



**Electronic Filing  
in the New York State Courts**

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**2023**

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Report of the Chief Administrative Judge  
to the Legislature, the Governor, and the  
Chief Judge of the State of New York



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*“With each passing year, technological advancements facilitate more expansive access to our justice system and increase the speed at which our courts receive, process, and resolve legal matters. E-filing has quickly become an invaluable tool for the legal community and self-represented litigants because it maximizes productivity and minimizes the expense, burden, and inconveniences of litigation for our court users. We have made significant progress in growing the availability of e-filing in recent years, and we will continue to support and develop our digital resources to improve the delivery of justice for all.”*

A handwritten signature in blue ink, appearing to read 'Anthony Cannataro', is positioned above the title.

**Acting Chief Judge Anthony Cannataro**

Chief Judge of the Court of Appeals  
and of the State of New York

# Preface

February 10, 2023

I submit this Report pursuant to section 212(2)(u)(i)(A) of the Judiciary Law<sup>1</sup> on the status of New York State's electronic filing ("e-filing") program. I want to thank the bar, the County Clerks, and the E-filing Advisory Committees for their input and their contributions to improving the e-filing program over these past 24 years. I also want to thank the Legislature and the Governor for their support of e-filing initiatives in the past and for their consideration of the Judiciary's legislative proposal to allow for the further expansion of e-filing. I especially want to acknowledge the efforts of Jeff Carucci, Director of the Division of E-Filing, who has retired this year after decades of dedicated service to the e-filing program and 37 years of service with the court system.

A handwritten signature in black ink that reads "Tamiko Amaker". The signature is written in a cursive style with a long horizontal stroke at the beginning.

**Hon. Tamiko Amaker**

Acting Chief Administrative Judge of the State of New York

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1. Judiciary Law 212(2)(u)(i)(A) states that UCS must submit a "report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate."

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# I. Introduction

The COVID-19 pandemic brought about a myriad of changes to the Unified Court System, and various pandemic-related challenges have only demonstrated the importance and centrality of e-filing. For lawyers and pro se litigants, e-filing has been a pandemic lifeline: eliminating trips to the courthouses to file documents; saving the expense and burden of serving documents; giving easy access to the entire case file through the internet; improving efficiency and productivity for judges and courts; and providing participating attorneys and pro se litigants immediate notice of court decisions and orders.

We are at an inflection point for e-filing in New York State. The digital transmission of information is now ubiquitous in society, and the legal community and the general public have gradually moved away from analog technologies (postal mail and paper filings) to digital technologies (e-mail, videoconferencing, web resources). County Clerks from across the State consider e-filing to be “invaluable”<sup>1</sup> to the operation of their offices because it saves time, reduces the need to store paper documents, reduces errors and provides for a more efficient exchange of documents. The savings in time, space, and efficiency translates into a better use of taxpayer dollars. Over 24 years after e-filing was first implemented in the New York Courts, e-filing is now an essential component of modern legal practice.

As this report will show, the number of documents that have been uploaded through the e-filing system in 2022 was over double the number in 2017—significant progress in just five years. Currently, e-filing is in use in Supreme Court, Civil Term, in 61 of New York’s 62 counties, and in all 62 counties in Surrogate’s Court. E-filing is available in all departments of the Appellate Division; for all matters in the Court of Claims statewide; in New York City Civil Court for no-fault health services cases (related to insurance coverage after a car accident); and in Housing Court in all boroughs of New York City.

Number of E-filed Cases and Documents	
<u>2017</u>	<u>2022</u>
<b>305,856 cases</b>	<b>773,475 cases</b>
<b>4,920,325 documents</b>	<b>11,226,411 documents</b>

Despite the universal recognition that e-filing improves efficiency and security for lawyers, litigants, and the courts, the Unified Court System is still limited in its ability to institute and require e-filing in the trial courts. The Chief Administrative Judge has limited statutory authority to mandate e-filing for certain types of cases, such as in Supreme Court, Civil Term, matrimonial cases and Article 78

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1. Letter from Gizelle Meeks, Jefferson County Clerk (November 2022). [Appendix D, p. 70](#)

cases (petitions challenging a decision or action of a New York State body or officer).<sup>2</sup> The Chief Administrative Judge also may not authorize mandatory e-filing in more than six counties each in the Superior criminal courts and Family Court (only for Article 3 and 10 proceedings). Furthermore, no form of e-filing – whether voluntary or mandatory – may be instituted in the local criminal courts and in the local civil courts outside of New York City. The Unified Court System’s proposed legislation ([Appendix A](#)) will rectify these issues. Our proposed legislation also maintains the exemptions and opt outs to mandatory e-filing that are currently in place. Self-represented litigants are automatically exempt from mandatory e-filing. Attorneys who certify that they lack the skills or equipment may also affirmatively opt out of e-filing.

A report from the National Center for State Courts published in 2022 reveals that 25 states (including D.C.) have statewide or district-wide e-filing at the trial court level.<sup>3</sup> New York is not one of those states. The Unified Court System urges the Legislature to take action and authorize the Chief Administrative Judge to institute e-filing in all of New York’s trial courts in any case type and to remove the restrictions on establishing mandatory e-filing in case types. As stated by the Commission to Reimagine the Future of New York’s Courts, “[i]mplementing these legislative changes will enhance access to justice without delay, while continuing to safeguard the interests of self-represented litigants and technologically challenged attorneys.”<sup>4</sup>

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2. Additional case types that the Chief Administrative Judge cannot mandate in Supreme Court, Civil Term are election law proceedings, Article 70 matters, and Mental Hygiene Law cases. CPLR 2111(b)(2)(A).

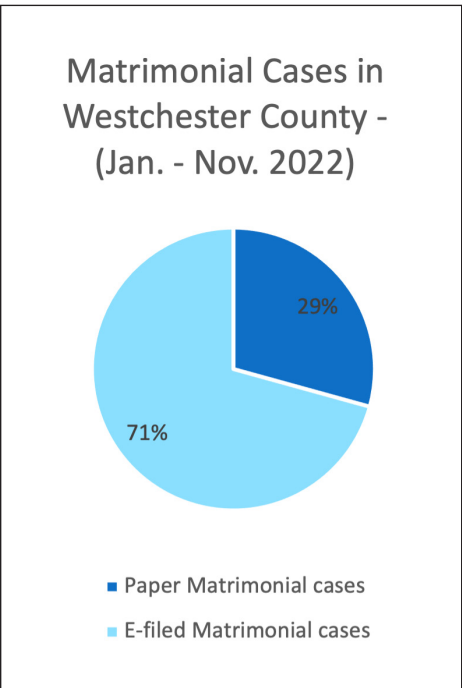
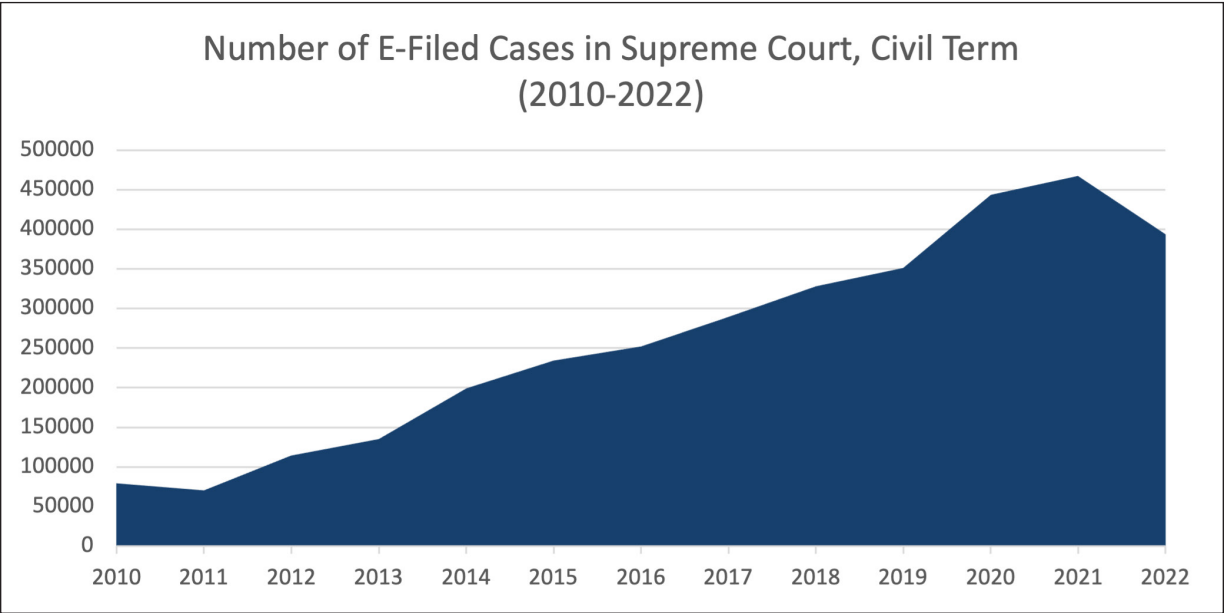
3. National Center for State Courts, *Self-represented e-filing: surveying the accessible implementations* (July 2022), pp. 9-11. [https://www.ncsc.org/\\_data/assets/pdf\\_file/0022/76432/SRL-efiling.pdf](https://www.ncsc.org/_data/assets/pdf_file/0022/76432/SRL-efiling.pdf)

4. Structural Innovations Working Group of the Commission to Reimagine the Future of New York’s Courts, *The Expansion of Electronic Filing – A Report and Recommendations of the Structural Innovations Working Group* (Jan. 2021), p. 16. <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf>

# II. Status of E-filing in New York State

## A. Supreme Court (Civil Cases)

In 2022, 393,385 cases were e-filed in Supreme Court around New York State. Since 2010, there has been an almost 500% increase in e-filed cases in Supreme Court.



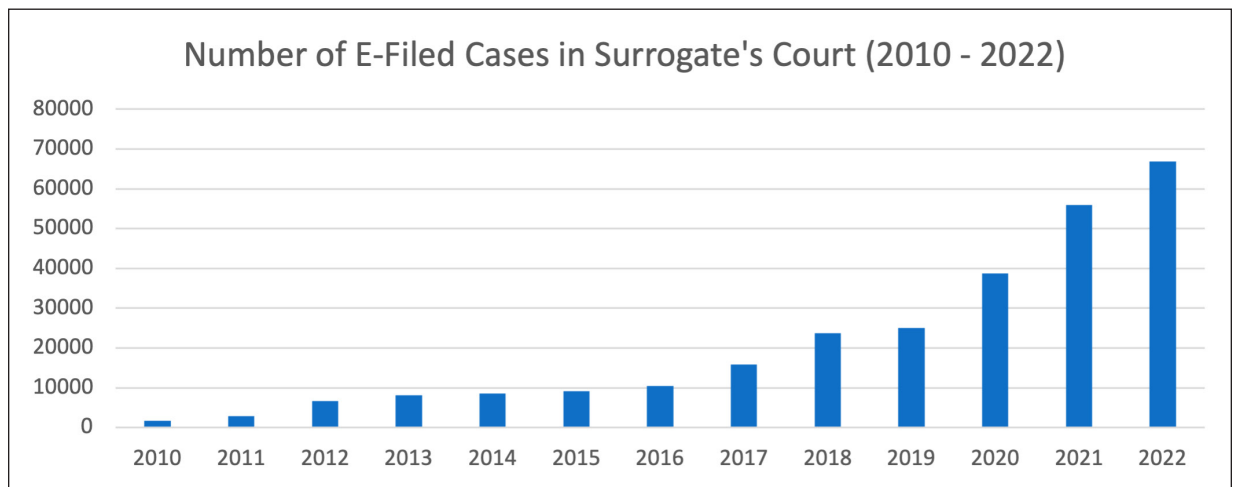
While there is no e-filing in Allegany County and Herkimer County has consensual e-filing only, the other 60 counties have mandatory e-filing in Supreme Court in the case types authorized by statute. Matrimonial cases are one notable case type where mandatory e-filing is prohibited by the current law. Even though matrimonial cases are currently only e-filed on a consensual basis, there is strong support from the matrimonial law attorneys and bar groups for mandatory e-filing in matrimonial cases. By way of example, in 2022 71% of matrimonial cases are already e-filed in Westchester County even though e-filing is not required. Even though there is already a high utilization of e-filing in a consensual case type in this county, converting more courts and case types to mandatory e-filing is important because of the efficiencies and time savings it will produce for courts, local county governments, and practitioners. Having a larger proportion of case filings in electronic format also ensures that UCS is prepared in case of future emergencies that may affect access to paper documents that are maintained and stored in the courts and County Clerks' offices.

Matrimonial files are confidential under Domestic Relations Law § 235, and they are restricted from public view in the New York State Courts Electronic Filing System (NYSCEF). All e-filed matrimonial cases are only accessible by the counsel on the case, participating self-represented parties, and the County Clerk or court staff who have permission to work on such cases. Since NYSCEF is an automated application with built-in security, it provides greater security for the confidentiality of matrimonial files compared with hard-copy files. NYSCEF has an electronic audit trail to ensure that only authorized persons view the documents.

County Clerks, in particular, are eager for legislative change that will allow matrimonial cases to be e-filed on a mandatory basis (with the usual exceptions for unrepresented litigants and attorneys who opt out). In Dutchess County, the County Clerk reported that approximately 36.5% of all the paper cases that were submitted were matrimonial actions.<sup>5</sup> The Onondaga County Clerk, Lisa Dell, stated, “Mandatory e-filing is the next logical step for a case type that constitutes a large portion of the Supreme Court cases.”<sup>6</sup> Mandatory e-filing of matrimonial actions will translate into more efficient processing of these cases and cost savings for all parties involved.

## B. Surrogate’s Court, the Court of Claims, New York City Civil Court, and Housing Court

Over 66,800 cases were e-filed in Surrogate’s Court around the state in 2022. For the 57 counties outside of New York City, e-filing is mandatory in Surrogate’s Court for the majority of case types. In New York City, e-filing in Surrogate’s Court is on a consensual basis only. There has been significant growth in the number of e-filed cases in Surrogate’s Court from 2010 to the present year. In 2023, the e-filing team will continue to work on the enhancement and re-write of the Surrogate’s Court’s current e-filing program. The changes to the program will improve the functionality and user experience of e-filing in Surrogate’s Court.



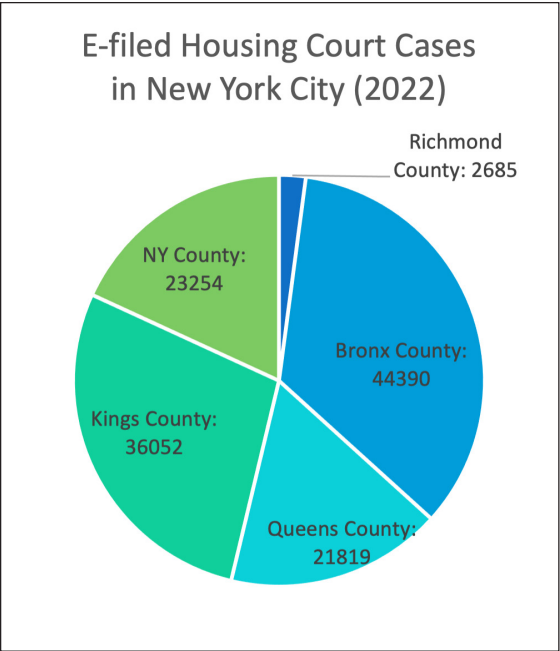
The Court of Claims (the court for individuals seeking money damages against the State of New York) has e-filing throughout the State but only on a voluntary basis.<sup>7</sup> There has also been a huge increase in the number of e-filed cases in New York City Civil Court since no-fault health services cases were subject to mandatory e-filing beginning in 2021. No-fault cases are actions brought by a provider of health care services after a car accident against an insurer for failure to comply

5. In Dutchess County, the number of e-filed matrimonial matters has also grown 350% from 2017 to 2022.

6. Letter from Lisa Dell, Onondaga County Clerk (November 16, 2022), [Appendix D, p. 72](#)

7. Mandatory e-filing is not presently permitted in the Court of Claims under current legislation.





with the rules and regulations under Insurance Law § 5108(b) and CPLR 2111(b)(2)(C). In 2021 and 2022, 654,980 paper no-fault cases in Civil Court were converted to e-filing cases, creating great reductions in costs to courts, lawyers, and litigants alike. E-filing, which began in Housing Court in the summer of 2020, is operating on a consensual basis in Housing Court in all five boroughs in New York City. In 2022, over 128,000 Housing Court cases were e-filed in New York City.

In 2023, the e-filing team is working with stakeholders to expand e-filing for more case types in Civil Court. The team has already engaged in extensive discussions about bringing consensual e-filing in consumer credit cases in Civil Court, with many legal services organizations, such as the Legal Aid Society<sup>8</sup> and other interested parties, requesting such e-filing capability.<sup>9</sup> The team

continues to work with legal services organizations, the UCS’ Office of Language Access, and Office of Justice Initiatives to improve the e-filing user experience for unrepresented litigants. The e-filing team plans on soliciting feedback from users throughout the development process.

### C. Family Court

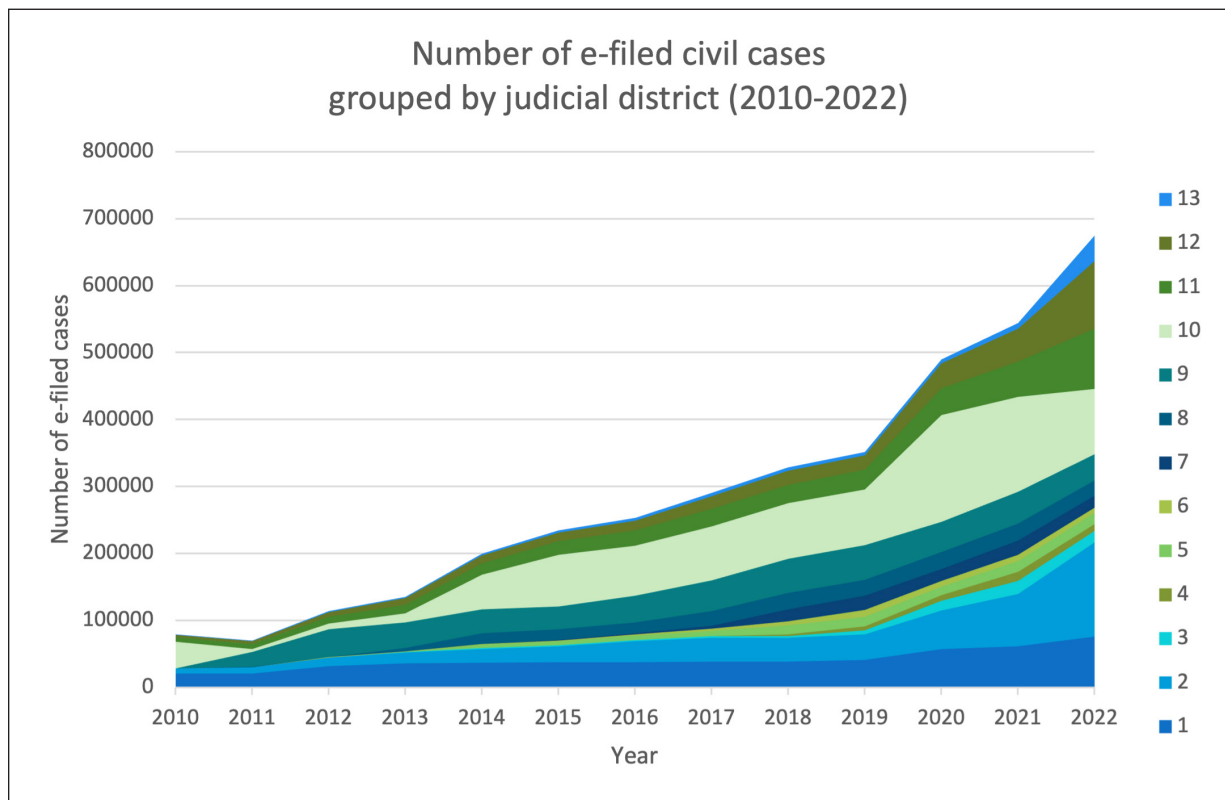
Creating the ability to e-file through the NYSCEF system was a top priority for the Unified Court System in 2022. Prior to 2022, there was no NYSCEF program for Family Court cases. During the COVID-19 pandemic, litigants and attorneys in Family Court used the Electronic Document Delivery System (EDDS) to send documents to the courts but those documents were not part of an online case record that could be accessed remotely, like in NYSCEF.

The e-filing team, led by Jeff Carucci, worked closely with Administrative Judge Anne-Marie Jolly and various Family Court employees to map out the workflow of Family Court clerks and analysts. E-filing made its Family Court debut in the summer and fall of 2022 as a pilot program in five counties: New York County, Richmond County, Fulton County, Saratoga County, and Suffolk County. E-filing is entirely on a consensual basis in Family Court and currently in limited case types: custody/visitation, guardianship, paternity, parentage – assisted reproduction, parentage – surrogacy, and support. Many unrepresented litigants, particularly in New York County, are already making use of the e-filing system. The e-filing team is working on expanding the availability of consensual e-filing to other case types and to other counties in 2023. The Division of Technology has developed a process to allow for the automated transfer of data from NYSCEF to the internal case management system of the courts, known as UCMS (Universal Case Management System), which creates significant efficiencies with respect to calendaring and tracking cases. This process is currently occurring in the Supreme Court e-filing platform and is under development for the Family Court

8. Adriene Holder, Letter from Legal Aid Society, December 12, 2022. [Appendix E, p. 109-111](#)  
 9. An unrepresented litigant, Juliana Payne, submitted a comment to the e-filing team saying, “Living in hope that one day the New York City Civil Court will allow e-filing for all, and not just landlord and tenant and no fault matters only.” E-mail dated September 10, 2022, [Appendix E, p. 170](#)

platform. Family Court case records are confidential, as determined by statute.<sup>10</sup> Only participating parties and attorneys have access to individual proceedings.

Collectively, the number of e-filed civil cases in Supreme Court throughout the state; New York City Civil Court (excluding cases converted from paper to e-filing); New York City Housing Court cases; and Family Court cases has grown dramatically from 2010 (around 79,000 e-filed cases) to 2022 (nearly 675,000 e-filed cases).<sup>11</sup> The below chart excludes cases from Surrogate’s Court and the Court of Claims.



