

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

## I. Introduction:

The previously consensual e-filing program in Erie County Supreme Court for certain civil matters was made mandatory as of October 1, 2013. (See Administrative Order 222/13 as modified by Administrative Order 194/15). All applicable Legislation, Rules and Administrative Order can be found at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) at the “Rules and Legislation” link.

These Joint Protocols are applicable to those matters previously filed under the consensual e-filing program and those matters now required to be e-filed under the mandatory program.

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

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

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

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

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

**D. Unrepresented Litigants:** A party to an action who is not represented by counsel is exempt from e-filing in both consensual and mandatory programs; however, such unrepresented litigant may choose to participate in e-filing and commence an action or respond to an action filed against him or her in NYSCEF. An unrepresented litigant who wishes to participate in e-filing may register using the "Create an Account" or "Unrepresented Litigants" links on the NYSCEF home page at [www.nycourts.gov/efile](http://www.nycourts.gov/efile). If an unrepresented litigant chooses NOT to participate in e-filing, he or she must file pleadings in hard copy at the Erie County Clerk's Office and shall serve and be served in hard copy by any other parties involved in the action. Documents presented by unrepresented litigants will be uploaded to NYSCEF by the County Clerk. However, participation of an unrepresented litigant will not be presumed absent consent, which is demonstrated by creation of an account and either use of the "Consent/Represent action or filing to an existing case for the first time.

For an explanation of your options as an unrepresented litigant, please contact the 8<sup>th</sup> Judicial District Help Center at (716) 845-1816 or go to the "Unrepresented Litigants" link on the NYSCEF home page at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

**E. Cases Eligible for E-Filing:** Case types currently eligible and accepted for e-filing are listed at the NYSCEF website.

Note that some actions or special proceedings, (i.e., name changes) which are otherwise subject to mandatory e-filing, if commenced by unrepresented litigants will NOT be maintained in the NYSCEF system; individual cases may be found either at NYSCEF or in the Erie County Clerk's online records system.

**F. No Fee Authorization Letter:** Where a "No Fee Authorization Letter" is referenced, it is intended to be a written request on the letterhead of the attorney or filer that an action or particular document type: will be accepted with no fee required and include the basis for the exemption.

**G. Lost or Compromised Login Credentials:** All NYSCEF users shall immediately contact the NYSCE Resource Center if they have reason to believe that their identification or password may have been compromised and may request a new user identification or password.

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

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

Cases that are converted from paper to e-filing shall retain the original index number.

### **III. Filing of Papers**

**A. Commencing an Action in NYSCEF:** To commence an action, go to the NYSCEF home page at [www.nycourts.gov/efile](http://www.nycourts.gov/efile), choose the link for Supreme Court, log in, choose from the "E-File" menu the option: "Start a New Case" and select the Supreme Court in which you wish to commence your action. Thereafter, follow the system prompts.

Please note that the case type chosen may limit the NYSCEF Document Types available.

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

**B. Response to Electronic Filing:** In order to receive notification of any filings made in a case filed electronically, counsel must use the “Consent/Represent” action on the NYSCEF site to indicate representation of a party or, if an unrepresented litigant, his or her participation in electronic filing through NYSCEF and contact information.

For cases commenced in the consensual program, the procedure for obtaining consent for electronic filing is set forth in Uniform Rule §202.5-b(b)(2). A party which commenced a case electronically has consented to e-filing. For parties responding to an e-filed case, consent shall be obtained by stipulation or by electronically registering consent. Any party not consenting to e-filing must indicate his/her/its non-consent in writing. Please note that filing papers in hard copy, along with the *Notice of Hard Copy Submission – E-filed Case* form, is not sufficient to register non-consent. By logging in at your earliest convenience to register your consent, you will be assured of promptly receiving all notifications of documents electronically filed to the case.

**C. Responsibilities of Parties NOT Participating in E-Filing:** A nonparticipating party is responsible for filing all paper documents with the County Clerk or the Court. Papers filed manually must be presented unbound. Any nonparticipating party must also serve the documents on the opposition in paper format and file an Affidavit of Service with the County Clerk and/or Court.

