneys can be added to the calendar.
- Appearances should be adjusted to ensure that attorneys who are engaged virtually are not required to appear physically at the same time.
- Requests for virtual proceedings to accommodate a disability should be routinely honored in accordance with law.
- RTC attorneys should be given a sufficient amount of time to establish the attorney client relationship and research and investigate complex cases. Anything less is not meaningful right to counsel."

#### **b. Virtual/In Person Appearances**

While there has been support for continuing some component of virtual appearance, such as in some conferences, many litigants in Housing Court do not have access to the necessary technology and therefore there needs to be some thoughtfulness as to which proceedings in which matters should be virtual and which should be in person, although there has been consensus that trials should be conducted in person.

Finally, Housing Court in particular is in dire need of more non-judicial personnel, as many left and have not been replaced.

## **V. FAMILY COURT**

#### **a. Virtual/In Person Appearances**

Family Court experienced many delays during the pandemic and had been experiencing backlogs even before the pandemic. There are very lengthy delays in getting dates for support and enforcement hearings, some caused by the court's transition to Skype for Business and

subsequently to Microsoft Teams. Thereafter some litigants were given the choice to proceed virtually and chose not to, to be followed by the Court deciding to proceed virtually after allowing litigants the choice. Presently, some parts continue to operate remotely but there appears to be little if any uniformity of practices or protocols and there are differing opinions among counsel who appear in Family Court about whether some hybrid model should be retained. After all, there may be some instances where virtual appearances are preferable so the litigant need not miss work, find childcare, etc., or where the litigant or attorney tests positive for Covid, provided the litigant has access to the necessary technology for remote access. Therefore, the litigants should have the option of in person or virtual appearances. However, since Family Court relies on hearings and assessing witness credibility in cases that involve, for example, potentially stripping a parent of rights or removing a child from a parent's care, assessing credibility remotely is not optimal and therefore hearing and trials should take place in person.

### **b. Efiling**

Efiling has recently been made available in the New York County Family Court in the following case types: custody/visitation; guardianship; parentage – assisted reproduction; parentage – surrogacy; paternity; and support, and only in new cases filed on or after August 1, 2022.<sup>4</sup> Efiling in Family Court should be expanded and there should be further guidance to litigants and court personnel on how to implement its use. The Court should also have an easy to access repository connecting the links to every Part.

### **c. City Bar-Fund for Modern Courts Report**

In February 2022, the City Bar and the Fund for Modern Courts released a report entitled “The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants” (*see* Appendix #2). The primary goal of the report was to highlight the significant and longstanding inequities faced by litigants in Family Court; to analyze the choices Family Court made about which cases would move forward during the pandemic; to identify the types of proceedings that did not go forward and the impact felt by litigants in those cases; and to address the urgent need—that long predates COVID-19—for increased Family Court resources and meaningful reform.

Several of the report's recommendations are worth highlighting here since they remain vitally relevant as the court system assesses pandemic-related practices and recovery. In addition to other recommendations contained in this testimony as pertains to Family Court, the report urged OCA to: provide the public with regular statistical reporting, by court Term, on all Family Court proceedings; build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants; conduct litigant surveys so that real time feedback can be obtained from the clients of Family Court; adopt NYSCEF to the fullest extent permitted by law; enable litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology; adopt a communications strategy to ensure litigants and attorneys are

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<sup>4</sup> New York State Unified Court System, New York State Courts Electronic Filing, <https://iapps.courts.state.ny.us/nyscef/AuthorizeCaseType>. (All websites last accessed on Nov. 7, 2022.)

kept up to date on the status of their cases as well as the status of Court operations generally; provide appropriate resources from other trial courts as necessary and appropriate to tackle backlogs and delays; and enact uniform procedural rules. The City Bar is continuing to engage with all stakeholders on ways to improve access to justice in New York City Family Court.

**d. Family Court Vacancies and Reassignments: Disruption and Delay**

As to this longstanding area of concern for Family Court practitioners, we commend to the Working Group our December 2020 report, “The Family Court Judicial Appointment and Assignment Process” and the recommendations therein. (See Appendix #7.) Recommendations that particularly relate to OCA’s role in this process include: maximize advance planning opportunities and allocate short-term cases to judges during any six-month transition periods; collect robust data on judicial vacancies and their impact; better coordinate with the Mayor’s Advisory Committee on the Judiciary; and increase transparency in the appointment and assignment process. The City Bar is continuing its efforts to spotlight the urgent need to improve the process of identifying and filling Family Court vacancies.

**VI. CONCLUSION**

While there are many different opinions about specific courts, there seems to be unanimous support for retaining some of the pandemic practices: e-filing in most instances, virtual appearances for many types of court conferences, with the choice of virtual or in person to be given to the litigants or attorneys, and e-service of documents between the parties. For the most part, there is support for hearings and trials to be conducted in person, with some leeway for some hybrid models and some virtual appearances for witnesses in limited instances. And there is an overwhelming cry for uniformity of protocols and practices in each court, with more information and clear instruction to be provided to litigants and attorneys.

Thank you for your consideration and please do not hesitate to call upon the City Bar if we can provide any additional information or assistance to the working group.

Council on Judicial Administration  
Fran Hoffinger, Chair  
[fhoffinger@hoffingerlaw.com](mailto:fhoffinger@hoffingerlaw.com)

**Contact**

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | [mcilenti@nycbar.org](mailto:mcilenti@nycbar.org)  
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## **APPENDIX OF PRIOR CITY BAR REPORTS CONCERNING PANDEMIC PRACTICES AND RELATED CONCERNS**

1. September 19, 2022, **Written Testimony Submitted for the Chief Judge’s Statewide 2022 Civil Legal Services Hearing**, [https://s3.amazonaws.com/documents.nycbar.org/files/20221086-CivilLegalServices\\_KohlmannTestimony091922.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/20221086-CivilLegalServices_KohlmannTestimony091922.pdf) (proposing, among other things, alternate calendaring of cases in Housing Court to prioritize two-attorney cases and enforcement of housing maintenance standards).
2. February 4, 2022, **Report from Multi-Committee Working Group on the Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/family-court-covid-19-impact> (documenting crisis in Family Court during COVID and recommending, among other things, the adoption of NYSCEF in Family Court to the fullest extent permitted by law; appropriate support for unrepresented litigants; providing the public with regular statistical reporting, by court Term, on all Family Court proceedings; building an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants; enabling litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology; adopting a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally; providing enhanced training for jurists in case management strategies and techniques; assessing the Court’s needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and provide sufficient user training and support; moving judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays; and enacting uniform procedural rules).
3. December 6, 2021, **Recommendations to Improve the Housing Court’s Enforcement of Housing Maintenance and Standards**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/enforcement-of-housing-maintenance-and-standards> (as part of overall recommendations, the Housing Court Committee recommends that cases seeking enforcement of housing maintenance standards be prioritized).
4. July 20, 2021, **Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz> (Promoting uniformity, the letter states that Judge Ruiz is “uniquely positioned to promulgate rules of court to identify when and in which proceedings litigants and attorneys must appear in person....Failure to do this only intensifies the pandemic-bred chaos that families are suffering now.”).
5. June 15, 2021, **Letter from Working Group on Racial Equity in New York State Courts to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders**, <https://www.nycbar.org/member-and->



[career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting) (Recommendations included: the Family Court must create procedural rules that govern all parts so there is uniformity, particularly as to virtual courtrooms; the Family Court must either grant Universal Case Management System (UCMS) access to all attorneys with cases in the court, or preferably, create an electronic filing system, e.g., a New York State Courts Electronic Filing System (NYSCEF) model; conduct polling of litigants, which can be effectuated by non-legal staff who are culturally competent and relatable, can interpret and explain for litigants, and can help process complaints).

6. April 9, 2021, **Report from Domestic Violence Committee, Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases> (makes recommendations as to specific needs and circumstances faced in cases involving domestic violence).
7. December 15, 2020, **Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process> (reporting on the delays and disruption that result from judicial vacancies and transfers in Family Court, and recommending the following: increase the number of Mayor's Advisory Committee on the Judiciary (MACJ) members; enhance communication and planning between MACJ and OCA; reevaluate the current rule that fully vetted judicial applicants who are identified as excellent candidates for appointment but are not appointed within six months must begin the application process anew if they wish to continue to be considered for appointment; select appointees before vacancies arise and take the additional steps necessary to fill vacancies expeditiously; enhance both MACJ's and OCA's technological resources and improve data collection and analysis; use a distinct application and review process for judicial reappointments in order to complete the reappointment process more expeditiously; improve training programs offered to judges presiding in the Family Court; allocate short-term cases to judges who are transitioning out of the Family Court; and increase transparency in the reassignment process managed by OCA.)



**RICHMOND COUNTY BAR ASSOCIATION**  
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December 1, 2022

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**Via Email: [efilingcomments@nycouts.gov](mailto:efilingcomments@nycouts.gov)**

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Re: NYS Courts Electronic Filing Program

Dear Mr. Carrucci:

Please accept this letter in support of the current proposed legislative amendments to expand e-filing in the courts and to permit the Chief Administrative Judge to institute e-filing in all of the State's trial courts and in any class of cases.

We recently surveyed our members regarding their experience with the measures implemented by the Office of Court Administration (OCA) during the Pandemic and their recommendations regarding whether such measures should be continued in the future. Our survey respondents included Bar members from all areas of expertise in both private and public practice. With regard to e-filing, the majority of respondents reported e-filing prior to the pandemic with the number increasing only slightly during the Pandemic and now in current practice.

We note, however, that certain filings, such as in guardianship and matrimonial matters, require that confidentiality of the contents therein be maintained despite being e-filed. This needs to be addressed in any expansion of e-filing in these areas of law.

We thank you for considering our practitioners' experiences before issuing a report to the Legislature, the Governor and the Chief Judge on this matter.

If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

*Kerri L. Bringslid*

Kerri L. Bringslid

*President*



*Organized 1876*

# QUEENS COUNTY BAR ASSOCIATION

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December 6, 2022

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*Executive Director*

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver St, 9<sup>th</sup> Floor  
New York, NY 10004

Dear Mr. Carucci:

The Queens County Bar Association supports the amendment of CPLR Article 21-A and other statutes to allow for the expanded use of electronic filing to all courts, as stated in the OCA notice dated October 28, 2022. We concur that this expansion throughout the court system will allow for a more efficient and effective court system and we believe it is important to include electronic filing to all courts within the Office of Court Administration purview, as is recommended. Furthermore, we also agree with the provisions, as stated, that unrepresented litigants and attorneys who do not have the appropriate equipment can opt out of electronic filing requirements.

The Queens County Bar Association recommends that each courthouse within the county, and all counties throughout New York State, have the necessary equipment available for unrepresented litigants and/or attorneys lacking such equipment to electronically file documents and a public area where such electronically filed documents can be viewed by the same.

Very truly yours,

Adam M. Orlow  
President

## MEMORANDUM

**TO:** Mr. Jeffrey Carucci  
Statewide Coordinator for Electronic Filing  
Office of Court Administration  
25 Beaver Street  
New York, New York 10004  
efilingcomments@nycourts.gov  
*Via E-Mail*

**FROM:** Appellate Courts Committee, New York County Lawyers Association

**RE:** Comments on Electronic Filing

**DATE:** December 12, 2022

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This memorandum, submitted by the Appellate Courts Committee of the New York County Lawyers Association, offers comments for inclusion in the Office of Court Administration's ("OCA's") annual report to the Legislature, the Governor, and the Chief Judge evaluating our State's electronic filing system, including the New York State Electronic Filing System ("NYSCEF"). We appreciate the opportunity to offer input.<sup>1</sup>

In December 2017, all four departments of the Appellate Division adopted uniform rules on electronic filing (the "Rules"). *See* 22 NYCRR § 1245 et. seq. And in 2020, the Appellate Divisions First and Second Departments went "all digital," no longer requiring paper filing of any documents. Instead, in the First Department, papers are filed on NYSCEF and in the Second Department papers are filed on either NYSCEF or a portal.

The Appellate Courts Committee of the New York County Lawyers Association applauds the Unified Court System's efforts to expand electronic filing. Electronic filing drastically enhances the efficiency of the court system and prevents the arduous

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<sup>1</sup> These comments have been approved by NYCLA's Appellate Courts Committee and approved for submission by NYCLA's President. They have not been reviewed by NYCLA's Executive Committee and do not necessarily represent the views of its Board.

process of travelling to a courthouse to file paper. Digital filing also saves resources and is environmentally friendly. Still, the current e-filing system can be improved. These comments propose several e-filing reforms that could dramatically improve the efficiency of our appellate system.

In proposing these reforms, we do not operate on a blank slate. Many of the reforms proposed below have already been previously proposed, in one form or another, in bar-association letters and reports.<sup>2</sup> Now is a perfect opportunity to adopt them.

### **A. Compilation of the Record on Appeal**

The current system for providing the record to assigned counsel is inefficient, costly, and delays cases by years. Digital reform can fix this problem.

In First Department cases where counsel is assigned (a vast majority of criminal cases and a significant number of civil cases in that Department), the record that the court provides to assigned counsel is often incomplete, thus forcing assigned counsel to spend considerable resources compiling a complete record.<sup>3</sup> Relevant transcripts are often not provided. Papers filed with the trial court are often absent from the record, meaning that counsel must dig through the paper court file to assemble a complete record. And hearing and trial exhibits are, as a matter of established practice, *never* part of the provided record and are instead only provided upon a request to the party who introduced them, which often takes months to fulfill. Even worse, these exhibit requests are fulfilled at the taxpayer's expense as District Attorneys' Offices and other state agencies must spend resources scouring old files for exhibits that were admitted into evidence years earlier.

Even once the record is complete, it still can take years after judgment is imposed for the court system to provide it. It often takes at least a year for counsel to be assigned

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<sup>2</sup> See Exhibit A, which attaches the following materials: NYCLA Statement, *Electronic Filing and Service During the Current Pandemic* (March 25, 2020); New York City Bar Association, Criminal Justice Operations Committee, Criminal Advocacy Committee, and Criminal Courts Committee, Letter to O.C.A. and Presiding Justices of the First and Second Departments, *Delays Associated with Compiling the Record on Appeal in Criminal Cases* (March 5, 2020); NYCLA, Appellate Courts Committee, Letter to the Presiding Justices of the Appellate Courts, *Proposals for Reform of Appellate Procedures in the First and Second Departments* (July 3, 2018); NYCLA, Appellate Courts Committee, Letter to the Clerk of the Court of Appeals, *Electronic Service of Applications for Leave to Appeal in Criminal and Civil Appeals* (July 13, 2018).

<sup>3</sup> The situation is even more challenging in the Second Department. There, the record is not provided at all; instead, assigned counsel must compile the record from scratch on his/her own.

post-judgment. At that point, the court orders the provision of the transcripts/record to assigned counsel, a process that routinely takes another year. So, for instance, appellate counsel may not receive a viable record on appeal from a May 2021 judgment until May 2023 or even later. This delay hurts individuals seeking appellate relief. And it hurts the government's interests because, if a judgment is reversed, new proceedings must take place many years after the initial proceeding, thus injecting the risk of absent witnesses, stale memories, and outright loss of evidence.

To improve this inefficient system, we propose the following changes:

- the OCA CRIMS record sheet, which lists all of the court appearances in criminal cases, should be filed on NYSCEF so appellate counsel can have easy access to information that will allow for a determination of the record's completeness;
- transcripts should be uploaded onto NYSCEF so the parties can have easy access to them;
- subject to appropriate exceptions for exceptionally voluminous, confidential, or sealed materials, every document or material filed in the trial court and/or contained in the court file should be filed on NYSCEF, including jury notes, *in limine* motions, and substantive email correspondence with the trial court (such as requests to charge, which are often done through email); and
- a copy or photograph of each exhibit should, if possible, be made part of the record and placed on the NYSCEF file.

These reforms will greatly enhance the ease and efficiency of appellate practice.

## **B. The Court of Appeals Should Adopt Fully Digital Filing**

Although the Appellate Divisions adopted fully digital filing during the Pandemic, the Court of Appeals has unfortunately not eliminated paper filing. Briefs and records, often collectively consisting of thousands of pages, must still be filed in paper copy, as must motions for leave to appeal. Fortunately, the Court has recently (effective January 2021) created a new e-filing portal which allows for parties to file electronic copies of motions for leave to appeal in criminal and civil cases. But while the Court has abandoned the cumbersome requirement that copies of the Appellate Division briefing must be filed in paper, it still requires paper copies of those motion papers and letters.

The Court of Appeals should eliminate any paper-filing requirements as doing so will enhance efficiency and save taxpayers and litigants the considerable expense of

printing, shipping, and delivering paper copies. In turn, the Court of Appeals should join the NYSCEF filing system so all papers can be filed and stored there.

At a minimum, the Court of Appeals should amend its rules to render a document timely filed if the digital copy is uploaded by or on a deadline. The Court's current rules pin the filing date to the date the paper copy is received by the Court in Albany. This rather arbitrary rule puts the parties at the mercy of the mail; in effect, it requires litigants – including government agencies, criminal defense providers, and nonprofits – to expend scarce resources on services that provide guaranteed, overnight delivery. Instead, as in virtually every other court, a document should be deemed filed when it is electronically submitted.

### **C. The Second Department's Technical Citation Requirements**

E-filing works wonders for busy attorneys. But the imposition of hypertechnical and time-consuming e-filing rules wastes precious time. The Second Department's cumbersome citation rules for e-filed cases is an example that cries out for reform.

In the Second Department, filings must comply with a set of "Technical Guidelines." Among them are requirements that authorities cited within filings must be "Bookmarked" or "Hyperlinked." Under the Technical Guidelines, litigants who opt for bookmarking must: (1) compile all of the authorities cited into pdf files, (2) merge those files into one compendium, (3) annex that compendium to the filing, and (4) manually bookmark each cited authority. Those who opt for hyperlinking must, for each citation in the filing, manually create a hyperlink to the website where the source is located. For an average-length appellate brief, we have found that both methods require between two and a half to three hours to complete.