## D. Town and Village Courts

Electronic filing and service of documents by litigants in Town and Village Courts is still not permitted by statute, so the e-filing team has developed functionality for Town and Village Court staff to create their own case files in NYSCEF. The Town and Village Courts continue to employ the Electronic Document Delivery System (EDDS), which permits the digital transmission of documents to those courts. Though attorneys are not able to file documents using NYSCEF, they have access to the electronic case file in Town and Village Courts for the cases that have been created in NYSCEF.

10. Family Court Act § 166; Family Court Act § 375.1.

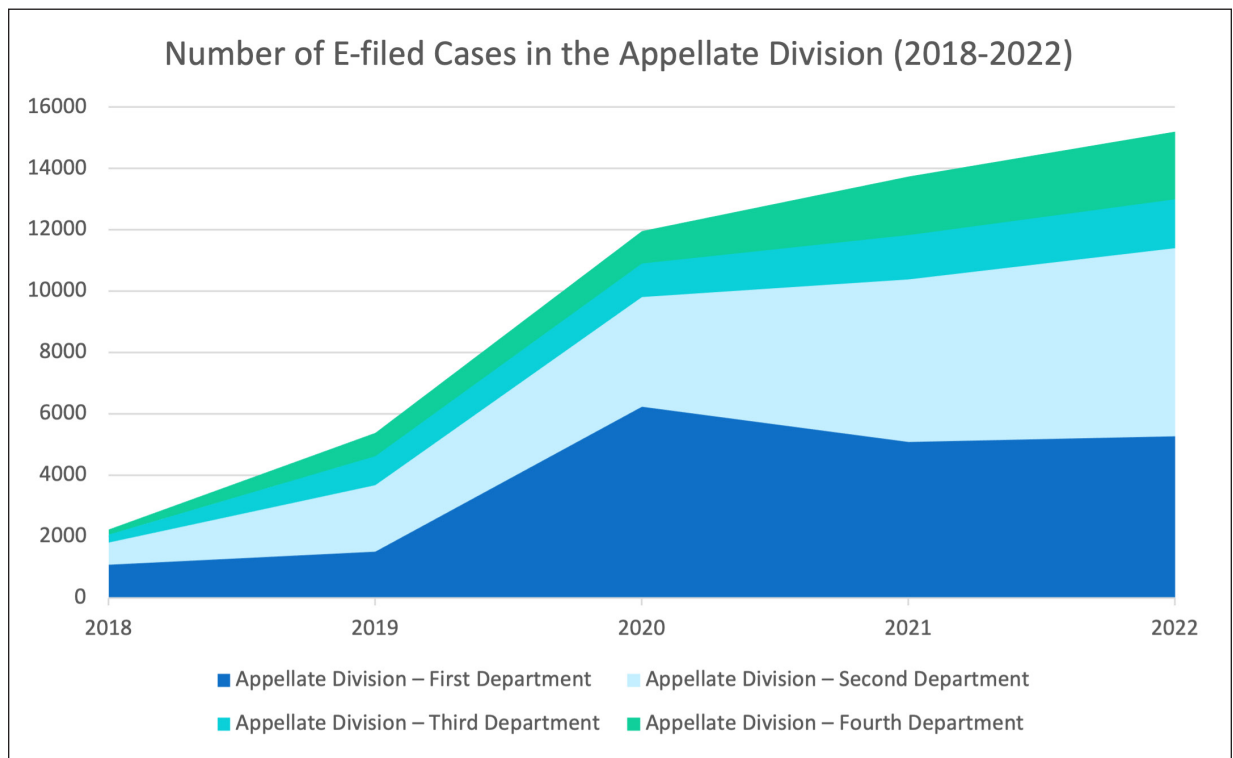
11. Please note that civil no-fault cases were not e-filed until 2021. Housing Court in New York City began e-filing in 2020, and Family Court began e-filing in 2022.

## E. Supreme and County Courts - Criminal Cases

The e-filing team has already expended significant time and resources into developing a pilot program for e-filing for Supreme and County Court criminal cases. The e-filing team has developed a list of documents that may be e-filed, a flow chart of typical filings for the case types in which they are authorized, and draft web screens. The NYSCEF Resource Center Team held many meetings regarding the proposed e-filing module and received feedback from various stakeholder groups in ten different counties in New York in 2021. The rules subcommittee of the Advisory Committee on E-Filing in Supreme and County Court Criminal Cases (Hon. Michael V. Coccoma (Ret.), Chair) are also in the process of developing and finalizing appropriate e-filing rules for criminal cases. The roll-out of e-filing in the superior courts for criminal cases will be a major priority for UCS in 2023.

## F. Appellate Division and Appellate Term

Most of the cases heard on appeal in the Appellate Division are subject to mandatory e-filing. NYSCEF provides a uniform system of e-filing on appeal at the intermediate level statewide, under a single set of statewide rules. While there were slightly over 2200 cases e-filed in the Appellate Division in 2018, in 2022 15,198 cases were e-filed in the Appellate Division.



In 2023, the e-filing team is examining and analyzing implementation of e-filing in the Appellate Term, the appellate court for appeals from civil and criminal cases originating in the Civil and Criminal Courts of the City of New York. In the Second Department, the Appellate Terms also have jurisdiction over appeals from civil and criminal cases originating in District, City, Town and Village Courts, as well as non-felony appeals from County Court.

## G. Electronic Document Delivery System (EDDS)

Where e-filing/NYSCEF is not authorized, EDDS (Electronic Document Delivery System) continues to be widely used. EDDS, developed in response to the pandemic to transmit digitized documents to the Courts around the state, is available and utilized in over 320 individual courts. Additionally, Town and Village Courts have commenced a pilot program which uses EDDS for the delivery of documents and then utilizes NYSCEF to maintain the official court record. (Its launch, however, is currently limited in number). Like NYSCEF, EDDS has minimized the number of people entering courthouses to file and submit papers during the height of the pandemic.

In 2022, 851,745 documents were transmitted to courts using EDDS. The high volume of documents demonstrates the interest among practitioners and litigants in e-filing, where NYSCEF is currently unavailable. Over half of the documents transmitted using EDDS pertained to Family Court cases. About 24% of the documents transmitted using EDDS were documents in criminal cases.

Although EDDS serves the purpose for transmitting documents to the courts that are not authorized for e-filing, there are vast differences between the EDDS and NYSCEF platforms. Documents uploaded via NYSCEF are deemed filed when its electronic transmission is recorded at the site, whereas documents transmitted via EDDS are not deemed filed until reviewed and accepted by the clerk, which may have statutory implications. The NYSCEF system maintains all of the documents in a case file from commencement to disposition, recording the date and time the documents were filed, and is available remotely to all participating parties 24/7. Submissions via EDDS is simply the transmission of the document to the court. An electronic case record does not exist in EDDS.

Another benefit of e-filing via NYSCEF is that interlocutory documents that are filed, are simultaneously served on all participating parties. EDDS does not effectuate service, and proof of service by alternative methods is generally required to accompany any documents submitted via EDDS. Finally, the overall functionality offered in NYSCEF is much broader and more robust than EDDS. For example, NYSCEF is used to interact with filers to return documents for insufficiencies and permits the filer to re-submit a corrected version. Court staff can also use NYSCEF to upload and send court notices to all of the parties, whereas communication with a party that submitted a document through EDDS is likely by e-mail or telephone. Once NYSCEF becomes available in more case types and more counties around the state, the need for EDDS will diminish.

## H. E-filing Among Unrepresented Litigants

Unrepresented litigants are statutorily exempt from e-filing. They file and serve, and are served with, documents in hard-copy form. This exemption is automatic – these litigants need take no action whatsoever to obtain or maintain their exemption. The law bars courts and County Clerks from requiring such litigants to participate in e-filing in a venue where e-filing is in place. “No party shall be compelled, directly or indirectly, to participate in e-filing.” CPLR 2111(b)(1).

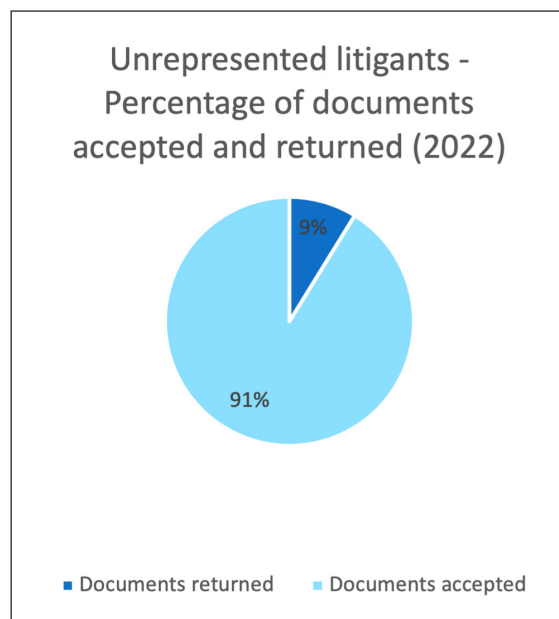
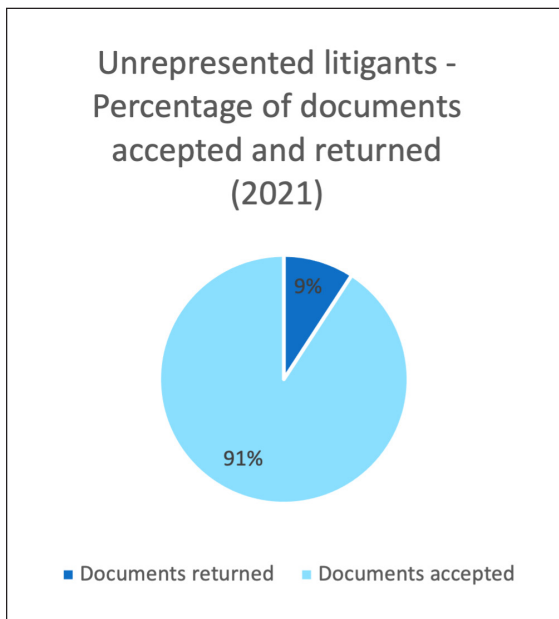
That said, e-filing is available to unrepresented litigants, if they choose to use it,<sup>12</sup> in a variety of case types. In 2022, there were 19,793 active unrepresented litigants who either recorded consent in an e-filing case, commenced a case, or filed a document. The Legal Aid Society stated in their comment submission:

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12. If an unrepresented party changes their mind about participating in e-filing, they can file and serve a Notice of Intent to Cease E-filing.

*Access to e-filing can be a great boon to low-income and other disadvantaged communities, such as the elderly, people with disabilities and those with Limited English Proficiency (LEP). All litigants, especially those who are low-income and unrepresented, would benefit from immediate access to court records and the ability to file legal papers remotely at any time, day or night. Litigants with disabilities that limit their mobility can benefit from electronic access to court files. Reducing the number of people traveling to and entering courthouses and post offices would maximize safety for all. With the onset of the coronavirus pandemic and ongoing resurgences and variants, e-filing and other technology is an essential tool to expand access to justice.<sup>13</sup>*

Our records also show that unrepresented litigants are usually able to e-file successfully. In both 2021 and 2022, approximately 9% of the documents filed by unrepresented users were returned by the clerks for further correction. These numbers show that unrepresented users were able to file successfully 91% of the time. The NYSCEF Resource Center Staff continue to make training and assistance easily available to the self-represented and attorneys through on-line self-help tools, e-mail, telephone, and through live and virtual training sessions.<sup>14</sup>



Though the ability to e-file confers great advantages to unrepresented litigants, the e-filing team is also cognizant of ways that NYSCEF can be improved to make e-filing more accessible and user-friendly for those who are unfamiliar with legal terminology and for those who may lack access to personal computers or scanners. In the future, the e-filing team will redesign the NYSCEF website for the self-represented that will further simplify the presentation and make the site available in its entirety in English and Spanish, as well as other languages at a later point.

13. Adriene Holder, Letter from the Legal Aid Society, December 12, 2022. [Appendix E, p. 109-111](#)

14. The Managing Attorneys and Clerks Association (MACA) submitted a comment that said, "In our experience, a substantial factor in NYSCEF's success is the NYSCEF Resource Center.... Their staff operate an effective help desk that provides competent e-filing problem-solving services." [Appendix E, p. 119](#)

## I. Virtual Evidence Courtroom

In addition to the progress that has been made in expanding e-filing to an increasing number of courts and jurisdictions, the e-filing team has also been working to improve the Virtual Evidence Courtroom (VEC) platform. The VEC is an evidence management system for e-filed matters allowing participants in a conference, hearing, or trial to have the ability to send evidence to the court remotely via NYSCEF. There has been a significant increase in the utilization of the VEC platform, where it is in use in over half of the counties in New York in Supreme Court (civil cases). Over 3000 Virtual Evidence Courtrooms have been created.

A newer stand-alone version, VEC2, will soon be available for those courts that are not yet authorized to e-file. The VEC2 platform will also permit the electronic submission of evidence in files/formats other than PDF/PDFA, including video and audio files. VEC2 is expected to launch in a number of courts by Spring 2023.

### III. Comments Received Regarding E-filing

#### A. Solicitation of Comments from Interested Stakeholders

UCS undertook large-scale efforts to consult with interested persons and groups about e-filing. The UCS posted notices seeking comment on the public UCS website and on the home page of the NYSCEF website. Notice was also transmitted to the New York Law Journal for publication therein.

Further, the UCS reached out directly to over 500 bar groups, legal services providers, and other interested groups and persons and solicited their comments and suggestions and, in the case of groups, those of their members. The Director of the UCS Division of Electronic Filing wrote to, among others, all County Clerks in New York State, state, city, county, and women’s bar associations, District Attorneys, public defenders, legal aid groups, agencies, the Office of Indigent Legal Services, specialty bar associations, appropriate government officials, and representatives of victims’ rights organizations.<sup>15</sup> The UCS sent follow-up e-mails to a number of these recipients. Many bar groups circulated our solicitation of comments to their members. In the solicitation letters, the UCS invited comments from recipient groups and individuals about the state’s experience with the UCS electronic filing system and about a possible legislative amendment that would expand current authority for the use of e-filing in the courts and permit the Chief Administrative Judge to institute e-filing - on either a consensual or mandatory basis - in all of the State’s trial courts and in any class of cases. A comprehensive list of organizations that were asked for comment can be found on the NYSCEF website in the 2022 e-filing report.<sup>16</sup>

#### B. Comments Received from Advisory Committees, County Clerks, and Other Groups and Individuals

The various e-filing Advisory Committees, which are described in Judiciary Law § 212(2)(u)(i)(A), all submitted letters in support of UCS’ proposed legislation relating to e-filing. The membership of the Advisory Committees is listed in [Appendix B](#), and the letters they submitted in compliance with the Judiciary Law are contained in [Appendix C](#). Many of the Committees stated in their letters that there was great demand for the expansion of e-filing in their courts. Specifically, the Supreme Court (Civil) E-filing Advisory Committee stated that their committee “has witnessed overwhelming support of e-filing in each and every county where it has been approved both mandatorily and consensually.”<sup>17</sup>

The letters received from the County Clerks are contained in [Appendix D](#) of the report. The comments from the County Clerks echo similar comments that have been made year after year: 1) there has been “profound” savings in time and resources for County Clerk’s Offices with the increased use of e-filing; 2) there are safeguards in place for unrepresented litigants and attorneys who are unable to e-file; 3) there is strong support for legislation that would give the Chief Administrative Judge authorization to mandate e-filing in further case types.<sup>18</sup>

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15. Copy of letter sent to bar organizations, legal service providers, attorneys, and other interested persons and organizations, Oct. 28, 2022. <https://www.nycourts.gov/LegacyPDFS/RULES/efiling/PDF/2022-Memo-NYSCEF-Report.pdf>. These solicitations were sent in compliance with Judiciary Law 212 (u)(i)(A).

16. 2022 – Electronic Filing in the New York State Courts, Appendix K, p. 99-106. <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/EFileReport.pdf>

17. [Appendix C, p. 52](#)

18. [Appendix D, p. 69](#)

Comments from bar associations, legal services organizations, unrepresented individuals, attorneys, and all others are contained in [Appendix E](#) of the report. The Chair of the Pandemic Practices Working Group, Hon. Craig Doran, submitted a comment strongly supporting the expansion of NYSCEF.<sup>19</sup> The Working Group solicited input and suggestions from stakeholders from around New York regarding the use of technology during the pandemic. The Working Group received testimony at the public hearings that the public views NYSCEF as the most reliable platform which allows remote filing and service of legal papers and remote access to court filings. Judge Doran stated the public is ready for the expansion of e-filing and “welcomes the efficiencies and convenience of e-filing.” The Working Group noted that OCA’s proposed legislation regarding e-filing is critical to promoting efficiency and access to the courts. The letter concludes by stating, “The impact of the pandemic made exceedingly obvious that the implementation of NYSCEF to courts throughout the state should not be delayed.”<sup>20</sup>

**“The impact of the pandemic made exceedingly obvious that the implementation of NYSCEF to courts throughout the state should not be delayed.”**

Hon. Craig Doran, Chair of the Pandemic Practices Working Group

The comments from legal service organizations are also supportive of the continued expansion of e-filing. The Prisoners’ Legal Services of New York supports UCS’ proposed legislation to expand e-filing. The Legal Aid Society applauds the expansion of e-filing and urges OCA to introduce a consensual e-filing pilot for consumer credit cases in New York City Civil Court. Various other legal service organizations also reiterate the importance of allowing unrepresented litigants to be automatically exempted from e-filing and making efforts to increase access to technology to the unrepresented. The various bar associations that have provided comments are also supportive of the continued expansion of e-filing. The New York

State Bar Association Commercial and Federal Litigation Section writes, “[T]he proposed legislative change will promote efficiency, improve access to the courts, and keep the court system in line with current cultural trends.”<sup>21</sup> The Queens County Bar Association also recommends that the legislative proposal to expand the use of e-filing be adopted. The New York County Lawyers Association also supports OCA’s efforts to expand e-filing and advocates for the Court of Appeals to adopt e-filing through NYSCEF.<sup>22</sup>

A couple of the comments we received concerned the confidentiality and security of documents. As noted earlier in [Section II. A.](#) in the discussion of matrimonial filings, NYSCEF has functionality that preserves confidentiality, permits secure *ex parte* submissions, and enables the sealing of files, if it is required. Some of the comments submitted raise technical issues and/or suggest modifications

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19. [Appendix E, p. 81](#)

20. [Appendix E, p. 81](#)

21. [Appendix E, p. 115](#)

22. The New York State Bar Association’s Task Force on the Modernization of Criminal Practice submitted a comment regarding e-filing in the Town and Village Justice Courts. They expressed concerns about the lack of resources and staff in the Justice Courts and the difficulties they may have in adapting to e-filing. See [Appendix E, p. 132](#). All stakeholders will have further opportunities to comment and submit recommendations before e-filing is implemented in a new jurisdiction. E-filing is only implemented after extensive testing with adjustments made after receiving feedback. The introduction of e-filing to a new court will also be gradually rolled out (with many opportunities to provide feedback), and the NYSCEF team will also assist in providing additional training for the bar and court staff as needed.



to specific aspects of the NYSCEF application. As the NYSCEF system expands, the NYSCEF administrators, along with the Division of Technology, are constantly building enhancements into NYSCEF. Many of these enhancements are a consequence of the improved technical capabilities of the system. Many other enhancements are a response to the valuable and appreciated comments and recommendations received by daily NYSCEF users. Every suggestion for enhancing, simplifying, and extending the features of the NYSCEF application are seriously considered, and every reasonable comment is explored. However, prioritizing work on the system involves several factors, including the complexity of the particular enhancement, the number of filers it will directly affect, and the time that must be devoted to achieve it. The NYSCEF staff respond directly to comments received from users and interest groups.

The overall tenor of the comments demonstrates that there is strong support for the Judiciary's legislative proposal to give the Chief Administrative Judge authorization to further expand the use of e-filing. None of these expansions will occur without completing extensive outreach and consultation with bar associations, attorneys, and members of the public who may be affected by the proposed e-filing program.

## IV. Legislative Proposal to Expand E-Filing

The NYSCEF e-filing system is one of the most successful administrative endeavors undertaken by the courts of New York in its history. Over many years now, the most salient recommendation we have received about e-filing is that we need more of it. The Judiciary’s legislative proposal, included in full in [Appendix A](#), will lift the constraints on the Chief Administrative Judge to implement e-filing—on either a voluntary or mandatory basis – in any or all of the State’s trial courts and in any class of cases. The highlights of the bill include:

- **Bill section 2.** Amends CPLR 2111(a) to extend the authority to institute e-filing in all of the State’s trial courts of civil jurisdiction. Advance approval of the local county clerk outside New York City is still required as to e-filing in Supreme Court and County Court.
- **Bill section 3.** Repeals paragraphs 1, 2, and 2-a of CPLR 2111(b) [provisions that now mandate that e-filing in courts of civil jurisdiction, where instituted, be voluntary unless the Chief Administrative Judge imposes mandatory e-filing – which he can only do in Supreme Court subject to prohibition upon its use in some major classes of cases, and in the New York City Civil Court in but one class of cases (*i.e.*, cases brought by health care providers against certain insurers)] – and replaces them with new paragraphs 1 and 2, permitting the Chief Administrative Judge to institute voluntary/mandatory e-filing in his discretion, without limitation as to court or class of cases. New paragraphs 1 and 2 continue the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. They also continue the requirement for consultation with various bar associations and attorneys.
- **Bill section 6.** Amends section 11-b(1) of the Court of Claims Act to eliminate its restriction that filing by FAX and e-filing in the Court of Claims be voluntary.
- **Bill section 7.** Adds a new section 42 to the New York City Criminal Court Act to clarify that e-filing may be instituted in the Criminal Court.
- **Bill section 8.** Adds a new section 2103-a to the Uniform District Court Act to clarify that e-filing may be instituted in both civil and criminal cases in the District Courts.
- **Bill section 9.** Adds a new section 2103-a to the Uniform City Court Act to clarify that e-filing may be instituted in both civil and criminal cases in the City Courts.
- **Bill section 10.** Adds a new section 2103-a to the Uniform Justice Court Act to clarify that e-filing may be instituted in both civil and criminal cases in the Town and Village Justice Courts.
- **Bill section 11.** Amends section 10.40(2)(a) of the Criminal Procedure Law to extend the authority to institute e-filing in all of the State’s courts of criminal jurisdiction.
- **Bill section 12.** Repeals section 10.40(2)(b) of the Criminal Procedure Law and replaces it with a new paragraph (b), permitting the Chief Administrative Judge to institute voluntary/mandatory e-filing in all criminal cases in all courts at his discretion.

