

SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the 9th Judicial District, the Surrogate of Rockland County, and the Chief Clerk of the Rockland County Surrogate's 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 Rockland 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, 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.

- In any case where a will is being offered for probate and letters of Trusteeship are being requested within the probate petition, the initiating document selected should be probate petition. **DO NOT SELECT PROBATE PETITION WITH TESTAMENTARY TRUST, OR YOU WILL BE CHARGED AN ADDITIONAL FEE.**
- When seeking probate and preliminary letters testamentary, the initiating document selected should be probate petition. **DO NOT SELECT PRELIMINARY PROBATE AS THE INITIATING DOCUMENT, OR IT WILL BE REMOVED.**

1) Cases Types Eligible for E-Filing:

Mandatory E-Filing: When filers are represented by counsel, e-filing is mandatory for all new probate, administration, small estate, accounting, and miscellaneous proceedings. 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.

Consensual E-Filing: E-filing is consensual for all guardianship proceedings. All such proceedings may be commenced by filing with the Court electronically through NYSCEF and, except in limited circumstances, all subsequent documents filed by participating parties must be e-filed.

Hybrid Proceedings: This Court will not accept e-filed documents in a proceeding that was previously commenced in paper, unless directed by the clerk's office.

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 E-filed through NYSCEF.

IMPORTANT EXCEPTIONS TO REQUIREMENT TO E-FILE ALL DOCUMENTS:

- When obtaining a **BOND**, that bond is not accepted by the Court until the Judge signs the bond and approves it as to form and sufficiency. For that reason, bonds should not be e-filed or paid for via NYSCEF. The Original bond, along with a check for the filing fee, must be submitted to the Court. Once signed by the Judge and received, that document will be uploaded to NYSCEF by the Court.
- When **recording an instrument**, such an instrument is not considered recorded until the Court physically records it in a ledger and stamps the original (or certified) document as having been recorded. For that reason, instruments being recorded should not be e-filed or paid for via NYSCEF. The Original instrument to be recorded, along with a check for the filing fee and a self-addressed stamped envelope, must be submitted to the Court. Once recorded and received, the instrument will be uploaded to NYSCEF by the Court and the original instrument will be returned in the self-addressed stamped envelope.

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. (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 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).

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>

- 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”

• 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: **Do not file this document in Rockland County.**

• Death Certificates: In addition to e-filing the death certificate, a hard copy must be filed within three (3) business days of e-filing. Submit the death certificate to the Court with a copy of your e-filing confirmation that the death certificate was e-filed. **If the hard copy certified death certificate is not submitted to the Court as required, the proceeding may be dismissed.**

• Wills: The original Will is required to be e-filed by the filer: Do NOT REMOVE STAPLES from the original will. File the original paper will within three (3) business days of e-filing. Submit the Will to the Court with a copy of your e-filing confirmation that the Will was e-filed. **If the original Will is not submitted to the Court as required, the proceeding may be dismissed.**

• 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 (or Court Order if there is one.) Service of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing. (See Forms page on NYSCEF site.)

• 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.

- **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:** **Submit working copies of all Motion Papers.** This Court does not require working copies for any other matters unless and until the Court asks for them. If 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. Working copies must be exact hard copy duplicates of the e-filed documents. The working copies do not become part of the official record and will be destroyed by chambers.

- 4) **Payment:** This court accepts payment of fees required by the SCPA by credit card payments made via NYSCEF or by payments made at the court. 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. 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. Our 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 5 business days after e-filing.

- 5) **Notifications:**

Notification of defective filings will be sent out by e-mail from NYSCEF.

- **Return of Requested Documents:** To ensure rapid return of documents you have requested from Surrogate’s Court, be sure to include a pre-paid self-addressed envelope when you send in the hard copy certified death certificate.

- **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**: Do not e-file general correspondence, adjournment requests and conference requests. E-mail both the Chief Clerk and Deputy Chief Clerk directly.

6) **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).

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

• **Motion to Seal**: In general, a party who wishes to file a document under seal or redact portions of a necessary document must make a motion to seal. The item the party is attempting to shield from public view (whether it be a particular exhibit or specific information in a necessary document) may be redacted to block out only those portions which are requested to be sealed. The redaction should not be broader than necessary. The blanket sealing of an entire proceeding is not possible. Within three (3) business days of electronically filing the document, submit a motion, **on paper**, with an unredacted version of the document the party is seeking to seal, for in camera review.

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.)

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. 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, messenger).