This requirement comes at a high cost for appellate practitioners and produces little benefit. For one, appellate counsel must purchase expensive pdf-writing software. In addition, counsel must spend valuable time complying with the intricacies of the Technical Guidelines rather than tending to clients' needs. Additionally, since institutional providers and government agencies have limited resources, including limited support staffs, formatting responsibilities often fall onto attorneys who must divert time and energy away from legal work in order to bookmark and hyperlink their filings. These requirements impose a heavy burden on solo practitioners as well.

In sum, we propose that technical citation requirements be eliminated, because they provide only a marginal benefit to the court at great cost to litigants. Instead, a table of authorities should suffice.

### **D. Improving Access to Transcripts**



Ready access to electronic copies of transcripts is essential to good lawyering and the fair administration of trial-level and appellate justice. Nevertheless, in assigned-counsel cases, transcripts are still routinely delivered in paper copy to the courts and ultimately the parties. This makes little sense in the modern world, nor is it friendly to the environment. Transcripts should be provided in electronic copy because doing so is cheaper and far more efficient than printing out hundreds (and at times thousands) of pages and transporting those pages to the recipients. And once the court system receives a transcript for an appeal, it should immediately upload that transcript onto the NYSCEF system so that it will be available to all parties. This change will speed up the appellate process by many months.

Further, the court system should ensure that there are no price distinctions between PDF and paper copies of transcripts. PDF copies should never cost more than paper copies, as they currently do; if anything, they should be less expensive, as they do not require printing.

#### **E. Rejected E-Filings**

Courts routinely reject e-filings that do not comply with formatting and e-filing requirements. Often, the courts do not provide an explanation of where in the filing the defects appear nor a person to contact regarding their rectification. This can lead to practitioners spending considerable time identifying and fixing what often amount to minor formatting errors. OCA should err on the side of accepting filings that contain only minor formatting errors and should provide a help line to assist litigants in correcting defective filings.

Respectfully Submitted,

Appellate Courts Committee,  
New York County Lawyers Association



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December 13, 2022

Jeffrey Carucci, Director  
OCA Division of E-filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

*Via e-mail to [efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)*

Re: Efiling comments

Dear Mr. Carucci:

This letter is submitted in response to your October 28 request for comments and observations on New York's electronic filing system (NYCEF) and proposed amendments to CPLR Article 21-A that would expand the current use of e-filing in New York's Courts. Thank you for the opportunity to share our thoughts with you.

The Empire Justice Center is a statewide, not for profit legal services organization with offices in Central Islip (Long Island), Albany, Rochester, and Westchester County. We represent low-income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including public benefits, health, domestic violence, foreclosure prevention, civil rights, LGBTQ issues and landlord-tenant matters. We also provide support and training to legal services and other community-based organizations, undertake policy research and analysis, and engage in legislative and administrative advocacy. Many of our attorneys use the NYCEF filing system and find it cost effective, convenient, and environmentally friendly. We also appreciate the ability to browse and access filed documents.

We have two comments for your consideration. First, we want to underscore the critical nature of the Office of Court Administration's commitment to exempt pro

se litigants from the e-filing rules. This section includes special attention to pro se litigants in foreclosure proceedings who are represented only in the settlement conference phase. Our second comment concerns the filing procedure in NYCEF in cases where the plaintiff wishes to seek that papers be sealed or redacted. Our comments are based on our experience with low income individuals and the issues that they face.

1. Pro se litigants:

Your October 28 letter states that under the proposed amendments, “unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate.” Further, page 14 of the 2021 Report referenced in your letter <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf> states that “Self-represented litigants will continue to be automatically exempt from mandatory e-filing...service of paper copies of documents on any self-represented litigants will continue to be required.”

It is critical that any expansion of e-filing maintain this exception. Our clients are often respondents, do not have internet or have limited or intermittent access to the internet, and often do not understand or have access to email. Outside of New York City, many tenant respondents in eviction proceedings do not have counsel, so we are reluctant to support the expansion of mandatory e-filing in the lower courts at this time.

Regarding foreclosure cases, the Office of Court Administration has allowed legal counsel to represent homeowners in a limited capacity, for the settlement conference portion of a lawsuit only. If legal representation ends following the settlement conference part, there is a form in foreclosure cases submitted to the court to indicate that counsel is no longer representing the homeowner. Should the chief judge mandate e-filing in foreclosure cases, if such form is filed indicating that a defendant is no longer represented by counsel and becomes a pro se litigant, the e-filing requirement should be extinguished for that defendant (unless they opt in). It should be clear that the rule governing pro se litigants applies even if the case was originally under the e-filing mandate.

2. Process in NYCEF for sealed or redacted documents must be revised

Page 14 of the 2021 report notes that if e-filing was expanded to matrimonial actions, access to the court file would be “automatically limited to litigants, authorized court staff and counsel of record who consented to service.” On page

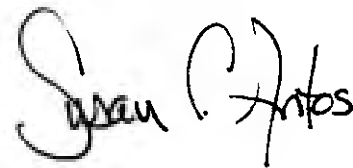
15, the report goes on to say that *“Documents are also routinely filed in non-matrimonial matter which are sealed or confidential. The same procedures would be applied to e-filed papers in all such actions, permitting access only to those authorized.”*

Our concern is that those “same procedures” in non-matrimonial matters make litigants vulnerable in cases where counsel may wish to seek the sealing or redaction of documents that contain sensitive or confidential information. Until a court directs that a matter be sealed, documents that are efiled are at risk of being made public due to the existence of websites, programs and applications that pull publicly available information and distribute it. Once this information has been captured and made public, it cannot be protected, even where a court subsequently orders sealing or redaction. We recommend that the Office of Court Administration consider how to control this information so as not to put efilers at risk. One option could be the inclusion of a checkbox or a form that asks for temporary sealing until the case can be reviewed by a judge.

The Empire Justice Center frequently represents transgender petitioners seeking name changes. While most of these cases are sealed to protect a petitioner’s privacy once reviewed by a judge pursuant to New York Civil Rights Law § 64-a, review in these cases can take between two weeks to four months. This delay allows for sensitive information to be revealed in the manner described as above, including birth certificates required to be included in name change cases, and renders subsequent sealing largely meaningless. We welcome further discussion on this issue.

Thank you for the opportunity to comment, and please do not hesitate to contact the undersigned should you have additional questions or concerns.

Very truly yours,

A handwritten signature in black ink that reads "Susan C. Antos". The signature is written in a cursive style with a large initial "S".

Susan C. Antos  
Senior Attorney  
[santos@empirejustice.org](mailto:santos@empirejustice.org)

December 12, 2022

Jeffrey Carucci, Director  
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Chief Executive Officer*

Adriene L. Holder  
*Attorney-in-Charge  
Civil Practice*

Re: New York State Courts Electronic Filing Program (NYSCEF)

Dear Mr. Carucci:

We write in response to the request for comments on electronic filing in New York State Courts for inclusion in the Office of Court Administration's 2023 annual report and in support of the proposed amendment to CPLR Article 21A to give the Chief Administrative Judge (CAJ) the authority to make e-filing mandatory statewide in any or all New York State trial courts. We appreciate the opportunity to comment and offer our insights and recommendations on electronic filing in New York State Courts and the ongoing dialogue we have had with the Office of Court Administration's (OCA) Division of E-Filing about its expansion.

We applaud the continued rapid expansion of e-filing and other technology used by the courts during the coronavirus pandemic, and we share in the desire to create a more efficient and effective court system in New York State. As attorneys and practitioners, we have benefitted from the court's expanded use of technology to provide digital services, which has enabled us to continue to serve our client populations in a time of great need. We believe there should be equal access to electronic filing for all court users in New York State courts, including unrepresented litigants who should have access to the same benefits e-filing has to offer as those represented by counsel.

Access to e-filing can be a great boon to low-income and other disadvantaged communities, such as the elderly, people with disabilities and those with Limited English Proficiency (LEP). As providers of free legal services to low-income New Yorkers and active members of several statewide e-filing advisory committees,<sup>1</sup> we believe the time has come to move away from the incremental approach of expanding e-filing of the last two decades.

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<sup>1</sup> Including the Supreme Court (Civil) Advisory Committee on E-filing, Legal Services Advisory Committee on E-filing, and Civil Court Advisory Committee on E-filing.

All litigants, especially those who are low-income and unrepresented, would benefit from immediate access to court records and the ability to file legal papers remotely at any time, day or night. Litigants with disabilities that limit their mobility can benefit from electronic access to court files. Reducing the number of people traveling to and entering courthouses and post offices would maximize safety for all. With the onset of the coronavirus pandemic and ongoing resurgences and variants, e-filing and other technology is an essential tool to expand access to justice. Yet, such expansion must avoid a “digital divide” that institutionalizes a two-tiered system with barriers for the unrepresented. An e-filing system should be designed to be accessible and easy to use for all court users, otherwise it results in uneven access to the advantages it offers, disadvantages unrepresented litigants, and creates a system of unequal access to the courts.

The reality is that most unrepresented litigants are unable to access the benefits of e-filing through the existing system. To address these concerns in part, unrepresented litigants should continue to be exempt from e-filing but should be allowed to opt-in if they so choose. We echo the concerns raised in the past by other legal service providers about lack of access to computers, internet, software, hardware, and difficulty filing on NYSCEF in those cases where it is already available. Many low-income litigants cannot afford personal computers and thus need to rely on shared publicly available computers to e-file and, these should be made available at self-help centers, legal services offices, public libraries and other forums.

For New Yorkers not proficient in English, the prospect of navigating the legal system is daunting, especially for those who have no choice but to represent themselves. Any e-filing program should ideally be provided in the primary languages spoken in New York. At a minimum the notice to opt-in must be provided in each of these languages so litigants can make an informed decision on whether to participate. The notice should make it clear that it is not mandatory and inform them of what is required to successfully e-file.

One suggestion is that unrepresented litigants have the option to opt-in for the remainder of the case or opt-in for one filing. Many self-represented litigants may have assistance from limited scope assistance programs and clinics where they may not wish to consent to electronic service of documents in the future. Another option is to permit unrepresented litigants to opt-in for filing or only for service or only for receipt of service.

We also recommend that OCA collect, analyze, and make publicly available data from NYSCEF, including about how it is used and by who, in order to increase transparency and encourage public trust in the courts, promote accountability, and allow for creative problem-solving.

The primary and essential requirement for *pro se* litigants to successfully utilize e-filing is adequate staffing and e-filing support. With the high rates of self-representation in many high-volume courts there must be adequate support for those who choose to e-file.

### NYC Civil Court Consumer Credit Pilot

Expansion of e-filing to case types with high numbers of unrepresented litigants, such as consumer credit actions, is new territory for the courts. We urge CAJ Lawrence Marks and OCA to introduce a

consensual e-filing pilot program for consumer credit cases in NYC Civil Court. The pilot should be implemented in a way that avoids unintended consequences for the unrepresented and allows for analysis and modification before expansion to the remaining boroughs. There should be dedicated *pro se* e-filing court clerks to assist unrepresented litigants and reliance should not be placed on existing court personnel tasked with to her responsibilities.

The goals of the pilot program should include (1) testing e-filing technologies and processes with end-users, including and in particular unrepresented litigants; (2) soliciting and incorporating feedback from end-users into the design (and potential redesign) of technology choices and e-filing processes; (3) identifying those unrepresented litigants and other court users for whom e-filing is and is not likely to be beneficial; (4) developing appropriate safeguards for unrepresented litigants informed by feedback from end-users; and, (5) collecting, analyzing, and making publicly available data from the pilot program.

We recommend the pilot also incorporate remote practices the court developed during the pandemic and has retained and expanded upon in its wake, including allowing litigants the option to appear virtually in court proceedings without condition. Virtual appearances and other remote practices implemented during the pandemic reduced some of the burdens associated with in-person appearances for many litigants. The pilot should ensure that litigants in these proceedings continue to be able to access the full range of remote services and associated benefits that other court users enjoy. By providing greater access to courts remotely, our courts can continue to provide legal services to our communities effectively, efficiently and safely.

Implementing NYSCEF in Civil Court consumer credit action would allow *pro se* defendants to overcome many existing barriers to navigating the court system. These challenges include lengthy delays in accessing court files<sup>2</sup> for defendants who need to file legal papers to vacate default judgments, respond to motions, and consider settlement options.<sup>3</sup> Moreover, if and when the physical court files are retrieved, key documents are often missing.<sup>4</sup>

With the backlog in the court docket and Electronic Document Delivery System (EDDS) filings, it has become a regular occurrence for hearings to proceed where the Judge does not have the court file or motion papers before them and rely entirely on information and assurances provided by plaintiff's counsel. E-filing would allow many *pro se* assistance programs to immediately access courts records and assist with filing in the same session.

### Supreme Court

During the pandemic Supreme Court opened e-filing to other practice areas. Eventually, many matters in Supreme Court were mandatory e-filing. Currently, e-filing has proven to be a huge asset to Supreme Court. When the pandemic started, the only access to filing was through the mail, or the

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<sup>2</sup> In our experience, it takes on average 6 to 8 weeks to obtain NYC civil court files older than 3 years and these files are archived in offsite storage facilities.

<sup>3</sup> The most common filings in consider debt cases require access to affidavits of service, motions to dismiss and for summary judgment.

<sup>4</sup> NY Judiciary Law § 255-255-B (Public right to inspect and copy records and filings in New York courts).

dropping off of documents in the courthouses. This proved to be precarious. Original documents were lost through the mail, and the documents were not timely filed.

E-filing allowed for instantaneous filing of documents and review of files. For matters with attorneys, it was extremely needed. Unfortunately, the *pro se* were left behind. Clerks' offices were not open to accept documents, and clients were unable to access their files. Those without computer skills could not review their cases, or answer pleadings.

Though some practice areas in Supreme Court see limited *pro se* litigants, others can have over 50% of their cases with *pro ses*. Some of these matters, such as matrimonial, include issues of custody and orders of protection. If the court is to continue to serve all New York, it must create safeguards for the unrepresented.

### Family Court

NYC Family Courts recently expanded the use of e-filing to all five boroughs. Previously, documents were emailed to the clerks through EDDS. Unfortunately, with the practical shut down of family court for certain matters, the EDDS system failed New York. Petitions that were emailed were lost, multiple petitions were filed and not linked, so matters were on in different courts for the same issue. Litigants were not notified, and after waiting almost a year, their matters were dismissed. There was limited ability to mark matters as urgent (except for orders of protection), so petitions languished. Cases were not docketed for months, and then notifications went out haphazardly.

Family Court, which handles many of the same matters as Supreme Court, must continue using e-filing in all boroughs. Though most matters are begun by *pro se* litigants, through the right to counsel, many receive an attorney early in the case. Attorneys would then have access to filed petitions and other reports. Litigants who can use computers would be able to e-file. The number of litigants entering the courthouse would decrease.

Recently an attorney had to obtain an order. She entered the courthouse and was told that it was at capacity and had to wait to see a clerk. Courthouses should not be at capacity for filing of documents. With e-filing, these issues would lessen. Petitions could be filed in real time, orders uploaded immediately. Clients would not have to wait for their orders, many of which are time sensitive.

We believe the time for e-filing in family court has come and recommend that CAJ Marks and OCA maintain e-filing in all of New York City.

### Housing Court

In the housing context tenants are increasingly represented by counsel in eviction defense cases, however, there will always be unrepresented tenants who will need to access the courts often in emergency situations like when they receive a marshal's notice of eviction, or when they need to commence a Housing Part action for emergency repairs or harassment.



One issue that has become apparent since the introduction of NYSCEF for housing court proceedings, is that the Housing Court is struggling to maintain complete records in paper or online. Documents that are submitted in court or generated in court, including *pro se* answers, settlement stipulations and substantive motions, are not being uploaded in a timely fashion or at all. Similarly, it takes a long time sometimes for cases to get uploaded after a request to convert. The court also sometimes loses files and advises that they don't know where files are and it is up to the parties to reconstruct the missing files. We are also seeing orders that judges have read to the parties in open court are then edited after the parties have left the court and when they are uploaded they are inconsistent with what the parties believe had been ordered. Some parties, who may have consented to e-filing in a stipulation are not taking the subsequent step to go into NYSCEF to consent to service by email which can lead to errors in service and missed communications. We need clearer guidelines for professional and lay users of NYSCEF and better support for the courts to ensure that they are handling any paper so that the complete court record is available online for the court and the litigants. While it is remarkably convenient for practitioners to have access to full court files online, tenants and their advocates have consistently raised concerns that the vast amounts of information that is available through NYSCEF may be used against tenants by future landlords, possible creditors or employers, abusers or data miners. Tenants in the New York City area have struggled to overcome discrimination based on past participation in housing litigation using tenant "blacklists." The availability of even greater volumes of readily accessible digital information about tenants may make it ever harder for tenants to secure new housing, credit, jobs or professional licenses they may apply for. Employers, creditors and data miner, could also review easily available online housing court information to determine personal or financial characteristics of a potential or current employee, borrower or consumer. Survivors of domestic violence or other forms of abuse could be vulnerable to further harm if their abusers have easy access to information in online housing court records. In the same way that family court and divorce matters are considered confidential to non-attorneys, it would be strongly preferable if there were some limit to the public availability and use of housing court records.


In the context of eviction cases, *pro se* tenants need to be able to quickly file orders to show cause (OSCs) to stop evictions and vacate defaults. Tenants need options to file electronically using an online tool that walks tenants through the process of drafting and filing papers or to file in person in the courthouse if they cannot access the electronic system. Tenants will need assistance uploading supporting documents. Clear instructions must be provided for this in the electronic version of the system and assistance in the courthouse must be provided to ensure that documents are uploaded correctly. All tenants represented and *pro* need their OSCs to be reviewed quickly by the court. There needs to be a process for tenants to be able to convey signed OSCs quickly and electronically to the City Marshal's to stop evictions and to serve upon their adversary or opposing counsel.