- **Bill section 13.** Adds a new paragraph (c) to section 10.40(2) of the Criminal Procedure Law (and reletters existing paragraphs (c) and (d) to be (d) and (e)) prescribing rules governing both voluntary and mandatory e-filing in the criminal courts. Regarding the latter, new paragraph (c) continues the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. It also continues the requirement for consultation with various bar associations and attorneys practicing criminal law in the courts to be affected by e-filing; and, likewise, continues the present requirement that the Chief Administrative Judge secure approval of the local District Attorney and criminal defense bar before instituting mandatory e-filing in criminal cases in courts in a county.
- **Bill section 15.** Amends section 10.40(2)(e)(ii) of the Criminal Procedure Law to clarify that e-filing may be instituted in any criminal court, not just in Supreme and County Courts.
- **Bill section 16.** Repeals section 214(b) of the Family Court Act and replaces it with a new subdivision (b), permitting the Chief Administrative Judge to institute voluntary/mandatory e-filing in all Family Court proceedings.
- **Bill section 17.** Adds a new paragraph (c) to section 214 of the Family Court Act (and reletters existing paragraphs (c) through (h) to be (d) through (i)) prescribing rules governing both voluntary and mandatory e-filing in Family Court. Regarding the latter, new paragraph (c) continues the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. It also continues the requirement that the Chief Administrative Judge secure approval of authorized local presentment and child protective agencies, along with the Family Court bars representing parents and children, respectively, before instituting mandatory e-filing in Family Court in a county.

## V. Conclusion

This annual report paints a picture of the prevalence and usefulness of e-filing for not only the Judiciary, but also for County Clerks, attorneys, litigants, unrepresented parties, and members of the public. We once again submit that the restrictions and prohibitions on the authority of the Chief Administrative Judge to expand e-filing should be removed by enacting our proposed legislation. These changes will allow UCS to continue to modernize our services and improve the administration of justice. We ask that the Legislature take these steps to put New York in line with half of the country, which have authorized statewide e-filing in the trial courts, and so that the Judiciary can continue to evolve and respond to the demands of an increasingly digital world.

## **Appendix A**

Judiciary's Legislative Proposal

# Appendix A

Legislative Bill Drafting Commission  
03573-01-3

S.            -----  
                  Senate  
                  -----

IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
                  Assembly  
                  -----

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

**\*JUDILA\* \*Office of Court Adminis-  
tration 9\***  
(Relates to filing by electronic  
means; repealer)

Jud. efilng

AN ACT

to amend the judiciary law, the  
civil practice law and rules, the  
court of claims act, the New York  
city criminal court act, the uniform  
district court act, the uniform city  
court act, the uniform justice court  
act, the criminal procedure law and  
the family court act, in relation to  
filing by electronic means; to amend  
chapter 237 of the laws of 2015  
amending the judiciary law, the  
civil practice law and rules and  
other laws relating to the use of

## IN SENATE

### Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal:

s15 Addabbo	s34 Fernandez	s24 Lanza	s21 Parker	s11 Stavisky
s43 Ashby	s60 Gallivan	s16 Liu	s19 Persaud	s45 Stec
s36 Bailey	s12 Gianaris	s50 Mannion	s13 Ramos	s35 Stewart-
s57 Borrello	s59 Gonzalez	s04 Martinez	s05 Rhoads	Cousins
s46 Breslin	s26 Gounardes	s07 Martins	s33 Rivera	s44 Tedisco
s25 Brisport	s53 Griffo	s02 Mattered	s39 Rolison	s06 Thomas
s55 Brouk	s40 Harckham	s48 May	s61 Ryan	s49 Walczyk
s09 Canzoneri-	s54 Helming	s37 Mayer	s18 Salazar	s52 Webb
Fitzpatrick	s41 Hinchey	s03 Murray	s10 Sanders	s38 Weber
s17 Chu	s47 Hoylman	s20 Myrie	s23 Scarcella-	s08 Weik
s30 Cleare	s31 Jackson	s51 Oberacker	Spanton	
s14 Comrie	s27 Kavanagh	s58 O'Mara	s32 Sepulveda	
s56 Cooney	s63 Kennedy	s62 Ortt	s29 Serrano	
s22 Felder	s28 Krueger	s01 Palumbo	s42 Skoufis	

## IN ASSEMBLY

### Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a078 Alvarez	a140 Conrad	a150 Goodell	a017 Mikulin	a075 Simone
a031 Anderson	a032 Cook	a116 Gray	a122 Miller	a114 Simpson
a121 Angelino	a039 Cruz	a100 Gunther	a051 Mitaynes	a094 Slater
a037 Ardila	a043 Cunningham	a139 Hawley	a145 Morinello	a005 Smith
a035 Aubry	a021 Curran	a083 Heastie	a144 Norris	a118 Smullen
a120 Barclay	a018 Darling	a028 Hevesi	a045 Novakhov	a022 Solages
a106 Barrett	a053 Davila	a128 Hunter	a069 O'Donnell	a110 Steek
a105 Beephan	a072 De Los Santos	a029 Hyndman	a091 Otis	a010 Stern
a107 Bendett	a003 DeStefano	a079 Jackson	a132 Palmesano	a127 Stirpe
a082 Benedetto	a070 Dickens	a104 Jacobson	a088 Paulin	a102 Tague
a042 Bichotte	a054 Dilan	a011 Jean-Pierre	a141 Peoples-	a064 Tannousis
Hermelyn	a081 Dinowitz	a134 Jensen	Stokes	a086 Tapia
a117 Blankenbush	a147 DiPietro	a115 Jones	a063 Pirozzolo	a071 Taylor
a015 Blumencranz	a009 Durso	a077 Joyner	a089 Pretlow	a001 Thiele
a073 Bores	a099 Eachus	a125 Kelles	a019 Ra	a033 Vanel
a098 Brabene	a048 Eichenstein	a040 Kim	a030 Raga	a055 Walker
a026 Braunstein	a074 Epstein	a013 Lavine	a038 Rajkumar	a143 Wallace
a138 Bronson	a109 Fahy	a065 Lee	a006 Ramos	a112 Walsh
a046 Brook-Krasny	a061 Fall	a126 Lemondes	a062 Reilly	a041 Weinstein
a020 Brown, E.	a008 Fitzpatrick	a095 Levenberg	a087 Reyes	a024 Weprin
a012 Brown, K.	a004 Flood	a060 Lucas	a149 Rivera	a059 Williams
a093 Burdick	a057 Forrest	a135 Lunsford	a027 Rosenthal, D.	a113 Woerner
a085 Burgos	a124 Friend	a123 Lupardo	a067 Rosenthal, L.	a080 Zaccaro
a142 Burke	a050 Gallagher	a129 Magnarelli	a025 Rozi	a096 Zebrowski
a119 Buttenschon	a131 Gallahan	a101 Maher	a111 Santabarbara	a056 Zinerman
a133 Bymes	a007 Gandolfo	a036 Mamdani	a090 Sayegh	a023
a044 Carroll	a068 Gibbs	a130 Manktelow	a076 Seawright	
a058 Chandler-	a002 Giglio, J.A.	a108 McDonald	a084 Septimo	
Waterman	a148 Giglio, J.M.	a014 McDonough	a092 Shimsky	
a049 Chang	a066 Glick	a097 McGowan	a103 Shrestha	
a136 Clark	a034 Gonzalez-	a146 McMahon	a016 Sillitti	
a047 Colton	Rojas	a137 Meeks	a052 Simon	

1) Single House Bill (introduced and printed separately in either or  
both houses). Uni-Bill (introduced simultaneously in both houses and printed  
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2  
signed copies of bill and: in Assembly 2 copies of memorandum in support, in  
Senate 4 copies of memorandum in support (single house); or 4 signed copies  
of bill and 6 copies of memorandum in support (uni-bill).

LBDC 01/03/23

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electronic means for the commencement and filing of papers in certain actions and proceedings, in relation to the effectiveness thereof; and to repeal certain provisions of the civil practice law and rules, the criminal procedure law and the family court act, relating to court filings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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1 Section 1. Clause (A) of subparagraph (i) and subparagraphs (iv), (v)  
2 and (vi) of paragraph (u) of subdivision 2 of section 212 of the judici-  
3 ary law, clause (A) of subparagraph (i) as amended by chapter 99 of the  
4 laws of 2017, subparagraphs (iv), (v) and (vi) as added by chapter 237  
5 of the laws of 2015 and such paragraph as relettered by section 1 of  
6 part BB of chapter 55 of the laws of 2017, are amended to read as  
7 follows:

8 (A) Not later than February first in each calendar year, the chief  
9 administrator of the courts shall submit to the legislature, the gover-  
10 nor and the chief judge of the state a report evaluating the state's  
11 experience with programs in the use of electronic means for the  
12 commencement of actions and proceedings and the service of papers there-  
13 in as authorized by law and containing such recommendations for further  
14 legislation as he or she shall deem appropriate. In the preparation of  
15 such report, the chief administrator shall consult with each county  
16 clerk in whose county a program has been implemented in [civil cases in]  
17 the supreme [court] and/or county court, each district attorney in whose  
18 county a program has been implemented in criminal cases in the courts of  
19 such county, the advisory committees established pursuant to subpara-  
20 graphs (ii) through (vi) of this paragraph, the organized bar including  
21 but not limited to city, state, county and women's bar associations; the  
22 office of indigent legal services; institutional legal service provid-  
23 ers; not-for-profit legal service providers; public defenders; attorneys  
24 assigned pursuant to article eighteen-B of the county law; unaffiliated  
25 attorneys who regularly appear in proceedings that are or have been  
26 affected by any programs that have been implemented or who may be  
27 affected by the proposed recommendations for further legislation; repre-  
28 sentatives of victims' rights organizations; and any other persons in



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1 whose county a program has been implemented in any of the courts therein  
2 as deemed to be appropriate by the chief administrator, and afford them  
3 an opportunity to submit comments with respect to such implementation  
4 for inclusion in the report and address any such comments.

5 Public comments shall also be sought via a prominent posting on the  
6 website of the office of court administration. All comments received  
7 from any source shall be posted for public review on the same website.

8 (iv) The chief administrator shall maintain an advisory committee to  
9 consult with him or her in the implementation of laws affecting the  
10 program in the use of electronic means for the commencement of civil  
11 actions and proceedings and the service and filing of papers therein in  
12 the civil court of the city of New York, the district courts, the city  
13 courts outside New York city, and the town and village justice courts.

14 This committee shall consist of such number of members as the chief  
15 administrator shall designate, among which there shall be the chief  
16 clerk of the civil court of the city of New York; one or more chief  
17 clerks of the district courts, the city courts outside New York city,  
18 and the town and village justice courts; the president of the state  
19 magistrates' association or his or her designee; representatives of the  
20 organized bar including but not limited to city, state, county and  
21 women's bar associations; [attorneys who regularly appear in actions  
22 specified in subparagraph (C) of paragraph two of subdivision (b) of  
23 section twenty-one hundred eleven of the civil practice law and rules;]  
24 and unaffiliated attorneys who regularly appear in proceedings that are  
25 or have been affected by the programs that have been implemented or who  
26 may be affected by any recommendations for further legislation concern-  
27 ing the use of electronic means for the commencement of actions and  
28 proceedings and the service and filing of papers therein in [the civil

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1 court of the city of New York] any of the courts specified in this  
2 subparagraph; and any other persons as deemed appropriate by the chief  
3 administrator. Such committee shall help the chief administrator to  
4 evaluate the impact of such electronic filing program on litigants  
5 including unrepresented parties, practitioners and the courts and to  
6 obtain input from those who are or would be affected by such electronic  
7 filing program, including unrepresented parties, city, state, county and  
8 women's bar associations; institutional legal service providers; not-  
9 for-profit legal service providers; attorneys assigned pursuant to arti-  
10 cle eighteen-B of the county law; unaffiliated attorneys who regularly  
11 appear in proceedings that are or have been affected by the programs  
12 that have been implemented or who may be affected by any recommendations  
13 for further legislation concerning the use of the electronic filing  
14 program in any of the [civil court of the city of New York] courts spec-  
15 ified in this subparagraph; and any other persons in whose county a  
16 program has been implemented in any of the courts therein as deemed to  
17 be appropriate by the chief administrator.

18 (v) The chief administrator shall maintain an advisory committee to  
19 consult with him or her in the implementation of laws affecting the  
20 program in the use of electronic means for the commencement of criminal  
21 actions and the filing and service of papers in pending criminal actions  
22 and proceedings[, as first authorized by paragraph one of subdivision  
23 (c) of section six of chapter four hundred sixteen of the laws of two  
24 thousand nine, as amended by chapter one hundred eighty-four of the laws  
25 of two thousand twelve, is continued]. The committee shall consist of  
26 such number of members as will enable the chief administrator to obtain  
27 input from those who are or would be affected by such electronic filing  
28 program, and such members shall include county clerks; chief clerks of

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1 supreme, county and other courts; district attorneys; representatives of  
2 the office of indigent legal services; not-for-profit legal service  
3 providers; public defenders; statewide and local specialty bar associ-  
4 ations whose membership devotes a significant portion of their practice  
5 to assigned criminal cases pursuant to subparagraph (i) of paragraph (a)  
6 of subdivision three of section seven hundred twenty-two of the county  
7 law; institutional providers of criminal defense services and other  
8 members of the criminal defense bar; representatives of victims' rights  
9 organizations; unaffiliated attorneys who regularly appear in  
10 proceedings that are or would be affected by such electronic filing  
11 program and other interested members of the criminal justice community.  
12 Such committee shall help the chief administrator to evaluate the impact  
13 of such electronic filing program on litigants including unrepresented  
14 parties, practitioners and the courts and to obtain input from those who  
15 are or would be affected by such electronic filing program, including  
16 unrepresented parties, district attorneys, not-for-profit legal service  
17 providers, public defenders, statewide and local specialty bar associ-  
18 ations whose membership devotes a significant portion of their practice  
19 to assigned criminal cases pursuant to subparagraph (i) of paragraph (a)  
20 of subdivision three of section seven hundred twenty-two of the county  
21 law; institutional providers of criminal defense services and other  
22 members of the criminal defense bar, representatives of victims' rights  
23 organizations, unaffiliated attorneys who regularly appear in  
24 proceedings that are or would be affected by such electronic filing  
25 program and other interested members of the criminal justice community.  
26 (vi) The chief administrator shall maintain an advisory committee to  
27 consult with him or her in the implementation of laws affecting the  
28 program in the use of electronic means for the origination of [juvenile

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1 delinquency] proceedings [under article three of the family court act  
2 and abuse or neglect proceedings pursuant to article ten of the family  
3 court act] in family court and the filing and service of papers in such  
4 pending proceedings[, as first authorized by paragraph one of subdivi-  
5 sion (d) of section six of chapter four hundred sixteen of the laws of  
6 two thousand nine, as amended by chapter one hundred eighty-four of the  
7 laws of two thousand twelve, is continued]. The committee shall consist  
8 of such number of members as will enable the chief administrator to  
9 obtain input from those who are or would be affected by such electronic  
10 filing program, and such members shall include chief clerks of family  
11 courts; representatives of authorized presentment and child protective  
12 agencies; other appropriate county and city government officials; insti-  
13 tutional providers of legal services for children and/or parents; not-  
14 for-profit legal service providers; public defenders; representatives of  
15 the office of indigent legal services; attorneys assigned pursuant to  
16 article eighteen-B of the county law; and other members of the family  
17 court bar; representatives of victims' rights organizations; unaffil-  
18 iated attorneys who regularly appear in proceedings that are or would be  
19 affected by such electronic filing program; and other interested members  
20 of the family practice community. Such committee shall help the chief  
21 administrator to evaluate the impact of such electronic filing program  
22 on litigants including unrepresented parties, practitioners and the  
23 courts and to obtain input from those who are or would be affected by  
24 such electronic filing program, including unrepresented parties, repre-  
25 sentatives of authorized presentment and child protective agencies,  
26 other appropriate county and city government officials, institutional  
27 providers of legal services for children and/or parents, not-for-profit  
28 legal service providers, public defenders, attorneys assigned pursuant

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1 to article eighteen-B of the county law and other members of the family  
2 court bar, representatives of victims' rights organizations, unaffil-  
3 iated attorneys who regularly appear in proceedings that are or would be  
4 affected by such electronic filing program, and other interested members  
5 of the criminal justice community.

6 § 2. Subdivision (a) of section 2111 of the civil practice law and  
7 rules, as added by chapter 237 of the laws of 2015, is amended to read  
8 as follows:

9 (a) Notwithstanding any other provision of law, the chief administra-  
10 tor of the courts, with the approval of the administrative board of the  
11 courts, may promulgate rules authorizing a program in the use of facsim-  
12 ile transmission only in the court of claims and electronic means in the  
13 [supreme court, the civil court of the city of New York, surrogate's  
14 courts and the court of claims] courts of New York having civil juris-  
15 diction for: (i) the commencement of civil actions and proceedings, and  
16 (ii) the filing and service of papers in pending actions and  
17 proceedings. Provided, however, the chief administrator shall consult  
18 with the county clerk of a county outside the city of New York before  
19 the use of electronic means is to be authorized hereunder in the supreme  
20 court or the county court of such county, afford him or her the opportu-  
21 nity to submit comments with respect thereto, consider any such comments  
22 and obtain the agreement thereto of such county clerk.

23 § 3. Paragraphs 1, 2 and 2-a of subdivision (b) of section 2111 of the  
24 civil practice law and rules are REPEALED and two new paragraphs 1 and 2  
25 are added to read as follows:

26 1. Participation in this program may be required or may be voluntary  
27 as provided by the chief administrator, except that it shall be strictly

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1 voluntary as to any party to an action or proceeding who is not repres-  
2 ented by counsel.

3 2. (A) Where participation in this program is to be voluntary:

4 (i) commencement of an action or proceeding by facsimile transmission  
5 or electronic means shall not require the consent of any other party;  
6 nor shall a party's failure to consent to participation in an action or  
7 proceeding bar any other party to the action or proceeding from filing  
8 and serving papers by facsimile transmission or electronic means upon  
9 the court or any other party to such action or proceeding who has  
10 consented to participation;

11 (ii) all parties shall be notified clearly, in plain language, about  
12 their options to participate in filing by electronic means;

13 (iii) no party to an action or proceeding shall be compelled, directly  
14 or indirectly, to participate;

15 (iv) where a party is not represented by counsel, the court shall  
16 explain such party's options for electronic filing in plain language,  
17 including the option for expedited processing, and shall inquire whether  
18 he or she wishes to participate, provided however the unrepresented  
19 litigant may participate in the program only upon his or her request,  
20 which shall be documented in the case file, after said party has been  
21 presented with sufficient information in plain language concerning the  
22 program.

23 (B) Where participation in this program is to be required:

24 (i) such requirement shall not be effective in a court in a county  
25 unless, in addition to consulting with the county clerk of such county  
26 and obtaining his or her agreement thereto if the court is a supreme  
27 court or county court, the chief administrator shall:

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1 (1) first consult with members of the organized bar including but not  
2 limited to city, state, county, and women's bar associations and, where  
3 they practice in such court in such county, with (a) institutional  
4 service providers, (b) not-for-profit legal service providers, (c)  
5 attorneys assigned pursuant to article eighteen-B of the county law, (d)  
6 unaffiliated attorneys who regularly appear in proceedings that are or  
7 have been affected by a program of electronic filing in such county, and  
8 (e) any other persons as deemed to be appropriate by the chief adminis-  
9 trator;

10 (2) afford all those with whom he or she consults pursuant to item one  
11 of this clause the opportunity to submit comments with respect to the  
12 program, which comments, including but not limited to comments related  
13 to unrepresented litigants, he or she shall consider and shall post for  
14 public review on the office of court administration's website; and

15 (ii) as provided in paragraph three of this subdivision, no party who  
16 is not represented by counsel nor any counsel in an affected case who  
17 opts out of participation in the program shall be required to partic-  
18 ipate therein.

19 § 4. The opening paragraph of paragraph 3 of subdivision (b) of  
20 section 2111 of the civil practice law and rules, as added by chapter  
21 237 of the laws of 2015, is amended to read as follows:

22 Where the chief administrator [eliminates the requirement of consent]  
23 requires participation in electronic filing as provided in paragraph  
24 [two] one of this subdivision, he or she shall afford counsel the oppor-  
25 tunity to opt out of the program, via presentation of a prescribed form  
26 to be filed with the clerk of the court where the action is pending.  
27 [Said] Such form shall permit an attorney to opt out of participation in

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1 the program under any of the following circumstances, in which event, he  
2 or she will not be compelled to participate:

3 § 5. Section 2112 of the civil practice law and rules, as amended by  
4 chapter 99 of the laws of 2017, is amended to read as follows:

5 § 2112. Filing of papers in the appellate division by electronic  
6 means. Notwithstanding any other provision of law, and except as other-  
7 wise provided in subdivision (c) of section twenty-one hundred eleven of  
8 this article, the appellate division in each judicial department may  
9 promulgate rules authorizing a program in the use of electronic means  
10 for: (i) appeals to such court from the judgment or order of a court of  
11 original instance or from that of another appellate court, (ii) making a  
12 motion for permission to appeal to such court, (iii) commencement of any  
13 other proceeding that may be brought in such court, and (iv) the filing  
14 and service of papers in pending actions and proceedings. Provided  
15 however, such rules shall not require an unrepresented party or any  
16 attorney who furnishes a certificate specified in subparagraph (A) or  
17 (B) of paragraph three of subdivision (b) of section twenty-one hundred  
18 eleven of this article to take or perfect an appeal by electronic means.  
19 Provided further, however, before promulgating any such rules, the  
20 appellate division in each judicial department shall consult with the  
21 chief administrator of the courts and shall provide an opportunity for  
22 review and comment by all those who are or would be affected including  
23 city, state, county and women's bar associations; institutional legal  
24 service providers; not-for-profit legal service providers; attorneys  
25 assigned pursuant to article eighteen-B of the county law; unaffiliated  
26 attorneys who regularly appear in proceedings that are or have been  
27 affected by the programs that have been implemented or who may be  
28 affected by promulgation of rules concerning the use of the electronic



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1 filing program in the appellate division of any judicial department; and  
2 any other persons in whose county a program has been implemented in any  
3 of the courts therein as deemed to be appropriate by any appellate divi-  
4 sion. To the extent practicable, rules promulgated by the appellate  
5 division in each judicial department pursuant to this section shall be  
6 uniform and may apply to any appellate term established by an appellate  
7 division.

