

ORLEANS COUNTY SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the 8th Judicial District, the Surrogate of Orleans County, and the Chief Clerk of the Orleans 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 Orleans 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). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

Cases Types Eligible for E-Filing:

Mandatory E-Filing: 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. E-filing is mandatory in Probate, Administration, Small Estate and Miscellaneous Proceedings relating thereto that are commenced in this court on or after May 23, 2018. 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 Lifetime Trust matters may be e-filed, although it's not mandatory at this time.

Hybrid Proceedings: Documents can be E-filed on a previously non E-filed Estate, which then creates a hybrid record. Any subsequent document filings on the hybrid file should then be E-filed.

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 interveners (non-attorneys) and unrepresented non-parties are exempt from e-filing. (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.

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>

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. 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 papers.

The case name 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"

Estate Value: The filer should select the value range that reflects the gross value of the estate, which is reflected on the petition. The proper estate value will help determine the filing fee.

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.

Request for Surrogate's Court Action: Orleans does not require the Request for Surrogate's Court Action for initial or subsequent filings.

Death Certificates: The death certificate should be scanned into NYSCEF and in addition to e-filing the death certificate, a hard copy, which should be a certified copy or attorney certified copy must be filed within two (2) business days of e-filing.

Wills: Will is required to be scanned by the filer; will must not be unstapled. Scan the original will, but DO NOT UNSTAPLE. Then file with the Surrogate's Court the original paper will within two (2) business days of e-filing the will. If the staples do happen to become removed for scanning purposes then a staple affidavit is required.

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. 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.) If it is a Guardianship or Lifetime Trust matter then the NYSCEF Notice Regarding Availability of Electronic Filing should be served with the citation.

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 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.

Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed. If the court requires a working copy, the filer must attach proof that the stipulation has been e-filed (e.g., the thank you page or the e-mail notification) to the back of the stipulation when it is submitted to the Court.

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. They do not become part of the official record and will be destroyed by chambers at the disposition of the case.

Payment: This court accepts payment of fees required by the SCPA 2402. If payment is being made by credit card the payments may be made via NYSCEF. Or payments may be paid at Court by doing so in person or by mail. If paying by mail or in person you may pay by using a check payable to Orleans County Surrogate’s Court, or cash may be used as a form of payment. Although large amounts of cash should not be sent by mail. If paying through NYSCEF and by credit card the fees are calculated in accordance with SCPA 2402. Your credit card will be charged at the time of filing. There will be a 2.99%

credit card transaction fee on all electronic payments. The filer must enter the credit card information for each filing as this information is not retained by the court. Make sure the 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 specific amount of time after E-filing.

Notifications: Notification of defective filings will be sent out by e-mail, or mail depending on the circumstances. Clerks/staff are available for consultation during regular business hours by telephone 585-283-6658 and by email at OrleansSurrogate@nycourts.gov

Return of Requested Documents: To ensure rapid return of documents you have requested from Surrogate’s Court, the court will keep your pre-paid self-addressed envelope in the file and it will be used to mail the documents. If a pre-paid self-addressed envelope is not provided at the time of filing, then the court will provide its own envelope. It is encouraged for filers to provide a pre-paid self-addressed envelope when filing.

Certificates and Letters: Upon request made via NYSCEF, the court will mail out Certificates and Letters. Users must request and pay for certificates in advance in any e-filed proceeding.

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

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 e-filer is responsible for maintaining the original, executed document pursuant to Uniform Rule 207.4-a(f)(2).

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” 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 directs the party to file the document 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” with a Notice of Hard Copy Submission form attached. (See Forms page on the NYSCEF web site.)

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. However, the notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]). Court issued Letters and Certificates of Appointment will be provided in hard copy to the filer via the usual means (SASE, USPS mailing).