

HAMILTON COUNTY SURROGATE'S COURT LOCAL PROTOCOLS FOR ELECTRONIC FILING

The Surrogate of Hamilton County hereby promulgates these local Protocols to assist users of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”) when accessing NYSCEF to electronically file petitions and documents in Hamilton County Surrogate’s Court. E-filing exists in accordance with the program established by the Chief Administrator of the Courts pursuant to 22 NYCRR 207.4a and 207.4aa. Users should review the NYSCEF website (www.nycourts.gov/efile), as well as 22 NYCRR 207.4. These Protocols do not supersede any statutory or regulatory provisions.

1) Case Types Eligible for E-Filing:

Mandatory E-Filing: Effective **May 26, 2021**, e-filing is **mandatory** for all types of proceedings commenced on or after the effective date, with the exception of adoption proceedings and lifetime trusts. These proceedings are *specifically exempted* from e-filing regardless of the commencement date. Guardianship proceedings, while not mandatory, may be e-filed on a consensual basis.

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 3, below) all documents to be filed with the court in a NYSCEF case must be filed with the NYSCEF system.

Hybrid Proceedings: A party must not use NYSCEF to electronically file documents in proceedings that were not commenced electronically. All proceedings, even those listed above which were commenced prior to May 26, 2021, must continue to conclusion as hard copy paper filings.

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 form¹ 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. (22NYCRR § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing, but may choose to participate (CPLR § 2111).

3) 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

¹ 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>

if a file is already open. 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 **Hamilton County** as the venue for your case.

The case name must be entered as follows:

- Initial entry must be identical to the name 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"

• 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" form (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.**

• Death Certificates: In addition to e-filing the death certificate, a hard copy, certified if required, must be filed with the Court within two (2) business days of e-filing.

• Wills: E-file the original will, but DO NOT UNSTAPLE. File the original paper will with the Court within two (2) business days of e-filing.

• Citations: Proposed citations in e-filed cases must be submitted electronically through NYSCEF. 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, the filer must 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" form (See Forms page on NYSCEF site.)

• Decrees and Orders: Proposed decrees and orders in e-filed cases must be submitted electronically through NYSCEF. If the proposed decree or order requires amendment, the Court will advise accordingly. Once the decree or order is signed, the court will upload the signed version to NYSCEF and notify all consenting parties that the decree or order has been signed and posted. 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. The court will try to accommodate requests for a signed duplicate original decree of judicial settlement, but users must make that request in the "Comments" section of NYSCEF. Only one duplicate original will be issued.

- Stipulations: Proposed “so ordered” stipulations in e-filed cases must be submitted electronically through NYSCEF. Following review, it will be uploaded to NYSCEF and the parties will be notified that it has been signed and posted.

- 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, along with a “Notice of Hard Copy Submission – E-Filed Proceeding” (Form EF-20). A “Notice of Hard Copy Exhibit Filing” (Form EF-21) should be filed in NYSCEF.

- Working Copies: The Court may, upon notice, require certain e-filed documents be submitted to the Court in hard copy, also known as working copies. If the working copy request is made, it does not absolve the party from electronically filing the document through NYSCEF. The filer must attach proof that the document has been e-filed (e.g., the thank you page from NYSCEF or the e-mail notification after a successful upload of the document to NYSCEF). Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed by chambers at the disposition of the case.

- 4) Payment: Required fees in e-filed cases may be paid either at Court (in person or through the mail) or via credit card directly through the NYSCEF system. Please be advised of the following if paying via credit card through NYSCEF: (1) your credit card will be charged at the time of filing, therefore please make sure credit limit is large enough to cover anticipated fee; (2) a 2.99% non-refundable service fee will also be charged; (3) fees are calculated automatically in accordance with SCPA §2402 based on the documents filed and the filer’s representation regarding the size of the estate; (4) once the papers are reviewed by the Court, there may be either an upward or downward modification of fees initially assessed via NYSCEF; (5) in such event, you will be contacted by the Court; (6) if an additional fee is due, the Court cannot permit any further documents to be filed until the additional fee is paid.

If the electronic filer opts to pay at Court, be advised 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 two weeks after being electronically submitted through NYSCEF.

- 5) Notifications: Notification of defective and/or incomplete filings will be via e-mail or by telephone, depending on the circumstances. Hamilton County Surrogate’s Court telephone number is 518-648-5411 and the e-mail address is HamiltonSurrogate@nycourts.gov

- Return of Requested Documents: To ensure rapid return of documents, please provide a stamped, self-addressed envelope with sufficient postage to permit them to be returned to you. If a self-addressed, stamped envelope is not provided, the Court will contact you and direct you to pick up the documents at the Clerk’s Office during regular business hours.

- Certificates and Letters: Upon request made via NYSCEF, the court will mail out Certificates and Letters. Certificates must be requested and paid for in advance for all e-filed proceedings.

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

6) Signatures: Documents requiring signatures are deemed “signed” under the circumstances outlined in 22 NYCRR §207.4-a(f). When e-filing a document bears an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to 22 NYCRR §207.4-a(f)(2).

7) 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 “Notice of Hard Copy Submission -E-Filed Proceeding” form 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-E-Filed Proceeding” form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court finds good cause and grants the sealing request pursuant to Uniform Rules 216.1(a), the documents will then be noted and filed by the Court accordingly. If the request is denied, an order will be issued directing that the document be filed electronically.

- 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”. A “Notice of Hard Copy Submission-E-filed Proceeding” form must be filed electronically through NYSCEF and it should be attached to the outside of the envelope. (See Forms page on the NYSCEF site.)

8) Decrees, Orders, and Judgments:

Decrees, orders, and judgments will be signed in hard copy by the Surrogate and forwarded to the Clerk for filing and scanning into the NYSCEF system, which will then transmit notification to all parties. Please be advised, the notification does not constitute service of notice of filing upon any party (22 NYCRR 207.4-a[h]).

Should you need assistance please contact:

Hamilton County Surrogate Court Clerk’s Office at (518) 648-5411;

NYSCEF Resource Center, Monday through Friday from 8am to 6pm at (646) 386-3033, by email at nyscef@nycourts.gov or by fax at (212) 401-9146.