**D. Converting a Case to Electronic Filing:** Cases originally commenced in hard-copy format but later converted to NYSCEF status by delivery of an original *Stipulation and Consent to E-file* form signed by all parties (with limited exceptions) to the Office of the Erie County Clerk (and a copy to the Part Clerk if assigned to an IAS Justice) will bear the Index Number originally assigned (i.e., 001234/2012). Converted cases will be the only Erie County cases without “800-899” as the first three digits of the index number in the NYSCEF system. The County Clerk will upload the County Clerk's docket and any initiating documents (i.e., Summons, Complaint, Petition) as well as the signed *Stipulation and Consent to E-file* form into NYSCEF. The attorneys or parties shall be responsible for uploading any **pending** motions and proposed Orders relevant to those motions. When filing pending motions and supporting documents, the filer

should choose "Fee Previously Paid" and include the receipt number of the original filing where required in the NYSCEF system to avoid paying fees for any previously filed documents.

**D. Paper Documents Not Accepted / Rejection of Hard Copy Filings:** In accordance with Uniform Rule §202.5-b(d), the County Clerk shall refuse to accept for filing, hard copy papers filed to an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules or this Protocol and the papers bear a completed *Notice of Hard Copy Submission - E-filed Case* form.

Documents presented in hard copy by unrepresented litigants will be uploaded to NYSCEF by the County Clerk; however participation of an unrepresented litigant will not be presumed absent registration of the litigant with the NYSCEF system (by User Identification Name and Password) and use of the consent/represent action.

Equipment for use by filers is available at the Chief Clerk's Office, 25 Delaware Avenue, Buffalo, New York. Documents may be electronically filed so long as the party has a User Identification Name and Password. Neither Chief Clerk's nor County Clerk's staff is available for filing documents for attorneys.

**E. Payment of Fees:** Payment for fee-bearing NYSCEF documents must be made online via credit or debit card (American Express, MasterCard or Visa) at the time of submission.

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

**G. Confidential Personal Information:** An attorney or unrepresented litigant filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing Social Security Numbers. It is the sole responsibility of counsel or unrepresented litigant filing to be aware of and to comply with existing laws requiring non-disclosure of personal information contained in any document e-filed in NYSCEF.

**H. Exhibits:** In the NYSCEF system, each exhibit must be uploaded as a separate .pdf file. After uploading a primary document, please choose the document type "Exhibit" and enter the appropriate number or letter and a brief description of the exhibit; each exhibit should bear a separate cover sheet

clearly marked as “Exhibit A,” “Exhibit B,” etc. “Exhibit A” or “Exhibit B” is unacceptable as a brief description of the exhibit.

Exhibits, where referenced in a signed Order as attached or affixed shall be uploaded with the signed Order as one .pdf document.

**I. Affidavit/Affirmation of Service:** In the NYSCEF system, each Affidavit of Service must be uploaded as a separate .pdf file. After uploading the Affidavit, please choose the document type: “*Affirmation/Affidavit of Service*” and enter the name of the party served as Additional Document Information.

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

**K. Technical Failures:** When filing by electronic means is hindered by a technical failure, please refer to the Uniform Rule §202.5-b(i).

**L. Addition of New Parties/Amendment to Caption:** If an Amended Complaint, Cross- or Counter-Complaint, or Amended Third Party Complaint adding new parties, or other document is filed which results in a change to the caption of the case by the addition of new parties, the filer must upload a *Notice to County Clerk – Amendment of Caption* form which will allow the County Clerk to index the additional parties.

**M. Discovery Materials and Correspondence:** In the absence of the Court’s permission or stipulation of the parties, no party shall file electronically any correspondence or discovery materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the Court.

**N. Notice of Entry:** The Part Clerk shall upload decisions and orders electronically. The NYSCEF system will provide notice that the decision/order has been posted, however the entry of such decision/order shall be effectuated thereafter upon the County Clerk affixing the “Filed” stamp. Parties may continue to access the document link contained in the email notification to verify that the

“Filed” stamp has been affixed or visit the list of documents to reference the decision/order. Upon entry of such order, a party shall file and serve their Notice of Entry in conformance with Uniform Rule §202.5-b(h)(3).

See also **Judgments**, below.

