

## SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Sixth Judicial District, the Surrogates of Cortland County, and the Chief Clerk of Cortland 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 Cortland County Surrogate's 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 and fees.

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) Cases Types Eligible for E-Filing:

**Mandatory E-Filing:** E-filing is mandatory in **Administrations, Probates, Guardianships and related matters thereto, including Small Estate (Voluntary Administration) Proceedings**. Except in limited circumstances, all such proceedings must be commenced by filing with the court electronically through the NYSCEF system.

All subsequent documents in such proceedings must be e-filed, unless an exception is granted (i.e. hard copy submission accompanied by a Hard-Copy Submission form - NYSCEF Form SC-11).

Lifetime Trust matters and Adoption proceedings are *currently exempt* from the E-filing program.

### **Exemptions:**

An attorney who certifies in good faith that they lack the equipment or knowledge needed to e-file and has no staff person under their direction who has such knowledge or needed equipment, many opt out of e-filing in a mandatory case by filing an Opt-out form with the Clerk (NYSCEF Form SCM-2). Attorneys may also be exempt by the Court for good cause shown.

Per Uniform Rule 207.4-aa(e)(1), an unrepresented litigant, proposed intervenor or other non-party seeking relief from the Court, who is unrepresented, is exempt from having to file and serve document electronically.

**Hybrid Proceedings:** The court will accept proceedings/documents in previously **paper** filed estates on the understanding that the court clerk may need time to "upload" the file. Therefore, previously filed documents MAY NOT be immediately available in **UCMS**.

### 2) E-Filing Documents 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 is already open. In addition, you must ascertain whether there is 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 papers.

The case name and party information must be entered as follows:

- Initial entry must be identical to the signature on the will
- 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”
- The Party Name, Role and Address information must be added for each petitioner (consented party), as reflected in the pleading.

**Additional Record Info:**

**Estate Value** – select the value range which reflects the gross value of the estate (as reflected in the petition). This is important for the payment of the proper filing fee, and it will also be later relied on for the Inventory of Assets filing.

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

• **Death Certificates**

Original death certificates need not be submitted directly to the Surrogate’s Court. They can be e-filed (scan both sides). No hard copy submission of the death certificate is required. The Court will accept the image as evidence of death, pursuant to 22 NYCRR 207.15. **The Court reserves the right to request originals.**

• **Wills**

The ORIGINAL Will is required to be scanned by the filer. It is acceptable to unstaple for this purpose, without the need for a stapling affidavit. Once the original is scanned and the proceeding is e-filed, then the original hard copy must be submitted to the Court. Do NOT e-file an attorney certified copy, as this is not required. File the original paper Will within two (2) business days of e-filing.

NOTE: Should there be any concern with the un-stapling of the Will, then the filer may simply submit the original in hard copy with a notation that it has not been scanned. Upon receipt, the Court will upload the original Will image to the NYSCEF record.

- **Family Tree:** A family tree is required on all new proceedings. In the instances of a sole distributee, the form cannot be signed by the sole distributee or his/her spouse or child(ren).

- Citations:

Submit a proposed citation electronically through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. 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 §307. The Citation must be served with the NYSCEF Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing form (SCM-1), unless service is by publication.

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

- Decrees and Orders:

E-file proposed decrees and orders through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF, at which time all counsel/consented parties will receive immediate notification. However, the notification does not constitute service of notice of filing upon any party (Uniform Rule 207.4-a[h]).

NOTE: All Court documents requiring a court seal, including Certificates of Appointment, will be sent out in hard copy, as well as any e-filed requests for exemplifications and/or certified copies (with appropriate payment).

- Stipulations:

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

- General Correspondence:

All general correspondence, adjournment requests and conference requests should be electronically filed.

- 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:

The court may require submission of hard copies of e-filed documents, also known as working copies. 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. Working copies must be exact hard copy duplicates of the e-filed documents. Working copies do not become part of the official record and will be destroyed by chambers at the disposition of the case.

- Sealed Cases/Documents:

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 form (SC-11). 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 form, in the traditional manner.

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 and 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.

**Additional Notes on Document Filing:**

Payment of Fees: Required fees in e-filed cases may be paid either at Court (in person or by mail “Pay at Court”) or via credit card (**VISA or MASTER CARD**) **directly through the NYSCEF system.** If choosing to Pay at 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 2 business days after e-filing.**

If paying by credit card, there is a 2.99% administrative charge in addition to the fees 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. Credit card information is not retained by the Court, and must be entered with each filing.

The “Pay at Court” option should not be used for subsequent requests for certificates, certification or exemplifications as the Court cannot process these requests without receipt of payment.

NOTE: Review of a filing 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 if the filer owes an outstanding fee in that proceeding. Additional payment can be made via the NYSCEF system by going to the Main Menu and selecting Submit Additional Payment.

**Problem Filings and Notifications:**

If it is determined that there is an issue with an e-filing, the filer will be notified by court staff by phone or email notification (via the NYSCEF system).

**Contact Information:**

- Problems with electronically filing: email: [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov) or call: 646-386-3033
- Procedural questions: [CortlandSurrogate@nycourts.gov](mailto:CortlandSurrogate@nycourts.gov)