

## SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the 5<sup>th</sup> Judicial District, the Surrogate of Oswego County, and the Chief Clerk of the Oswego County Surrogate Court hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as "NYSCEF") implemented in the Oswego County Surrogate Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules 207.4a and 207.4aa and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website ([www.nycourts.gov/efile](http://www.nycourts.gov/efile)). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

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

**Mandatory E-Filing:** E-filing is mandatory in all Administrations, Probates, and related matters there to, including Small Estate Proceedings that are commenced in this court. Except in limited circumstances, all such proceedings must be commenced by filing with the Court electronically through NYSCEF and all subsequent documents in such proceedings must be e-filed.

Guardianship and Adoption proceedings are currently exempt from the e-filing program.

**Hybrid Proceedings:** This Court allows a previously hard filed estate to proceed by e-filing, thereby creating a hybrid record. Previously hard filed estate records may not be uploaded to the NYSCEF system, unless determined necessary. Once an estate is e-filed or becomes an e-filed matter (hybrid), then all subsequent document filings and proceedings should be further e-filed.

**Documents Must Be E-Filed:** Unless otherwise provided in the e-filing rules, this protocol, or where a special exemption is granted (e.g., Oversized Exhibits in Section 4, below) all documents to be filed with the court in a NYSCEF case must be filed with the NYSCEF system.

### 2) **Non-Participation in E-Filing:**

- **Exemptions from Mandatory E-Filing:** An attorney who certifies in good faith that he or she lacks the equipment or knowledge needed to e-file and has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of e-filing in each mandatory proceeding by filing an opt out form<sup>1</sup> with the Clerk. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing.

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<sup>1</sup> All forms referred to in the Protocol are available on the Forms page of the NYSCEF website at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>

(Uniform Rule § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing but may choose to participate. (CPLR § 2111)

Unrepresented litigants in a consensual proceeding are not required to decline consent or to attach the Notice of Hard Copy Submission – E-Filed Proceeding to any of their hard copy filings.

### 3) **E-Filing in Surrogate’s Court:**

- **Essential Step Prior to E-Filing:** Prior to entering any information into an initial filing, you should run an inquiry on the decedent’s last name, using the first initial, to determine if a file has already been established. Due to the numbering system in Surrogate’s Court, an inquiry based on the file number alone may not produce accurate results. In addition, you must contact the Court to ascertain whether there may be another will for the decedent on file with the Court (e.g., filed for safekeeping).

- **Initial Entering of Case Information:** Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select the same county as is shown on your documents.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will and on the petition
- If the name on the death certificate is different, that becomes an “AKA”
- If the name on the will does not match the signature, that becomes an “AKA”
- No punctuation or spaces should be used when entering the name or “AKA”

4) **E-Filing Documents:** The filer should ensure that all documents are properly scanned before e-filing (ie. page order, forward facing, clear image, etc.). The e-filed documents are the official record copy and will be required to be corrected if found to be unacceptable to the Court.

- **Death Certificates:** The certified copy of the original death certificate should be e-filed (both sides). No hard copy submission of the death certificate is required if both the front and back are captured in your e-filed document. The Court will accept the image as evidence of death pursuant to 22NYCRR 207.15.

- **Wills:** The ORIGINAL will is required to be scanned by the filer, but DO NOT UNSTAPLE. The court may request a staple affidavit if the will was received unstapled. Scan the original will and file the original paper will within two (2) business days of e-filing.

- **Citations:** Proposed citations should be submitted through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF. If your proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt

of the notification, print the citation and serve it, in accordance with the SCPA. Service of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site as these documents will not be provided by the court with your citation)

- Decrees and Orders: Proposed Orders and Decrees (when necessary) should be submitted through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF which will notify all consenting parties via email that the decree or order has been posted. However, the notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]). Users who have requested a certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy by regular mail.

- Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed.

- Certificates and Letters: All Court documents requiring a court seal, including Letters and Certificates of Appointment, will be sent out in hard copy via regular mail, as well as any e-filed requests for exemplifications and/or certified copies, once payment is received.

- General Correspondence: All general correspondence, adjournment requests and conference requests should be electronically filed through NYSCEF.

- Signatures: Documents requiring a signature shall be considered to be signed by the person under the circumstances outlined in Uniform Rule 207.4-a(f). When e-filing a document bearing an actual signature, the E-filer is responsible for maintain the original, executed document pursuant to Uniform Rule 207.4-a(f)(2).

- Oversized Exhibits: If an exhibit or attachment is unsuited for electronic filing (e.g., a large map or a videotape), it shall be submitted to the court and served on the other parties in hard copy. Attach a Notice of Hard Copy Submission – E-Filed Proceeding. In addition, a Notice of Hard Copy Exhibit must be completed and electronically filed. (See Forms page on the NYSCEF site.)