Similarly, in affirmative cases initiated by tenants and tenant groups, an online tool for helping tenants file HP cases where filing fees can be assessed or waived via NYSCEF is an important component in a successful shift to tenant e-filing. Again, there must still be an in-person option for tenants to file in the courthouses rather than online. Communications from the court via NYSCEF need to be sent to tenant phones via text and not only by email for communication with tenants to be effective. Additionally, more must be done to facilitate and simplify the service requirements for commencement of *pro se* HP cases as this is a longstanding problem for unrepresented tenants resulting in countless dismissals for lack of jurisdiction. Such unsuccessful attempts at filing are a

waste of judicial resources and serve to frustrate tenant efforts to timely obtain repairs and halt landlord harassment.

The Legal Aid Society commends the OCA for their efforts to expand the use of e-filing and technology in our courts. We support the expansion of e-filing and the proposed amendment to grant the CAJ the authority to implement mandatory e-filing in New York courts, subject to the recommendations herein.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Adriene Holder".

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**NEW YORK STATE BAR ASSOCIATION  
COMMERCIAL AND FEDERAL LITIGATION SECTION  
COMMENTS RE: NEW YORK STATE COURTS ELECTRONIC FILING PROGRAM**

The New York State Bar Association (“NYSBA”) Commercial and Federal Litigation Section supports and recommends the proposed legislative amendments to CPLR Article 21-A. The proposed amendments seek to expand the Unified Court System (UCS) and the Chief Administrative Judge (CAJ)'s discretion to require electronic filing, by consensus or mandate, in any type of case. This change would render e-filing mandatory in those instances that currently require party consent. The NYSBA Commercial & Federal Litigation Section believes this proposed legislative change will promote efficiency, improve access to the courts, and keep the court system in line with current cultural trends.

Expanded e-filing is consistent with industry norms and societal norms, where digital communication is increasingly the normative standard. E-filing creates efficiencies in the litigation process by speeding up notification of and access to documents filed with the court, and creates an immediate record of filings that is easily accessible to litigants. These benefits accrue to lawyers and *pro se* parties. It is also a less costly process than hard-copy filings, which impose printing and delivery costs on the filer. Finally, e-filing promotes waste reduction and, as a result, environmental benefits.

The e-filing proposal comports with current ethical guidelines. The New York Rules of Professional Conduct require that lawyers remain abreast of the technology used to serve clients and practice law<sup>1</sup> and must meet CLE requirements in cybersecurity.<sup>2</sup> In light of this, the burden of an electronic filing requirement on attorneys is minimal.

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<sup>1</sup> New York Rules of Professional Conduct, Rule 1.1, Comment 8

<sup>2</sup> 22 NYCRR § 1500.2 Definitions.

The NYSBA Commercial & Federal Litigation Section believes e-filing will improve access to the court system by decreasing costs associated with filing and allowing litigants the convenience of filing from virtually anywhere. Although we are sensitive to concerns about access to high-speed internet, especially in rural areas and for *pro se* litigants, we nonetheless believe those concerns are adequately addressed by the exemptions available to *pro se* litigants and to those who demonstrate technological deficiencies or other good cause.<sup>3</sup> In fact, e-filing may benefit *pro se* litigants by enabling them to file with the court when they may otherwise be unable to travel to file in person and by allowing them to avoid expenses for postage and potentially voluminous photocopying.

For the aforementioned reasons, NYSBA's Commercial and Federal Litigation Section approves the proposed amendments. We are confident the proposed amendments will benefit the litigants, their counsel, and the court system through efficiencies of time and expense.

Respectfully submitted,

New York State Bar Association  
Commercial and Federal Litigation Section  
Ignatius A. Grande, Section Chair

December 15, 2022

Approved by the NYSBA Commercial & Federal Litigation Section Executive Committee,  
December 14, 2022

Legislative & Judicial Initiatives Committee

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Anthony Harwood, Co-Chair  
Monica Ayala-Talavera  
Carolynn Beck  
David Gorvitz  
Ignatius Grande  
Alyssa Grzesh  
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<sup>3</sup> NY Uniform Trial Court Rules 202.5bb(b), (c) and (e).

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December 15, 2022

Mr. Jeffrey Carucci  
Director, OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

We write on behalf of the Managing Attorneys and Clerks Association, Inc. (“MACA”), in response to your October 28, 2022 invitation to comment on our experience with NYSCEF generally and proposed legislation to expand e-filing and to authorize the Chief Administrator to institute e-filing in all trial courts statewide. As we do each year, we welcome this opportunity and thank you and the Office of Court Administration (“OCA”) for seeking the views of the bar on these important subjects.

As you know, MACA is comprised of approximately 125 law firms with litigation practices, primarily large and mid-sized firms, as well as the Attorney General’s Office. Our members’ positions within our respective firms and concomitant responsibilities afford us a breadth of understanding of the day-to-day operations of the various state and federal court systems. Our members have extensive experience with e-filing in NYSCEF, in other states’ e-filing systems and in the federal e-filing system. In a majority of our member firms, managing

attorney or managing clerk staff perform the actual filing of litigation papers in NYSCEF. Additionally, some of our member firms handle matters that fall outside standard civil litigation, such as matrimonial actions, proceedings in Family Court and Criminal Court, and residential foreclosure and consumer credit actions, either as part of their regular business or on a pro bono basis.

### General Assessment

We continue to find NYSCEF a very effective tool, both as our means of serving and filing court papers and as courts' readily accessible online record of their cases. The technology is reliable; we very rarely experience a service disruption. In this regard, NYSCEF compares very favorably with the federal CM/ECF system.

In our experience, a substantial factor in NYSCEF's success is the NYSCEF Resource Center (a.k.a. the Statewide E-Filing Resource Center). Their staff operate an effective help desk that provides competent e-filing problem-solving services. In addition, leadership of the Center for many years has been receptive to our feedback and suggestions, sought our input on new proposals and developments and alerted us to e-filing-related changes to help us ensure our firms adapt efficiently.

Some years ago we voiced concern that new staff needed to be recruited to the Center as the staff at that time approached retirement age. We are very pleased now to be working with an excellent new generation of NYSCEF Resource staff alongside the Center's senior staff with whom we've worked for years. We are confident that recent retirements will not diminish the quality of this superb public resource.

### Our 2021 Comments and Suggestions

We stand by the comments and suggestions we made in our letter of December 22, 2021, attached. We firmly believe that NYSCEF should replace hard copy court files throughout the State's trial courts in all types of cases. We also believe the future effectiveness and reliability of NYSCEF depends on its continual improvement to meet the needs of litigants and the courts. Accordingly, inclusion of proper funding for the development of new NYSCEF functionality in the 2023 budget for the judiciary is as much of a priority for us as legislation to expand e-filing throughout the trial courts.

### NYSCEF Returns for Correction in Violation of CPLR, Uniform Rules

In our experience, court personnel who deem a filing to be deficient use features in NYSCEF to return the papers to the e-filer for correction. Under NYSCEF's return-for-correction processes, returned papers are not accepted for filing until resubmitted in corrected form. A return for correction is thus, functionally, a rejection of the filing.

CPLR 2102(c) provides, however, that “a clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court.” The Administrative Board of the Courts approved the adoption of Uniform Rule 202.5(d) to implement this law in Supreme Court and County Court. Uniform Rule 202.5(d) prohibits County Clerks and Chief Clerks of Supreme Court or County Court from rejecting filings unless they are defective in one or more of five enumerated ways (such as omission of an index number, filing in the wrong court, lack of signature).

These provisions are extremely important to managing attorneys and managing clerks (and the lawyers we support) because they provide clarity as to what is required in order for papers we file on behalf of our firms not to get rejected. For the process of preparing and filing court papers to work efficiently, we must be able to advise our colleagues and clients whether a filing will be rejected; court staff use of NYSCEF to return for correction for reasons other than those enumerated in Uniform Rule 202.5(d) subverts our ability to do so.

Notably, CPLR 2102(c) resulted from a lawsuit against the New York County Clerk for allegedly using arbitrary standards for rejecting court filings, some fifteen or twenty years ago. Based on the experiences of members of our community who formerly worked for a County Clerk, the adoption of Uniform Rule 202.5(d) not only prevented such problems from recurring but also helped the Court function more efficiently because the rule essentially is a checklist that replaces subjective standards for what can be accepted or rejected.

We believe court personnel use of NYSCEF to return filings for correction may signal that courts need Uniform Rule 202.5(d) expanded in order to function efficiently. If so, the Managing Attorneys and Clerks Association is ready and willing to assist in the process of assessing courts’ needs and drafting a proposed amendment. It remains imperative, however, that court filings not be rejected except for a reason enumerated in Uniform Rule 202.5(d) or its equivalent.

\* \* \*

Again, we are grateful for the opportunity to comment on NYSCEF. We are enthusiastic supporters of the system and eagerly look forward to the expansion of e-filing, improvements to NYSCEF functionality and bringing the use of returns for correction into compliance with the CPLR and the Uniform Rules.

Respectfully submitted,

s/ Peter McGowan  
MACA President  
Managing Attorney  
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December 22, 2021

Mr. Jeffrey Carucci  
Director, OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, Room 1062  
New York, New York 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

We are writing on behalf of the Managing Attorneys and Clerks Association, Inc. (“MACA”), in response to your November 15, 2021 invitation to comment on our experience with NYSCEF generally and make e-filing mandatory across the State’s trial courts. We welcome this opportunity and thank you and the Office of Court Administration (“OCA”) for seeking the views of the bar on these important subjects.

As you know, MACA is comprised of approximately 125 law firms with litigation practices, primarily large and mid-sized firms. Our members' positions within our respective firms and concomitant responsibilities afford us a breadth of understanding of the day-to-day operations of the various state and federal court systems. Our members have extensive experience with e-filing in NYSCEF, in other states’ e-filing systems and in the federal e-filing system. In a majority of our member firms, managing attorney or

managing clerk staff perform the actual filing of litigation papers in NYSCEF. Additionally, some of our member firms handle matters that fall outside standard civil litigation, such as matrimonial actions, proceedings in Family Court and Criminal Court, and residential foreclosure and consumer credit actions, either as part of their regular business or on a pro bono basis.

### General Assessment

Overall, MACA's experience with NYSCEF continues to be very positive. As frequent users of NYSCEF, we benefit from the efficiency and accessibility it offers first-hand. The e-filing platform is easy to navigate and is user-friendly. Some features we enjoy include the simplicity of choosing an e-filing category, the PDF checker and the ability to e-file multiple documents simultaneously without having to re-select the filing party for each document. NYSCEF has proven to be flexible and able to keep pace with changing technology. NYSCEF is well supported by its developers and the Electronic Filing Resource Center. The Resource Center has continually offered excellent user support, which includes the ability to call or email the Help Desk, creation of a new E-Filing Chat forum and increased online training sessions.

Additionally, the Resource Center's leadership is extremely effective in their readiness to assess the needs and concerns of the bar and to implement change to improve the court system. There are some areas of functionality our membership would like to see NYSCEF further develop.

### Carrying Over Representation; Notice of Appeal; and Record on Appeal

We feel that there is potential for significant benefit through integration of the NYSCEF system between the various trial divisions and the Appellate Division.

Currently, when an appeal is taken in an e-filed case, the appellant must establish a new NYSCEF docket for the appeal, re-enter the relevant party information, and re-file the notice of appeal and other initial case documents on the new appeal docket. Appellant must then wait for the appellate division to assign a case number, and then serve his or her adversary with a notice of the opening of the appeal docket and case number in hard copy. Appellant must continue to serve any interlocutory papers in hard copy until either the respondents' counsel records a representation on the NYSCEF appeal docket or 14 days have elapsed, whichever is sooner. Similarly, a respondent does not receive formal notice of the opening of the appeal until he or she receives the hard copy notification from the appellant, and then must record a representation in NYSCEF in order to begin receiving notifications of filings in the appeal.

While these steps may be appropriate for appeals from non-e-filed cases, they make little sense for appeals from e-filed cases. All the information an appellant must enter to create the appeal docket in NYSCEF is already available on the NYSCEF docket for the case at the trial level, or in the Informational Statement the appellant filed therein.

When a respondent has already consented to, and become accustomed to, receiving email service in the proceeding below, requiring hard copy service of the notice of creation of the appeal docket on the respondent, then requiring the respondent to re-record his or her representation in the appeal docket, serves only to put additional costs and burdens on both parties, and to create confusion and the potential for missed notifications.

We recommend OCA consider ways to automate the process of establishing the NYSCEF docket for an appeal from an e-filed case. The establishment of the NYSCEF appeal docket could be achieved, for instance, by automatically forwarding the party and representation information recorded on the trial court docket to the Appellate Division. Alternatively, similar to what is currently required for filing a Request for Judicial Intervention, an appellant could be required to complete an online form when filing the Informational Statement, which could automatically populate the required information for the appeal docket.

We also recommend modifying both the NYSCEF system and the Electronic Filing Rules of the Appellate Division to eliminate the requirement of a hard copy service of the notice of creation of the appeal docket and subsequent filings until the respondent records a representation. Instead provide that such service happen automatically via NYSCEF email notifications on the parties to the appeal as soon as the appeal docket is created.

These changes would streamline the process for creating appeal dockets in NYSCEF, and would ensure that all parties receive prompt notification of the creation of the docket and any filings thereon as soon as they are made. There would be no prejudice or additional burden to any party, as the parties have already been participating in an e-filed case in the court below. Appeal docket information collected automatically would be more accurate and less prone to data-entry error by the user, reducing the burden on the court staff.

Relatedly, the ability to create the Record on Appeal from the official docket of the trial division of the Supreme Court would be a significant enhancement. The e-filed NYSCEF case list and documents are the official docket and record of e-filed cases in the trial divisions of the Supreme Court, and most of the documents that would constitute the record on an appeal from an e-filed case are already available on the NYSCEF docket. Despite this, parties spend considerable time, money, and resources to downloading, compiling, and combining those documents into a separate Record on Appeal in both digital and hard copy format for filing with the Appellate Division.

A more economical and practical approach is to have the programmers of NYSCEF develop a process so that parties can select the documents relevant to their appeal from the official docket of the Supreme Court and have those documents transmitted to the appellate court. Our members envision a process that would be similar to preparing a judgment roll when entering a judgment in the Supreme Court. The party

appealing need only verify all documents necessary for the Record on Appeal are entered on the official docket. Adding a function to create the Record on Appeal would ease the burden on parties with minimal impact on current court operations.

### Hyperlinking

As previously proposed, our membership would like OCA to further develop NYSCEF to include automatic hyperlinking of legal citations after a document has been e-filed. We believe this functionality should be added for the benefit of all e-filing courts in the Unified Court System (“UCS”). Although hyperlinking is currently only required by the Commercial Division, it will inevitably be required by other courts as technology advances. Hyperlinking to the legal citation enables judges, court staff and practitioners to evaluate parties’ arguments more efficiently. Just as practitioners have a responsibility to keep up with technology, so must NYSCEF. We strongly believe that litigants and their lawyers should not be burdened with the extra cost and time pressure of hyperlinking before they e-file, particularly when an automated solution is attainable. The time spent hyperlinking diminishes the time spent drafting compelling legal arguments. While many MACA members have the resources to hyperlink documents prior to e-filing, it is particularly burdensome for solo and small firm practitioners who do not. We urge OCA to review the federal NextGen CM/ECF e-filing system, which includes the creation of hyperlinks to text-searchable e-filed documents, and adapt that functionality for NYSCEF.

### Integrating Calendars

We recommend court calendars and appearances be integrated into NYSCEF, so parties are notified of scheduled appearances via NYSCEF email notification. Currently, NYSCEF does not generate calendars or notify parties of upcoming appearances, as a result, parties must rely on separate databases to receive notifications of their scheduled appearances. Parties would benefit from using NYSCEF as a single platform to search their cases, dockets, and appearances.

### Adjourning Multiple Motions Simultaneously

A function we would like to see developed in NYSCEF is the ability to adjourn more than one motion at a time. Currently, if a litigant wishes to adjourn the briefing schedule of more than one motion, the stipulation to adjourn must be filed in each motion sequence. A better approach would be to allow the litigant to select more than one motion sequence in which to apply a stipulation to adjourn.

### Printing Docket Sheets

A function our members would like to see restored is the ability to print a full document list of the official docket on NYSCEF. Currently that feature is limited to the

parties who have consented to e-filing. The public should have access to view and print the document list.

Overall the experience of MACA has been that NYSCEF is a useful resource which deserves to be implemented to the fullest extent possible in a standardized manner across the state court system. With additional enhancements, NYSCEF can become more useful to the bench and bar.

Response to Legislative Proposals

MACA enthusiastically supports expansion of mandatory e-filing across the State's trial courts. In particular, we support the enactment of legislation to allow the Chief Administrative Judge ("CAJ") to institute e-filing on a mandatory, standardized basis.

NYSCEF has proven to be a reliable and efficient platform to access the courts. The rapid expansion of NYSCEF during the pandemic is an indicator that the bench, bar and the public are ready for further expansion of e-filing. In order to maximize the benefits NYSCEF has to offer, it is necessary to permit mandatory e-filing. The CAJ is capable of, and experienced in, managing the further expansion of e-filing in a manner that avoids delay that results from being required to await legislative action in each instance.

We believe the recommendations in support of the legislative amendments proposed by the UCS to expand e-filing are aimed at promoting the creation of a more efficient and effective court system in New York State.

Again, we are grateful for the opportunity to comment on NYSCEF. We are enthusiastic supporters of the system and eagerly look forward to improvements and to expansions of mandatory e-filing.

Respectfully submitted,

s/ Peter McGowan  
MACA President  
Managing Attorney  
Sidley Austin LLP  
pmcgowan@sidley.com

**Brooklyn (BOS)  
Defenders**

**The  
Defenders**

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**N Y C D S**

**QUEENS  
DEFENDERS**

December 15, 2022

Jeffrey Carucci  
Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, Rm. 1062  
New York, New York 10004  
efilingcomments@nycourts.gov

Re: Comment on New York State Courts Electronic Filing Program (NYSCEF)

Dear Mr. Carucci:

Thank you for the opportunity to comment on the New York State Courts Electronic Filing Program (NYSCEF) and the proposed amendments to Criminal Procedure Law §10.40, the New York City Criminal Court Act, Family Court Act §241, CPLR Article 21A and other relevant statutes to authorize the Chief Administrative Judge to make electronic filing mandatory across New York State.