8 § 6. Subdivision 1 of section 11-b of the court of claims act, as  
9 added by chapter 237 of the laws of 2015, is amended to read as follows:

10 1. Notwithstanding any other provision of law, the chief administrator  
11 of the courts[, with the approval of the administrative board of the  
12 courts,] may authorize a program in the [voluntary] use of facsimile  
13 transmission and electronic means in the court as provided in article  
14 twenty-one-A of the civil practice law and rules.

15 § 7. The New York city criminal court act is amended by adding a new  
16 section 42 to read as follows:

17 § 42. Use of electronic filing authorized. (1) Notwithstanding any  
18 other provision of law, the chief administrator of the courts may  
19 authorize a program in the use of electronic means in cases in the crim-  
20 inal court of the city of New York as provided in section 10.40 of the  
21 criminal procedure law.

22 (2) For purposes of this section, "electronic means" shall have the  
23 same meaning as defined by subdivision (f) of rule twenty-one hundred  
24 three of the civil practice law and rules.

25 § 8. The uniform district court act is amended by adding a new section  
26 2103-a to read as follows:

27 § 2103-a. Use of electronic filing authorized.

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1 (a) Notwithstanding any other provision of law, the chief administra-  
2 tor of the courts may authorize a program in the use of electronic means  
3 in civil cases in a district court as provided in article twenty-one-A  
4 of the civil practice law and rules, and in criminal cases as provided  
5 in section 10.40 of the criminal procedure law.

6 (b) For purposes of this section, "electronic means" shall have the  
7 same meaning as defined by subdivision (f) of rule twenty-one hundred  
8 three of the civil practice law and rules.

9 § 9. The uniform city court act is amended by adding a new section  
10 2103-a to read as follows:

11 § 2103-a. Use of electronic filing authorized.

12 (a) Notwithstanding any other provision of law, the chief administra-  
13 tor of the courts may authorize a program in the use of electronic means  
14 in civil cases in a city court as provided in article twenty-one-A of  
15 the civil practice law and rules, and in criminal cases as provided in  
16 section 10.40 of the criminal procedure law.

17 (b) For purposes of this section, "electronic means" shall have the  
18 same meaning as defined by subdivision (f) of rule twenty-one hundred  
19 three of the civil practice law and rules.

20 § 10. The uniform justice court act is amended by adding a new section  
21 2103-a to read as follows:

22 § 2103-a. Use of electronic filing authorized.

23 (a) Notwithstanding any other provision of law, the chief administra-  
24 tor of the courts may authorize a program in the use of electronic means  
25 in civil cases in a justice court as provided in article twenty-one-A of  
26 the civil practice law and rules, and in criminal cases as provided in  
27 section 10.40 of the criminal procedure law.

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1 (b) For purposes of this section, "electronic means" shall have the  
2 same meaning as defined by subdivision (f) of rule twenty-one hundred  
3 three of the civil practice law and rules.

4 § 11. Paragraph (a) of subdivision 2 of section 10.40 of the criminal  
5 procedure law, as added by chapter 237 of the laws of 2015, is amended  
6 to read as follows:

7 (a) Notwithstanding any other provision of law, the chief administra-  
8 tor, with the approval of the administrative board of the courts, may  
9 promulgate rules authorizing a program in the use of electronic means  
10 ("e-filing") in the [supreme court and in the county court] courts of  
11 New York having criminal jurisdiction for: (i) the filing with a court  
12 of an accusatory instrument for the purpose of commencement of a crimi-  
13 nal action or proceeding [in a superior court, as provided by articles  
14 one hundred ninety-five and two hundred of this chapter], and (ii) the  
15 filing and service of papers in pending [criminal] actions and  
16 proceedings. Provided, however, the chief administrator shall consult  
17 with the county clerk of a county outside the city of New York before  
18 the use of electronic means is to be authorized hereunder in the supreme  
19 court or county court of such county, afford him or her the opportunity  
20 to submit comments with respect thereto, consider any such comments and  
21 obtain the agreement thereto of such county clerk.

22 § 12. Paragraph (b) of subdivision 2 of section 10.40 of the criminal  
23 procedure law is REPEALED and a new paragraph (b) is added to read as  
24 follows:

25 (b) Participation in this program may be required or may be voluntary  
26 as provided by the chief administrator, except that it shall be strictly  
27 voluntary as to any party to an action or proceeding who is not repres-

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1 ented by counsel unless such party, upon his or her request, chooses to  
2 participate.

3 § 13. Paragraphs (c) and (d) of subdivision 2 of section 10.40 of the  
4 criminal procedure law, as added by chapter 237 of the laws of 2015, are  
5 relettered paragraphs (d) and (e) and a new paragraph (c) is added to  
6 read as follows:

7 (c) (i) Where participation in this program is to be voluntary: (A)  
8 filing an accusatory instrument by electronic means with the court for  
9 the purpose of commencement of an action or proceeding shall not require  
10 the consent of any other party; nor shall a party's failure to consent  
11 to participation in an action or proceeding bar any other party to such  
12 action or proceeding from filing and serving papers by facsimile trans-  
13 mission or electronic means upon the court or any other party to such  
14 action or proceeding who has consented to participation;

15 (B) all parties shall be notified clearly, in plain language, about  
16 their options to participate in filing by electronic means;

17 (C) no party to an action or proceeding shall be compelled, directly  
18 or indirectly, to participate;

19 (D) where a party is not represented by counsel, the court shall  
20 explain such party's options for electronic filing in plain language,  
21 including the option for expedited processing, and shall inquire whether  
22 he or she wishes to participate, provided however the unrepresented  
23 litigant may participate in the program only upon his or her request,  
24 which shall be documented in the case file, after said party has been  
25 presented with sufficient information in plain language concerning the  
26 program.

27 (ii) Where participation in this program is to be required:

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1 (A) such requirement shall not be effective in a court in a county  
2 unless, in addition to consulting with the county clerk of such county  
3 and obtaining his or her agreement thereto if the court is a supreme  
4 court or county court, the chief administrator shall:

5 (1) first consult with and obtain the agreement of the district attor-  
6 ney and the criminal defense bar of such county, provide all persons and  
7 organizations, or their representative or representatives, who regularly  
8 appear in criminal actions or proceedings in the criminal courts of such  
9 county with reasonable notice and opportunity to submit comments with  
10 respect thereto and give due consideration to all such comments, and  
11 consult with the members of the advisory committee specified in subpara-  
12 graph (v) of paragraph (u) of subdivision two of section two hundred  
13 twelve of the judiciary law; and

14 (2) afford all those with whom he or she consults pursuant to item one  
15 of this clause the opportunity to submit comments with respect to the  
16 program, which comments, including but not limited to comments related  
17 to unrepresented litigants, he or she shall consider and shall post for  
18 public review on the office of court administration's website; and

19 (B) as provided in paragraph (d) of this subdivision, no party who is  
20 not represented by counsel nor any counsel in an affected case who opts  
21 out of participation in the program shall be required to participate  
22 therein.

23 § 14. The opening paragraph of paragraph (d) of subdivision 2 of  
24 section 10.40 of the criminal procedure law, as added by chapter 237 of  
25 the laws of 2015 and such paragraph as relettered by section thirteen of  
26 this act, is amended to read as follows:

27 Where the chief administrator [eliminates the requirement of consent]  
28 requires participation in electronic filing as provided in [subparagraph

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1 (ii) of] paragraph (b) of this subdivision, he or she shall afford coun-  
2 sel the opportunity to opt out of the program, via presentation of a  
3 prescribed form to be filed with the court where the criminal action is  
4 pending. Said form shall permit an attorney to opt out of participation  
5 in the program under any of the following circumstances, in which event,  
6 he or she will not be compelled to participate:

7 § 15. Subparagraph (ii) of paragraph (e) of subdivision 2 of section  
8 10.40 of the criminal procedure law, as added by chapter 237 of the laws  
9 of 2015 and such paragraph as relettered by section thirteen of this  
10 act, is amended to read as follows:

11 (ii) Notwithstanding any other provision of this section, no paper or  
12 document that is filed by electronic means in a criminal proceeding [in  
13 supreme court or county court] shall be available for public inspection  
14 on-line. Subject to the provisions of existing laws governing the seal-  
15 ing and confidentiality of court records, nothing herein shall prevent  
16 the unified court system from sharing statistical information that does  
17 not include any papers or documents filed with the action; and, provided  
18 further, that this paragraph shall not prohibit the chief administrator,  
19 in the exercise of his or her discretion, from posting papers or docu-  
20 ments that have not been sealed pursuant to law on a public website  
21 maintained by the unified court system where: (A) the website is not the  
22 website established by the rules promulgated pursuant to paragraph (a)  
23 of this subdivision, and (B) to do so would be in the public interest.  
24 For purposes of this subparagraph, the chief administrator, in determin-  
25 ing whether posting papers or documents on a public website is in the  
26 public interest, shall, at a minimum, take into account for each posting  
27 the following factors: (A) the type of case involved; (B) whether such  
28 posting would cause harm to any person, including especially a minor or

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1 crime victim; (C) whether such posting would include lewd or scandalous  
2 matters; and (D) the possibility that such papers or documents may ulti-  
3 mately be sealed.

4 § 16. Subdivision (b) of section 214 of the family court act is  
5 REPEALED and a new subdivision (b) is added to read as follows:

6 (b) (i) Notwithstanding any other provision of law, the chief adminis-  
7 trator, with the approval of the administrative board of the courts, may  
8 promulgate rules authorizing a program in the use of electronic means  
9 ("e-filing") in the family court for: (1) the origination of proceedings  
10 in such court, and (2) the filing and service of papers in pending  
11 proceedings.

12 (ii) Participation in this program may be required or may be voluntary  
13 as provided by the chief administrator, except that it shall be strictly  
14 voluntary as to any party to an action or proceeding who is not repres-  
15 ented by counsel unless such party, upon his or her request, chooses to  
16 participate.

17 § 17. Subdivisions (c), (d), (e), (f) and (g) of section 214 of the  
18 family court act, as added by chapter 237 of the laws of 2015, are  
19 relettered subdivisions (d), (e), (f), (g) and (h) and a new subdivision  
20 (c) is added to read as follows:

21 (c) (i) Where participation in this program is to be voluntary:

22 (1) filing a petition by electronic means with the court for the  
23 purpose of originating a proceeding shall not require the consent of any  
24 other party; nor shall the failure of a party or other person who is  
25 entitled to notice of the proceedings to consent to participation bar  
26 any other party from filing and serving papers by electronic means upon  
27 the court or any other party or person entitled to receive notice of  
28 such proceeding who has consented to participation;

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1 (2) all parties shall be notified clearly, in plain language, about  
2 their options to participate in filing by electronic means;

3 (3) no party to an action or proceeding shall be compelled, directly  
4 or indirectly, to participate;

5 (4) where a party is not represented by counsel, the court shall  
6 explain such party's options for electronic filing in plain language,  
7 including the option for expedited processing, and shall inquire whether  
8 he or she wishes to participate, provided however the unrepresented  
9 litigant may participate in the program only upon his or her request,  
10 which shall be documented in the case file, after said party has been  
11 presented with sufficient information in plain language concerning the  
12 program;

13 (5) upon the filing of a petition with the court by electronic means,  
14 a party to the proceeding and any attorney for such person shall be  
15 permitted to immediately review and obtain copies of such documents and  
16 papers if such person or attorney would have been authorized by law to  
17 review or obtain copies of such documents and papers if they had been  
18 filed with the court in paper form.

19 (ii) Where participation in this program is to be required:

20 (1) such requirement shall not be effective in a court in a county  
21 unless the chief administrator shall:

22 (A) first consult with and obtain the agreement of each authorized  
23 presentment agency, child protective agency, the family court bar  
24 providing representation to parents, and the family court bar providing  
25 representation to children (as represented by the head of each legal  
26 services organization representing parents and/or children, the head of  
27 each public defender organization, and president of the local bar asso-  
28 ciation as applicable) of such county, provide all persons or organiza-



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1 tions, or their representative or representatives, who regularly appear  
2 in proceedings in the family court of such county, in which proceedings  
3 the requirement of consent is to be eliminated with reasonable notice  
4 and an opportunity to submit comments with respect thereto and give due  
5 consideration to all such comments, and consult with the members of the  
6 advisory committee continued pursuant to subparagraph (vi) of paragraph  
7 (u) of subdivision two of section two hundred twelve of the judiciary  
8 law; and

9 (B) afford all those with whom he or she consults pursuant to clause  
10 (A) of this subparagraph with a reasonable opportunity to submit  
11 comments with respect to the program, which comments he or she shall  
12 consider and shall post for public review on the office of court admin-  
13 istration's website; and

14 (C) consult with the members of the advisory committee continued  
15 pursuant to subparagraph (vi) of paragraph (u) of subdivision two of  
16 section two hundred twelve of the judiciary law; and

17 (2) as provided in subdivision (d) of this section, no party who is  
18 not represented by counsel nor any counsel in an affected case who opts  
19 out of participation in the program shall be required to participate  
20 therein.

21 § 18. Section 11 of chapter 237 of the laws of 2015 amending the judi-  
22 ciary law, the civil practice law and rules and other laws relating to  
23 the use of electronic means for the commencement and filing of papers in  
24 certain actions and proceedings, as amended by chapter 554 of the laws  
25 of 2022, is amended to read as follows:

26 § 11. This act shall take effect immediately[; provided that sections  
27 four, five, six and seven of this act shall each expire and be deemed  
28 repealed September 1, 2027; and provided that paragraph 2-a of subdivi-

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1 sion (b) of section 2111 of the civil practice law and rules, as added  
2 by section two of this act, shall expire and be deemed repealed Septem-  
3 ber 1, 2027].

4 § 19. This act shall take effect immediately.

## **Appendix B**

E-Filing Advisory Committees -  
Membership Lists

## Appendix B

### SUPREME COURT (CIVIL) ADVISORY COMMITTEE ON E-FILING

For Purposes of Statutory Consultation Requirement under L. 2015, c. 237.

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## Appendix B

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## Appendix B

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For Purposes of Statutory Consultation Requirement under L. 2015, c. 237.

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Chief Clerk, Erie County Family Court, Buffalo, NY

**Margaret Burt, Esq.**

Rochester, NY

**Steve Byrnes**

First Deputy Chief Clerk, New York City Family Court

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Attorneys for Children Program, NYS Supreme Court, Appellate Division, Second Department

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Special Asst. Public Defender, Monroe County, Rochester, NY

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Brooklyn, NY

### LEGAL SERVICES ADVISORY COMMITTEE ON E-FILING

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Chief Operating Officer, Latino Justice PRLDEF

**Nancy Sunshine**

Kings County Clerk

## **Appendix C**

Advisory Committee Letters



## Appendix C



### WESTCHESTER COUNTY CLERK

**Timothy C. Idoni**  
County Clerk

December 2, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, New York 10004

Dear Judge Amaker:

This letter is intended to fulfill the obligation of the Supreme Court (Civil) Electronic Filing Advisory Committee to consult with the Chief Administrative Judge regarding the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and service of papers therein.

The committee met one time since the 2021 report on electronic filing on November 17, 2022 to discuss the following issues:

- The expansion of electronic filing for the following parts were examined:
  - Article 70
  - Article 78
  - Election Law
  - Mental Health
  - Matrimonial
  - Criminal
- The committee reviewed the proposed legislation, prepared by Marc Bloustein, for consideration of the State Legislature in the 2023 Legislative session. The 2022 E-filing report must be submitted to the Legislature, Governor and Chief Judge by February 1, 2023. A Notice was posted on the NYSCEF website, the New York Law Journal, and distributed to bar associations, legal services organizations, attorneys, and other interested organizations and persons, inviting comment on electronic filing and proposed amendments. A similar notice was forwarded to the County Clerks throughout the state also requesting comments. It was noted that all existing sunset provisions have been requested to be extended to the year 2027.

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- County Clerks will be asked to provide e-filing statistics for the previous year.

Our meeting included ideas and opinions on the potential expansion of e-filing programs across the state. To date, sixty-one counties (out of sixty-two) in the Supreme Court (Civil branch) are providing e-filing capabilities to their constituents.

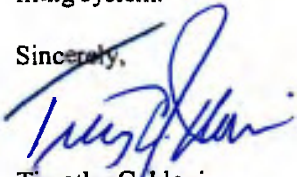
Our committee endorses legislation to lift the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in all the cases noted in bullet # 1. We stand ready to actively support these worthwhile expansion efforts.

Our committee has witnessed overwhelming support of e-filing in each and every county where it has been approved both mandatorily and consensually. The NYSCEF system has been a leading factor in this success. We thank and credit the staff of the Office of Court Administration for its work product. We believe that with further strengthening of the state legislation governing this process, will only continue the positive success of the entire program.

We would be remiss if we did not include our sincere thanks to Jeffrey Carucci, the E-Filing Coordinator of this program from day one, who has announced his retirement. His work was essential in the development and success of the program.

Thank you for considering our input as you prepare your annual report. We look forward to continuing as partners on the path toward great automation and efficiency of the State Court's filing system.

Sincerely,



Timothy C. Itoni

Westchester County Clerk/ Chair OCA (Civil) E-Filing Advisory Committee

STATE OF NEW YORK

Hon. Craig J. Doran  
Supreme Court Justice



Seventh Judicial District  
Ontario County Courthouse

December 28, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, New York 10004

Re: Report of Surrogate's Court Advisory Committee on E-Filing

Dear Judge Amaker,

This letter is intended to fulfill the obligation of the Surrogate's Court Advisory Committee to consult with the Chief Administrative Judge regarding the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein and to recommend further appropriate legislation.

This Committee has been meeting regularly since 2015 and has reported the steady e-filing expansion in the Surrogate's Courts across the state. The Committee has noted that the NYSCEF program in the Surrogate's Courts was found to be a great convenience and an enormous tool in allowing unrepresented litigants and the legal profession to continue their important work outside the court setting during the unprecedented circumstances caused by the pandemic. This has been true as well of many parties who may not have first been eager to e-file, but who quickly found e-filing to be a great convenience.

As previously reported, since May 2021, all 62 Surrogate's Courts have active e-filing programs, and as of December 2021 all but 5 of these Courts have mandatory e-filing programs. The remaining 5 Surrogate's Courts chose to remain with consensual e-filing until certain functionality updates are completed in the Surrogate's Court NYSCEF platform.<sup>1</sup>

The steady progress in the Surrogate's Courts over the years has been made possible by the hard work of many, i.e., court staff, bar associations, legal service providers, and this very Committee. However, as the Committee consistently remarks, it is the very hard work of recently retired Jeff Carucci, Director of E-filing, Chris Gibson, Deputy Statewide Coordinator, and their dedicated and

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<sup>1</sup>Beginning in February of 2022, then Chief Administrative Judge Lawrence Marks, directed that all NYSCEF resources (including dedicated NYSCEF Division of Technology (DoT) programmers) were to be solely involved with the development of an e-filing pilot program for the Family Court. All other e-filing upgrades/projects were temporarily put on hold until the completion of the Family Court Program, although some "newer" platforms in Surrogate's Court were begun but have not yet been completed. It is our intention to restart/complete the functionality updates in the Surrogate's Court NYSCEF platform.

COUNTY COURTHOUSE  
Phone: 585-412-5292

27 NORTH MAIN STREET  
Fax: 585-412-5328

CANANDAIGUA, NY 14424  
cdoran@nycourts.gov

## Appendix C

January 28, 2022  
Hon. Lawrence K. Marks  
Page 2

professional E-Filing staff that has driven NYSCEF forward in courts throughout the state. And as we are all very aware, they have been called upon to enhance and adapt NYSCEF and other digital platforms in response to the challenges caused by the pandemic.

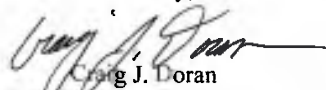
To record our specific meeting for this report, the Committee has met on November 21, 2022:

- Discussion: 2023 annual Electronic Filing Report of the Chief Administrative Judge to the Legislature, the Governor, and the Chief Judge of the State of New York, evaluating the state's experience with programs in the use of electronic means and the invitation for this Committee to comment on proposed legislation authorizing the CAJ to make e-filing available across the state in all of the State's trial courts. The Committee also discussed assembling a smaller working group to review the current rules to determine if updates are necessary.

As stated, the implementation of electronic filing in Surrogate's Courts throughout New York State has been a great success and the Committee recommends that additional resources be made available to the NYSCEF Division to be able to keep up with the demands for e-filing in all authorized courts and to be able to complete the necessary updates to this platform as quickly as possible. The members of the Committee believe that the NYSCEF program is a great product and also recommend the legislative proposal to give the Chief Administrative Judge the authority to expand e-filing to all trial courts and all actions throughout the state, with the inclusion of current safeguards, especially the safeguards for the self-represented litigants to continue to be exempt from e-filing.<sup>2</sup> (Additionally, the committee recommends that the UCMS DOS database for the Surrogate's Court be updated/upgraded.)

It is evident that the pandemic has highlighted the pressing need for the expansion of e-filing into all courts as soon as that can be done. The solid foundation of the NYSCEF system has provided access throughout the pandemic, and absolutely lends itself to the continued expansion of electronic filing programs in all courts.<sup>3</sup> Thank you for considering our input as you prepare your annual report evaluating the state's experience with electronic filing.

Sincerely,



Craig J. Doran  
New York State Supreme Court Justice  
Chair, Surrogate's Court Advisory Committee on E-Filing

cc: Committee

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<sup>2</sup> The Committee has consistently endorsed legislation to authorize the CAJ to make e-filing available to all courts throughout the state, and the Committee is also aware that the proposed legislation has been repeatedly endorsed by *The Commission to Reimagine the Future of New York's Courts*, and its various working committees.