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

**IV. Requests for Judicial Intervention (RJIs):** An RJI in a NYSCEF case shall be filed via the NYSCEF system and will be filed after all other documents have been uploaded. The filer may choose between filing a .pdf image of the prepared RJI and any Addendum or having the system prepare the RJI which shall conform to Uniform Rules. Addenda, such as the *Commercial Division Addendum*, if prepared by the filer must be filed simultaneously with and attached to an RJI and uploaded as one .pdf document with the RJI. If the RJI is prepared by the e-filing system, no separate Addendum is required. Whether or not the filer elects to allow NYSCEF to create the RJI or chooses to upload a prepared RJI, data in addition to the nature of the judicial intervention, including information that appears on any Addenda will be collected through completion of the fields presented. If the filing of the RJI is accomplished through a filing agent, a prepared RJI and Addendum must be filed in lieu of the creation of the RJI by the NYSCEF system, as the RJI must be signed by the attorney.

**A. Residential Foreclosure Actions:** The Plaintiff is required to simultaneously file the following four (4) documents, unless previously filed, as separate pdf files:

1. Proof of Service of the Summons, Complaint, Summons with Notice, or Summons and Complaint;
  2. *Request for Judicial Intervention*;
  3. *Foreclosure Addendum (attached to the RJI, if a prepared RJI is filed)*;
- and

4. Depending on the commencement date of the action, either (a) or (b), below:
  - a. If the action was commenced on or after August 30, 2013, *Certificate of Merit* pursuant to CPLR §3012-b(a) or:
  - b. If the action was commenced prior to August 30, 2013, *Affirmation of Accuracy* pursuant to Administrative Order 431/11 or *Certificate of Merit* pursuant to Administrative Order 208/13.

Further, if the matter is NOT eligible for settlement conference, Plaintiff must file an Affirmation stating such and including the reason why the matter is not eligible for Settlement Conference pursuant to Justice Feroletto's Administrative Order dated March 3, 2010. If the reason is that premises are vacant, not owner-occupied / not intended to be owner-occupied, the Affirmation must also state the efforts that were taken to determine same. The mere fact that the homeowner was served at a location other than the property address is not sufficient.

If the matter is eligible for Settlement Conference, no further documents need be filed. The Court will schedule a mandatory settlement conference pursuant to CPLR §3408 and Uniform Rule §202.12-a. No motions or ex parte applications should accompany the RJL if the matter is subject to a mandatory settlement conference. No motions are to be filed until the settlement conference phase is completed.

**B. Commercial Foreclosure Actions:** All foreclosure actions involving commercial property, commercial loans, or between commercial entities require the Plaintiff to file, as a separate .pdf document, a *Foreclosure-Settlement Conference Ineligible Affirmation (8<sup>th</sup> Judicial District)* detailing the reason that the action is deemed commercial. If the Plaintiff is also seeking assignment to the Commercial Division, the *Commercial Division Addendum* form must be filed with a prepared Request for Judicial Intervention. If the RJL is prepared by the e-filing system, no separate Addendum is required.

**V. Motions and Petitions:** Submission of motions, including cross motions, shall comply with all relevant provisions of the CPLR, the Uniform Rules of the New York State Trials Courts (NYCRR) and individual Part Rules.

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



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

**1. Commercial Division:** Refer to the 8<sup>th</sup> Judicial District Commercial Division website.

**2. Residential Foreclosure Actions:** Except where indicated otherwise in the Part Rules of the individual IAS Justice, if no defendant served an Answer to the Complaint, the Plaintiff may apply ex parte for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. If a defendant served an Answer and did not waive further notice, the Plaintiff must move on notice for Summary Judgment for the appointment of a referee to compute and for a Judgment of Foreclosure and Sale. Applications for the appointment of a referee to compute must include a proposed Order of Reference submitted as document type *Proposed Ex Parte Order*, if ex parte, or document type *Proposed Order* simultaneously with a separate document type *Notice of Motion*, if on notice.

Similarly, applications for a Judgment of Foreclosure and Sale must include a proposed judgment submitted as document type *Proposed Ex Parte Order*, if ex parte, or as document type *Judgment to Court (Proposed)* with a separate document type *Notice of Motion*, if on notice. **In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the Settlement Conference Part.**

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

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

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

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

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

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

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

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

Except as provided in the following paragraph B, a proposed OTSC and supporting documents must be submitted by filing with the NYSCEF system. Original paper documents will not be accepted by the County Clerk unless specifically permitted by the Uniform Rules of the New York State Trials Courts (NYCRR) or these Protocols.