We remain excited anticipating this technological step forward for our courts and stakeholders. As our courts continue to assess the impact of the pandemic and paths forward, NYSCEF, a platform to allow remote filing and service of legal papers as well as remote access to court filings, must be expanded and implemented for our criminal courts. Over the past years, defense providers voiced this need to provide greater access to the Courts for the communities it serves. Access should no longer be restricted to business hours in person. It is disappointing that plans to expand access to courts by piloting NYSCEF in identified Supreme Courts, Criminal Term, were delayed

and have yet to resume. There is no greater time to test and implement NYSCEF than now as we assess and imagine our courts with the impact of the pandemic.

Together, we bring a broad perspective of our community that we serve in need of greater access to our courts. We represent thousands of people in criminal, family, immigration, and civil legal matters every year. We practice in some of New York's busiest courthouses and have seen the impact the pandemic has had on our clients and communities first hand. We have been active stakeholders, voicing such needs for greater access in testimony before Commission to Reimagine the Future of New York's Courts and its working groups. We continue to call for the development and implementation of electronic filing via a secure and well-developed portal.

We must however provide access to all including vulnerable populations who are often penalized for the digital gap inside our court system. We also have grave concerns about privacy and security of confidential client information, accessibility of data, and mandating a statewide system before rules are promulgated and a full pilot program launched. Although we agree there are many benefits to an electronic filing system in New York's court system, these benefits can only be fully realized after rules have been promulgated and the system is thoroughly tested. Our offices continue to welcome the opportunity to be part of this project from its inception and remain invested in ensuring the new system is accessible and efficient while also protecting the privacy of all its users and litigants.

As we continue to assess our courts together and develop paths forward, we must address concerns with NYSCEF as we develop and implement a much need platform to provide greater access:

- **Security and Privacy Concerns**

We must provide security and privacy required in a digital platform that will hold critical confidential, and highly sensitive information of thousands of New Yorkers. Our offices share the Commission's privacy and security concerns, as detailed in its 2020 report.<sup>1</sup> The vulnerable populations we represent, those accused of crimes, parents accused of child neglect and abuse, undocumented immigrants, survivors of domestic and sexual violence, are especially at risk of the life altering consequences should their court records ever be improperly accessed. We must protect against improper access of a person's court record which may compromise their employment, housing, immigration status and ruin their life. Yet, far more information is needed now about how court documents, discovery and sensitive information will be stored, secured, and accessed only by counsel, prosecutors and court personnel while a case is pending. If discovery materials are to be uploaded, we need to ensure that only counsel have access to discovery materials. Documents filed electronically should remain confidential and not be accessible to the public unless and until there is a conviction. If *ex parte* applications are filed, the electronically filed

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<sup>1</sup> <https://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>

document and the fact of its filing should be unavailable for viewing online by any other party.

- **Rules for NYSCEF Are Needed Before It Can Be Rolled Out Across the State**

We cannot expand and mandate NYSCEF into new areas, such as criminal matters, without first conducting and completing the proper process to promulgate rules. Committees were established to draft rules to define how the electronic filing portal will be used and its impact on the legal rights of the parties involved. Proposed rules would then be subject to public comment,<sup>2</sup> and final rules are then published. *See, e.g.*, NY Ct. Rules 202.5 (setting forth rules for Civil matters). Yet, to date, no proposed rules have been shared with any committee regarding implementation for criminal matters. No such rules have been offered for public comment nor promulgated. We must move forward now on Rules and such Rules must address critical legal issues, such as:

- Categories or types of legal matters which will require mandatory electronic filing;
- Instruction on registration and access rights for counsel and filing agents, including notifications as to which parties will have access to the filed documents;
- Procedural rights as to filing deadlines and accuracy of filings and service;
- Provision for emergency applications, including the filing of Orders to Show Cause and Temporary Restraining Orders, how papers will be conformed without missing statutory deadlines and how cases will be calendared.

- **Conduct Full Pilot Project**

With criminal matters, proper testing and feedback first must be conducted through a pilot project before an untested portal replete with confidential information be mandated statewide. During the development of NYSCEF for criminal court, many stakeholders working together provided invaluable and critical feedback leading to significant revisions of NYSCEF screens. However, such feedback occurred prior to substantial changes in bail and discovery reform leaving questions as to additional required updates to address changes in law. The current platform needs to be thoroughly tested by all parties (prosecutors, defense counsel, and court) to determine if there are any issues and address the needs of all before mandating electronic filing statewide.

In conclusion, there is much more we need to understand about the vulnerabilities and security measures needed for electronic filing, how to protect the privacy of litigants and how to ensure greater access before New York rolls out a state-wide mandatory e-filing system in all its courts. We strongly recommend that the project first be piloted in several localities, as was recommended

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<sup>2</sup> OCA, for example, posts requests for comments publicly using, in part, the OCA website, here: <https://ww2.nycourts.gov/rules/efiling/index.shtml>.



in 2019, allowing the system and its accompanying rules to be tested and gathering critical stakeholder feedback before the system is mandated and implemented across all courts in New York State.

We hope to continue the conversation with your office on this issue. Please reach out with any questions.

Sincerely,

Lisa Schreibersdorf  
Executive Director  
Brooklyn Defender Services

Justine Olderman  
Executive Director  
The Bronx Defenders

Justine M. Luongo  
Attorney-in-Chief  
Criminal Defense Practice  
The Legal Aid Society

Alice Fontier  
Managing Director  
Neighborhood Defender  
Service of Harlem

Stan German  
Executive Director  
New York County Defender Services

Lori Zeno  
Executive Director  
Queens Defenders



# NEW YORK STATE BAR ASSOCIATION

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(914) 286-3407  
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December 15, 2022

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Re: Request for Comment, New York State Courts Electronic Filing Program

Dear Mr. Carucci,

I write in my capacity as President of the New York State Bar Association (NYSBA) in response to your October 28, 2022, request for comment regarding New York State Courts Electronic Filing Program.

NYSBA has longstanding policy in support of electronic filing in New York State courts. Our 2007 Report of the Task Force on the Electronic Filing of Court Documents analyzed the best practices of existing e-filing initiatives in the United States and made recommendations to implement such a system in New York State courts. (Report Attached).

Our subsequent 2012 Report on the Progress Toward Implementing Statewide Electronic Filing in New York Groups wherein we call for the Statewide adoption of electronic filing in New York. (Report Attached).

Although not policy of our Association, our Task Force on the Modernization of Criminal Practice stresses the importance of extending e-filing to address Town and Village Justice Courts. (Attached).

I hope that the enclosed reports provide insights useful to the formation of your forthcoming report. Should you wish to further discuss NYSBA's policy on electronic filing, please do not hesitate to contact me or our General Counsel, David P. Miranda, at [dmiranda@nysba.org](mailto:dmiranda@nysba.org).

Respectfully,  
Sherry Levin Wallach, Esq.  
President, New York State Bar Association



**Committee on Technology and the Legal Profession**

December 15, 2022

Re: Request for Comment on Electronic Filing in New York Courts

At this point, given the technological requirements of practicing law with any degree of competence absolutely requiring some level of technological skill, and given further that electronic filing on NYSCEF is no more complicated than the other technological skills expected of attorneys (such as electronic research, remote appearances, email communications and the like), and given further the ease of access to free CLE programs on electronic filing with NYSCEF provided by OCA, the exception for attorneys who do not have access to a computer or an internet connection should be struck as out of date. We submit that with the availability of outside services that are available to assist counsel, there remains no legitimate basis for an attorney to attest that he or she should be exempt from e-filing.

While the exception for pro se litigants should remain for the time being, OCA should work with the Court Clerks of each county to create a simpler process for pro se litigants to obtain a non-attorney filing account and should provide tutorials for its use. At the very least, pro se litigants wishing to abstain from filing electronically, should be required provide counsel and the court with their cell phone number for purposes of texting and/or email address so that counsel and the court can communicate with each other and the pro se be able to electronically submit their documents to court staff for e-filing/service on their behalf.



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**TASK FORCE ON THE MODERNIZATION OF CRIMINAL PRACTICE**

December 15, 2022

**Re: Request for Comment on New York State Courts Electronic Filing**

The Task Force on Modernization of Criminal Practice submits comments regarding the proposal to expand e-filing to criminal matters throughout the state. As the Chief Administrative Judge seeks to expand e-filing to become more uniform and effective, it is important to address the obstacles in Town & Village Justice Courts that may prevent uniformity in e-filing from the commencement of criminal matters.

There are more than 1200 Town and Village Justice Courts throughout the state, and they are staffed by individuals of varying ages, education, and experiences, both legal and technological. More than 60% of justices are non-lawyer judges of whom only a high-school degree is required. Many of the courts sit on a part-time basis, disposing of criminal matters on scheduled District Attorney dates as few as two to three times per year (some courts without clerks), whereas others meet weekly and employ full time court clerks. These courts rely on local revenue to cover salaries, equipment, and training, but they may apply for JCAP grants of limited amounts to supplement services (including the provision of law books, treatises, and appropriate training for justices and non-judicial court staff). Many of these courts sit in rural areas, burdened by the lack of reliable internet access and the lack of frequent public transportation. Some courts do not have or rely on computers, some judges do not use email, and many courts are inappropriately staffed to manage e-filing from the commencement of a criminal matter.

Depending on the complexity of a criminal matter, multiple parties may submit documents in criminal matters: law enforcement (accusatory instruments); courts (orders of protection, probation terms, conditional discharge terms, driver's license revocation paperwork); prosecuting agencies (discovery, statements of readiness, 710.30 notices, Grand Jury notices); probation (pre-sentence reports); psychiatrists (730 reports), in addition to an innumerable amount of regularly filed motions. Criminal matters may be disposed of at arraignment or at first appearance by plea or other disposition. In simpler, less complex matters that resolve on the first or second appearance, there may not be sufficient time or staff to e-file the documents involved before the court disposes of the matter. To delay court proceedings for completion of e-filing on every case would be to burden already over-loaded criminal dockets and to require more appearances than necessary.

The e-filing proposal allows unrepresented persons to be exempt from e-filing and for attorneys to opt out of the system. Such options will result in a hodgepodge filing system for courts, requiring understaffed courts to juggle keeping track of which cases follow which rules. It may be too confusing for a municipality-based system to handle.

Although e-filing has aspirations of convenience for many parties, it cannot be uniform or effective where justice courts are ill-equipped to handle it, staff ill-trained to monitor it, and parties given the option to ignore it.

**HOUSE OF DELEGATES  
Agenda Item #5**

**RESOLUTION OFFERED BY TASK FORCE ON E-FILING**

WHEREAS, the Task Force on the Electronic Filing of Court Documents was created and charged with collecting data on the e-filing initiatives and programs throughout the United States, analyzing the best practices from each, and making recommendations to the Office of Court Administration regarding whether and how e-filing might best be implemented within the New York State courts; and

WHEREAS, the Task Force has conducted surveys of New York attorneys, the New York County Clerks and the Chief Clerks of New York Surrogate's Courts, and has studied the electronic filing program of the United States Courts, and has studied the filing programs and pilots of other state courts, and has extensively studied the currently authorized pilot of Filing By Electronic Means (FBEM) conducted in New York State courts; and

WHEREAS, electronic filing of court documents offers significant advantages over paper filing including savings of costs and time to clients and attorneys, savings of storage costs to the court system, minimalization of misfiling of documents, access to filed documents at any time from a remote location, and uniformity of filing procedures, among other advantages; and

WHEREAS, attorneys within New York who have participated in mandatory electronic filing in Federal Court or in New York State Supreme Court under the FBEM pilot program have by significant majority indicated an overall positive experience; and

WHEREAS, the FBEM pilot has been successful where employed, but is seriously underutilized due to the requirement that all participants to an action under the pilot affirmatively opt into electronic filing; and

WHEREAS, the Task Force has issued a report, analyzing the electronic filing of court documents and making recommendations regarding the full scale implementation of an electronic filing system;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association hereby endorses the report and recommendations of the Task Force on Electronic Filing of Court Documents; and it is further

RESOLVED, that the officers of the Association are hereby empowered to take such steps as they may deem warranted to implement this resolution, and to affirmatively take such steps to ensure a fully implemented electronic filing system, including but not limited to (1) support for implementation of electronic filing in the Supreme Court and Surrogate's Court in each county as the county becomes ready to undertake it, and in the Court of Claims, (2) support for the authority of the Chief Administrator of the Courts to plan and direct future expansion of

electronic filing in New York, and (3) support for the provision of resources to the Office of Court Administration and the Offices of the County Clerks to properly enable electronic filing, and to consider the creation of an entity within the Association to collaborate with the Office of Court Administration and the New York State Legislature in order to ensure such implementation.

NEW YORK STATE BAR ASSOCIATION



# NYSBA

## Report on the Progress Toward Implementing Statewide Electronic Filing in New York Courts

Approved by the Association's Executive Committee  
on March 30, 2012



# **REPORT ON THE PROGRESS TOWARD IMPLEMENTING STATEWIDE ELECTRONIC FILING IN NEW YORK COURTS**

## **COMMITTEE ON COURT STRUCTURE AND OPERATIONS: SUBCOMMITTEE ON ELECTRONIC FILING**

### **EXECUTIVE SUMMARY**

The New York State Bar Association (“NYSBA”) Committee on Court Structure and Operations: Subcommittee on Electronic Filing (respectively “Committee” and “Subcommittee”) submits this report on the progress toward the implementation of mandatory, universal electronic filing (“e-filing”) of court documents throughout New York State, and recommends the following for NYSBA’s continuing efforts toward achieving this goal:

- (1) That NYSBA support legislative amendments that expressly:
  - a. Authorize mandatory e-filing in all courts across the State, with the exception of opt-outs for *pro se* litigants and for those attorneys who lack the technical capacity to participate;
  - b. Allow court administrators, including the Chief Judge, Chief Administrative Judge (“C.A.J.”) and District Administrative Judges, to adopt rules regulating the form, manner and methodology of e-filing;
  - c. Streamline the implementation process by minimizing or eliminating the need for input from non-judicial officers; and
  - d. Direct court administrators to phase-in mandatory e-filing in the various counties in an orderly fashion that accounts for the particular needs of the county clerks’ offices.



- (2) That NYSBA urge the Legislature to recognize the substantial cost and time savings that will result from a Statewide e-filing system, and to provide adequate funding for implementation;
- (3) That NYSBA support the decision of the Chief Judge and C.A.J. to implement the New York State Courts Electronic Filing system (“NYSCEF”), developed by the Office of Court Administration’s Division of Technology (respectively “OCA” and “DOT”), as the single, uniform e-filing system for all courts across the State; and
- (4) That NYSBA and local bar associations and organizations:
  - a. Support OCA’s efforts to provide training materials and classes to educate members of the bar on NYSCEF; and
  - b. Develop avenues for members of the bar to provide constructive feedback to OCA regarding their experiences with NYSCEF.

Section I of the report summarizes NYSBA’s policy on e-filing, and identifies the fundamental advantages of a mandatory, Statewide system. Section II explains the legislative and administrative history of e-filing in New York, as well as NYSCEF’s technological aspects, including system architecture, security and available training. Section III outlines the current availability of e-filing in New York, and discusses the unique role the county clerks play in implementing e-filing on a county-by-county basis. The report ends with the Subcommittee’s conclusions and recommendations in Section IV.

## I. INTRODUCTION

NYSBA's position on electronic filing is clear: the House of Delegates, by resolution dated March 31, 2007, called for the implementation of universal and mandatory electronic filing in all New York State courts without undue delay. Relying on the work of the NYSBA Task Force on E-Filing of Court Documents ("Task Force"),<sup>1</sup> the House of Delegates has acknowledged the potential cost and time savings from "an ideal fully implemented e-filing system," as well as the need for simplicity and uniformity in any such system. Now, five years after the House of Delegates' resolution and the Task Force's report, the Subcommittee, under the guidance of Henry M. Greenberg, Esq., and NYSBA Past-President Stephen P. Younger, Esq., Co-Chairs of the full Committee, has reviewed the Task Force's recommendations in light of intervening developments and the current legislative and administrative framework to identify opportunities for NYSBA to provide further assistance in achieving this goal.

Importantly, and as over 10,000 practitioners can attest, New York's current e-filing system, NYSCEF, has proven to be a dependable and efficient program offering a range of benefits, including, but not limited to, the following:

- (1) Instant World-Wide Filing: No longer will an attorney race to the clerk's office before 5 o'clock or travel hundreds of miles to file papers in the proper county—now, courtesy of e-filing, practitioners can file court documents from the convenience of their own offices, homes, vacation spots, or anywhere else that has internet access;

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<sup>1</sup> In June 2005, NYSBA President A. Vincent Buzard created the Task Force, co-chaired by Sharon Stern Gerstman, Esq. and Wallace L. Leinhardt, Esq., to analyze the status of e-filing initiatives throughout the United States, to gather data from affected constituencies in New York State, and to formulate recommendations as to whether and how e-filing should be implemented within our courts. After two years of extensive work, the Task Force issued a comprehensive report providing a clear vision for "an ideal fully implemented e-filing system" in New York State and recommendations on how NYSBA can assist OCA and other stakeholders in realizing this goal.