<sup>3</sup> Currently, I am the Chair of *The Pandemic Practices Working Group*, charged by the Commission to Reimagine the Future of NY Courts to examine Pandemic Related Practices. Our group will be distributing its final report within the coming weeks, the report details our support for the expansion of the NYSCEF system and the OCA's legislative proposal.

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## Appendix C



### CIVIL COURT OF THE CITY OF NEW YORK

111 CENTRE STREET  
NEW YORK, N.Y. 10013

**ALLIA RAZZAQ**  
CHIEF CLERK

January 26, 2023

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, New York 10004

Re: Report of the Civil Court Advisory Committee on  
E-filing

Dear Acting Chief Administrative Judge Amaker,

This letter is intended to fulfill the obligation of the NYC Civil Court Advisory Committee on E-filing to consult with the Chief Administrative Judge regarding: (1) the state's experience with programs in the use of electronic means for the commencement of proceedings; (2) the service of papers therein; and (3) recommendations for further appropriate legislation.

The Committee met on November 21, 2022. The Committee again finds much to report and update regarding electronic filing platforms successfully implemented in the New York City Civil Court. As you are aware, during the height of the pandemic, consensual E-filing programs were implemented for all Landlord and Tenant matters within the New York City Civil Court, in every borough including the Harlem Community Justice Center, and more recently implemented in the RedHook Community Justice Center.<sup>1</sup> In addition, beginning in September of 2021, mandatory E-filing in No-Fault Health Services actions pursuant to Insurance Law was authorized in the New York City Civil Court and also implemented in each borough.<sup>2</sup> The benefits of E-filing and the E-filing programs have been well received. As an example, Adriene Holder, Attorney-in-Charge of the Legal Aid Society, Civil Practice, has commented: "All litigants, especially those who are low-income and unrepresented, benefit from immediate access to court records and the ability to file papers remotely at any time, day or night."

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<sup>1</sup> In 2022, approximately 130,000 Landlord and Tenant matters have been filed via NYSCEF, with more than 1 million documents E-filed in these case types.

<sup>2</sup> No Fault actions are the only case type under current statute that can be mandated in the New York City Civil Court, and the New York City Civil Court is the only local Civil Court that has authorization to E-file. In 2022, approximately 165,000 No Fault actions were E-filed, with more than 850,000 documents E-filed in these case types.

## Appendix C

In fact, many legal service groups, impressed with the NYSCEF program, and aware of its many benefits, have been advocating for an expansion of E-filing to the high-volume consumer credit matters. As previously reported, meetings regarding this initiative were held with NYSCEF representatives, stakeholders including Legal Service Organizations, and Civil Court Administration, and a pilot program was anticipated in 2022. However, this E-filing project like many others, was temporarily put on *hold* as court resources were re-directed and focused solely on creating/implementing a NYSCEF program in family court. We have since discussed a “re-start” and will continue to meet throughout the year, hoping to be able to test functionality required for this case type and ultimately to launch a pilot program sometime late in 2023. Civil Court Administration, still battling with eviction matters, will provide NYSCEF representatives a timeline as to when they can be ready to proceed with this process.

The Advisory Committee has also discussed the steps that must be taken to implement additional E-filing programs in this Court. While it is evident that all parties would like to continue to move forward with these additional formats, the Committee is aware of the Court’s limited resources and **strongly recommends that all E-filing programs become a priority**. The Committee is very mindful of the many self-represented parties who find themselves navigating the Civil Court and believe that E-filing will improve access to justice for the self-represented. To ensure an effective rollout of E-filing in these cases, the Committee recommends updating self-represented NYSCEF web pages and integrating them with DIY platforms, creating forms in multiple languages, and examining the possible introduction of new platforms, reaching out to broader community-based platforms to introduce E-filing and conduct training, and providing more training sessions geared to the self-represented, just to name a few. The Committee is also aware that there may be self-represented litigants who wish to avail themselves of the convenience of remote court access, but who may be unable to do so as they may not have the technology: computer, scanner, etc. In this regard the Committee has tasked itself with considering how to make this technology/equipment more accessible, at self-help centers, legal services offices, and other forums, and agreed to continue these discussions to ensure that all persons have meaningful entry/access to the courts.

The Committee also discussed the use of the Electronic Document Delivery System (EDDS), created during COVID-19, as a secure means for documents to be transmitted digitally to the court where NYSCEF is not available.<sup>3</sup> The Committee is aware and discussed the differences between the extensive functionality in NYSCEF and the limitation of EDDS.

Lastly, as in years past, the Committee addressed the Chief Administrative Judge’s Annual Report on E-filing for 2023 and the proposed legislation. The Committee once again supports legislation to move away from the incremental approach of expanding for the last two decades and to lift the restraints upon the Chief Administrative Judge to introduce E-filing in any court and/or action, with the continuation of the current safeguard whereby self-represented litigants are automatically exempt from E-filing.<sup>4</sup> Additionally, the Committee respectfully recommends that

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<sup>3</sup>Over 600,000 documents have been transmitted via EDDS in Civil matters.

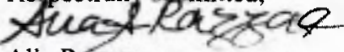
<sup>4</sup> One Committee member suggested the Committee request a meeting with Legislatures to understand and/or discuss their reluctance to act, year after year, on this important legislation.

## Appendix C

resources should be made available to assist the NYSCEF Division to make the additions and enhancements outlined within this submission.

The Committee looks forward to continuing working together and to report on the progress E-filing has made in the Civil Court.

Respectfully submitted,



Alia Razzaq

Chief Clerk of the Civil Court

Chairperson

Civil Court Advisory Committee on E-filing

c: Hon. Deborah A. Kaplan, Deputy Chief Administrative Judge, NYC Courts  
Hon. Carolyn Walker-Diallo, Administrative Judge, Civil Court of the City of New York



**NEW YORK STATE**  
**Unified Court System**

OFFICE OF COURT ADMINISTRATION

**NANCY J. BARRY, ESQ.**  
CHIEF OF OPERATIONS

**JUSTIN BARRY, ESQ.**  
CHIEF OF ADMINISTRATION

**Christopher Gibson**  
Acting DIRECTOR, OCA DIVISION OF E-FILING

December 2, 2022

Honorable Tamiko Amaker  
Acting Chief Administrative Judge  
New York State Court System  
25 Beaver Street  
New York, N.Y. 10004

Re: Report of Family Court Advisory Committee on E-Filing

Dear Judge Amaker,

This letter is intended to fulfill the obligation of the Family Court Advisory Committee to consult with the Chief Administrative Judge regarding the state's experience with programs in the use of electronic means for the commencement of proceedings and the service of papers therein and containing recommendations for further appropriate legislation.

This Committee met on November 17, 2022. The Committee is pleased to report the introduction of a pilot program for the consensual use of E-filing in the Family Court. Since its debut in August, e-filing is now available in limited case types, (Custody/Visitation, Guardianship, Paternity, Parentage-Assisted Reproduction, Parentage-Surrogacy, Support), in a total of 5 Family Courts: within New York County (Manhattan), Richmond County (Staten Island) – outside New York City: Fulton, Saratoga, and Suffolk Counties. The committee was informed Family Court Administrators plan further expansion in 2023.

Although the Electronic Document Delivery System (EDDS) was a helpful pandemic related tool and did assist with the many uncertainties caused by the pandemic, and remains in use today, the members agree that NYSCEF is clearly the preferred system for the future of the Family Court. In that regard, and as a result of feedback from the legal community regarding pandemic practices available in the Family Court, in February of 2022, then Chief Administrative Judge Lawrence Marks directed that all NYSCEF resources (including dedicated NYSCEF Division of Technology (DoT) programmers) were to be solely involved with the development of an e-filing pilot program for the Family Court. By August 2022, the first phase of the pilot program was implemented, utilizing NYSCEF to electronically deliver documents to the court, and electronically serve papers on the parties. Members of the NYSCEF Resource Center worked closely with the Family Court Administrators/staff to guide DoT in the programming of initialization screens and functionality to begin e-filing. Additionally, court Administrators, and Family Court



## Appendix C

Judges/staff, developed e-filing rules for the pilot program, which were introduced by Administrative Order, at the time the pilot program was authorized to begin.<sup>1</sup> Future phases of this program include the transfer of data directly into the court's case management system (UCMS), the development of specific family DIY programs/interviews that can support/interact with NYSCEF, and the direct creation of petitions on the NYSCEF system. The committee also considered the importance of keeping Family Court matters confidential and thoroughly reviewed the NYSCEF functionalities which provide these necessary protections.

The committee remains very aware of the many unrepresented parties appearing in Family Court proceedings and is cognizant of the extraordinary effort, preparation, and coordination between NYSCEF administrators/staff, Family Court administrators/staff, and DoT, to make certain the pilot program sufficiently addresses the specific and unique needs of these parties, while keeping the files confidential. Additionally, the committee emphasizes that current rules make clear that the pilot program is consensual and that no party is compelled to participate in e-filing, at this time.

The Committee has previously reported that all but one Department of the Appellate Division has authorized e-filing in Family Court matters. With e-filing implemented in Family Court, the electronic transfer of data and case files through NYSCEF from Family Court to the Appellate Division will be a great convenience to the court. Also discussed by committee members, especially from those practicing regularly in Family Court, is the disorganization caused by different policies within each Family Court and the eagerness to be able to utilize NYSCEF to additionally create uniformity and organization.

Finally, the committee discussed the proposed legislation allowing for the expansion of e-filing in any or all courts of any case type, and the committee supports the legislation that would allow the Chief Administrative Judge to implement these e-filing programs with the current safeguards in place.

Thank you for considering our input.

Respectfully Submitted, \



Christopher Gibson  
Acting Director, OCA Division of E-Filing  
Acting Vice Chairperson,  
Family Court Advisory Committee on e-Filing

cc: Committee Members

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<sup>1</sup> These rules have not been vetted for public comment and/or promulgated. They have been created solely for the pilot and will be updated as necessary when administrators are prepared to remove the program from a "pilot" stage, and at that time the rules will be vetted/promulgated.

## Appendix C

### SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING

For the New York State Unified Court System

Committee Chair – Hon. Michael Coccoma, JSC (ret.)

Former – Deputy Chief Administrative Judge

Outside NYC

January 13, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, NY 10004

Re: Report of Supreme and County (Criminal) Advisory Committee on E-Filing

Dear Judge Amaker:

The intent of this letter is to fulfill the Supreme and County Court (Criminal) E-filing Advisory Committee's obligation to consult with the Chief Administrative Judge regarding the state's experience with programs using electronic means (e-filing) for the commencement of proceedings and the service of papers therein, and to offer recommendations for further appropriate legislation.

The full Committee, together with its "working" subcommittee, met December 16, 2022. As a brief recap, this group met in December of 2019, a meeting in which, after 3 years of discussion and planning with e-filing staff, we finalized specific e-filing screens to accommodate e-filing in criminal actions in Supreme and County Courts. Representatives from the Division of Technology (DoT) were present for most of our meetings to monitor the logic and functionality required to be built into the NYSCEF program for these criminal filings. This Committee also reviewed document lists and suggested requirements as to the type of documents filed, the need to identify "grouping" of documents, and the documents that may need to be sealed and/or restricted, and those that should not be e-filed as the pilot begins or perhaps thereafter. We submitted final screens and an approved plan to DoT and they were scheduled to begin the programming and developing of the new criminal e-filing platform, and in fact began development. It was anticipated that there would be a "roll out" of the pilot program in at least 3 counties within the first quarter of 2020. These plans have been paused since March of 2020, nearly three years:

- In February of 2022, as the project was about to begin again, and we began circling back to the Courts that had originally stated their interest in going forward with the Pilot – (each of these Courts had established working "stakeholder" groups) - to ascertain they remained committed and ready to proceed, we were suddenly informed by Chief Administrative Judge Lawrence Marks, that all NYSCEF resources were to be focused solely on creating/implementing an e-filing pilot program for the Family Court. Since, the

## Appendix C

### **SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING**

**For the New York State Unified Court System**

**Committee Chair – Hon. Michael Cocco, JSC (ret.)**

**Former – Deputy Chief Administrative Judge  
Outside NYC**

Family Court Project has recently launched their e-filing program, the Committee has requested from OCA Administration to be the next project to “move ahead.”<sup>1</sup>

- Given the “go-ahead” we will once again reach out to “pilot” courts to establish commitment and readiness to proceed. DoT will continue building the program/screens, and together the group will test functionality. As screens and functionality are reviewed/tested, there may be additional adjustments as changes/updates to procedural requirements implemented during this *paused period* may involve further incorporation.
- The “rules” subcommittee will resume meeting regularly to review the general provision of the consensual e-filing rules and continue discussions on necessary rules for the electronic filing of indictments and SCI(s). While the consensual e-filing rules may be generally relied upon, this group has met several times and began drafting equivalent rules for the electronic filing of documents in the Superior (Supreme/County) Criminal Court that are not adequately addressed in the existing e-filing rules. Once we complete this task, the proposed rules will be submitted to the General and Working Committees for comment and sent to counsel’s office and the Administrative Board for approval. Upon approval they will be publicly vetted/posted, prior to promulgation, as is OCA’s policy. This group will also be establishing a uniform e-filing protocol for the Superior Court. However, each e-filing court may amend the protocol to conform to its specific/local practices. The program, naturally, will not be launched until these rules are in place.
- Over 35 committee members, representing a broad spectrum of the legal community, including, representatives from the Supreme/County Courts, County Clerk’s Offices, District Attorney’s Offices, Criminal Defense Bar, Public Defender Offices, and other Legal Service Organizations, participated in our December 16, 2022, meeting. Committee members appear to be ready to pick up where we left off in December 2019, especially since the pandemic has reinforced the need for electronic filing. However, they are eager to review rules once completed and test functionality of the screens incrementally when they are made available by DoT.<sup>2</sup>

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<sup>1</sup> We await the appointment of a new Chief Judge/Chief Administrative Judge within the next few days/weeks. Once the “new” administration is briefed as to this Committee and its progress, the Committee will meet again to review clear directions regarding moving this project forward.

<sup>2</sup> In a comment submitted by the Brooklyn Defenders, Neighborhood Defender, New York County Defender Services, Bronx Defenders, Legal Aid Society, and Queens Defenders, (“Joint Defenders”), for the CAJ’s annual report, they state: “It is disappointing that plans to expand access to courts by piloting NYSCEF in identified Supreme Courts, Criminal Term, were delayed and have yet to resume. There is no greater time to test and implement NYSCEF than now as we access and imagine our courts with the impact of the pandemic.”

**SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING**

**For the New York State Unified Court System**

**Committee Chair – Hon. Michael Coccooma, JSC (ret.)**

**Former – Deputy Chief Administrative Judge  
Outside NYC**

- While this committee may be unable to report on specific e-filing experience(s) at this time, we can report on the use of the Electronic Document Delivery System (EDDS), which was created as a secure means for documents to be transmitted digitally to the court.<sup>3</sup> The experience of the electronic transmission created through EDDS has increased the desire for the NYSCEF pilot program with its significant additional benefits. We are aware that the implementation of this important program depends very much on current court resources and priorities. We strongly recommend that this eagerly anticipated program be given the “green light” to become a reality in 2023.
- Additionally, the committee generally supports legislation permitting the expansion of e-filing and lifting the current restraints upon the discretion of the Chief Administrative Judge to introduce e-filing programs in other courts and case types. However, any expansion must maintain current standards, which include protections for the unrepresented, securing confidentiality pursuant to law, and vetting by interested parties with the consent of the District Attorney and defense bar.<sup>4</sup>

The committee continues to look forward to testing the functionality of this new and exciting e-filing module as it develops, and in the drafting of appropriate e-filing rules for these matters. We are hopeful, (perhaps even confident), that our next annual submission, will be a report on the successful implementation of criminal e-filing in the Superior Court.

Thank you for considering our input as you prepare your annual report.

Respectfully submitted,



Hon. Michael Coccooma, JSC (ret.)

*Former – Deputy Chief Administrative Judge  
Outside New York City*

cc: Committee Members

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<sup>3</sup> To date, nearly 250,000 documents have been transmitted via EDDS in Superior Criminal matters statewide. And over 300,000 documents have been transmitted via EDDS in local Criminal Matters statewide.

<sup>4</sup> A couple of committee members had concerns regarding security of the NYSCEF program and documents e-filed. The UCS Division of Technology has advised that the UCS uses updated security measures to assure that the integrity and security of each document stored is maintained in accordance with the UCS records retention guidelines. Specifically, each PDF is security scanned (multiple virus scanners with the addition of script detection) before being saved. For additional back-up protection all e-filed documents are stored in 3 separate locations, (servers located in two physical locations and one in a secure cloud storage).



NEW YORK STATE

## Unified Court System

OFFICE OF COURT ADMINISTRATION

**NANCY J. BARRY, ESQ.**  
CHIEF OF OPERATIONS

**JUSTIN BARRY, ESQ.**  
CHIEF OF ADMINISTRATION

January 6, 2023

**Christopher Gibson**  
Acting DIRECTOR, OCA DIVISION OF E-FILING

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, New York 10004

Re: Legal Services Advisory Committee on E-Filing

Dear Judge Amaker:

The Legal Services Advisory Committee on E-Filing was established in 2019. It joins five Advisory Committees on Electronic Filing established by Ch. 237 of the Laws of 2015 in consulting with the Chief Administrative Judge about electronic filing in the New York State courts. The purpose of this committee is to foster effective communications between the legal services community and the Court System regarding electronic filing. The Committee is focused on gathering information regarding electronic filing and self-represented litigants and any difficulties that the self-represented might encounter in any court anywhere in the state. Further, the Committee is interested in suggestions on how to improve electronic filing for the self-represented and to address any other concerns the legal services community might have regarding other aspects of electronic filing.

The Committee met on November 17, 2022. The Committee reviewed its purpose and discussed several steps taken to improve the processing of electronic filing for self-represented litigants and plans for future enhancements.

The Committee discussed again the e-filing programs implemented in the high-volume NYC Civil Court for Landlord-Tenant and No-Fault matters, which programs basically *rolled-out* during the height of the public health emergency. The Committee is aware that as a result of these successful e-filing programs, Legal Service Groups, initiated by Tashi Lhewa of the Legal Aid Society, has requested the expansion of e-filing to Consumer Credit matters in the Civil Court. In fact, the availability of NYSCEF in these limited case types, showcasing its efficiency and convenience of having 24-hour access to a court file, has awakened many, and there has been a demanding increase in the number of requests for e-filing programs in all case types in the Civil Court as well as all other courts currently without an e-filing program.

The Committee was also informed of the successful implementation of a Family Court Pilot Program, (August 2022), for the consensual e-filing of Custody/Visitation, Guardianship, Paternity, Parentage-Assisted Reproduction, Parentage-Surrogacy, Support, in 5 Family Courts:

## Appendix C

New York County and Richmond County within New York City and Fulton, Saratoga, and Suffolk Counties outside of New York City, with plans of future expansion.

As of December 2022, there have been over 25,000 self-represented active NYSCEF Users, representing a 28% increase in self-represented Users from the year before. The Committee is aware that there are also self-represented litigants who wish to avail themselves the conveniences of remote court access, but may be unable to do so as they may not have the technology: computer, scanner, etc. In this regard the Committee has tasked itself with considering how to make this technology/equipment more accessible at self-help centers, kiosks or stations in courthouses, legal services offices, public and court libraries, and other forums and agreed to continue these discussions to ensure that all persons have meaningful remote entry to the courts. While the Committee is aware of limited resources, it strongly recommends that all e-filing programs become a priority and that adequate staffing/support be provided for those self-represented litigants who choose to e-file. The Committee also supports efforts by NYSCEF leadership to pool/combine their limited resources with other OCA Departments/Division/Programs in an effort to bridge the digital divide. The Committee was informed of meetings both with the Division of Justice Initiatives to address challenges self-represented parties may face when e-filing. Potential coordination discussed were upgrading current self-represented NYSCEF web pages and creating a more user friendly website including a clear “how to” e-file in *plain language* for self-represented litigants, creating forms and e-filing instructions in the primary languages spoken in New York and having them readily available and visible on the website, combining the UCS “Do It Yourself” (DIY) platforms with documents ready to be e-filed, coordinating participation in community-based remote court platforms to introduce e-filing and conduct training, and providing additional training sessions for Court “help-centers” focusing on the self-represented and to prepare and enable these groups to better assist self-represented litigants.

Additionally, the Committee was reminded that a UCS e-mail was created whereby legal services attorneys anywhere in New York State could inform e-filing staff whenever they encounter an instance or issue regarding a member of the court staff in an e-filed case affecting a self-represented person, in an attempt to resolve any such issues as it occurs. To date, there have been no comments received. We will re-circulate this email to legal service providers so that they can distribute within their communities. The Committee is also aware and welcome to call/email the Acting Director and/or NYSCEF staff with questions/concerns.<sup>1</sup>

As in years past, the Committee also addressed the Chief Administrative Judge’s Annual Report on E-Filing for 2023. The committee generally supports the proposed legislation to lift the current restraints upon the Chief Administrative Judge to introduce e-filing in any court and/or action, with the inclusion of the current safeguards for self-represented litigants to continue to be automatically exempt from e-filing and to avoid creating a “digital divide” for the self-represented. The Committee is aware and discussed that this proposal does not seek to impose any form of e-filing upon any court, nor upon even a single county or a single type of case, but instead will

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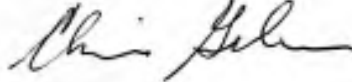
<sup>1</sup> One committee member remarked that he was very impressed with the extremely efficient and timely response from NYSCEF Administrators and/or staff whenever he had contacted them with a question and/ or wanted to discuss any perceived issue.

## Appendix C

continue its current practice of extensive outreach and consultation with County Clerks, Court Administrators, bar associations and attorneys from courts and venues in question. Stakeholders will also test “new” programs allowing for modifications in response to feedback.

The Committee looks forward to its work this year and in the coming years and hopes to be able to contribute to an electronic filing program that works well for all litigants and all attorneys in New York State.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Gibson", written in a cursive style.