**A. OTSC Concurrent with Commencing an Action:** Where the action is being commenced and an OTSC is filed with the purchase of an Index Number, Summons and Complaint, Petition or Summons with Notice and the filing of an RJI, the filer may select the document type: *Order to Show Cause Accompanying Commencement Doc(s) – Proposed*.

**B. OTSC and Temporary Restraining Order Concurrent with Commencing an Action:** Where the action is being commenced and an application for an OTSC with an Ex Parte Temporary Restraining Order (hereinafter TRO) is being made simultaneously, an Index Number must be obtained at the County Clerk’s Office and the documents (with Index Number affixed) presented to the Chief Clerk’s Office in hard (paper) copy with the *Notice of Hard Copy Submission – E-filed Case* form and payment receipt attached. An IAS Justice will be assigned to the matter and the OTSC with TRO should be submitted to the Justice. (Unless the IAS Justice is unavailable, the proposed OTSC should NOT be presented to the Special Term Judge of the Day. If presented to the Special Term Justice, the Court Part of the IAS Justice shall be contacted for a return day prior to signing.)

That same hard (paper) copy of the proposed OTSC shall be signed by the Justice and retained by the Court. All other documents including a conformed copy of the

OTSC will be returned to attorney/party by the Court Part Clerk. Attorney or party shall immediately file the commencement document(s), RJI, and proposed order to show cause as follows:

1. Choose "Start a New Case;"
2. File the appropriate Commencement Document(s) RJI, and choose document type: *Order to Show Case (Proposed)* to file the proposed OTSC; and either simultaneously or within 3 business days, e-file the supporting documents or exhibits;
3. On Payment Screen, choose "Fee Previously Paid," complete required fields, note in COMMENTS REGARDING the PAYMENT, "Index Number has been assigned" and provide the assigned Index Number.

Upon notice of filing of the proposed OTSC, the Court Part Clerk shall upload the signed OTSC with TRO.

### **C. OTSC in Existing Action:**

1. If there is no prejudice or emergency, the proposed OTSC and supporting papers should be uploaded as separate .pdf files, with a hard (paper) copy of the OTSC provided to the Justice for signature. (Unless the IAS Justice is unavailable, the proposed OTSC should NOT be presented to the Special Term Judge of the Day. If presented to the Special Term Justice, the Court Part of the IAS Justice shall be contacted for a return day prior to signing.) Upon signing by the Justice, the OTSC shall be uploaded to NYSCEF by the Part Clerk.

2. Where the filer is submitting an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Uniform Rule 202.7(f)), or where a party seeks to submit documents in an emergency in accordance with the Uniform Rules, the motion fee for the OTSC must be paid to the County Clerk's Office and the proposed OTSC may then be presented to the IAS Justice in hard (paper) copy with completed *Notice of Hard-Copy Submission – E-filed Case* form and payment receipt affixed to the proposed OTSC. (Unless the IAS Justice is unavailable, the proposed OTSC should NOT be presented to the Special Term Judge of the Day. If presented to the Special Term Justice, the Court Part of the IAS Justice shall be contacted for a return day prior to signing.)

That same hard (paper) copy of the proposed OTSC shall be signed by the Justice and retained by the Court. All other documents including a conformed copy of the OTSC will be returned to attorney / unrepresented litigant by the Court Part Clerk. Attorney or litigant shall immediately file the proposed OTSC and supporting papers. Attorney will choose "Fee

Previously Paid” on the payment screen and provide the receipt number in the required field. Upon notice of filing of the proposed OTSC, the Court Part Clerk shall upload the signed OTSC.

**VII. Secure Documents and Documents with Confidential Information:** Please be advised that pursuant to Administrative Order 134/13, documents may no longer be designated as "secure" in NYSCEF. Documents previously e-filed as secure in NYSCEF prior to April 15, 2013 will retain the secure status unless otherwise directed by the court. Online access to those documents will continue to be restricted to counsel of record and unrepresented litigant(s) in the case, the County Clerk, the Court, and the filer if an agent. Public inspection of the documents will be available on computer terminals at the courthouse or County Clerk's Office.

An attorney or unrepresented litigant filing a document via the NYSCEF system must comply with the requirements of 22 NYSCR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing social security numbers. It is the sole responsibility of counsel or unrepresented litigant to be aware of and to comply with existing laws requiring nondisclosure of confidential personal information contained in any document e-filed in NYSCEF.