- (2) Automatic Service: In addition to accepting filings, NYSCEF automatically effects and records service of all papers after the summons—eliminating the use of affidavits of service and relieving judges of the need to hear the “age-old practice of bickering among lawyers about whether they received a copy of this or that”<sup>2</sup>;
- (3) Universal Online Access: Digital storage of electronic documents provides litigants, courts, and the public the additional benefit of instant access to court papers anytime and anywhere, as well as greater transparency in our judicial system;
- (4) Extensive Cost Savings: Use of electronic files in lieu of physical documents eliminates the cost of purchasing paper, printing and copying, storage and disposal, and service by mail, overnight delivery or messenger: estimated savings for each e-filed document range from \$40 to \$95,<sup>3</sup> and, for a mandatory, universal e-filing system across the State, total “hundreds of millions of dollars a year”<sup>4</sup>;
- (5) Environmentally-Friendly: Electronic documents provide a “greener” and more environmentally friendly method for filing and service, not only by reducing the amount of paper used, but by eliminating the need to transport literally thousands of tons of paper each year to courts across the State and attorneys around the globe; and
- (6) Increased Security: NYSCEF contains a comprehensive technological infrastructure providing security for all e-filed documents “that is far greater than that which exists for documents in paper form.”<sup>5</sup> Documents uploaded to NYSCEF are encrypted, backed-up and preserved on multiple computer servers in separate locations in the State, ensuring

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<sup>2</sup> William Glaberson, *Amid Stacks of Paper, “E-Court” Is Finally in Session*, New York Times, July 7, 2011, section A20.

<sup>3</sup> Report of the Chief Administrative Judge, E-filing in the New York State Courts 3 (June 2011) citing Case File Xpress, *A Case Study: Time is Money: e-filing Saves Both*, at 6 (2010).

<sup>4</sup> See Report of the Chief Administrative Judge, E-filing in the New York State Courts 3 (June 2011); see also Jonathan Lippman, *E-filing Program Must be Retained; Our Experience Justifies Expansion*, NYLJ, May 1, 2001, at 23, col 3.

<sup>5</sup> Report of the Chief Administrative Judge, E-filing in the New York State Courts 8 (June 2011).

preservation of all documents in the event of a natural disaster or computer malfunction, and NYSCEF features protections against hackers and viruses, including advanced encryption, real-time system monitoring, and on-site server maintenance.<sup>6</sup>

Despite the clear benefits of NYSCEF, the road to implementation has been long (over 12 years) and there is far to go before a Statewide system is achieved. As discussed below, the Legislature has authorized e-filing on a piecemeal basis, county-by-county, and, in stark contrast to the implementation of the federal e-filing program, New York law does not give the Judiciary exclusive control of the process. Instead, the C.A.J. must obtain the approval of various constituencies who otherwise have no part in court structure and operations. This fragmented implementation, coupled with inclusion of non-judicial officers, has resulted in delays that were absent from the federal experience.

It is the Subcommittee's view that while the progress over the past 12 years has been, at times, slow, OCA's current e-filing system, NYSCEF, is well-suited to the needs of the State's Judiciary, practitioners, litigants and the general public. Therefore, the Subcommittee calls for the Statewide adoption of NYSCEF as soon as practicable, which the Subcommittee believes accords with the goals set in 2007 by the House of Delegates.

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<sup>6</sup> *Id.*

## II. HISTORY OF E-FILING IN NEW YORK STATE

There are two elements in the history of e-filing in New York State: (1) the legal and administrative authority authorizing e-filing; and (2) its technological creation and implementation. A proper understanding of New York's current system can be achieved only through an analysis of both.

### A. Legislation, Regulations and Administrative Orders

#### 1. The Pilot Program: L.1999, ch. 367

The New York Legislature authorized e-filing as a mere pilot program in 1999,<sup>7</sup> which it amended six times before making it a permanent fixture in 2009.<sup>8</sup> Originally known as the "Filing by Electronic Means," or FBEM, the program was scheduled to run for a three-year period beginning on July 1, 1999.<sup>9</sup> Under FBEM, as well as its eventual successor NYSCEF, litigants were able to file and to serve court documents simply by uploading them to the FBEM website.

The pilot program consisted of three key elements. First, it authorized the C.A.J. to establish a consensual e-filing program in commercial cases in the Commercial Division of the Supreme Court, Monroe and New York Counties and tax certiorari claims in the Supreme Court, Westchester County.<sup>10</sup> Commencement of these actions could now be performed upon electronic delivery of the requisite papers to the court clerk,<sup>11</sup> and, following physical service of

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<sup>7</sup> L. 1999 ch. 367.

<sup>8</sup> L. 2002, ch. 110; L. 2003, ch. 261; L. 2004, ch. 384; L. 2005, ch. 504; L. 2007, ch. 369; L. 2008, ch. 95.

<sup>9</sup> Judiciary L. § 212, as amended by L. 1999, ch 367.

<sup>10</sup> See Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367; CPLR § 2103(f)(6), as amended by L. 1999, ch. 367. This legislation additionally authorized facsimile commencement for commercial cases in the Commercial Division of the Supreme Courts of Monroe and New York County; as well as for tax certiorari cases and mental hygiene and conservatorship proceedings in Suffolk County, as well as claims against the State of New York in the Court of Claims. Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367.; Ct. Cl § 11(i), as amended by L. 1999, ch. 367.

<sup>11</sup> See CPLR § 304, as amended by L. 1999, ch. 367.

commencement papers, counsel could exchange interlocutory service electronically.<sup>12</sup> While FBEM offered numerous time and cost savings, “participation in this experiment [was] strictly voluntary” and “only to take place upon the written consent of the parties and of the judge assigned to the case.”<sup>13</sup> Thus, if the party initiating a lawsuit elected to use the e-filing system, the opponent could veto that decision by simply withholding consent.

Second, this legislation amended the CPLR and other statutes to expedite the process of e-filing. Most notably, the legislation amended the CPLR and Judiciary Law to allow payment of court fees by credit card.<sup>14</sup> The legislation also amended the CPLR to authorize the use of documents in electronic form,<sup>15</sup> and to clarify the definition and procedure surrounding electronic service.<sup>16</sup>

Third, the C.A.J. was required to issue a written report on the success of the FBEM pilot to the Governor, Legislature and Chief Judge by April 1, 2002—three months before the pilot’s sunset date of June 30, 2002.<sup>17</sup>

## 2. Expanding the Pilot Program

Beginning in 2002, the Legislature extended and expanded FBEM six times until the program lost its pilot status and became a permanent fixture in New York courts in 2009.

FBEM received its first one-year extension in 2002, pushing the sunset date to July 1, 2003.<sup>18</sup> This first amendment also expanded the coverage of the pilot program by allowing

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<sup>12</sup> See CPLR § 2103(7), as added by L. 1999, ch. 367.

<sup>13</sup> Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367.

<sup>14</sup> See CPLR § 8023 as added by L. 1999, ch. 367 and Jud. L. § 212(2) as amended by L. 1999, ch. 367.

<sup>15</sup> CPLR § 2101, as amended by L. 1999, ch. 367.

<sup>16</sup> CPLR § 2103, as amended by L. 1999, ch. 367.

<sup>17</sup> Judiciary L. § 212, as amended by L. 1999, ch 367.

<sup>18</sup> Judiciary L. § 212, as amended by L. 2002 ch. 110.

voluntary e-filing in commercial division cases in Supreme Court, Albany, Nassau, and Westchester Counties.<sup>19</sup>

In 2003, the Legislature extended FBEM for an additional two years until September 1, 2005,<sup>20</sup> because, as stated in the Sponsor's Memo, e-filing "requires further study and extending these programs will permit additional time to evaluate the performance and utility of these modern methods of exchanging information."<sup>21</sup>

FBEM was amended a third time in 2004, significantly expanding the counties and types of cases that were eligible for the e-filing. The law authorized e-filing in commercial division cases in the remaining counties in New York City (Bronx, Kings, Queens and Richmond), as well as in Supreme Court, Erie County. E-filing also was authorized for tax certiorari claims in Supreme Court, Bronx, Kings, Queens, and Richmond Counties, and a new Surrogate's Court e-filing pilot was started in Erie County. Finally, this amendment expanded e-filing to tort claims in all of the pilot jurisdictions, which by this time included Albany, Monroe, Westchester, New York, Bronx, Kings, Queens, Richmond, Nassau and Suffolk Counties.<sup>22</sup>

The pilot program was amended a fourth time in 2005, postponing the sunset until September 1, 2009, and authorizing e-filing in five additional counties: Niagara, Broome, Essex, Onondaga, and Sullivan.<sup>23</sup> The 2005 amendment also authorized the C.A.J. to implement e-filing for commercial, tax certiorari, and tort claims in all counties already authorized for the e-filing program.

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<sup>19</sup> See CPLR § 2103, as amended by L. 2002 ch. 110.

<sup>20</sup> L. 1999 ch. 367, as amended by L. 2003, ch. 261.

<sup>21</sup> Sponsor's Mem., Bill Jacket L. 2003, ch. 261.

<sup>22</sup> L. 1999 ch. 367, as amended by L. 2004, ch. 384.

<sup>23</sup> L. 1999 ch. 367, as amended by L. 2005, ch. 504.

The pilot, now known as the New York State E-filing program (“NYSEF”),<sup>24</sup> was amended a fifth time in 2007, authorizing e-filing for all commercial, tax certiorari and tort cases in Supreme Court, Livingston County. The Surrogate’s Court e-filing pilot was further expanded to include Chautauqua, Monroe, Queens and Suffolk Counties. Additionally, e-filing was expanded to the civil courts of New York City, but only for no-fault automobile cases which were brought by a health provider against an insurer for failure to comply with Insurance Department regulations.<sup>25</sup>

In 2008, the NYSEF pilot was amended for the sixth and final time, authorizing voluntary e-filing for all cases in Supreme Court, Erie County.<sup>26</sup>

By 2009, the pilot program had extended far beyond tax and commercial cases in Supreme Court, New York, Monroe and Westchester Counties to a wide range of actions in 18 counties, including Supreme and Surrogate’s Courts,<sup>27</sup> as well as the Court of Claims and New York City Civil Courts. Cumulatively, over 10,000 attorneys had registered for the pilot program, electronically filing almost 160,000 cases and over 350,000 documents.<sup>28</sup>

### 3. Entered into Law: L. 2009, ch. 416

With the passage of L. 2009, ch. 416, e-filing shed its pilot program label, was renamed the New York State Courts Electronic Filing System (“NYSCEF”),<sup>29</sup> and became a permanent fixture in New York courts. The 2009 amendment authorized the C.A.J. to implement consensual e-filing programs across the State in Supreme Court, Surrogate’s Court and the Court

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<sup>24</sup> Sponsor’s Mem., Bill Jacket L. 2007, ch. 369 (“formerly referred to as ‘Filing by Electronic Means’ or FBEM”; now being referred to as ‘NYS Efiling’ or ‘NYSEF’ . . .”).

<sup>25</sup> L. 1999 ch. 367, as amended by L. 2007, ch. 369. See also N.Y. Ins. L. § 5108(b) requiring prompt payment by insurers to health insurance providers in automobile no-fault cases.

<sup>26</sup> L. 1999 ch. 367, as amended by L. 2008, ch. 95. This made Erie and Broome county Supreme Courts the only two in New York to have authorization for e-filing in all Supreme Court cases.

<sup>27</sup> The counties of Albany, Bronx, Broome, Chautauqua, Erie, Essex, Kings, Livingston, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan, Westchester.

<sup>28</sup> Sponsor’s Mem., Bill Jacket L. 2009, ch. 416.

<sup>29</sup> See Sponsor’s Mem., Bill Jacket L. 2009, ch. 416.



of Claims, as well as New York City Civil Courts. More importantly, the 2009 legislation authorized e-filing on a mandatory basis for certain cases<sup>30</sup> over a three-year pilot period in Supreme Court for three counties: New York (breach of contract cases and a variety of commercial cases worth over \$100,000); Westchester (tort cases); and one county outside of New York City to be selected by the C.A.J.<sup>31</sup> The mandatory pilot program included an “opt-out” provision, exempting *pro se* litigants and attorneys who certify that they either do not possess, or lack the requisite knowledge of, the computer equipment necessary to e-file.<sup>32</sup> Lastly, the 2009 law required the C.A.J. to file a report evaluating the mandatory pilot with the Governor, Legislature, and Chief Judge by April 1, 2012, before it sunset on September 1, 2012.<sup>33</sup>

In 2010, the Legislature authorized mandatory e-filing for commercial division cases in Supreme Court, Westchester County,<sup>34</sup> and extended the mandatory pilot to include Supreme Court, Livingston, Monroe, Rockland and Tompkins Counties.<sup>35</sup> The 2010 legislation also amended the Judiciary Law to allow payment of court fees by credit card.<sup>36</sup>

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<sup>30</sup> Cases generally eligible for e-filing included fiduciary duty, business torts, transactions under the uniform commercial code, transactions involving commercial real property, shareholder derivative actions (without a monetary threshold) commercial class actions, transactions with commercial banks, internal affairs of business organizations, commercial insurance coverage, the dissolution of business organizations, and applications to stay or compel arbitration. However, cases prohibited from mandatory e-filing included actions to collect professional fees, actions seeking declaratory judgments to insurance coverage for personal injuries or property damage, residential real estate disputes, proceedings to enforce a judgment, first party insurance claims, and certain attorney malpractice claims. For the complete list see L. 2009, ch. 416.

<sup>31</sup> Excluding matrimonial actions, election law proceedings, article 78 proceedings and proceedings brought under the mental hygiene law. L. 2009, ch. 416.

<sup>32</sup> See L. 2009, ch. 416

<sup>33</sup> L. 2009, ch. 416.

<sup>34</sup> Notably, this legislation would signal the demise of the facsimile machine’s role in e-filing programs. The fax machine, for so long the silent endowment of e-filing legislation, was essentially put out to pasture by this amendment, which now limited fax transmissions to the filing of papers in the Court of Claims. L. 2010, ch. 528.

<sup>35</sup> Excluding matrimonial actions, election law proceedings, article 78 proceedings and proceedings brought under the mental hygiene law. L. 2010, ch. 528.

<sup>36</sup> See N.Y. Jud. L. § 212(2)(j) as amended by L. 2010, ch. 528. Note that the provision for payment of credit cards was originally located in the CPLR before being repealed and moved to its current location by L. 2005, ch. 457.

The 2010 legislation placed a number of new requirements on the C.A.J. before either consensual or mandatory e-filing could be implemented where authorized by law. Prior to implementing a consensual program, the C.A.J. must consult with the relevant clerk, and, for any mandatory program, the C.A.J. must obtain the clerk's actual consent. The law also required the C.A.J. to compile an annual report for the Governor, Legislature, and Chief Judge by the first of April, but only after consulting with affected county clerks, and allowing the clerks to submit their own comments for inclusion. Lastly, the law required the C.A.J. to establish an advisory committee to assist and consult on future implementations of e-filing, with at least one-half of its members to be designated by the New York State Association of County Clerks.<sup>37</sup>

The most recent e-filing legislation was signed into law in September 2011, authorizing further development of the mandatory program, and signaling the Legislature's acceptance of e-filing's inevitable spread to other areas, including criminal matters and Family Court. Mandatory e-filing was expanded to include tort, breach of contract and various commercial cases in all of New York City, and the \$100,000 minimum for mandatory e-filing was eliminated. Allegany, Essex, Onondaga, and Westchester Counties also became eligible for mandatory e-filing, subject to the approval of the respective county clerks.<sup>38</sup> Additionally, New York City civil courts became eligible for mandatory e-filing, but only for one type of case. Finally, the 2011 legislation authorized the C.A.J. to expand mandatory e-filing to all Surrogate's Courts—provided the affected bar associations are consulted before implementation. The statutory sunset for the mandatory pilot program was postponed until September 1, 2015.<sup>39</sup>

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<sup>37</sup> L. 2010, ch. 528.

<sup>38</sup> Excluding matrimonial actions and proceedings brought under the Election Law, Article 78 Proceedings, and the Mental Hygiene Law. L. 2011, ch. 543

<sup>39</sup> L. 2011, ch. 543.

The 2011 amendments placed additional reporting and collaborative requirements on the C.A.J., such as the inclusion of comments from State and local bar groups and organizations in annual reports to the Legislature and Governor.<sup>40</sup> The 2011 law also created an e-filing advisory committee composed of representatives from bar associations and organizations, as well as four advisory committees to assist and consult in the implementation of new e-filing programs in Surrogate's Court, New York City civil courts, criminal courts, and Family Court.<sup>41</sup> The criminal and Family Court committees were also to assist the C.A.J. in drafting the reports evaluating and recommending the implementation of e-filing, both of which were due to the Governor, Legislature, and Chief Judge by January 1, 2012.<sup>42</sup>

#### 4. Current Rules, Regulations and Administrative Orders

Following each legislative installment discussed above, the C.A.J. has promulgated Administrative Orders and Uniform Rules to implement consensual and mandatory e-filing programs in courts across the State. However, due, in part, to the recent legislative requirement that the C.A.J. obtain the consent of multiple advisory groups and various non-judicial officers, e-filing has been implemented in only a fraction of the courts in New York where authorized by law.

Article 22 of the New York Codes, Rules and Regulations contains the Uniform Rules regarding e-filing. E-filing in the Supreme Court is governed by Uniform Rule 202.5-b for the consensual e-filing program, and Uniform Rule 202.5-bb for mandatory e-filing program.<sup>43</sup> E-filing in the Court of Claims is governed by Uniform Rules 206.5 and 206.5aa, and e-filing in Surrogate's Court and the New York City civil courts are governed by Uniform Rules 207.4-a

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<sup>40</sup> L. 2011, ch. 543.

<sup>41</sup> Juvenile Delinquency Proceedings under Article 3 and Abuse or Neglect Proceedings under Article 10.

<sup>42</sup> L. 2011, ch. 543.

<sup>43</sup> The mandatory program is also complimented by Uniform Rule 202.5(d), which forbids County Clerks from accepting legal papers that are covered by the mandatory e-filing program.

and 208.4-a, respectively. Each of these rules provides practitioners with general definitions of e-filing, as well as various considerations when commencing an action by e-filing, including: creation of a NYSCEF user account;<sup>44</sup> obtaining consent to e-file;<sup>45</sup> emergency exceptions to e-filing;<sup>46</sup> submitting exhibits and discovery materials;<sup>47</sup> signatures on e-filed documents;<sup>48</sup> service;<sup>49</sup> and adding parties to e-filed actions.<sup>50</sup>

The Uniform Rules also provide protections for “secure information” contained in electronic documents, including “individually identifiable health information, a social security number, a credit card, bank account number, an individual’s date of birth or home address, a minor child’s name, or trade secrets.” Anyone using NYSCEF is required to certify whether or not an electronic document contains “secure information” before it is uploaded, and the computer system automatically restricts access to the document to the actual parties to the action, filing agents, the county clerk and the court.<sup>51</sup> These protections are in addition to those already applicable to paper documents filed with the court clerk.