Christopher Gibson  
Acting Director, OCA Division of E-Filing  
Acting Chairperson,  
Legal Services Advisory Committee on e-Filing

## **Appendix D**

Comments from County Clerks



## Appendix D

### COUNTY CLERK'S OFFICE – CORTLAND COUNTY

ELIZABETH LARKIN  
County Clerk

TAMMY L BARRIGER  
Deputy County Clerk

BROOKE KEMAK  
Deputy County Clerk

Sonia Ganoung  
Director, Motor Vehicles

Courthouse  
46 Greenbush Street, Suite 105  
Cortland NY 13045  
(607) 753-5021  
Fax (607) 753-5378

Motor Vehicle (607) 753-5023  
Fax(607) 758-5500

[elarkin@cortland-co.org](mailto:elarkin@cortland-co.org)



November 23, 2022

Jeffrey Carucci, DIR  
OCA Division of Electronic Filing  
Office of Court Administration  
25 Beaver Street, Rm 1062  
New York, NY 10004

Dear Mr. Carucci;

Thank you for the opportunity to comment on the merits of e-filing.

We commenced e-filing consensually in 2014. After two years, when the majority of attorneys were familiar with e-filing and with my consent and the consent of our BAR association and other legal groups, we moved to mandatory e-filing.

Although civil e-filing is mandatory, with the exception of a few cases, there are safeguards in place for pro se litigants and attorneys who do not have the ability to e-file to exempt them from the requirement to e-file. The savings in time, cost of delivery and supplies have proven to be such an enticement for submitters to e-file that the pool of those who choose to file in hard copy is minimal.

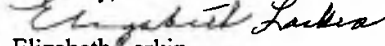
The need and desire to e-file during the COVID pandemic has further enticed submitters to e-file.

The savings in the County Clerk's Office has been profound. The time spent scanning 2 inch thick motion papers, the time spent verifying each hard copy scanned and the cost of shredding the paper once verified, has been eliminated. E-filing reduces errors and provides for a quicker exchange of documents between the courts, the county clerks and the parties to each case..

With the safeguards in place to allow for mandatory e-filing in all cases, I strongly support legislation that would allow the Chief Administrative Judge, after consultation with the local BAR, legal services and other groups and with the consent of the County Clerk to mandate e-filing for all civil cases and for that matter in all courts.

I anxiously await the commencement of criminal e-filing in county court.

Sincerely,

  
Elizabeth Larkin  
Cortland County Clerk

## Appendix D

From: **Gizelle Meeks** <[gmeeks@co.jefferson.ny.us](mailto:gmeeks@co.jefferson.ny.us)>

Date: Mon, Nov 14, 2022 at 2:48 PM

Subject: Jefferson County-Comments

Good Afternoon Jeff,

On behalf of Jefferson County, I am attaching my comments regarding E-filing pursuant to Judiciary Law §212. I am optimistic that the future looks promising for advancing the E-filing program.


I wish you all the happiness and fun that you deserve. Thank you for your contributions to OCA and the successful E-filing program. It is now time for you to enjoy your hard-earned retirement.

Let me know if you need anything further from me.

Gizelle

**Gizelle J. Meeks**  
**Jefferson County Clerk/RMO**  
175 Arsenal Street  
Watertown, NY 13601  
(315) 785-3312  
[gmeeks@co.jefferson.ny.us](mailto:gmeeks@co.jefferson.ny.us)

**I want to be remembered  
for the life I gave  
as well as the life I lived.**

Be A Hero. Be An Organ Donor. 



**Jefferson County Clerk's Office**  
175 Arsenal Street  
Watertown, NY 13601

Gizelle J. Meeks  
County Clerk/RMO  
[gmeeks@co.jefferson.ny.us](mailto:gmeeks@co.jefferson.ny.us)

Jaime S. Thompson  
Deputy County Clerk  
[jthompson@co.jefferson.ny.us](mailto:jthompson@co.jefferson.ny.us)

November 14, 2021

Jeffrey Carucci, DIR  
OCA Division of Electronic Filing  
Office of Court Administration  
25 Beaver Street, Room 1062  
New York, NY 1004

Dear Mr. Carucci,

Thank you for the opportunity to comment on the merits of e-filing.

Jefferson County started mandatory e-filing right out of the gate in 2018. While there was some initial hesitancy from attorneys, the process has proven to be user-friendly, and now we typically only receive paper filings from pro se individuals.

Not only has this process been beneficial for submitters, but it has been enormously invaluable to the way our office operates. The most significant benefit of all has been time and efficiency. Time previously spent on indexing, scanning, and filing civil records is now available for training and other scanning projects.

Pursuant to Judiciary Law §212, I strongly support legislation allowing the Chief Administrative Judge, with the consent of the County Clerk, to mandate e-filing for all civil cases.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gizelle J. Meeks".

Gizelle J. Meeks  
Jefferson County Clerk

---

Recording Department  
Phone: (315)785-3200  
[jeffcoclerksoffice@co.jefferson.ny.us](mailto:jeffcoclerksoffice@co.jefferson.ny.us)

Department of Motor Vehicles  
Phone: (315)785-3023  
Fax: (315)785-5048

Records Management  
Phone: (315)785-5149  
[recordscenter@co.jefferson.ny.us](mailto:recordscenter@co.jefferson.ny.us)

## Appendix D

November 16, 2022

Mr. Jeffrey Carucci  
Statewide Coordinator for  
Electronic Filing  
NYS Unified Court System  
New York County Courthouse  
60 Centre Street, Room 119 M  
New York, New York 10007

RE: New York State Courts Electronic Filing Program

Dear Mr. Carucci,

Having held office for seven years now, I have had the opportunity to experience the full effect of e-filing and its benefits. Our office has been participating in this program since 2012. E-filing's component of immediate access and retrieval of documents makes for a very efficient, customer friendly work environment. The electronic storage of these documents is another asset of the program. We are a large, high volume office and just do not have the extra storage space to hold paper.

Our office feels that it would be most beneficial to expand the e-filing program to make all case types mandatory especially with the rapid expansion of e-filing across New York State as well as in other courts such as Surrogates and the Appellate Divisions.

There are two specific case types that we would like to see become mandatory at least in Onondaga County:

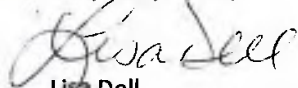
1. Foreclosure: This case is effectively mandatory in this county. Once the case type was offered in e-filing practically all the foreclosure firms are submitting electronically.
2. Matrimonial: E-filing has been limited in this type. Mandatory e-filing is the next logical step for a case type that constitutes a large portion of the Supreme Court cases. We will need to work with our Supreme Court to get the matrimonial part training and more involvement in e-filing.

I also will continue to strongly suggest that criminal actions also be included in the e-filing program and that our office can participate in the anticipated Criminal E-filing pilot. We receive voluminous amount of paper regarding trial transcripts as well as restitution orders from the District Attorney's Office. The ease and efficiency of having electronic filings would be extremely beneficial to all parties involved.

## Appendix D

I am very pleased to say that my office continues to have an excellent working relationship with the entire NYSCEF Resource Center staff and court system here in Onondaga County. I look forward to continuing to work with them and all parties involved with this process.

Very Truly Yours,

A handwritten signature in cursive script that reads "Lisa Dell".

Lisa Dell

Onondaga County Clerk  
401 Montgomery Street  
Syracuse, New York 13202  
315.435.2229 Office  
315.435.3455 Fax

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY CLERK

JUDITH A. PASCALE  
COUNTY CLERK

November 30, 2022

Jeffrey Carucci  
Director, OCA Division of Electronic Filing  
Office of Court Administration  
25 Beaver Street, Rm 1062  
New York, NY 10004

Dear Mr. Carucci:

Thank you for the opportunity to provide comments on Suffolk County's experience with electronic filing ("E-filing") through the New York State Courts Electronic Filing ("NYSCEF") System.

The Resource Center's staff continues to be a tremendous asset to Suffolk County in our ability to maintain, if not exceed, the level of service parties and their counsel have come to expect. Staff is always responsive to Suffolk County's needs and inquiries. This is especially true as Suffolk County still works through the process of returning to normal operations since the cyber-attack in September. My office would not have been able to become fully operational with E-filing so quickly without your support and the assistance of the staff at the Resource Center.

Pursuant to AO/372/21, Suffolk County became a mandatory E-filing county for all case types that are not legislatively prohibited from being designated as such and for those that are, it is consensual. Suffolk County is seeing a ninety-six percent (96%) rate of commencement of new cases electronically. That is up from seventy-nine percent (79%) in 2019. Having returned to the normal application of mandatory and consensual filings, the majority of practitioners are continuing to file their cases electronically. While we see this most significantly with matrimonial actions, it is occurring across most consensual case types. It is a testament to the convenience and simplicity of filing NYSCEF has to offer.

Conversion of cases to electronic filing also proceeds unabated. Stipulations and Letter Applications are filed on a daily basis. Both consensual and mandatory cases are being converted. Enhancement of the Electronic Document Delivery System ("EDDS") to allow conversion of the case directly from EDDS would increase the efficiency of converting and reduce the lag from submission to conversion.

Civil Practice Law and Rules 2111(2-a), which expires September 1, 2027, extends the grandfathering of seven counties', including Suffolk's, authorization to continue mandatory E-filing of residential foreclosures and consumer credit actions. These are the most common

## Appendix D

mandatory E-filed cases in which we receive hard copy submissions from unrepresented defendants. This leads me to believe that their due process rights are being and have been protected under the current authorization. Over the nearly ten years since residential foreclosures became mandatory in Suffolk County, neither I nor my staff have received any comments, calls, letters or other information suggesting any defendants have not received proper notice or that any due process rights have been violated. Furthermore, our experience during this pandemic has shown that the rights and access of unrepresented litigants to the Courts have been unrestricted thanks to technology.

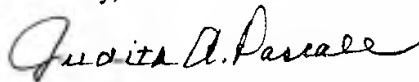
I support the passage of legislation that would allow the Chief Administrative Judge the discretion to authorize all case types be made mandatory subject to the existing review process and procedural safeguards. In this way, each county can choose for itself what it wants to file electronically. It is our experience in Suffolk County that mandatory, rather than consensual, authorization greatly reduces the rate at which opt-outs are filed. Our experience also shows that consensual, rather than mandatory, authorization also reduces the rate of commencement electronically. In light of the experiences of the past three years, I believe that expansion of the available mandatory case types would be welcome by practitioners.

In spite of all of the challenges and changes during and since the pandemic, electronic filing in Supreme Court has enabled the residents of New York State and Suffolk County to continue to have access to the Courts. ~~The prospect of future limited physical access to government offices and stay at home orders due to surges of known viruses, the appearance of new viruses and other significant disruptions to day-to-day routines make the need for additional~~ enhancement and growth of E-filing vital to furthering the goal of access to justice throughout New York State. It will also leave County Clerks and the Courts in an even better position to respond quickly to future events while protecting all concerned. The need to restrict filings will also be eliminated because of the ease of access to documents by parties, counsel, the public and the courts from anywhere.

Suffolk County also looks forward to serving as a pilot county for the implementation of criminal E-filing.

Thank you again for the opportunity to allow this Office to share its experience with E-filing.

Sincerely,



Judith A. Pascale  
Suffolk County Clerk

## Appendix D

**From:** Vogel, Pam  
**Sent:** Thursday, November 17, 2022 12:56 PM  
**Subject:** NYSCEF Support

Good Afternoon, Jeff...

Once again, the Office of the Warren County Clerk, as Clerk of the Supreme and County Courts – Civil Cases, is in full support of the efforts of the Division of E-Filing, OCA.

Your own understanding of the court, filing procedures, statutory obligations of the Clerk in respect to our Civil Cases and, most especially, the professional leadership that you have shown from the very beginning of this program have ensured it's success. That you continue to reach out to each County Clerk for comments and concerns further establishes a most essential relationship – Clerk to the Courts. We thank you always for this consideration!

Clearly, the events of the last few years – within our own counties, across New York State, throughout the entire United States of America – support without a doubt the importance of the implementation of E-Filing in the state court system. I cannot begin to imagine where we would be had this program not have been available to those of us serving as County Clerks and Clerks of the Courts.

As you prepare your final report to the Legislature, the Governor and the Chief Judge, rest assured that you have done your job and done it well! Most importantly, you have done this work while keeping in mind the very best interest of those who must rely on the Judicial system for the resolution of their legal matters ...the People of the State of New York.

May you enjoy a very happy and healthy retirement! Thank you so much!

Regards,

Pamela J. Vogel, Warren County Clerk  
1340 State Route 9  
Lake George, NY 12845  
[vogelp@warrencountyny.gov](mailto:vogelp@warrencountyny.gov)



## Appendix D



### WESTCHESTER COUNTY CLERK

**Timothy C. Idoni**  
County Clerk

December 7, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, New York 10004

Dear Judge Amaker:

I am writing in my capacity as Westchester County Clerk and as a former member of the Commission to Reimagine the Future of New York's Courts. As a member of the Commission, I co-chaired the committee which authored the report: *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group* to express our strong support for the initiatives being proposed by the Office of Court Administration in the 2023-24 Legislative session.

These initiatives include a proposed amendment to Civil Practice Law and Rules Article 21-A and other relevant statutes to expand current authority for the use of e-filing in the courts and permit you, as the Chief Administrative Judge (CAJ), to institute e-filing on either a consensual or mandatory basis in all of the state's trial courts and in any class of cases.

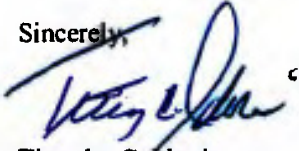
E-filing is an essential tool for improving access to justice to all litigants across the State. The Commission's report highlighted the fact that the courts, the bar and the public are ready and able to handle further expansion. It is only reasonable to repeal the existing restrictions imposed on the CAJ's discretion to establish mandatory e-filing in case types that are currently excluded.

Protections are now in place in current legislation to keep arbitrary and capricious changes from being implemented. There are requirements of consultation with the bar, legal services providers, County Clerks outside of New York City in Supreme Court matters and other groups in advance of other future expansion or impact upon existing provisions of e-filing legislation. Of extreme importance, unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate. Attorneys who lack the equipment or knowledge to participate would also continue their ability to opt out. We have found that e-filing also is a more secure and confidential method for filing cases.

## Appendix D

I thank you for your attention to this important issue. And, as a County Clerk, thank you for accepting our professional group as a great working partner in the modernization of the State Court system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy C. Itoni". The signature is stylized and written over the word "Sincerely,".

Timothy C. Itoni  
Westchester County Clerk

## **Appendix E**

Comments from Other Stakeholders

Appendix E

STATE OF NEW YORK

Hon. Craig J. Doran  
Supreme Court Justice



Seventh Judicial District  
Ontario County Courthouse

December 27, 2022

Hon. Tamiko Amaker  
Acting Chief Administrative Judge  
25 Beaver Street  
New York, NY 10004

Dear Judge Amaker,

I write as Chair of the Pandemic Practices Working Group, charged by the Commission to Reimagine the Future of NY Courts to examine Pandemic-Related Practices. The Working Group held a series of public hearings around the state to solicit input from stakeholders of the Courts regarding the technology practices and policies utilized during the pandemic. As a result of these hearings, a consensus has been reached among the members of the Working Group regarding recommendations which strongly support the expansion of technology generally and more specifically the expansion of the New York State Courts E-Filing System (NYSCEF). NYSCEF is a most reliable platform which allows remote filing/service of legal papers and remote access to court filings, in essence, it keeps courts "open" and accessible. This endorsement will be reflected in the Group's final Report to be issued and distributed within the next weeks. Particularly, the Working Group supports legislation being proposed by the OCA to give the Chief Administrative Judge (CAJ) the authority to expand and make e-filing available to all courts in all case types.

Moreover, the hearings established, and the Working Group "heard" loudly, clearly, and repeatedly, that the public is more than ready for this expansion and welcomes the efficiencies and convenience of e-filing. As indicated, the proposed legislation permits the CAJ to implement e-filing – on either a consensual or mandatory basis – in all of the State's trial courts and in any class of cases. The current legislative safeguards will remain in place, unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate, and attorneys would continue to be able to opt out of e-filing if they lack the equipment or knowledge to participate.

Clearly, the Working Group considers the proposed legislation critical to promote efficiency and improve access to the Courts. The impact of the pandemic made exceedingly obvious that the implementation of NYSCEF to courts throughout the state should not be delayed. Thank you for considering the Pandemic Practices Working Group's observations and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig J. Doran".

Craig J. Doran  
New York State Supreme Court Justice  
Chair, Surrogate's Court Advisory Committee on E-Filing  
Chair, Pandemic Practices Working Group of the  
Commission to Reimagine the Future of New York's Courts

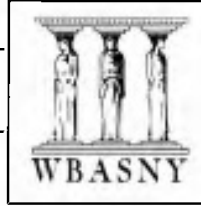
COUNTY COURTHOUSE  
Phone: 585-412-5292

27 NORTH MAIN STREET  
Fax: 585-412-5328

CANANDAIGUA, NY 14424  
cdoran@nycourts.gov

**Women's Bar**

OF THE STATE



**Association**

OF NEW YORK

**PRESIDENT**

Deborah G. Rosenthal  
Post Office Box 936  
Planetarium Station  
New York, NY 10024-0546

(212) 362-4445  
(212) 721-1620 (FAX)  
info@wbasny.org  
www.wbasny.org

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**Thousand Islands**

Ashley Lyon

**Westchester**

Elizabeth J. Marcus

**Western New York**

Anastasia McCarthy

**EXECUTIVE DIRECTOR**

Linda A. Chiaverini

November 30, 2022

[efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Dear Mr. Carucci:

I am the President of the Women's Bar Association of the State of New York ("WBASNY"), which is the second largest statewide bar association in New York State. In accordance with your request for comments regarding the New York State Courts Electronic Filing System ("NYSCEF"), we sent a request to the Presidents of our 20 local chapters, our committee chairs and our membership and received the following comments for your review and inclusion in the Office of Court Administration's report to the Legislature, the Governor and the Chief Judge.

Generally, our members support e-filing and consider the system to work well. For solo and small law firm practitioners, any way to help them spend less time and/or money to file something is considered a positive development. Our members appreciate that the clerks apparently assure the legitimacy of the docket and that there are ample filing names to select for various documents. We also appreciate that documents, such as mechanics liens can be e-filed with county clerks in the City of New York, which also saves resources.

Notwithstanding the foregoing, our members pointed out areas for improvement. WBASNY members feel that e-filing should be adopted in all of the Courts of New York universally. Some courts, in particular some Surrogate's Courts, do not accept e-filing for motions or accountings. Each court should not have the option to opt out of certain proceedings. In addition, our members have noticed that file size uploads are different in different Supreme Courts throughout the State. We believe the same standards should apply in similar courts throughout New York State.

In addition, for attorneys on a matter who have already e-filed, e-filing attorneys should be able to opt in to e-filing as the means of service, so those parties who do not want to receive duplicate paper filings will not receive them.

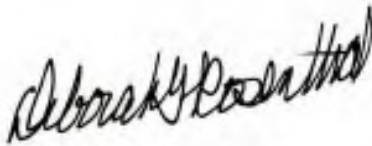
## Appendix E

Jeffrey Carucci, Director  
OCA Division of E-Filing  
November 30, 2022  
Page 2

Finally, some of our members expressed concern about making e-filing mandatory for *pro se* litigants. Self-represented litigants may not be able to navigate e-filing if it is mandatory because of disability, poverty or other issues. The OCA memo addresses this issue, but we want to make certain this exception to e-filing continues.

We hope you find these comments helpful in your review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Deborah G. Rosenthal". The signature is written in a cursive, flowing style.

Deborah G. Rosenthal  
President, WBASNY

## Appendix E

**From:** Jonathan Feldman <jfeldman@plsny.org>  
**Sent:** Tuesday, November 29, 2022 11:23 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Cc:** kmurtagh@plsny.org; Krin Flaherty <kflaherty@plsny.org>  
**Subject:** PLS comments on NYSCEF proposal

Dear Mr. Carucci,

Here are our comments on the NYSCEF proposal:

When Prisoners' Legal Services (PLS) polled its attorneys, everyone who responded supported the proposed legislative amendments to expand e-filing. PLS therefore lends its support to this important initiative. In our view, e-filing makes it easier both to file and manage cases. At the same time, we support the continuing exemption for unrepresented litigants, and the opt-out for attorneys who lack the requisite technology. Preserving those common-sense exceptions, combined with the overall expansion of e-filing, would help to promote access to justice in New York.

Thank you very much for your consideration.

Best regards,

Jonathan Feldman

Jonathan Feldman, General Counsel  
**Prisoners' Legal Services of New York**  
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Appendix E



**Jess Dannhauser**  
Commissioner

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**Alan W. Sputz, Esq.**  
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**Nancy Thomson, Esq.**  
Associate  
Commissioner  
Family Court Legal  
Services

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To: Jeffrey Carucci, OCA Division of E-Filing  
From: Nancy Thomson, Associate Commissioner *NT*  
Date: November 30, 2022

Re: Comments on Electronic Filing

On behalf of the Administration for Children's Services (ACS), I am submitting our comments on the implementation of the electronic filing program.

The Administration for Children's Services is the petitioner for all child protective filings in New York City Family Courts. Each year, ACS files 8-10,000 petitions. We currently electronically file our Article 10 neglect and abuse petitions through a data share MOU with New York City Family Court and receive court hearing information from UCMS. ACS attorneys also appear on post-dispositional hearings on Article 3 matters in which a child is placed with ACS under Close to Home. In those cases, our attorneys may file extension of placement petitions, permanency reports and other motions.

The pandemic has demonstrated the need for the New York State Court System to expand electronic filing in all the courts. Our staff have filed motions and other documents through the EDDS system and found that electronic transmission of court papers and reports to be an efficient way of disseminating documents. However, EDDS has limited functionality and is not considered a filing system. Expansion of NYSCEF to Family Court would allow electronic filing of pleadings, motions, documents. As ACS is already electronically filing our Article 10 petitions with New York City Family Court and due to the complexity of the data exchange, would prefer to continue to use the current system for the filing of initial Article 10 petitions.

I understand that any expansion of electronic filing to Family Court would involve consultation with the local court system and attorney groups. Our office has a couple of concerns about how NYSCEF notifies attorneys of new filings and also of the level of access to a particular case by all ACS attorneys. These details can be discussed as the system is rolled out.

Thank you for considering our concerns and we look forward to working on the implementation.