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

**A. Application for a Sealing Order:** Requests to seal a document or case shall comply with all relevant provisions of the CPLR, the Uniform Rules, and any other applicable provision of the law. To seal a document or case in a NYSCEF case, counsel or unrepresented litigant must apply to the Court for a “sealing” order pursuant to Uniform Rule 216.1 directing the County Clerk to seal the document or case file. Note that documents filed to NYSCEF will NOT be viewable to the public until an Index Number is assigned.

**1. Sealing document(s) previously filed or an existing case file in NYSCEF:** To seal a document previously e-filed or a case file in a pending e-filed case, unrepresented litigant or counsel must apply for a sealing order. Application may be made through the NYSCEF system and, upon issuance of an Order directing the sealing of an existing e-filed document or case file, the Part Clerk shall upload and file the signed Sealing Order. Counsel / litigant must file the *Notification for Sealing* form to identify the documents to be sealed or indicate that the entire case file shall be sealed and to effectuate the order. The County Clerk shall seal the document(s) or case file identified in the *Notification for Sealing* as directed

by the Court, both in the NYSCEF system and, if any of the covered documents are found therein, in the hard copy file. No further action by counsel is required.

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

a. Where counsel or unrepresented litigant seeks to obtain an order in an existing case for a document or document(s) not yet filed, application may be made through the NYSCEF system. If the motion/application is filed with the NYSCEF system, the motion and accompanying documents filed to the existing case will be open to the public until sealed. The Part Clerk shall upload and file the signed Sealing Order, when signed. Counsel or unrepresented litigant shall upload the *Notification of Sealing* form identifying the documents to be sealed, and when filing the documents intended to be sealed, shall then contact the County Clerk who will process the document(s) under seal. All documents previously filed in connection with the motion for sealing, if ordered to be sealed, may also be sealed by the County Clerk upon the additional filing of a *Notification of Sealing* form(s).

b. Alternatively, in the event that counsel or unrepresented litigant requests the motion/application be unavailable to the public on the NYSCEF system, a motion to seal may be filed in hard copy form. Following payment of any fees due to the County Clerk's Office, application may be presented to the IAS Justice in hard copy with the NYSCEF document type: *Notice of Hard-copy Submission – E-Filed Case* form and payment receipt attached. Any opposition or reply papers shall likewise be submitted in hard copy form, with said *Notice* attached.

The Part Clerk shall upload and file the signed Sealing Order. All other documents including a conformed copy of the Sealing Order will be returned to attorney / litigant by the Court Part Clerk. Counsel or litigant shall upload the *Notification of Sealing* form identifying the documents to be sealed, and when filing the documents intended to be sealed, shall contact the County Clerk who will process the document(s) under seal. All documents presented in connection with the motion for sealing that have not yet been e-filed must be e-filed with additional *Notification of Sealing* form(s), if applicable, within three business days.

c. In the event that an Order shall direct the sealing of an existing case in its entirety, the County Clerk shall seal the entire file upon filing of the Sealing Order by the Court Clerk.

**3. Unsealing a document or file previously sealed:** To make a document or file available to the public (unseal the document or case file), an Order shall be obtained and entered directing the County Clerk to unseal a document or entire file. All documents to be unsealed must be specifically identified by Document Number.

An Order unsealing a case file will be presumed to unseal the entire case file. In the event that a case should be unsealed from a certain date, the Order directing the unsealing shall specifically identify the date from which point the case shall no longer be sealed.

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

**X. Consolidation or Joint Trial:** Consolidation or joint trial of proceedings shall be at the discretion of the Court as permitted under the CPLR and case law. Upon filing of an Order by the Court as NYSCEF document type: *Order-Consolidation* directing consolidation under one index number, the actions will be consolidated into one action and all subsequently filed pleadings/papers shall be filed in the case bearing the lower Index Number assigned unless directed otherwise by the Court. Upon filing of the Order in both or all cases, the previously active case(s) will be closed to e-filing by the County Clerk.

An order directing joinder of two or more actions for a limited purpose, such as joint trial or discovery will not result in the consolidation of cases and subsequent motions or other documents affecting both or all cases must be filed in both or all cases. The Order of the Court shall be filed as NYSCEF document type: *Order – Joint Trial, if applicable*, in both or all affected cases.