Further, the Rules include an “opt-out” provision in connection with the mandatory e-filing program for *pro se* litigants and attorneys who certify in good faith that they either do not possess, or lack the requisite knowledge of, the computer equipment needed to e-file. Any party seeking to use this provision is required to file a notice with the court certifying that they are qualified to opt-out.<sup>52</sup>

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<sup>44</sup> 22 NYCRR § 202.5 -b(c)(2).

<sup>45</sup> 22 NYCRR § 202.5-b(b)(2)(i).

<sup>46</sup> 22 NYCRR §§ 202.5-b(d)(1)(ii), 202.5-bb(b)(2), 202.5-bb(c)(3).

<sup>47</sup> 22 NYCRR §§ 202.5-b(d)(6), 202.5-b(j).

<sup>48</sup> 22 NYCRR §§ 202.5-b(e); 22 NYCRR § 207.4-a(f); 22 NYCRR § 208.4-a(e)

<sup>49</sup> 22 NYCRR §§ 202.5-b(f), 202.5-b(b)(3), 202.5-b(c), 208.4-a(d), 207.4-a(g).

<sup>50</sup> 22 NYCRR §§ 202.5-b(g), 202.5-bb(c)(2).

<sup>51</sup> 22 NYCRR § 202.5-b(d)(3)(iii). Note, however, that the document would still be available for public inspection at the office of the County Clerk, unless it is sealed by the court. *Id.*

<sup>52</sup> 22 NYCRR § 202.5-bb(e).

Presently, the C.A.J. has implemented mandatory e-filing for various actions across the State. In Supreme Court, the C.A.J. has implemented mandatory e-filing for: commercial, contract and tort actions in New York County; commercial actions in Kings County; medical malpractice actions in Bronx County; and all newly commenced matters in Rockland and Westchester Counties, except for proceedings under CPLR Article 78, Mental Hygiene Law, Election Law and matrimonial actions.<sup>53</sup> Additionally, mandatory e-filing has been implemented for probate and administrative proceedings in Surrogate's Court in Chautauqua, Erie and Monroe Counties.<sup>54</sup>

Likewise, the C.A.J. has implemented consensual e-filing for commercial, tort, and tax certiorari actions in Supreme Court, Albany, Niagara, Onondaga, and Suffolk Counties; commercial, tort, tax certiorari, and workers' compensation matters in Supreme Court, Bronx, Erie, Kings, Queens, Richmond, and Westchester Counties; commercial, tort, tax certiorari, CPLR article 75 and 78 proceedings, guardianship, matrimonial, and mental hygiene matters for Supreme Court, Broome County; commercial, tort, and workers' compensation matters in Supreme Court, Nassau County; commercial, tort, tax certiorari, workers' compensation and Department of Health matters in Supreme Court, New York County; probate and other administrative proceedings in the Surrogate's Court of Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne and Yates Counties; designated claims in the Albany District<sup>55</sup> of the Court of Claims; and no fault automobile cases brought by a health

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<sup>53</sup> Chief Administrative Judge of the Courts, Administrative Order (5/18/11).

<sup>54</sup> Please note that this report includes the projected jurisdictional additions to the mandatory e-filing pilot program for 2012 as identified by C.A.J. Prudenti. See Memorandum from Chief Administrative Judge regarding Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>55</sup> Which includes Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady, Ulster, Warren, and Washington Counties.

provider against an insurer for failure to comply with Insurance Department regulations in New York City civil courts.<sup>56</sup>

#### 5. Local Rules Affecting E-filing

As the C.A.J. implements e-filing in courts across the State, it will be important for practitioners to be cognizant of applicable local rules. For now, the small number of local rules addressing e-filing generally defer to the current NYSCEF framework, typically by reiterating NYSCEF rules or pointing practitioners to NYSCEF's webpage.<sup>57</sup>

It must be noted, however, that certain courts require that e-filed motions be accompanied by a "working copy" or courtesy hard copy" in paper form.<sup>58</sup> For example, in Supreme Court, Queens County, Part 14 requires a paper copy of motion papers to be submitted "prior to the submission of the motion to the court for determination,"<sup>59</sup> while Part 31 requires a physical copy of motion papers "on the return date of the motion/application."<sup>60</sup> This is also the case in various trial parts of the Commercial Division of Supreme Court, New York County.<sup>61</sup> Erie County, on the other hand, currently does not require working copies, unless required by the individual justice.<sup>62</sup> The lesson, as usual, is that practitioners must be aware of applicable local rules, especially as e-filing becomes more prevalent throughout the State.

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<sup>56</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12). Please note that the implementation of e-filing in the various counties of New York is subject to change with legislation and administrative orders by C.A.J. Prudenti. For the most up to date state of the law, please check: NYSCEF Rules and Legislation, New York State Unified Court System, <https://iapps.courts.state.ny.us/nyscef/RulesAndLegislation>.

<sup>57</sup> See New York County Courthouse Procedures, Procedure II; New York County Justices Rules Rule 14; Erie County E-filing Doc. 1; Queens County Supreme Civil Term Part 5, 10.

<sup>58</sup> A "working copy" is defined as "a hard copy that is an exact copy of a document that had been electronically filed in accordance with [the rules.]" See 22 NYCRR 202.5-b(a)(2)(vii).

<sup>59</sup> Queens County Supreme Civil Term Part 14 Rules.

<sup>60</sup> Queens County Supreme Civil Term Part 31 Rules.

<sup>61</sup> Commercial Division of New York County Part 39 & 56 Rules.

<sup>62</sup> Erie County E-filing Doc. 1.

## **B. Technology and Implementation**

If the Legislature and C.A.J. are responsible for the legal authority behind New York's e-filing program, it is OCA's Division of Technology ("DOT") that actually created it—currently in the form of NYSCEF. Much to the DOT's credit, this work was done wholly in-house, relying mainly on open-source software and ongoing technological advances resulting in savings of hundreds of thousands of dollars to taxpayers over the past decade. The technology behind NYSCEF creates not only the website where the user interfaces with the system (the "front end"), but also a complex and secure infrastructure for receiving and storing electronic filings, processing payments, effecting service, and transmitting data to courts, clerks and other end users across the State (the "back end").

For New York's e-filing system to ensure maximum efficiency and ease of access for practitioners filing in any State court, then, as the Task Force concluded, it "should use a uniform method of access and filing throughout the state. All courts should be accessible through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties." The Subcommittee, as did the House of Delegates, wholly supports this recommendation for two reasons: (1) the use of different e-filing websites by individual clerks across the State in lieu of NYSCEF's standard interface would increase the opportunity for human error as well as the number of computer systems subject to malfunction; and (2) the use of different e-filing websites will require additional time and expense to develop extra layers of internet architecture and web services before e-filed documents and information can be transmitted and interpreted by all end users, including trial and appellate courts across the State.

The Subcommittee has evaluated the form and functionality of OCA's current e-filing system, and concludes that NYSCEF is sufficient to provide both a uniform user experience in

accord with the report and recommendations of the Task Force, as well as a secure technological infrastructure able to maintain and serve court documents. The Subcommittee, therefore, recommends that NYSBA support OCA's decision to use NYSCEF as the single, uniform e-filing system for all courts in New York State.

#### 1. User Accounts and Electronic Signatures

Before an individual can use NYSCEF either to access or to e-file documents, he or she must create an individual account—which can be done quickly and efficiently through NYSCEF's website.<sup>63</sup> The user, once logged into the system, is then able to access his or her active cases, upload documents, or search the entire database. In addition, a NYSCEF user account provides the vehicle for certifying a user's identity, and the act of logging into NYSCEF constitutes a signature for purposes of Part 130 of the Rules of the Chief Administrator.<sup>64</sup> Thus, if the user is filing a brief, notice or even affirmation bearing his or her name, the user can electronically sign the document with a typewritten “/s/” instead of printing, physically signing, and scanning documents—wholly eliminating the need to create a paper version. Documents bearing another person's name, however, must bear that person's signature (physical or electronic) before uploading to the system.<sup>65</sup>

#### 2. NYSCEF User Interface

NYSCEF also provides a uniform method of access and filing that complies with the Task Force's recommendation that e-filing occur “through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties.” This interface has been updated to provide easier access as well as to comply with the Americans with Disabilities Act.

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<sup>63</sup> New York State Unified Court System, *New York State Court Electronic Filing – Create Account*, at <https://iapps.courts.state.ny.us/nyscef/CreateAccount> (last visited Jan. 5, 2012).

<sup>64</sup> 22 NYCRR § 202.5-b(e).

<sup>65</sup> *Id.*



For example, all information has been re-coded into static pages to ensure compatibility with text readers for the visually impaired. The DOT also developed NYSCEF to maximize compatibility with OCA's electronic case management system, which the DOT also created.

Some have argued that alternative systems may be more "user friendly" when compared with NYSCEF, and that a clerk, not OCA, should determine what final system will be used in the clerk's office. As discussed above, however, the use of a single interface would maximize efficiency by eliminating the need for users to learn different e-filing websites, as well as the corresponding opportunities for human error. Thus, while there may be room for improvements to NYSCEF, any potential benefits associated with allowing non-standardized interfaces across 62 counties are substantially outweighed by the potential burdens, particularly where NYSBA and local bar associations and organizations are free to work alongside OCA to improve NYSCEF's user interface and technical functionality.

Further, NYSCEF's standard interface corresponds to its standardized method for gathering and transmitting data to multiple end users throughout the State. When a document is electronically filed, the relevant e-filing system gathers data according to the website's particular user interface, and then transmits the data in the system's own language to a variety of end users, including OCA, court staff, case management systems, court clerks, and, when the system effects and records service of process via email, parties to the litigation. Any change in a system's user interface—as well as any differences among competing systems used by individual clerks—such as website layout, number of data fields, and coding language, would result in variations in how data is collected and transmitted to the end user. The use of NYSCEF as New York's uniform e-filing system would provide an efficient and streamlined method for ensuring compatibility of all data regarding documents e-filed in any court across the State—foreclosing the need to spend

time and money constructing additional architecture and web services to facilitate communication between competing e-filing systems. This is of particular importance if New York's e-filing system is to effect and record service of process, and to communicate with case management systems used in different courts.

### 3. Creation of Streamlined and Secure System Architecture

The e-filing process captures a variety of sensitive data through the website and documents uploaded to NYSCEF concerning users and litigants, including names, addresses, social security numbers, medical records and credit card information. Security, therefore, is of vital importance to any e-filing system.

In response to potential security risks, the DOT has implemented a number of safeguards to protect against unlawful access to secure information, as well as loss of information due to computer malfunction:

**User login information:** all user and password information is both generated and stored in a single central location by the DOT. When passwords are generated, they are one way encrypted, which cannot then be unencrypted or reverse-engineered. NYSCEF also limits the number of login attempts, and automatically logs a user out after inactivity.

**Credit card information:** NYSCEF does not store credit card information for users, to protect against potential hackers, and all such information is encrypted before transmission via NYSCEF's secure website.

**Virus protection for e-filed documents:** NYSCEF safeguards the integrity of uploaded files through the use of the PDF/A file format and advanced virus scanning tools tailored to those files. The PDF/A format creates wholly self-contained documents, eliminating imbedded links and multimedia in a non-PDF/A format that may be compromised. By limiting all data to one format, virus scanning is streamlined and optimized.

**Encryption of data regarding e-filed documents while in transit:** NYSCEF segregates the files containing images of electronic documents from the data connecting those documents to a particular case during transmission. The image is secured according to the SHA-1 protocol designed by the National Security Agency, using a 160-bit secure hash algorithm that cannot be reverse-engineered. The data containing this

hash is digitally signed using authenticated security certificates. This ensures the security of the document while in transit from a user to NYSCEF.

Maintaining the integrity of e-filed documents: NYSCEF's network is secure from access by individuals both outside and within the DOT through multiple sub-systems, use of static IP addresses, and network segregation by internal firewalls. In short, NYSCEF sends the different pieces of information relevant to any e-filing to separate locations behind separate firewalls within its own network.

Maintaining system integrity: the DOT uses a cluster of multiple redundant servers spread across two separate physical locations in New York. This redundant architecture maximizes NYSCEF's availability in case of systemic failures. Thus, the failure of one or more servers at either location would not cause an interruption of service as the alternative site servers would continue the operation of NYSCEF. The DOT's System Architecture Group further maintains the optimization of all software servers and monitors work-flow to ensure efficiency within the system.

It is the Subcommittee's opinion that the NYSCEF system, as created and administered by the DOT, has sufficient security measures to protect sensitive information concerning users and litigants alike. And, even assuming that private vendors can achieve the same security offered by the DOT, any expansion of electronic records management beyond the DOT would serve only to expand the number of vulnerability points and potential security threats.

#### 4. Technical Support and Training across the State

OCA has appointed a Statewide Coordinator for E-Filing, Mr. Jeffrey Carucci, to oversee implementation and training across the State, and has created an E-Filing Resource Center<sup>66</sup> with publications and training materials to assist users in learning and navigating NYSCEF. The DOT also staffs dedicated support technicians available 24 hours a day, 7 days a week to answer any questions that may arise during the e-filing process.<sup>67</sup>

The E-Filing Resource Center's website provides a central location where users can learn nearly everything they need to know about e-filing, complete with user manuals, FAQs,

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<sup>66</sup> New York State Unified Court System, *Statewide E-Filing Resource Center*, at <http://www.nycourts.gov/supctmanh/EFRC.htm> (last visited Jan. 5, 2012).

<sup>67</sup> New York State Unified Court System, *Contact Us*, at <https://iapps-train.courts.state.ny.us/nyscef/ContactUs> (last visited Jan. 5, 2012).

demonstration videos, PowerPoint presentations, and the opportunity to register for free hands-on training classes.<sup>68</sup> OCA also publishes an e-filing newsletter, with contributions from the Chief Judge, the C.A.J., and other e-filing participants across the State.<sup>69</sup> And, of particular importance, OCA has developed NYSCEF training classes: each class provides 2.0 Continuing Legal Education (CLE) credit hours (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management), and can be taught by OCA or any other local accredited organization. Many counties have successfully conducted these training sessions, with some, like Westchester County, holding classes every week.

Apart from OCA's training materials and resources, local courts have developed their own resources and training materials, with the 9th Judicial District as an exemplar.<sup>70</sup> Through the 9th District's website, users can find relevant announcements and protocols addressing local timetables and preferences for courtesy copies, etc.<sup>71</sup>

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<sup>68</sup>New York State Unified Court System, *NYSCEF Training Resources*, at <https://iapps.courts.state.ny.us/nyscef/TrainingResources> (last visited Jan. 5, 2012).

<sup>69</sup>New York State Unified Court System, *NYSCEF News*, at <http://www.nycourts.gov/supctmanh/NN%20links%20page.htm> (last visited Jan. 5, 2012).

<sup>70</sup>New York State Unified Court System, 9<sup>th</sup> Judicial District, *E-Filing Information*, at <http://www.nycourts.gov/courts/9jd/E-file.shtml> (last visited Jan. 5, 2012).

<sup>71</sup>*Joint Protocols for New York State Courts E-Filing (NYSCEF): Cases Filed in Westchester County*, available at <http://www.nycourts.gov/courts/9jd/efile/WestchesterCountyJointProtocols.pdf> (last modified Jan. 13, 2011).

### III. AVAILABILITY OF E-FILING IN NEW YORK COURTS

Despite the numerous laws and administrative orders allowing e-filing, it has been implemented only in a small percentage of courts, leaving New York's program far behind its federal counterpart. Today, the federal Case Management/Electronic Case Files system ("CM/ECF") is used for both civil and criminal cases in all District Courts, all Courts of Appeal, all Bankruptcy Courts, the Court of Federal Claims, the Court of International Trade, and the Judicial Panel on Multidistrict Litigation. Over 500,000 attorneys use the CM/ECF program, resulting in approximately 6,000,000 documents being e-filed each *month*.<sup>72</sup> In comparison, by 2009—the tenth anniversary of e-filing in New York State—only 10,000 attorneys had registered for NYSCEF, and roughly 350,000 documents had been electronically filed in fewer than 160,000 cases.<sup>73</sup>

It is the Subcommittee's view that for e-filing to achieve its greatest potential, it must be used in all courts across the State. Such expansion would increase exponentially the benefits enjoyed at the trial-level courts, by, for example, allowing appellate courts simply to log-into NYSCEF and view the electronic documents already filed. No more records on appeal, no more certifications by counsel, no more printing multiple copies of each bound volume—just universal access to one e-filing system.

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<sup>72</sup> *Annual Report of the Director of the Administrative Office of the United States Courts* (2010), at [http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport\\_2010/Technology.aspx](http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport_2010/Technology.aspx) (last visited Jan. 5, 2012).

<sup>73</sup> Sponsor's Mem., Bill Jacket L. 2009, ch. 416.

## A. Implementation where Authorized by Statute and Administrative Order

### 1. Supreme Court

#### a. Consensual:

Authorized	62 Counties <sup>74</sup>
Implemented	13 Counties Albany, Bronx, Broome, Erie, Kings, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, and Westchester <sup>75</sup>

#### b. Mandatory:

Authorized	13 Counties Commercial and Tort cases in Bronx, Kings, New York, Queens, and Richmond; and Certain Cases <sup>76</sup> in Allegany, Essex, Livingston, Monroe, Onondaga, Rockland, Tompkins, and Westchester <sup>77</sup>
Implemented	5 Counties New York (commercial, contract, and tort actions); Kings (commercial actions); Bronx (medical malpractice actions); Westchester (all newly commenced matters [except CPLR Article 78 proceedings, Mental Hygiene Law Proceedings, matrimonial actions, and Election Law proceedings]); and Rockland (all newly commenced matters [except CPLR Article 78 proceedings, Mental Hygiene Law Proceedings, matrimonial actions, and Election Law proceedings]) <sup>78</sup>

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<sup>74</sup> L. 2009, ch. 416.