NEW YORK STATE PROFESSIONAL PROCESS SERVERS ASSOCIATION



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Administrator

November 30, 2022

**Via Email: [efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)**

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, NY 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci:

Thank you for the opportunity to offer comments on the proposed legislative amendments to expand e-filing. As means of an introduction, I am a New York State licensed attorney as well as the President of the New York State Professional Process Servers Association. In my daily tasks, I work closely with members of our team who handle e-filing, from case commencement until judgment. Additionally, I have spoken with many people in the legal industry, such as attorneys, paralegals and those in the legal services realm regarding the e-filing program. Thus, the suggestions and comments are based upon these discussions and research.

One item that would assist legal services providers greatly is the ability to have a directory as to who to call and the contact information to place the call. For instance, at times, it is unclear whether a question should be directed to the NYSCEF team or if it is a question that needs to be addressed to the County Clerk. It would seem that perhaps items that are pending and have a question should be directed to NYSCEF but once the document is filed, then the County Clerk should now handle any questions however it appears as though that is not the case and many are confused as to who to call for proper protocol.

It has also been suggested to me that the document selection type could be expanded, as many times the type of document one could choose is not actually

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what the document represents. I have heard from some court service providers that it appears as though the court staff have additional document categories that are not available to those filing through the system. Is it possible, if this is accurate, to allow the E-filing system for those handling the filing to mirror what is available to the court personnel? If not, perhaps there can be a "miscellaneous" document type that is used for those documents that do not fit within the pre-established choices?

One option that is not currently available is a "Notice of Discontinuance." The addition of that document option would be extremely helpful.

I appreciate that "unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate." I feel this is very important as there are many pro se litigants who either do not possess the technology or the skillset to adequately use the technology. Access to the system is important and one should not be hindered by either not having the technology or the skillset to gain access to the court system.

I believe there are more seasoned, senior attorneys who may not be as familiar with the expansion of technology and thus the e-filing process may be cumbersome to them. There is a risk of mistake if one does not understand the technology or platform. Thank you for continuing to allow "attorneys in cases in which e-filing would otherwise be mandatory ... to be able to opt out of e-filing."

I am concerned, however, and would like to point out that the electronic systems may still malfunction. A loss of data might occur. Also, there could be an attack on the E-file system by malware. My main concern, in light of what has happened in Suffolk County this fall, is a ransomware scheme where access is disabled. If paper is no longer kept, if such an "attack" on the system occurs, how does one retrieve what was "lost?"

Lastly, I know that the current platform allows for Wills to be uploaded but the original Will must be produced within a specific time frame to Surrogate's Court. It would seem that the original paper will should always be presented, regardless of

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CITY BAR

November 30, 2022

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver St., 9<sup>th</sup> Floor  
New York, NY 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

On behalf of the New York City Bar Association, attached please find our submission in response to your October 28, 2022 memorandum requesting comments on electronic filing in the New York State Courts. The enclosed testimony was delivered to the Pandemic Practices Working Group of the Commission to Reimagine the Future of New York Courts in November and reflects our latest comments on electronic filing.<sup>1</sup>

We hope this information can be helpful. If you have any questions or would like to discuss further, please let us know.

Respectfully,



Elizabeth Kocienda  
Director of Advocacy

**Contact**

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org  
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org

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<sup>1</sup> Available online at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-to-pandemic-practices-working-group-of-the-commission-to-reimagine-the-future-of-new-york-courts>.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

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WRITTEN TESTIMONY OF THE COUNCIL ON JUDICIAL ADMINISTRATION  
PUBLIC HEARING OF THE PANDEMIC PRACTICES WORKING GROUP OF THE  
COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK'S COURTS

SUBMITTED NOVEMBER 7, 2022

The New York City Bar Association's Council on Judicial Administration ("CJA") collected anecdotal data and input from various court committees, practitioners, judges, court attorneys and court personnel regarding the impact of the pandemic court practices and which should be continued or discontinued post pandemic.<sup>1</sup> While the practices in and opinions about the different courts varied, there were some universal observations and comments, **the most prevalent of which was that there needs to be more uniformity of rules and protocols within each court, at a minimum countywide if not citywide, and especially in the areas of efilng and virtual or in person appearances.** For the most part there seemed to be agreement that some conferences and appearances might or should continue to be conducted virtually or to be available virtually, but that most hearings and trials -- and all jury trials -- should be conducted in person. There was also agreement that the nycourts.gov website needs to be updated and revamped. And finally, the loss of highly trained clerical staff, both before and during the pandemic, needs to be addressed and ameliorated. A large number of senior clerks from the County Clerk's Office and from the individual court's clerk's offices retired during the pandemic, and at present many of the clerk's offices are operating with an insufficient number of clerks and in particular, highly trained senior clerks. The loss of so many clerks is undoubtedly a contributing factor in the backlogs and longer delays in the processing of cases, judgments and orders.

One further uniform observation: virtual appearances fared the best in the Commercial Division, and there is widespread enthusiasm for retaining virtual appearances in conferences and in many instances, for hearings and some bench trials. The virtual appearances have been cost effective for represented litigants and practitioners. In other courts, however, virtual appearances and other pandemic practices have had mixed results and reviews.

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<sup>1</sup> In addition to at-large members who practice across a wide variety of courts, the Council on Judicial Administration includes representatives of the following City Bar committees, all of whom contributed views and anecdotal data to this report: Civil Court, Family Court, Housing Court, Criminal Court, State Courts of Superior Jurisdiction, and Litigation.

**About the Association**

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This testimony is presented in sections, with each section focusing on a particular court and issues relevant to that court. Our intent is to highlight the issues that arose most often during our information-gathering phase; therefore, some topics may appear in one section, but not another. We also have included an Appendix that lists the City Bar's prior statements, letters and reports addressing pandemic-related court practices, along with some highlighted recommendations that are incorporated herein.

### **I. SUPREME COURT, MATRIMONIAL PARTS AND OTHER CIVIL TERM PARTS**

#### **a. Efiling in Matrimonial Cases**

In the Supreme Court Matrimonial Parts, the feedback regarding efilings through NYSCEF generally has been positive, with some backlog issues which are now being addressed by the courts and the County Clerk. Prior to the pandemic, all papers in matrimonial actions were filed in person, including uncontested divorce papers. In New York County for example, the time from filing uncontested divorce papers through receipt of a signed judgment was approximately 2-4 months. Before filing final divorce papers, matrimonial clerks reviewed papers and litigants and attorneys had the opportunity to make necessary corrections prior to the papers being submitted to a judge or referee for signature. That process shortened the time from filing through judgment. During and since the pandemic, papers have been efiled, without prior clerical review to correct errors and omissions, and the length of time from filing the final papers through a signed judgment increased to one year or more. The County Clerk is now working to address the backlog, and lengths of time from filing through judgment are lessening but the problems inherent with efilings without preliminary clerical review remain. The same is true of filing Orders to Show Cause: pre-pandemic, an Order to Show Cause would be reviewed first by clerks prior to submission to a judge, and attorneys or litigants had the opportunity to make corrections or provide additions before submission, making the process more efficient. The pre-filing review no longer takes place.

#### **b. Virtual / In Person Appearances in Matrimonial and Other Civil Term Parts**

During the pandemic, appearances in matrimonial cases were virtual, with some courts requiring the parties to appear in person in certain instances (especially where there was disagreement between the parties and where there were settlement opportunities), but now more appearances seem to be in person again. While it is still too soon to assess the ultimate impact of more in person appearances, it seems that where litigants are either not working together or productively, or where a case appears to be near a settlement, in person appearances may be preferable and useful, while for routine court check-ins or control dates, virtual appearances may be more efficient. There is still a backlog of decisions on motions and delays in getting preliminary or other conferences.

In other Supreme Court Civil Term Parts there are still lengthy delays to get a discovery conference or a decision on submitted motions due to the backlogs, and some courts continue to conduct virtual appearances while others are doing a hybrid of remote and in person. The consensus is that some remote appearances are still preferable such as for conferences, especially

discovery conferences, while there is a preference for in person hearings and trials, particularly jury trials, and settlement conferences.

In addition, many practitioners believe that public access to view court proceedings should be easier and that NYSCEF and E-Track should be linked.

## **II. CRIMINAL COURT AND SUPREME COURT, CRIMINAL TERM**

### **a. Virtual/In Person Appearances**

In Criminal Court and Supreme Court Criminal Term, most if not all appearances are now taking place again in person. Some practitioners would prefer defendants to have the option to appear virtually, especially for brief routine court appearances, where they are at risk of losing jobs due to having to take off a whole day to appear in court, or do not have child care, for example. One suggestion is to have a day set aside each week for virtual appearances which could be staggered with a specific time frame assigned for a number of cases (e.g. a 9:30-11:15 am call, 11:15-1 pm call, 2:15-3:30 pm call and 3:30-4:30 pm call) with hearings and trials to take place in person. Defense attorneys or defendants who test positive for Covid should appear remotely.<sup>2</sup> In other instances, a defendant in a criminal matter may prefer to appear in person. Accordingly the default procedure should be to give defendants the choice of type of appearance.

Where the defendants are incarcerated, however, the responses to remote appearances are mixed: they may be preferable in some instances provided (a) the technology is available at the defendant's location; and (b) the defendant does not need to meet with his/her attorney on the same day as the court appearance. The trip from prison or jail to the courthouse is often arduous and lengthy and may be unnecessary for routine court appearances where the defendant's interactions with the court and counsel is limited. But if the defendant needs to see counsel in person and/or discuss or take a plea, or see family who may be appearing in court to view the proceedings, then in person is preferable. Finally, sentencings, hearings and trials should be conducted in person.

For criminal cases being heard in the Appellate Division, the public has not been allowed to return to the courthouse for arguments and defendants in criminal matters wishing to attend arguments in their cases have been excluded. This should be rectified as it is an issue of basic fairness for a defendant to be able to attend.<sup>3</sup>

### **b. Efiling in Criminal Cases**

While reviews about e-service between prosecutors and defense counsel have been enthusiastic and therefore e-service should be adopted uniformly, e-filing in criminal matters requires further and fulsome discussion among judges, prosecutors, defense attorneys, OCA and the County Clerk about the pros and cons of doing so. There are privacy concerns (for example,

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<sup>2</sup> While this protocol is appropriate in other courts as well, it is particularly important to set it as a protocol in Criminal Court where a defendant's failure to appear may result in a bench warrant and a charge of bail jumping, and where defendants must have representation.

<sup>3</sup> This applies to other parties appearing before the Appellate Division as well.

once efiled, there are questions as to whether sealed matters due to dismissal or acquittal are truly sealed) and there need to be uniform protocols and instructions for e-filers. For example, in Supreme Court, Criminal Term, an efiled motion may take weeks to be delivered to the assigned court, and the best practice is for the efiler to deliver a courtesy hard copy to the court attorney for the assigned part. However, the efilings system does not notify the efiler that a hard copy should be filed as well, and it is difficult to find the information identifying the court attorney and where the hard copy should be delivered. Reworking the efilings system (EDDS, in criminal cases) to give efilers that information and instruction upon efilings a motion would be an important step to improve efficiency.

Finally, digitalization of criminal court records should be done contemporaneously so that records for appeal may be collected efficiently and in a timely manner.

### **III. CIVIL COURT**

Civil Court's pandemic practices have been bumpier, in part because Civil Court filings during the pandemic required emailing documents and using a system that was not as efficient as efilings, and each county handled cases differently. A more uniform and more consistent set of protocols would be helpful particularly in the area of exchanging documents. Remote proceedings did not do as well with unrepresented litigants, although they may still be preferable in many instances to ensure that pro se litigants who must appear do not risk losing jobs by sitting in court for hours waiting for their cases to be heard. In those instances, however, the pro se litigant must have access to the necessary technology. If access to technology is a barrier to participating remotely, then in person appearances become necessary, with the proviso that circumstances may change and the option to proceed remotely should remain available. Consumer debt cases were particularly challenging, having been very backlogged; returning to in person appearances might help move more cases in that area.

The pandemic did highlight the need to move forward with electronic filing in Civil Court. During the pandemic, the court utilized the electronic delivery service EDDS, which served its purpose over the past two years. However, its continued use is not being advocated and often documents served and filed through EDDS are not being brought to the court's attention. A more sophisticated and user-friendly electronic filing system should be developed and utilized. Accessibility to vital court documents is a necessity and a more efficient court requires more efficient systems, especially in high-volume courts.

### **IV. HOUSING COURT**

#### **a. Tenant's Right to Counsel**

Housing Court has had mixed experiences. While it was able to use technology throughout the pandemic to hold virtual conferences and trials, and the court filing system was able to update to online filing, once eviction proceedings were permitted to move forward, Housing Court became flooded with cases, more than the legal services providers were and are able to handle. The latest update is that almost all the legal services providers have stopped taking on new cases, and the

## Appendix E

Court is allowing eviction cases to proceed without counsel, running directly afoul of New York City's right to counsel law.

In written testimony submitted for the Chief Judge's Statewide 2022 Civil Legal Services hearing in September (*see* Appendix #1, pp. 7-8), City Bar President Susan Kohlmann said this about the status of tenant's right to counsel post pandemic and offered four recommendations:

"While we understand that the entire judicial system has changed and that some court processes are returning thoughtfully and gradually, the perception is that RTC is fair game to be whittled away, as cases simply move forward without it. The consensus cannot be in favor of returning to the "cattle call" of old - this is precisely what Secretary Johnson warned against. Things can be different. The City Bar's Housing Court Committee, which is comprised of tenant and landlord lawyers, as well as Housing Court personnel, has suggested the following:

- Court calendars should be temporarily modified by first scheduling pre-pandemic cases that already have two attorneys; then, adjourned new cases that have two attorneys can be added to the calendar.
- Appearances should be adjusted to ensure that attorneys who are engaged virtually are not required to appear physically at the same time.
- Requests for virtual proceedings to accommodate a disability should be routinely honored in accordance with law.
- RTC attorneys should be given a sufficient amount of time to establish the attorney client relationship and research and investigate complex cases. Anything less is not meaningful right to counsel."

### **b. Virtual/In Person Appearances**

While there has been support for continuing some component of virtual appearance, such as in some conferences, many litigants in Housing Court do not have access to the necessary technology and therefore there needs to be some thoughtfulness as to which proceedings in which matters should be virtual and which should be in person, although there has been consensus that trials should be conducted in person.

Finally, Housing Court in particular is in dire need of more non-judicial personnel, as many left and have not been replaced.

## **V. FAMILY COURT**

### **a. Virtual/In Person Appearances**

Family Court experienced many delays during the pandemic and had been experiencing backlogs even before the pandemic. There are very lengthy delays in getting dates for support and enforcement hearings, some caused by the court's transition to Skype for Business and



subsequently to Microsoft Teams. Thereafter some litigants were given the choice to proceed virtually and chose not to, to be followed by the Court deciding to proceed virtually after allowing litigants the choice. Presently, some parts continue to operate remotely but there appears to be little if any uniformity of practices or protocols and there are differing opinions among counsel who appear in Family Court about whether some hybrid model should be retained. After all, there may be some instances where virtual appearances are preferable so the litigant need not miss work, find childcare, etc., or where the litigant or attorney tests positive for Covid, provided the litigant has access to the necessary technology for remote access. Therefore, the litigants should have the option of in person or virtual appearances. However, since Family Court relies on hearings and assessing witness credibility in cases that involve, for example, potentially stripping a parent of rights or removing a child from a parent's care, assessing credibility remotely is not optimal and therefore hearing and trials should take place in person.

### **b. Efiling**

Efiling has recently been made available in the New York County Family Court in the following case types: custody/visitation; guardianship; parentage – assisted reproduction; parentage – surrogacy; paternity; and support, and only in new cases filed on or after August 1, 2022.<sup>4</sup> Efiling in Family Court should be expanded and there should be further guidance to litigants and court personnel on how to implement its use. The Court should also have an easy to access repository connecting the links to every Part.

### **c. City Bar-Fund for Modern Courts Report**

In February 2022, the City Bar and the Fund for Modern Courts released a report entitled “The Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants” (*see* Appendix #2). The primary goal of the report was to highlight the significant and longstanding inequities faced by litigants in Family Court; to analyze the choices Family Court made about which cases would move forward during the pandemic; to identify the types of proceedings that did not go forward and the impact felt by litigants in those cases; and to address the urgent need—that long predates COVID-19—for increased Family Court resources and meaningful reform.

Several of the report's recommendations are worth highlighting here since they remain vitally relevant as the court system assesses pandemic-related practices and recovery. In addition to other recommendations contained in this testimony as pertains to Family Court, the report urged OCA to: provide the public with regular statistical reporting, by court Term, on all Family Court proceedings; build an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants; conduct litigant surveys so that real time feedback can be obtained from the clients of Family Court; adopt NYSCEF to the fullest extent permitted by law; enable litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology; adopt a communications strategy to ensure litigants and attorneys are

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<sup>4</sup> New York State Unified Court System, New York State Courts Electronic Filing, <https://iapps.courts.state.ny.us/nyscef/AuthorizeCaseType>. (All websites last accessed on Nov. 7, 2022.)

kept up to date on the status of their cases as well as the status of Court operations generally; provide appropriate resources from other trial courts as necessary and appropriate to tackle backlogs and delays; and enact uniform procedural rules. The City Bar is continuing to engage with all stakeholders on ways to improve access to justice in New York City Family Court.

#### **d. Family Court Vacancies and Reassignments: Disruption and Delay**

As to this longstanding area of concern for Family Court practitioners, we commend to the Working Group our December 2020 report, “The Family Court Judicial Appointment and Assignment Process” and the recommendations therein. (*See Appendix #7.*) Recommendations that particularly relate to OCA’s role in this process include: maximize advance planning opportunities and allocate short-term cases to judges during any six-month transition periods; collect robust data on judicial vacancies and their impact; better coordinate with the Mayor’s Advisory Committee on the Judiciary; and increase transparency in the appointment and assignment process. The City Bar is continuing its efforts to spotlight the urgent need to improve the process of identifying and filling Family Court vacancies.

## **VI. CONCLUSION**

While there are many different opinions about specific courts, there seems to be unanimous support for retaining some of the pandemic practices: e-filing in most instances, virtual appearances for many types of court conferences, with the choice of virtual or in person to be given to the litigants or attorneys, and e-service of documents between the parties. For the most part, there is support for hearings and trials to be conducted in person, with some leeway for some hybrid models and some virtual appearances for witnesses in limited instances. And there is an overwhelming cry for uniformity of protocols and practices in each court, with more information and clear instruction to be provided to litigants and attorneys.

Thank you for your consideration and please do not hesitate to call upon the City Bar if we can provide any additional information or assistance to the working group.

Council on Judicial Administration  
Fran Hoffinger, Chair  
[fhoffinger@hoffingerlaw.com](mailto:fhoffinger@hoffingerlaw.com)

#### **Contact**

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**APPENDIX OF PRIOR CITY BAR REPORTS CONCERNING PANDEMIC PRACTICES AND RELATED CONCERNS**

1. September 19, 2022, **Written Testimony Submitted for the Chief Judge’s Statewide 2022 Civil Legal Services Hearing**, [https://s3.amazonaws.com/documents.nycbar.org/files/20221086-CivilLegalServices\\_KohlmannTestimony091922.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/20221086-CivilLegalServices_KohlmannTestimony091922.pdf) (proposing, among other things, alternate calendaring of cases in Housing Court to prioritize two-attorney cases and enforcement of housing maintenance standards).
2. February 4, 2022, **Report from Multi-Committee Working Group on the Impact of COVID-19 on the New York City Family Court: Recommendations on Improving Access to Justice for All Litigants**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/family-court-covid-19-impact> (documenting crisis in Family Court during COVID and recommending, among other things, the adoption of NYSCEF in Family Court to the fullest extent permitted by law; appropriate support for unrepresented litigants; providing the public with regular statistical reporting, by court Term, on all Family Court proceedings; building an effective, user-friendly website (including mobile website) that comprehensively informs the public of current court operations and provides guidance to unrepresented litigants; enabling litigants without access to adequate technology to participate in remote proceedings by providing access to the appropriate technology; adopting a communications strategy to ensure litigants and attorneys are kept up to date on the status of their cases as well as the status of Court operations generally; providing enhanced training for jurists in case management strategies and techniques; assessing the Court’s needs with respect to remote proceedings to ensure that it purchases and utilizes up-to-date technology best suited for courtroom protocols, and provide sufficient user training and support; moving judges, staff, and other resources from other trial courts as necessary and appropriate to tackle backlogs and delays; and enacting uniform procedural rules).
3. December 6, 2021, **Recommendations to Improve the Housing Court’s Enforcement of Housing Maintenance and Standards**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/enforcement-of-housing-maintenance-and-standards> (as part of overall recommendations, the Housing Court Committee recommends that cases seeking enforcement of housing maintenance standards be prioritized).
4. July 20, 2021, **Letter to Judge Ruiz Regarding Equitable Access to Justice in the NYC Family Courts**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-judge-ruiz> (Promoting uniformity, the letter states that Judge Ruiz is “uniquely positioned to promulgate rules of court to identify when and in which proceedings litigants and attorneys must appear in person....Failure to do this only intensifies the pandemic-bred chaos that families are suffering now.”).
5. June 15, 2021, **Letter from Working Group on Racial Equity in New York State Courts to the Franklin H. Williams Judicial Commission Regarding their May 19, 2021, Meeting with New York City Family Court Stakeholders**, <https://www.nycbar.org/member-and->

## Appendix E

[career-services/committees/reports-listing/reports/detail/racial-equity-in-courts-williams-commission-meeting](#) (Recommendations included: the Family Court must create procedural rules that govern all parts so there is uniformity, particularly as to virtual courtrooms; the Family Court must either grant Universal Case Management System (UCMS) access to all attorneys with cases in the court, or preferably, create an electronic filing system, e.g., a New York State Courts Electronic Filing System (NYSCEF) model; conduct polling of litigants, which can be effectuated by non-legal staff who are culturally competent and relatable, can interpret and explain for litigants, and can help process complaints).