## **XI. Judgments:**

**A. General Procedures for Money Judgments:** Filers must submit proposed money judgments through the NYSCEF system as single documents and not combined with any other unrelated filings or documents. The filer may choose from NYSCEF document types:

- *Judgment – to County Clerk (Proposed)*,
- *Judgment – to Court (Proposed)*,
- *Judgment – Clerk Default (Proposed)*,

- *Judgment by Confession (Proposed)*, or

The filer may file a statement for judgment as NYSCEF document type:

- *Judgment – to County Clerk (Proposed)*,
- *Judgment – Clerk Default (Proposed)*, or
- *Judgment by Confession (Proposed)*

An additional *Bill of Costs* may be required if costs and disbursements are not itemized in the statement of judgment.

**1. Submission:** A party seeking the entry of a money judgment must submit papers in compliance with statutory requirements including, but not limited to, submission of costs and disbursements, with attorney affirmation, if applicable, including interest calculation, proof of additional mailing, and any necessary supporting information to be included in the judgment roll.

The Judgment or Statement of Judgment must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Clerk and failure to include the addresses will result in rejection of the document until correction.

**2. Examination:** The Judgment Clerk will examine the submission for entry. If the submission is deficient, the documents will be returned for correction and deficiencies will be communicated to the filer via the NYSCEF system. Once corrected, the judgment should be refiled via the NYSCEF system pursuant to the procedures for Errors in Submission, Paragraph III.K, above.

**3. Notification of Entry:** Notification of entry and docketing of the judgment will be sent via the NYSCEF system to all participating parties. “Entry” by the Clerk constitutes entry as defined by CPLR §5016(a) and requires payment by the filer of any statutory fee. Such notification via the NYSCEF system does not constitute service of Notice of Entry by any party. Notice of Entry must be made pursuant to the Uniform Rules and the CPLR, if required.

**B. Entry of Default Judgments:** A party seeking the entry of a default money judgment by the Clerk shall choose the following document type: *Judgment – Clerk Default (Proposed)* and pay the statutory filing fee required. A statement for judgment *with* complete calculations of costs, disbursements, interest, and attorney fees, if applicable may be submitted as the document type: *Judgment – Clerk Default (Proposed)* as one .pdf file.

**1. Entry of Default Judgment Based on Stipulation of Settlement:** A party seeking the entry of a default money judgment by the County Clerk pursuant to a Stipulation of Settlement or Release shall choose the following document type: *Judgment - Clerk Default (Proposed)*. If the Stipulation of Settlement or Release on which the judgment is based has not yet been filed, the filer shall choose the following NYSCEF document type: *Stipulation of Settlement* and pay the required \$35.00 fee to file the Stipulation pursuant to requirements of the CPLR.

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

**3. Entry of Order of Severance:** If severance is requested in conjunction with the entry of a Default Judgment, the proposed judgment should indicate that the action is severed as to one or more defendants and money judgment be entered against the specifically named Defendant(s) remaining. Alternatively, the filer may simultaneously file the proposed order as NYSCEF document type: *Order of Severance CPLR 3215(A) (Proposed)* to be signed and entered by the County Clerk.

If the litigant/counsel requests that the Court sign the Order of Severance, it must be uploaded as NYSCEF document type: *Order (Proposed)* and a fee paid prior to entry of the money judgment.

**C. Judgment Signed by the Court:** A party seeking the entry of a money judgment signed by the Court shall choose the following document type: *Judgment – To Court (Proposed)*. Notification of the signed Order/Judgment will be transmitted by the NYSCEF System to the filer. The filer shall then upload a statement of judgment with complete calculations of costs, disbursements, interest, and attorney fees, if applicable, unless included in the signed Judgment, as document type: *Judgment - to County Clerk (Proposed)*. The proposed judgment shall comply with statutory requirements and failure to include the addresses of the debtor(s) or creditor(s) will result in the judgment being returned for correction. Notification of entry by the County Clerk will be transmitted by the NYSCEF System to all participating entities.

In the event that a signed Order is filed containing complete calculations of costs and disbursements, if any, and addresses of the parties, the County Clerk will enter and docket the money judgment with no additional filings or notice required.