<sup>75</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>76</sup> These include one or more types of cases designated by the Chief Administrative Judge except for CPLR Article 78, Mental Health Law Article 81, matrimonial, and Election Law proceedings.

<sup>77</sup> L. 2011, ch. 543.; see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author).

<sup>78</sup> Chief Administrative Judge of the Courts, Administrative Order (5/18/11); see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

## 2. Courts in New York City

### a. Consensual:

Authorized	Civil Courts <sup>79</sup>
Implemented	Only no-fault automobile actions brought by a health provider against an insurer for failure to comply with Insurance Department regulations <sup>80</sup>

### b. Mandatory:

Authorized	Civil Courts <sup>81</sup>
Implemented	Only no-fault automobile actions brought by a health provider against an insurer for failure to comply with Insurance Department regulations <sup>82</sup>

## 3. Surrogate's Court

### a. Consensual:

Authorized	62 Counties <sup>83</sup>
Implemented	11 Counties Certain matters in Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne and Yates <sup>84</sup>

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<sup>79</sup> L. 2009, ch. 416.

<sup>80</sup> See Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>81</sup> L. 2011, ch. 543.

<sup>82</sup> See L. 2011, ch. 543; see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>83</sup> L. 2009, ch. 416.

<sup>84</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

b. Mandatory:

Authorized	62 Counties (local bar association must first be consulted) <sup>85</sup>
Implemented	3 Counties Probate and administration proceedings in Chautauqua, Erie, and Monroe Counties <sup>86</sup>

4. Family Court

a. Consensual: None

b. Mandatory: None

5. Criminal Courts

a. Consensual: None

b. Mandatory: None

6. Appellate Division

c. Consensual: Fourth Judicial Department by CD-ROM<sup>87</sup>

d. Mandatory: None

7. Court of Appeals

e. Consensual: By CD-ROM<sup>88</sup>

f. Mandatory: None

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<sup>85</sup> L. 2011, ch. 543.

<sup>86</sup> See Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12)..

<sup>87</sup> 22 NYCRR § 1000.3(h).

<sup>88</sup> 22 NYCRR § 500.2.



8. Court of Claims

a. Consensual:

Authorized	Statewide <sup>89</sup>
Implemented	Albany District <sup>90</sup>

b. Mandatory: None

9. County, City, Town and Village Courts

g. Consensual: None

h. Mandatory: None

**B. Role of County Clerks in the Uniform Implementation of NYSCEF**

County clerks, as the constitutional officers bound to protect the integrity of and access to public documents, including records for Supreme Court and county courts,<sup>91</sup> will play an integral part in the implementation of uniform e-filing in New York State. The clerk's role, however, is two-fold: he or she serves both as an elected local official, and as a constitutionally-designated officer of the Judiciary.<sup>92</sup> As a result of the county clerk's "dual roles," there appear to be dual interests vying for the clerk's attention: (1) the authority of the Chief Administrative Judge to manage the form of electronically filed documents, as well as the manner in which court records

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<sup>89</sup> L. 2009, ch. 416.

<sup>90</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>91</sup> New York Constitution, article VI, §6(e) and 22 NYCRR § 80.1(a).

<sup>92</sup> This distinction has been recognized by the Court of Appeals for over a century (*Olmstead v Meahl*, 219 NY 270, 275 [1916]; *Whitmore v Mayor of New York City*, 67 NY 21, 22 [1876]) and by the Attorney General (2005 Ops Atty Gen No. 2005-8 [informal opinion] ["When acting as a clerk of the court, the county clerk is considered a state officer, but in her other general duties the county clerk is considered a local officer"]), has been utilized by courts to determine a clerk's liability as an agent for the State Judiciary or a locally elected county officer (*Nat'l Westminster Bank, USA v State of New York*, 76 NY2d 507, 509 [1990]; *Ochsenbein v Shapley*, 85 NY 214 [1881]; *Ashland Equities Co. v Clerk of New York County*, 110 AD2d 60 [1st Dept 1985]; *Brown v State of New York*, 130 Misc 2d 1073 [Ct Cl 1986] [holding Monroe County Clerk acted "as a local elected county officer in filing a Federal tax lien"]), and is a basic component of New York's Freedom of Information Law (*Newsday, Inc. v Empire State Development Corp.*, 98 NY2d 359 [2002]; Comm on Open Govt FOIL-AO-14225 [2003] ["As you may be aware, county clerks perform a variety of functions, some of which involve county records that are subject to the Freedom of Information Law, and others, including those of your interest, which may be held as clerk of a court"]).

are filed and maintained;<sup>93</sup> and (2) the clerk's independent responsibility to manage the affairs of his or her office as it relates to retention and maintenance of local records.

If the end game for New York State is the implementation of a uniform e-filing system, then the current framework advances this goal by accounting for the county clerk's dual roles and striking a delicate balance between these potentially competing interests. Following the 2009 law first authorizing mandatory e-filing, the C.A.J. is required to consult with the affected county clerks prior to implementing any voluntary program, and, in the case of mandatory e-filing, to obtain the clerk's consent. The reasoning behind this new requirement was succinctly stated in the 2010-legislation's bill jacket: "This change will ensure that counties are well-prepared to meet the demands generated by mandatory e-filing." Under current law, therefore, the non-judicial role of the county clerk is protected by prohibiting the Judiciary from forcing clerks to adopt a new e-filing system such as NYSCEF unless and until the clerk's office is ready to do so. As a result, OCA has absorbed the costs associated with implementing NYSCEF by developing web services to allow communication with any clerk's pre-existing e-records system, providing the technical support and training for the clerks' offices, and reimbursing the clerks for fees associated with accepting credit card payments for court filings.

At the same time, the current law ensures uniformity and efficiency for attorneys, litigants and other users across the State by preserving control over the form, manner and methodology of e-filing with the Chief Judge, C.A.J. and District Administrative Judges. Under

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<sup>93</sup> The Constitution grants all supervisory powers over the Unified Court System to the Chief Judge, and creates the position of C.A.J. to "on behalf of the chief judge...supervise the administration and operation of the unified court system (NY Const, art VI, § 28[b]; see also 22 NYCRR § 80.1[a]; *Corkum v Bartlett*, 46 NY2d 424, 428-29 [1979] ["the Chief Judge's administrative powers are complete, and the Chief Administrator may employ them fully when and while and to the extent that they have been delegated to him"]; *Bloom v Crosson*, 183 AD2d 341 [3d Dept 1992] *aff'd* 82 NY2d 768; *Bartlet v Evans*, 110 AD2d 612, 614 [2d Dept 1985]; *Durante v Evans*, 94 AD2d 141, 143 [3d Dept 1983] *aff'd* 62 NY2d 719 [1984]). Judiciary Law § 211(1)(e), (f), in turn, states that the administrative powers of the Chief Judge include "the form, content, maintenance and disposition of court records" and "methods and systems of the unified court system."

the 1962 and 1978 amendments to the New York Constitution, the State's Judiciary was reorganized into the present Unified Court System,<sup>94</sup> which incorporated New York's existing single Statewide Supreme Court<sup>95</sup> "[un]bounded by county or other lines which subdivide the state."<sup>96</sup> The Supreme Court, while undivided across the State, has seats in each county, and the Constitution designates the 62 county clerks as the clerks of the entire Supreme Court. As a practical matter, it would be contrary to the basic structure of the Supreme Court, as a single Statewide institution, to allow 62 peer court clerks to adopt their own policies and procedures regarding Statewide e-filing that are contrary to each other or to the Chief Judge. Likewise, inconsistencies in the look and operation of any e-filing system would be contrary to the interests of members of the bar: uniformity is vital for simple and efficient use by attorneys and litigants in New York State.

The Subcommittee believes that the current framework advances the ultimate goal of universal and uniform e-filing while properly balancing the legal and practical workings of the clerk's office—as has been demonstrated with tremendous success in Westchester County—by allowing court administrators to phase-in mandatory e-filing in an orderly fashion that accounts for the particular needs of the clerks' offices, and still retain control of “the form, content, maintenance and disposition of court records” and “methods and systems of the unified court system,”<sup>97</sup> including the authority to adopt NYSCEF as the single, uniform e-filing system for New York State.

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<sup>94</sup> See Art. VI, § 1(a) (“There shall be a unified court system for the state”).

<sup>95</sup> See Art. VI., § 6(d); see also *Nat'l Westminster Bank. USA v State of New York*, 76 NY2d 507, 509 (1990) (“Under the Unified Court System they are but separate parts of a single State-wide Supreme Court”).

<sup>96</sup> *Olmstead v Meahl*, 219 NY 270, 275 (1916).

<sup>97</sup> Judiciary Law § 211 (1)(e), (f).

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Continued Approval of the Task Force's Recommendations**

The Subcommittee reaffirms the Task Force's Report and Recommendations, paying particular attention to the following:

- Recommendation 2: Any e-filing system should use a uniform method of access and filing throughout the state. All courts should be accessible through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties.
- Recommendation 5: E-filing should be mandatory; The Unified Court System should provide scanning and e-filing at every courthouse facility.
- Recommendation 6: Every attorney registered to practice law within the State of New York should be required to file and maintain an e-mail address to accept service of any electronic filing.
- Recommendation 7: *Pro se* litigants would be neither required nor permitted to participate in e-filing unless certain concerns are addressed.

As explained above, the Subcommittee agrees that for e-filing to work, it must be universal, uniform, and mandatory. Without belaboring the point, e-filing will save time and money, so the universal adoption of e-filing would maximize the benefits and savings for our State. Similarly, uniformity across the State will ensure efficient implementation by OCA, protect the integrity of the single Statewide Supreme Court, and simplify use for attorneys practicing in different courts across the State. Finally, e-filing's full potential cannot be achieved unless it is mandated (with provisions allowing waivers for *pro se* litigants and practitioners who lack the technical capacity to participate). While some may complain that they lack the technical expertise to e-file, this is the clear minority, and there are ample resources for training should a user seek it.

The Subcommittee also notes that several of the Task Force's recommendations have been implemented since its report was issued, including: (1) funding for hardware, software and

training of county clerk personnel is provided by OCA; (2) documents filed under an attorney's user account are deemed signed and certified; (3) there are no additional fees associated with e-filing; (4) acceptance of payment by electronic means; and (5) the NYSCEF system provides service and access for the public, in addition to being a repository of documents.

### **B. Changes in Legislation**

To achieve a universal, uniform and mandatory e-filing system, the Subcommittee believes that e-filing legislation should be amended to:

- (1) Authorize mandatory e-filing in all courts across the State, with the exception of opt-outs for *pro se* litigants and for those attorneys who lack the technical capacity to participate;
- (2) Allow court administrators, including the Chief Judge, Chief Administrative Judge ("C.A.J.") and District Administrative Judges, to adopt rules regulating the form, manner and methodology of e-filing;
- (3) Streamline the implementation process by minimizing or eliminating the need for input from non-judicial officers; and
- (4) Direct court administrators to phase-in mandatory e-filing in the various counties in an orderly fashion that accounts for the particular needs of the county clerks' offices.

The Subcommittee takes no position on the need for "pilot programs" and "committees" to advise the Chief Judge with respect to expanding the current system, other than to suggest that the Legislature should not infringe on the Judiciary's power to manage its own affairs. While the Subcommittee recognizes that such safeguards may create a system that is more efficient and user-friendly, it is equally likely that these additional steps may postpone the actual implementation of e-filing throughout the State. To the extent e-filing should be implemented in

an incremental fashion, whether for financial, logistical or any other reasons, the Judiciary should be allowed to make that decision.

### **C. Further Expansion by Administrative Order**

The Subcommittee believes that the Chief Judge, Chief Administrative Judge and District Administrative Judges, as the executive officers of the State's Judiciary, should have control over the form, manner and methodology of e-filing where authorized by statute. As explained above, allowing non-judicial officers to "veto" the Chief Judge would violate the integrity of the Unified Court System and constitutional separation of powers.

That being said, the Subcommittee agrees that the constitutional separation of powers authorizes county clerks to postpone implementation until their offices have the resources needed for the transition to e-filing. However, the Subcommittee would strongly oppose any attempt by a non-judicial officer to undermine the authority of the Chief Judge and Chief Administrative Judge with respect to the choice of e-filing systems.

Lastly, the Subcommittee understands that pilot programs may be necessary to develop and tailor the NYSCEF system to handle the needs of specific courts, and that there may be financial or logistical reasons for staggering or postponing implementation; however, we believe that decisions regarding pilot programs and timetables for implementation should be left to the Chief Judge and Chief Administrative Judge, and not micro-managed by the Legislature.

### **D. Expansion of Technology**

The Subcommittee commends OCA's DOT for its efforts designing and refining NYSCEF, and finds the current system to be a great improvement from its predecessor pilot program, FBEM. There, of course, is room for improvement, including greater opportunities for user feedback during the e-filing process. The Subcommittee believes the current NYSCEF

system is suitable for Statewide use, and recommends the swift but efficient adoption of this system in all courts, with the understanding that OCA will continue to revise and improve the system with input and comments from users.

The Subcommittee recognizes that the substantial budget cuts by the Legislature will impact how quickly OCA can implement e-filing, including the DOT's ability to manage technical support and other issues. These budget cuts and the resulting financial constraints will prevent e-filing whether or not it is handled through OCA or outside vendors. However, the Subcommittee expects that DOT has the greatest incentive to reduce costs, as opposed to outside vendors, which DOT has been doing over the past decade through the use of open source software, certain technological advances, and other methods.

#### **E. Input from NYSBA and Local Bar Associations and Organizations**

The Subcommittee suggests that NYSBA and local bar associations and organizations, if they are to ensure that attorneys and their clients enjoy the cost and time savings associated with e-filing, should work alongside OCA to ensure that NYSCEF is as efficient and secure as possible. These bar associations and organizations are well-positioned to relay information, including suggestions and critiques, from individuals using NYSCEF to OCA, and the Subcommittee recommends that such organizations take affirmative steps to facilitate such constructive feedback.

#### **F. Educating Members of the Bar**

Although e-filing is growing, it is clear that many attorneys are unaware of the full benefit of Statewide use, and, in some cases, of the very existence of NYSCEF. The Subcommittee believes that NYSBA and local bar associations and organizations can provide tremendous assistance in moving this project forward by educating their members, and by urging

the Legislature to provide the necessary legal authority and finances to implement e-filing as soon as practicable. Once New York State's attorneys realize the benefits of e-filing, they will be a strong force in calling for its immediate expansion and funding.

NYSBA and local bar associations and organizations, in addition to placing pressure on the Legislature, are the ideal vehicles for conducting training sessions for NYSCEF users, including attorneys, legal assistants, and the general public. Because OCA has developed the necessary resources, the cost to run such programs would be minimal, and bar associations are in a much better position to interface with the tens of thousands of users across the State. Lastly, NYSBA and local bar associations and organizations should employ available channels of communication to supply their members with updates on New York's e-filing program, including user requirements, implementation dates, and local rules.



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## **SUBCOMMITTEE ON ELECTRONIC FILING\***

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\* The Subcommittee thanks Mr. Paulino and Daniel A. Gross, Esq., Fellow at the Government Law Center of Albany Law School, for their assistance in drafting this report.

**From:** JP <payne@540production.com>

**Sent:** Saturday, September 10, 2022 7:13 PM

**To:** eFiling Comments <efilingcomments@nycourts.gov>

**Subject:** Re: Proposed implementation of new mandatory e-filing programs public comment

Hello,

As a pro se litigant who lives out of state, currently involved in a New York City Civil Court action, it would be great if online e-filing were available for the New York Civil Court. Because right now, the only e-filing available for the NYC Civil court is for Landlord and Tenant and No Fault matters only.

Having to mail pleadings to the court is a great hindrance and places an undue, unfair burden for litigants. Because not only do they have to rely on the mail, which is slow and not always certain, but then they are impeded by time due to the fact that the clerks do not get to the mailed in pleadings right away. And then of course there is the time delay because the clerk mails the document back. To give you a sense of how that works, I filed a claim in March 2022 and I recently received a stamped court pleading dated April 30, 2022. I received this April document in late August 2022.

The year is 2022 and it truly boggles the mind that New York City court functions like this. It truly does. Please update your court system, because it would be wonderful if mailing in pleadings (or of course hiring expensive outside services to file for me in NYC) were not the only options at hand.

Living in hope that one day the New York City Civil court will allow e-filing for all, and not just landlord and tenant and no fault matters only,

Juliana Payne

**From:** BOB GARRASI <bob.garrasi@gmail.com>  
**Sent:** Tuesday, October 4, 2022 4:37 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** USERNAME & PASSWORD SUGGESTIONS...

1. For Pro Se litigants, allow us to use the same username & password across all our cases. What happens with multiple usernames and passwords is that the browser stores them under one nyscef account. Each time we have to use a new username and password for a new case, it knocks the prior username & password in the browser for nyscef.
2. Allow showing of the password via toggle on, toggle off.

**From:** Marjorie Masters <marjorie.masters731@gmail.com>

**Sent:** Thursday, November 10, 2022 8:11 PM

**To:** eFiling Comments <efilingcomments@nycourts.gov>

**Subject:** E-Filing is great if you have access to the necessary technology (which I did/do)

I recently used E-Filing when my husband passed away without a will.

I approached two law offices for help; they both advised me that because it was considered a small estate, it would not be wise for me to spend money on them assisting me and that I should look into contacting the Niagara County Surrogate's Court directly or use E-Filing.

The website(s) were very informative and semi-easy to use. I filed successfully (I made one error that the court was kind enough to correct on my behalf). Because I had access to scanning, email and a great internet connection at home, I had a great experience from a personal point of view.

However, I work for a public school system. My understanding is that a lot of this E-Filing through the court system started when COVID began.

As I'm sure you are aware, educating students during that time exposed the "digital divide" within New York State.