- Working Copies: Working copies are exact hard copy duplicates of the e-filed documents. No working copies are required by this Court, unless specifically requested. The filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail notification) to the back of all working copies submitted to the court. They do not become part of the official record and will be destroyed by chambers at the disposition of the case.

- Notice of Hard-Copy Submission: Where, within the e-filing rules, an attorney or an unrepresented litigant who is participating in e-filing submits a document in hard copy, the document must bear a Notice of Hard Copy Submission – E-Filed Proceeding (see

NYSCEF Forms page). Attorneys who are exempt from e-filing are required to attach this form to all hard copy filings, while unrepresented litigants who are not participating in e-filing are not so required.

- 5) **Payment:** This court accepts payment of fees required by the SCPA by credit card (Visa, Mastercard or AMEX) via NYSCEF or by payments mailed/delivered to the court. There are no fees to use the NYSCEF System. Fees are calculated in accordance with SCPA §2402 based on the documents filed with NYSCEF and the representation of the filing user regarding the size of the estate. There will be a 2.99% credit card transaction fee on all electronic payments made through NYSCEF or in person. Review by the Court may result in a modification of the fees initially anticipated or charged in connection with this transaction. In the event of any such modification, the Court will contact the filing user by e-mail with the proper amount and request an additional fee, if applicable. The court will not allow the filing of additional documents by the filer if the filer owes an outstanding fee in that proceeding.

If choosing to pay by credit card at time of filing on NYSCEF website, enter credit card information directly on website. You must insert the credit card information with each filing; your credit card will be charged at the time of filing. Make sure credit limit is large enough to cover anticipated filings.

If choosing to pay at the court, be aware that documents are not “filed” until payment is received. The court cannot process the filing until payment is received in full and will delete the filing if payment is not made within a reasonable amount of time after e-filing.

**6) Sealed Documents, Sealed Cases; Documents Presented for In Camera Review:**

- **Applying for a Sealing Order:** A party who wishes to file a document under seal must file a hard copy of the document, along with the NYSCEF “Notice of Hard Copy Submission” with the Surrogate’s Court. Unless the document is being filed ex parte, the filing party shall serve all parties with hard copies of the document, along with the “Notice of Hard Copy Submission” form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court grants the sealing request, the Surrogate Clerk will then file the documents in the appropriate manner, as directed. If the application is denied, an order will be issued that the documents will be entered in the public record and uploaded to NYSCEF.

- **In Camera Documents:** Documents submitted to the Court for in camera review should be delivered to the Court in a sealed envelope conspicuously marked “FOR IN CAMERA REVIEW BY THE COURT” with a Notice of Hard Copy Submission form attached. (See Forms page on the NYSCEF web site.)

- 7) **Notifications:** If it is determined that there is an issue with an e-filing, the filer will be notified by court staff either by phone or through the service email provided by the filer. Filers are welcome to call the court directly for questions at 315-207-7566 or contact the

court via email at [Oswego-Surrogate-Court@nycourts.gov](mailto:Oswego-Surrogate-Court@nycourts.gov). Please note the court cannot give legal advice. Additionally, the E-Filing Resource Center can be reached at 646-386-3033 or [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov) for any questions regarding issues with using the NYSCEF system.

Return of Requested Documents: To ensure timely return of documents you have requested from Surrogate's Court, the court requests self-addressed, stamped envelopes.

## 8) **Local Rules, Part 1950. OSWEGO COUNTY**

### §1950.1 Retainer Statements:

Attorneys shall include a copy of a (signed) retainer agreement with the initial filing of any court papers. Said agreement should state, inter alia, when and by whom the attorney was retained, the terms of the retainer and a brief statement as to the services to be performed.

### § 1905.2 Filing of an Affidavit Regarding Wills and/or Codicils:

In all probate proceedings where the purported will and/or codicil of the deceased nominates an attorney as fiduciary or co-fiduciary, there shall be annexed to the probate petition an affidavit of the testator setting forth the following:

1. that the testator was advised that the nominated attorney may be entitled to a legal fee as well as to the commissions authorized by statute for the fiduciary;
2. that where an attorney is nominated to serve as co-fiduciary, that the testator was told of the fact that multiple commissions may be due and payable out of the estate funds; and
3. what the testator's reasons for nominating an attorney to serve as fiduciary or co-fiduciary were.

Failure to submit an affidavit of this nature may result in the denial of letters to an attorney. This rule shall be effective for all wills and codicils executed on or after June 1, 1990.

### § 1950.3 Filing of an Affidavit of Assets with the Petition for Probate or Administration:

Attorneys shall file an affidavit of property with the initial filing of a petition for probate or of a petition for administration. Said affidavit should state the personal, real and jointly owned property of the decedent insofar as the attorney and/or proposed fiduciary may be able to provide. Thereafter, a full disclosure of assets shall be furnished in accordance with the provisions of section 207.20 of the Uniform Rules for Surrogate's Court.