**D. Judgment of Foreclosure:** A party seeking the entry of a Judgment of Foreclosure shall first upload document type: *Oath* (of Referee) and NYSCEF document type: *Bill of Costs* for approval by the County Clerk. Applications for a Judgment of Foreclosure and Sale should be delayed until the County Clerk has reviewed and granted costs. Filer, when submitting the application for Judgment of Foreclosure, may use either document type: *Ex Parte Order (Proposed)*, if ex parte, or if on notice, document types: *Notice of Motion* and *Judgment to Court (Proposed)* In cases where mandatory settlement conferences are required pursuant to CPLR §3408, said submissions can only be made after the case has been released from the Settlement Conference Part.

**E. Confession of Judgment:** Entry of a money judgment by confession shall adhere to statutory and regulatory requirements. A party seeking the entry of judgment by confession via the NYSCEF system shall choose the document type: *Confession of Judgment (Affidavit of Defendant)* as the Commencement Document and *Judgment by Confession (Proposed)* for submission of the statement of judgment or duplicate affidavit of defendant, if no statement for judgment is prepared. A statutory fee for the assignment of an Index Number is required, unless the Affidavit of Confession is executed in conjunction with an already existing Supreme Court action. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

**F. Foreign Judgment:** Entry of a foreign money judgment shall adhere to statutory and regulatory requirements. A party seeking entry of a foreign judgment shall choose the document type: *Judgment-Foreign [5402]* as the Commencement Document and document type: *Judgment to County Clerk – (Proposed)* for submission of the statement for judgment, with complete calculations of costs, disbursements, interest, and attorney fees, if applicable, and document type: *Affirmation* for the Affidavit pursuant to CPLR Article 54. A statutory fee for the assignment of an Index Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

**G. Subsequent Judgment or Order:** When a previously entered money judgment is affected by a subsequent order (i.e., to vacate), the attorney must obtain a Certified Copy of the Order affecting the docketed Judgment, and file same with the Registrar's Division (Land Records). County Clerk will make no notation to the docket entry, except as follows:

**1. Amended Judgments:** Amended Judgments shall be filed through NYSCEF where the original action was electronically filed. The recording

information of the original judgment shall be provided to allow the docket of the existing Judgment to be revised. If none is provided, the Amended Judgment shall be returned for correction.

**2. Renewed Judgments:** Where the application for a renewal judgment is made, the docket of the existing judgment will be updated if the Order clearly indicates that a Judgment is being renewed and if the recording information of the original judgment is provided therein. A statement of judgment regarding the money judgment to be renewed, including costs and disbursements may be uploaded as the document type: *Judgment to County Clerk (Proposed)*.

**XII. Discontinuing (Foreclosure) Actions and Cancelling Notices of Pendency/Lis Pendens:** The discontinuance of an action and cancellation of (Notice of) Pendency/Lis Pendens should not be combined into one document and must be uploaded as two separate documents. If discontinuing the action, the filer may choose from the following document types:

- *Stipulation of Discontinuance (Post- or Pre-RJI)*,
- *Notice of Discontinuance (Post- or Pre-RJI)*, or
- *Stipulation of Discontinuance (Request to so Order)*

The cancellation of the Notice of Pendency/Lis Pendens, shall be filed as a separate document under document type: *Cancellation of Notice of Pendency/Lis Pendens*. The Affidavit required by CPLR §6514 must be attached to the document type: *Cancellation of Notice of Pendency/Lis Pendens*, if applicable.

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

**XIV. Consumer Credit Card Transactions:** Actions commenced pursuant to 22 NYCRR 202.27-a must be filed under one of the following case types:

- Consumer Credit (Card) Transaction Original Creditor,
- Consumer Credit (Card) Transaction Debt Buyer, or
- Consumer Credit (Card) Transaction Secondary Debt Buyer,

in order to obtain access to specific document types required by the Rule. See Administrative Orders dated September 15, 2014 (AO/185/14) and December 23, 2014 (AO/337/14 and AO/ 338/14), Rules 202.27-a and –b.

**XIV. Other:**

**A. Effect of Communication from the Office of the Erie County Clerk or Chief Clerk's Office:** No e-mail notifications from the Erie County Clerk or the Chief Clerk's Office shall be construed or considered to be service of Notice of Entry for purposes of commencement of the statutory time to appeal or otherwise. Such communications from the County Clerk or Chief Clerk shall constitute and serve only as notification in a ministerial capacity of receipt or entry.

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

Dated: August 4, 2017