In closing, I am all for E-Filing. I just want to be sure that every citizen of New York State can have access to this.

Thank you for your time.

**From:** Durga Bhurtel <deb@attorneybhurtel.com>  
**Sent:** Monday, November 14, 2022 2:17 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** In support of E-Filing Amendment of CPLR

Jeffery Carucci,  
Director of OCA Division of E-Filing,

Mr. Carucci:

E-filing has been helping reducing cost for the public especially does not have to go court and file it. Further Pro-Se litigation also should have option to file by using electronic filing ( ECF). Court can provide specific employee to just E-filing for pro se litigant as along as they can use email and they are able to use computer.

Court also should consider to start pilot program of Trail by u sing remote technology. Court also should allow a witness testimony via remote technology which would save substantially time and money of the litigant whose witness has to travel from various location.

I strongly support that E-filing should be expanded.

Thank you very much.

Sincerely

Dev. Bhurtel Esq.  
**Bhurtel Law Firm PLLC**  
Mailing Address:  
353 Lexington Avenue  
Suite # 904  
New York New York 10016  
Phone# 212-461-4628  
URL: attorneybhurtel.com

**From:** Mevorach, Lisa <LMevorach@DC37.NET>  
**Sent:** Tuesday, November 15, 2022 3:39 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Expansion of NYSCEF and efilng

Dear Mr. Carucci,

I have been practicing in Supreme for many years and have enjoyed the ease of efilng. I think it should be expanded into every practice area in Supreme Court and am glad that it is finally available in Surrogates Court. We should also consider expanding efilng to the Civil Court. As a practitioner in Civil Court, with many low income clients, I find that they are missing out on the efficacy of the filings, and the ability to pull up efiled documents. This makes it much more difficult to represent and defend my clients, and is discriminatory. Low-income clients and those struggling with consumer debt deserve the same ease of access to their pleadings as we have enjoyed in NYS Supreme Court matters for years now. Furthermore, the EDDS system employed by the Civil Courts rejects many simple filings, which filings like Answers, are easily electronically filed in Supreme Court. As a matter of fact, when you try to electronically file something in the NYC Civil court, the drop down menu does not even permit the filing of something as simple as an Answer. This lack of access to efilng prejudices our clients. This means that either the pro se defendant or his or her lawyer has to mail in pleadings, and the filing of same sometimes takes months, due to the lack of staff.

I would hope that the NYSCEF system is extended to litigants in NYC Civil Court, and that the practice of forcing Defendants to take off from work to walk pleadings in, or mailing them in to await hand filing ceases. Our consumer debtors deserve the access to justice that Supreme Court litigants have, with all its attendant ease and efficiency.

No one should be denied the benefits of the efilng system, just because they are in a lower level court. Defending against these consumer debts, or landlord tenant matters, should be on a par with all other litigation in the higher courts. It does a great disservice to this population when they cannot "see" their pleadings online, or efile them.

Thank you for all your efforts in your expansion of the NYSCEF system.

Lisa Mevorach, Esq.

Lisa Mevorach, Esq.  
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[lmevorach@dc37.net](mailto:lmevorach@dc37.net)

**From:** cmessina smlawny.com <cmessina@smlawny.com>  
**Sent:** Tuesday, November 15, 2022 12:16 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Cc:** Dan Schuller <Schuller@PBElderLaw.com>  
**Subject:** Efiling comments

I am an attorney in the Western New York area who regularly uses NYSCEF.  
I am a member of the Erie County Bar Association Matrimonial Committee and the Practice and Procedure in Family Court Committee.

There needs to be a way to remove an attorney from a case that has been completed.

For instance, in matrimonial actions, there are often post-judgment motions or orders to show cause to enforce a judgment, or revisit child support, or other issues.  
Under the current system, the attorney remains as attorney of record in NYSCEF and cannot be removed absent an order of the Court.

When a post-judgment motion is filed electronically, with the attorney still listed, it is theoretically served, though the attorney no longer represents that client.

I have run into this many times in the past couple years.

An attorney must be able to remove him/herself as attorney of record at the close of the case.

Also, there needs to be an option to file a document as "other" as many documents do not qualify as any set forth in the drop-down menus.

If EDDS is to be converted to NYSCEF, the categories of applicable actions and proceedings needs to be expanded in the EDDS drop-down menu. We are past the restrictions of COVID, yet it still only provides for the "emergent" filings that were imposed during COVID.

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F: (716) 648-1449





To: eFiling Comments <efilingcomments@nycourts.gov>  
Subject: Comments of E-Filing

Dear Mr. Carucci:

I am an early adopter and long-time user of the NYSCEF system. I have seen the system progress and improve. I am a strong proponent of the system. Yet here is a suggestion on limiting its use in certain cases.

The rule is quite clear in New York State: court records are open to the public. Historically, effort was required to go to a courthouse to obtain the record. This effort served as a gate keeper of sorts, in effect limiting access to those who were interested for one reason or another. Open public dockets are extraordinarily efficient, but require no essentially effort to access the records. Not all records should be readily available via a simple internet search. Yet the criteria for sealing a file has been strictly construed by courts interpreting 22 NYCRR 216, leaving many sensitive documents and videos readily available to anyone with a computer. This "either/or" approach does not serve litigants well. There is a middle ground that would comply with our existing statutes while still giving the litigants full access to the files. It would be beneficial to have a means to partially revert back to pre-e-filing days and grant attorneys discretion to file certain items as a hard copy, while simultaneously reflecting that filing in the electronic docket. The hard copy items would be served "the old fashioned way" (CPLR 2103) and delivered to court via US mail or hand delivery. That copy would become the official court file for that one docketed item. The remainder of the e-filing docket is the official court record for those docketed items. The public would still have full access to this part of the court file, provided they travel to the courthouse. This method would be the exception and probably used in a very small minority of cases. Attorneys could be required to sign a statement that they are using this method because there is a good faith reason to do so.

As one example, my office currently represents two infants for psychiatric injuries. For various reasons, including avoiding publicity, the parties are settling pre-suit. Nevertheless, we are mandated by CPLR 1208 to submit psychiatric records for judicial approval of the settlements. The case does not meet the requirements for sealing, but it is a disincentive, to say the least, for the infants' Mother to require her to allow the records to be publicly posted for all to see for all time. Giving counsel the discretion to file hard copies instead of electronically would help minimize the exposure to those who legitimately need access to those records.

John Rand

*John S. Rand*

Clark, Gagliardi and Miller, P.C.

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White Plains, NY 10601

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**From:** Alexander "Sandy" Budd <abudd@rjglawny.com>  
**Sent:** Wednesday, November 30, 2022 11:32 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** NYSCEF Comments

Good Morning:

First, I find NYSCEF to be very useful with an overall excellent user experience.

One addition I would like to see is the ability for a non-party, specifically a court appointed referee in a foreclosure action, to record participation in a case. As it stands, we are having to paper serve an appointed referee with certain documents which the referee could receive via NYSCEF if the referee were able to participate in some fashion in the e-filing process.

Thank you!



**ROWLANDS, LEBROU & GRIESMER, PLLC**  
ATTORNEYS AT LAW

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**W:** [www.rjglawny.com](http://www.rjglawny.com)

**From:** Mallory Livingston <[mlivingston@vlpcny.org](mailto:mlivingston@vlpcny.org)>  
**Sent:** Wednesday, November 30, 2022 3:25 PM  
**To:** eFiling Comments <[efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)>  
**Subject:** E-Filing

Our program offers free representation to LGBT persons facing discrimination in health care, housing, employment and public accommodations. Our service area is every county north of the Bronx with a focus on a 13 county area in Central New York. Our most popular service is performing free name and gender marker changes for transgender and non-binary persons. We are currently handling approximately 200 to 250 name changes per year.

The e-filing system as it is currently implemented does not take advantage, to its fullest extent, of the efficiency offered by the technology being used. The following are examples of situations where e-filing fails to be as efficient as it easily could be.

1. Now that pandemic rules are over, judges have begun to once again ask for working copies, even in uncomplicated cases such as name changes which should not require working copies. There is not much point in e-filing documents that then have to be printed and mailed anyway.
2. Numerous judges insist on being provided with original birth certificates in e-filed name change applications rather than accepting an e-filed scan of the original document being submitted as genuine by the attorney of record. This slows the process down, sometimes by weeks and often results in the original birth certificate, often a family heirloom, not being returned.
3. There are still some counties, such as Allegany County, that do not accept e-filing of even routine matters such as name change applications.
4. Numerous judges still refuse to seal the records of name changes despite the recent changes to the name change rules implemented as part of the Gender Recognition which require the records to be sealed at the request of the petitioner. Our clients typically choose to endure the risk to their personal safety posed by open records of their name change rather than wait for the outcome of a lengthy and costly appeal. Given the limited resources of our program and others across the state and given the overwhelming need for our services, it is next to impossible for us to have to pursue an appeal in these cases.

Thank you for the opportunity to address the efficiency of the e-filing system.

Very Truly Yours,

Mallory Livingston, Esq.  
(she, her hers)  
LGBT\* Rights Attorney  
Volunteer Lawyers Project of CNY, Inc.  
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**From:** Thomas Leith <tleith@hlalaw.org>  
**Sent:** Thursday, December 1, 2022 11:44 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** NYSCEF Comments - Legal Assistant Access to E-filed Documents

To help NYSCEF reach its potential in terms of improving ease and efficiency, non-attorney agents of the firm or organization should be allowed access to the e-filed documents. Speaking for a legal service provider receiving multiples of filings per day, the extra steps involved for the legal assistants to notify the attorney to access the document, for the attorney to then access it, download it, and send it back to the legal assistant adds considerable time. It also increases the chance for errors and oversights. Given the legitimate access those non-attorney representatives already have to those materials, it's not clear what purpose the restrictions are serving.

Thank you,

Thomas M. Leith  
Managing Attorney, Criminal & Appeals Programs  
Hiscock Legal Aid Society  
351 S. Warren Street  
Syracuse, NY 13202  
(315) 422-8191 | [tleith@hlalaw.org](mailto:tleith@hlalaw.org)

**From:** patwjohnson@me.com <patwjohnson@me.com>  
**Sent:** Thursday, December 1, 2022 2:59 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** E-filing bill

Please send the updated bill memo if any. As for comments, I haven't had to e-file yet and would try to opt out and keep it discretionary until I am comfortable with e-filing. I am on the Schenectady panel for Attorney for the Child. I use an apple computer and there are sometimes translation problems with personal computers. If OCA provided support like it did for the Teams meeting process with OCA staff available to practice with that would be great. As an aside I am grateful for the OCA staff who supported me when I had problems with getting to know and use Teams. OCA provided a process to make appointments for Teams meetings with OCA staff before my first teams meeting. I used this process again when I recently developed problems. Staff were very gracious, effective and informative. Thank you, Pat

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**From:** CARL BIRMAN <carldbirmann@gmail.com>  
**Sent:** Thursday, December 1, 2022 3:26 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** E-Filing Via NYCEF

Dear Sir/Madam:

I write to express my frustration in regards to the present state of affairs in regards to NYSCEF, , viewed in the context of the NYS Court System's other cloud-based databasing at the App. Div., and the Court-PASS and Companion Portals at the Court of Appeals. It seems, as a lay user (an attorney without a specialized data management certificate or training), that NYS Courts is wasting money on databasing platforms that, if not duplicative, are certainly wasteful in that they are not uniform. It is a vexing and common situation in the government sector and certainly not unusual. NYSCEF has its issues, but what bugs me is that following litigation at the trial level, one must master additional databasing procedures and rules at the App. Div. - and that these procedures and rules are not uniform from the Second to the Third Department - and that, to make things more vexing still, the COA uses yet another system entirely with its own differing procedures.

This simply makes no sense from a financial standpoint and should be looked into with a view towards streamlining government investments in this databasing architecture.

Thank you for contacting the Birman Law Office in regard to this important legal matter.

Very truly yours,

**CARL D. BIRMAN, ESQ.**

**THE BIRMAN LAW OFFICE D/B/A LAW OFFICE OF CARL D. BIRMAN, PLLC, P.O. Box 13592, Albany, NY 12212 W: 518-952-0516 M: 914-216-1766 \*\*\* LITIGATION INFO MAY BE ATTACHED. DO NOT FORWARD OR DISREGARD. BILLING ADDRESS 7 CORONET CT., SCHENECTADY, NY 12309. ALL LITIGATION VIA EMAIL IS DEEMED ACCEPTED UNLESS YOU OBJECT IN WRITING. ATTORNEY COMMUNICATIONS ARE STRICTLY CONFIDENTIAL AND INTENDED FOR DESIGNATED RECIPIENT ONLY. FEDERAL/STATE/LOCAL PRIVACY PROTECTIONS ARE IN EFFECT; BE GUIDED ACCORDINGLY. \*\***

**From:** Dylan Cerbini <dylancerbinilaw@gmail.com>  
**Sent:** Friday, December 2, 2022 2:12 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Issue with papers returned for correction

To whom it may concern:

First I would like to say that I love using NYSCEF and I think it's a great program in general. One thing I would change. When you upload documents normally, you are able to view them in a preview screen so that you can double check everything before you file them. This does not happen, however, when you upload documents in response to a return for correction. You click the return for correction button, and then whatever pdf you upload will get directly filed without being able to review it in a preview screen. It would be very helpful to be able to review documents posted in this way one last time before it becomes final. It's slightly too easy to upload things in response to a return for a correction notice as it is right now, and I have made some annoying mistakes this way that have had to be returned for correction an additional time.

Best regards,

Dylan Cerbini, Esq.  
(914)-810-3781

**From:** Natalie Dock <nataliedock@yahoo.com>  
**Sent:** Monday, December 5, 2022 2:38 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** EFILING

The system is arcane, and basic UX is very poor.

As example, if you can't log in and need to re-set your PW, the PW reset email does not seem to actually reset the PW, requiring multiple attempts.

Attempts to reach any tech support go nowhere.

And the clerks do not answer most phone calls, and many refuse to communicate basic information in a polite manner, rushing people off the phone, and often speaking in jumbled acronyms which may be known to them, but not to others.



**From:** joel@nysdivorce.com <joel@nysdivorce.com>  
**Sent:** Tuesday, December 13, 2022 8:37 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Request for Public Comment on eFiling rules

I am the author of the Law and the Family New York, 2022-2023 Edition, Law and the Family New York Forms 2022 Edition (5 volumes) (both Thomson Reuters) and the New York Matrimonial Trial Handbook (Bookbaby).

In preparing my annual update to those works I noticed that there are more than a hundred protocols online on the NYCEFS website if one can find them, dealing with e-filing such as NY New York County E-Filing Doc. 2. Doc. 2. Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (Revised August 15, 2019).

There are also several additional protocols on the e-courts website which deal with procedures and have nothing to do with eFiling, such as NY New York County Courthouse Procedures Procedure I. Commencement of Cases

The websites do not indicate the legal effect of these protocols or the source or authority for the promulgation of these protocols. Although there is a link on the NYCEFS website (<https://iapps.courts.state.ny.us/nyscef/HomePage>) for the surrogates court protocols (<https://iappscontent.courts.state.ny.us/NYSCEF/live/protocols.htm>) there does not appear to be a single place on the NYCEFS website where all of these protocols can be found.

Unfortunately, I had to, as they say, “stumble”, upon the protocols while doing my daily search to find updates to the court rules and electronic filing rules which are a mystery to many lawyers. Their existence is not well known by lawyers.

I found the protocols by searching for the word “protocol” on the e-courts website at <https://www.nycourts.gov/google/sitewide.shtml#gsc.tab=0> which brings up about 10 pages of unorganized protocols.

I am aware of the fact that if I have to file documents electronically there is a link on the right side of the County Clerks home page indicating the existence of protocols for that county. However, that link is only available if I have to efile documents in a specific county. There is no way to search for these links without being a user for a case in that county.

Although the 61 Supreme Court may have protocols ( New York County appears to have 8 separate procedural protocols in addition to its eFiling protocol ) which may be located on the specific court’s webpage I am sure that most lawyers who are not internet literate do not know they exist or do not see them when navigating the web site unless they look for them. I am sure most lawyers do not even know to look for them.

It would be helpful if the NYSCEF website has a link to the Supreme Court e-filing protocols organized by court and county just as it has a link to the individual Surrogate's Courts' protocols, and if the other protocols dealing with procedure be listed prominently on the e-courts website.

Joel R. Brandes  
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**Joel R. Brandes** is the author of [Law and the Family New York, 2022-2023 Edition](#) , the author of [Law and the Family New York Forms 2022 Edition \(5 volumes\) \(both Thomson Reuters\)](#) and the [New York Matrimonial Trial Handbook \(Bookbaby\)](#). His "Law and the Family" column is a regular feature in the New York Law Journal.

**Joel R. Brandes**, concentrates his practice in divorce, equitable distribution, custody and family law **appeals**. He also works as counsel to attorneys with all levels of experience assisting them with their litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

**From:** Richard Shin <rwshin@yahoo.com>  
**Sent:** Thursday, December 15, 2022 11:33 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** user comments on e-filing

Good Morning. I saw the request for public comments today. Fortunately, the time to submit a comment has not expired. I think you would receive more comments if you e-mailed everyone who e-filed during the last year.

1. Overall, the system is easy to use.
2. While doing multiple no-fault summons/complaint filings, I noticed that the system does not allow the user to open up and check the document that has been attached for filing. This can lead to user errors. Allowing the user to open up and check on the attached document before entering payment information will help reduce unnecessary errors.
3. I noticed that the system sometimes gives an "error" notice. This happened several times while uploading trial notices. The system prompts the user to re-submit the document. If the document is re-submitted, however, the document is processed twice and the user's credit card is billed twice. So it turns out that the "error" notice was a false alarm. But the user is charged twice if he follows the system's advice.
4. When I email the clerk's office about errors (Civil Court, Queens filings), no one ever responds. I do not know if the emails are going into a "spam" folder, but this situation should be rectified as soon as possible.

Very truly yours,

Richard W. Shin, Esq.