

SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Seventh Judicial District, the Surrogate of Wayne County, and the Chief Clerk of the Wayne 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 Wayne 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.

1) Cases Types Eligible for E-Filing:

Mandatory E-Filing: E-filing is mandatory in probate, administration and voluntary administrations that are commenced in this court on or after February 19, 2013. 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. If an attorney or unrepresented litigant participating in e-filing submits in hard copy, the document must bear a Notice of Hard Copy Submission form (SC-11).

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.

Adoption proceedings are currently exempt from the e-filing program and Guardianships are not currently being accepted through the e-filing program.

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.

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"

Request for Surrogate's Court Action: This court requires the NYSCEF Request for Surrogate's Court Action as the first document uploaded with each filing. This is to be filed as a stand alone document and should reflect the specific information to the filing at hand. Prepare a new form for each filing with the appropriate information entered.

If requesting court certified documents or Certificates of Appointment, use the Non-proceeding relief form ([age 2) and note any specific needs (ie: certified copy of will).

- **Death Certificates:** Original death certificates must be submitted directly to the Surrogate's Court for all voluntary administration cases. They cannot be e-filed except those being provided for probates and administrations but both sides must be efiled or a certified death certificate will be required to be mailed to the court.

- **Wills:** Original wills must be submitted directly to the Surrogate's Court after scanning. If the staples are removed for scanning, please provide a stapling affidavit. The court will upload the will to NYSCEF after the filing of the hard copy original. Do not e-file an attorney certified or conformed copy.

- **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 SCPA 307. 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.)

- **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 notification. Court documents requiring a court seal will be sent out in hard copy as well as any e-filed requests for exemplifications and/or certified copies with the correct payment.

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

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 “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.

Payment: Required fees in e-filed cases may be paid either at Court (in person or by mail) or via credit card (Visa & MC) directly through the NYSCEF system. Some courts will not allow the filing of additional documents by the filer if the filer owes an outstanding fee in that proceeding.

If paying by credit card at time of filing on NYSCEF: (1) fees are calculated in accordance with SCPA 2402; (2) your credit card will be charged at the time of the filing; (3) there will be a 2.99% credit card transaction fee on all electronic payments (4) credit card information is not retained by the Court, and must be entered with each filing.

If using the “Pay at Court” option, be aware that documents are not “filed” until payment is received. The Court cannot process the filing until payment is received in full.

Additionally, this “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.

- **Notifications:** Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Clerks/staff are available for consultation during regular business hours at (315) 665-8129.

- **Return of Documents:**

To ensure rapid return of documents, the court will keep your pre-paid self-addressed envelopes on file if provided.

- 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.

- 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).

- 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).

Hybrid and Subsequent Filings: This court will allow a previously hard filed estate to proceed by e-filing, thereby creating a hybrid record. Previously hard filed estate records will not be uploaded to the NYSCEF system unless determined necessary.

Once an estate is e-filed or becomes an e-filed matter (hybrid), then all subsequent document filings/proceedings should be e-filed. Exception would be a hard copy submission to the Court.

In the event of a hard filing to an e-filed case (verified claim, GAL report, etc), Court staff will scan and upload the hard filed document(s) to the NSYCEF record, and all consented filer(s) in the case will receive notification of the uploaded document(s).