6. April 9, 2021, **Report from Domestic Violence Committee, Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases> (makes recommendations as to specific needs and circumstances faced in cases involving domestic violence).
7. December 15, 2020, **Report from Multi-Committee Working Group on The Family Court Judicial Appointment and Assignment Process**, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/the-family-court-judicial-appointment-and-assignment-process> (reporting on the delays and disruption that result from judicial vacancies and transfers in Family Court, and recommending the following: increase the number of Mayor's Advisory Committee on the Judiciary (MACJ) members; enhance communication and planning between MACJ and OCA; reevaluate the current rule that fully vetted judicial applicants who are identified as excellent candidates for appointment but are not appointed within six months must begin the application process anew if they wish to continue to be considered for appointment; select appointees before vacancies arise and take the additional steps necessary to fill vacancies expeditiously; enhance both MACJ's and OCA's technological resources and improve data collection and analysis; use a distinct application and review process for judicial reappointments in order to complete the reappointment process more expeditiously; improve training programs offered to judges presiding in the Family Court; allocate short-term cases to judges who are transitioning out of the Family Court; and increase transparency in the reassignment process managed by OCA.)

## Appendix E



**RICHMOND COUNTY BAR ASSOCIATION**  
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December 1, 2022

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**Via Email: [efilingcomments@nycouts.gov](mailto:efilingcomments@nycouts.gov)**

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Re: NYS Courts Electronic Filing Program

Dear Mr. Carrucci:

Please accept this letter in support of the current proposed legislative amendments to expand e-filing in the courts and to permit the Chief Administrative Judge to institute e-filing in all of the State's trial courts and in any class of cases.

We recently surveyed our members regarding their experience with the measures implemented by the Office of Court Administration (OCA) during the Pandemic and their recommendations regarding whether such measures should be continued in the future. Our survey respondents included Bar members from all areas of expertise in both private and public practice. With regard to e-filing, the majority of respondents reported e-filing prior to the pandemic with the number increasing only slightly during the Pandemic and now in current practice.

We note, however, that certain filings, such as in guardianship and matrimonial matters, require that confidentiality of the contents therein be maintained despite being e-filed. This needs to be addressed in any expansion of e-filing in these areas of law.

## Appendix E

We thank you for considering our practitioners' experiences before issuing a report to the Legislature, the Governor and the Chief Judge on this matter.

If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

*Kerri L. Bringslid*

Kerri L. Bringslid  
*President*



Organized 1876

## QUEENS COUNTY BAR ASSOCIATION

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December 6, 2022

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Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver St, 9<sup>th</sup> Floor  
New York, NY 10004

Dear Mr. Carucci:

The Queens County Bar Association supports the amendment of CPLR Article 21-A and other statutes to allow for the expanded use of electronic filing to all courts, as stated in the OCA notice dated October 28, 2022. We concur that this expansion throughout the court system will allow for a more efficient and effective court system and we believe it is important to include electronic filing to all courts within the Office of Court Administration purview, as is recommended. Furthermore, we also agree with the provisions, as stated, that unrepresented litigants and attorneys who do not have the appropriate equipment can opt out of electronic filing requirements.

The Queens County Bar Association recommends that each courthouse within the county, and all counties throughout New York State, have the necessary equipment available for unrepresented litigants and/or attorneys lacking such equipment to electronically file documents and a public area where such electronically filed documents can be viewed by the same.

Very truly yours,

Adam M. Orlow  
President

**OVER 146 YEARS OF DEDICATED SERVICE**

**New York  
County Lawyers  
Association**

Matthew Bova & Steven Benathen  
Co-Chairs, Appellate Courts Committee

**MEMORANDUM**

**TO:** Mr. Jeffrey Carucci  
Statewide Coordinator for Electronic Filing  
Office of Court Administration  
25 Beaver Street  
New York, New York 10004  
efilingcomments@nycourts.gov  
*Via E-Mail*

**FROM:** Appellate Courts Committee, New York County Lawyers Association

**RE:** Comments on Electronic Filing

**DATE:** December 12, 2022

---

This memorandum, submitted by the Appellate Courts Committee of the New York County Lawyers Association, offers comments for inclusion in the Office of Court Administration's ("OCA's") annual report to the Legislature, the Governor, and the Chief Judge evaluating our State's electronic filing system, including the New York State Electronic Filing System ("NYSCEF"). We appreciate the opportunity to offer input.<sup>1</sup>

In December 2017, all four departments of the Appellate Division adopted uniform rules on electronic filing (the "Rules"). See 22 NYCRR § 1245 et. seq. And in 2020, the Appellate Divisions First and Second Departments went "all digital," no longer requiring paper filing of any documents. Instead, in the First Department, papers are filed on NYSCEF and in the Second Department papers are filed on either NYSCEF or a portal.

The Appellate Courts Committee of the New York County Lawyers Association applauds the Unified Court System's efforts to expand electronic filing. Electronic filing drastically enhances the efficiency of the court system and prevents the arduous

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<sup>1</sup> These comments have been approved by NYCLA's Appellate Courts Committee and approved for submission by NYCLA's President. They have not been reviewed by NYCLA's Executive Committee and do not necessarily represent the views of its Board.



process of travelling to a courthouse to file paper. Digital filing also saves resources and is environmentally friendly. Still, the current e-filing system can be improved. These comments propose several e-filing reforms that could dramatically improve the efficiency of our appellate system.

In proposing these reforms, we do not operate on a blank slate. Many of the reforms proposed below have already been previously proposed, in one form or another, in bar-association letters and reports.<sup>2</sup> Now is a perfect opportunity to adopt them.

### A. Compilation of the Record on Appeal

The current system for providing the record to assigned counsel is inefficient, costly, and delays cases by years. Digital reform can fix this problem.

In First Department cases where counsel is assigned (a vast majority of criminal cases and a significant number of civil cases in that Department), the record that the court provides to assigned counsel is often incomplete, thus forcing assigned counsel to spend considerable resources compiling a complete record.<sup>3</sup> Relevant transcripts are often not provided. Papers filed with the trial court are often absent from the record, meaning that counsel must dig through the paper court file to assemble a complete record. And hearing and trial exhibits are, as a matter of established practice, *never* part of the provided record and are instead only provided upon a request to the party who introduced them, which often takes months to fulfill. Even worse, these exhibit requests are fulfilled at the taxpayer's expense as District Attorneys' Offices and other state agencies must spend resources scouring old files for exhibits that were admitted into evidence years earlier.

Even once the record is complete, it still can take years after judgment is imposed for the court system to provide it. It often takes at least a year for counsel to be assigned

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<sup>2</sup> See Exhibit A, which attaches the following materials: NYCLA Statement, *Electronic Filing and Service During the Current Pandemic* (March 25, 2020); New York City Bar Association, Criminal Justice Operations Committee, Criminal Advocacy Committee, and Criminal Courts Committee, Letter to O.C.A. and Presiding Justices of the First and Second Departments, *Delays Associated with Compiling the Record on Appeal in Criminal Cases* (March 5, 2020); NYCLA, Appellate Courts Committee, Letter to the Presiding Justices of the Appellate Courts, *Proposals for Reform of Appellate Procedures in the First and Second Departments* (July 3, 2018); NYCLA, Appellate Courts Committee, Letter to the Clerk of the Court of Appeals, *Electronic Service of Applications for Leave to Appeal in Criminal and Civil Appeals* (July 13, 2018).

<sup>3</sup> The situation is even more challenging in the Second Department. There, the record is not provided at all; instead, assigned counsel must compile the record from scratch on his/her own.

post-judgment. At that point, the court orders the provision of the transcripts/record to assigned counsel, a process that routinely takes another year. So, for instance, appellate counsel may not receive a viable record on appeal from a May 2021 judgment until May 2023 or even later. This delay hurts individuals seeking appellate relief. And it hurts the government's interests because, if a judgment is reversed, new proceedings must take place many years after the initial proceeding, thus injecting the risk of absent witnesses, stale memories, and outright loss of evidence.

To improve this inefficient system, we propose the following changes:

- the OCA CRIMS record sheet, which lists all of the court appearances in criminal cases, should be filed on NYSCEF so appellate counsel can have easy access to information that will allow for a determination of the record's completeness;
- transcripts should be uploaded onto NYSCEF so the parties can have easy access to them;
- subject to appropriate exceptions for exceptionally voluminous, confidential, or sealed materials, every document or material filed in the trial court and/or contained in the court file should be filed on NYSCEF, including jury notes, *in limine* motions, and substantive email correspondence with the trial court (such as requests to charge, which are often done through email); and
- a copy or photograph of each exhibit should, if possible, be made part of the record and placed on the NYSCEF file.

These reforms will greatly enhance the ease and efficiency of appellate practice.

### **B. The Court of Appeals Should Adopt Fully Digital Filing**

Although the Appellate Divisions adopted fully digital filing during the Pandemic, the Court of Appeals has unfortunately not eliminated paper filing. Briefs and records, often collectively consisting of thousands of pages, must still be filed in paper copy, as must motions for leave to appeal. Fortunately, the Court has recently (effective January 2021) created a new e-filing portal which allows for parties to file electronic copies of motions for leave to appeal in criminal and civil cases. But while the Court has abandoned the cumbersome requirement that copies of the Appellate Division briefing must be filed in paper, it still requires paper copies of those motion papers and letters.

The Court of Appeals should eliminate any paper-filing requirements as doing so will enhance efficiency and save taxpayers and litigants the considerable expense of

printing, shipping, and delivering paper copies. In turn, the Court of Appeals should join the NYSCEF filing system so all papers can be filed and stored there.

At a minimum, the Court of Appeals should amend its rules to render a document timely filed if the digital copy is uploaded by or on a deadline. The Court's current rules pin the filing date to the date the paper copy is received by the Court in Albany. This rather arbitrary rule puts the parties at the mercy of the mail; in effect, it requires litigants – including government agencies, criminal defense providers, and nonprofits – to expend scarce resources on services that provide guaranteed, overnight delivery. Instead, as in virtually every other court, a document should be deemed filed when it is electronically submitted.

### **C. The Second Department's Technical Citation Requirements**

E-filing works wonders for busy attorneys. But the imposition of hypertechnical and time-consuming e-filing rules wastes precious time. The Second Department's cumbersome citation rules for e-filed cases is an example that cries out for reform.

In the Second Department, filings must comply with a set of "Technical Guidelines." Among them are requirements that authorities cited within filings must be "Bookmarked" or "Hyperlinked." Under the Technical Guidelines, litigants who opt for bookmarking must: (1) compile all of the authorities cited into pdf files, (2) merge those files into one compendium, (3) annex that compendium to the filing, and (4) manually bookmark each cited authority. Those who opt for hyperlinking must, for each citation in the filing, manually create a hyperlink to the website where the source is located. For an average-length appellate brief, we have found that both methods require between two and a half to three hours to complete.

This requirement comes at a high cost for appellate practitioners and produces little benefit. For one, appellate counsel must purchase expensive pdf-writing software. In addition, counsel must spend valuable time complying with the intricacies of the Technical Guidelines rather than tending to clients' needs. Additionally, since institutional providers and government agencies have limited resources, including limited support staffs, formatting responsibilities often fall onto attorneys who must divert time and energy away from legal work in order to bookmark and hyperlink their filings. These requirements impose a heavy burden on solo practitioners as well.

In sum, we propose that technical citation requirements be eliminated, because they provide only a marginal benefit to the court at great cost to litigants. Instead, a table of authorities should suffice.

### **D. Improving Access to Transcripts**

Ready access to electronic copies of transcripts is essential to good lawyering and the fair administration of trial-level and appellate justice. Nevertheless, in assigned-counsel cases, transcripts are still routinely delivered in paper copy to the courts and ultimately the parties. This makes little sense in the modern world, nor is it friendly to the environment. Transcripts should be provided in electronic copy because doing so is cheaper and far more efficient than printing out hundreds (and at times thousands) of pages and transporting those pages to the recipients. And once the court system receives a transcript for an appeal, it should immediately upload that transcript onto the NYSCEF system so that it will be available to all parties. This change will speed up the appellate process by many months.

Further, the court system should ensure that there are no price distinctions between PDF and paper copies of transcripts. PDF copies should never cost more than paper copies, as they currently do; if anything, they should be less expensive, as they do not require printing.

### **E. Rejected E-Filings**

Courts routinely reject e-filings that do not comply with formatting and e-filing requirements. Often, the courts do not provide an explanation of where in the filing the defects appear nor a person to contact regarding their rectification. This can lead to practitioners spending considerable time identifying and fixing what often amount to minor formatting errors. OCA should err on the side of accepting filings that contain only minor formatting errors and should provide a help line to assist litigants in correcting defective filings.

Respectfully Submitted,

Appellate Courts Committee,  
New York County Lawyers Association



119 Washington Ave., Suite 301 ♦ Albany, NY 12210

Phone 518.935.2845 (direct)

[www.empirejustice.org](http://www.empirejustice.org)

December 13, 2022

Jeffrey Carucci, Director  
OCA Division of E-filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

*Via e-mail to [efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)*

Re: Efiling comments

Dear Mr. Carucci:

This letter is submitted in response to your October 28 request for comments and observations on New York's electronic filing system (NYCEF) and proposed amendments to CPLR Article 21-A that would expand the current use of e-filing in New York's Courts. Thank you for the opportunity to share our thoughts with you.

The Empire Justice Center is a statewide, not for profit legal services organization with offices in Central Islip (Long Island), Albany, Rochester, and Westchester County. We represent low-income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including public benefits, health, domestic violence, foreclosure prevention, civil rights, LGBTQ issues and landlord-tenant matters. We also provide support and training to legal services and other community-based organizations, undertake policy research and analysis, and engage in legislative and administrative advocacy. Many of our attorneys use the NYCEF filing system and find it cost effective, convenient, and environmentally friendly. We also appreciate the ability to browse and access filed documents.

We have two comments for your consideration. First, we want to underscore the critical nature of the Office of Court Administration's commitment to exempt pro

se litigants from the e-filing rules. This section includes special attention to pro se litigants in foreclosure proceedings who are represented only in the settlement conference phase. Our second comment concerns the filing procedure in NYCEF in cases where the plaintiff wishes to seek that papers be sealed or redacted. Our comments are based on our experience with low income individuals and the issues that they face.

1. Pro se litigants:

Your October 28 letter states that under the proposed amendments, “unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate.” Further, page 14 of the 2021 Report referenced in your letter <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf> states that “Self-represented litigants will continue to be automatically exempt from mandatory e-filing...service of paper copies of documents on any self-represented litigants will continue to be required.”

It is critical that any expansion of e-filing maintain this exception. Our clients are often respondents, do not have internet or have limited or intermittent access to the internet, and often do not understand or have access to email. Outside of New York City, many tenant respondents in eviction proceedings do not have counsel, so we are reluctant to support the expansion of mandatory e-filing in the lower courts at this time.

Regarding foreclosure cases, the Office of Court Administration has allowed legal counsel to represent homeowners in a limited capacity, for the settlement conference portion of a lawsuit only. If legal representation ends following the settlement conference part, there is a form in foreclosure cases submitted to the court to indicate that counsel is no longer representing the homeowner. Should the chief judge mandate e-filing in foreclosure cases, if such form is filed indicating that a defendant is no longer represented by counsel and becomes a pro se litigant, the e-filing requirement should be extinguished for that defendant (unless they opt in). It should be clear that the rule governing pro se litigants applies even if the case was originally under the e-filing mandate.

2. Process in NYCEF for sealed or redacted documents must be revised

Page 14 of the 2021 report notes that if e-filing was expanded to matrimonial actions, access to the court file would be “automatically limited to litigants, authorized court staff and counsel of record who consented to service.” On page

## Appendix E

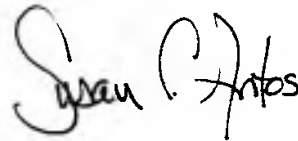
15, the report goes on to say that “*Documents are also routinely filed in non-matrimonial matter which are sealed or confidential. The same procedures would be applied to e-filed papers in all such actions, permitting access only to those authorized.*”

Our concern is that those “same procedures” in non-matrimonial matters make litigants vulnerable in cases where counsel may wish to seek the sealing or redaction of documents that contain sensitive or confidential information. Until a court directs that a matter be sealed, documents that are efiled are at risk of being made public due to the existence of websites, programs and applications that pull publicly available information and distribute it. Once this information has been captured and made public, it cannot be protected, even where a court subsequently orders sealing or redaction. We recommend that the Office of Court Administration consider how to control this information so as not to put efilers at risk. One option could be the inclusion of a checkbox or a form that asks for temporary sealing until the case can be reviewed by a judge.

The Empire Justice Center frequently represents transgender petitioners seeking name changes. While most of these cases are sealed to protect a petitioner’s privacy once reviewed by a judge pursuant to New York Civil Rights Law § 64-a, review in these cases can take between two weeks to four months. This delay allows for sensitive information to be revealed in the manner described as above, including birth certificates required to be included in name change cases, and renders subsequent sealing largely meaningless. We welcome further discussion on this issue.

Thank you for the opportunity to comment, and please do not hesitate to contact the undersigned should you have additional questions or concerns.

Very truly yours,

A handwritten signature in black ink that reads "Susan C. Antos". The signature is written in a cursive, flowing style.

Susan C. Antos  
Senior Attorney  
[santos@empirejustice.org](mailto:santos@empirejustice.org)



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December 12, 2022

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Twyla Cater  
*Attorney-in-Chief*  
*Chief Executive Officer*

Adriene L. Holder  
*Attorney-in-Charge*  
Civil Practice

Re: New York State Courts Electronic Filing Program (NYSCEF)

Dear Mr. Carucci:

We write in response to the request for comments on electronic filing in New York State Courts for inclusion in the Office of Court Administration's 2023 annual report and in support of the proposed amendment to CPLR Article 21A to give the Chief Administrative Judge (CAJ) the authority to make e-filing mandatory statewide in any or all New York State trial courts. We appreciate the opportunity to comment and offer our insights and recommendations on electronic filing in New York State Courts and the ongoing dialogue we have had with the Office of Court Administration's (OCA) Division of E-Filing about its expansion.

We applaud the continued rapid expansion of e-filing and other technology used by the courts during the coronavirus pandemic, and we share in the desire to create a more efficient and effective court system in New York State. As attorneys and practitioners, we have benefitted from the court's expanded use of technology to provide digital services, which has enabled us to continue to serve our client populations in a time of great need. We believe there should be equal access to electronic filing for all court users in New York State courts, including unrepresented litigants who should have access to the same benefits e-filing has to offer as those represented by counsel.

Access to e-filing can be a great boon to low-income and other disadvantaged communities, such as the elderly, people with disabilities and those with Limited English Proficiency (LEP). As providers of free legal services to low-income New Yorkers and active members of several statewide e-filing advisory committees,<sup>1</sup> we believe the time has come to move away from the incremental approach of expanding e-filing of the last two decades.

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<sup>1</sup> Including the Supreme Court (Civil) Advisory Committee on E-filing, Legal Services Advisory Committee on E-filing, and Civil Court Advisory Committee on E-filing.

**Justice in Every Borough.**



## Appendix E

All litigants, especially those who are low-income and unrepresented, would benefit from immediate access to court records and the ability to file legal papers remotely at any time, day or night. Litigants with disabilities that limit their mobility can benefit from electronic access to court files. Reducing the number of people traveling to and entering courthouses and post offices would maximize safety for all. With the onset of the coronavirus pandemic and ongoing resurgences and variants, e-filing and other technology is an essential tool to expand access to justice. Yet, such expansion must avoid a “digital divide” that institutionalizes a two-tiered system with barriers for the unrepresented. An e-filing system should be designed to be accessible and easy to use for all court users, otherwise it results in uneven access to the advantages it offers, disadvantages unrepresented litigants, and creates a system of unequal access to the courts.

The reality is that most unrepresented litigants are unable to access the benefits of e-filing through the existing system. To address these concerns in part, unrepresented litigants should continue to be exempt from e-filing but should be allowed to opt-in if they so choose. We echo the concerns raised in the past by other legal service providers about lack of access to computers, internet, software, hardware, and difficulty filing on NYSCEF in those cases where it is already available. Many low-income litigants cannot afford personal computers and thus need to rely on shared publicly available computers to e-file and, these should be made available at self-help centers, legal services offices, public libraries and other forums.

For New Yorkers not proficient in English, the prospect of navigating the legal system is daunting, especially for those who have no choice but to represent themselves. Any e-filing program should ideally be provided in the primary languages spoken in New York. At a minimum the notice to opt-in must be provided in each of these languages so litigants can make an informed decision on whether to participate. The notice should make it clear that it is not mandatory and inform them of what is required to successfully e-file.

One suggestion is that unrepresented litigants have the option to opt-in for the remainder of the case or opt-in for one filing. Many self-represented litigants may have assistance from limited scope assistance programs and clinics where they may not wish to consent to electronic service of documents in the future. Another option is to permit unrepresented litigants to opt-in for filing or only for service or only for receipt of service.

We also recommend that OCA collect, analyze, and make publicly available data from NYSCEF, including about how it is used and by who, in order to increase transparency and encourage public trust in the courts, promote accountability, and allow for creative problem-solving.

The primary and essential requirement for *pro se* litigants to successfully utilize e-filing is adequate staffing and e-filing support. With the high rates of self-representation in many high-volume courts there must be adequate support for those who choose to e-file.

### NYC Civil Court Consumer Credit Pilot

Expansion of e-filing to case types with high numbers of unrepresented litigants, such as consumer credit actions, is new territory for the courts. We urge CAJ Lawrence Marks and OCA to introduce a

consensual e-filing pilot program for consumer credit cases in NYC Civil Court. The pilot should be implemented in a way that avoids unintended consequences for the unrepresented and allows for analysis and modification before expansion to the remaining boroughs. There should be dedicated *pro se* e-filing court clerks to assist unrepresented litigants and reliance should not be placed on existing court personnel tasked with to her responsibilities.

The goals of the pilot program should include (1) testing e-filing technologies and processes with end-users, including and in particular unrepresented litigants; (2) soliciting and incorporating feedback from end-users into the design (and potential redesign) of technology choices and e-filing processes; (3) identifying those unrepresented litigants and other court users for whom e-filing is and is not likely to be beneficial; (4) developing appropriate safeguards for unrepresented litigants informed by feedback from end-users; and, (5) collecting, analyzing, and making publicly available data from the pilot program.

We recommend the pilot also incorporate remote practices the court developed during the pandemic and has retained and expanded upon in its wake, including allowing litigants the option to appear virtually in court proceedings without condition. Virtual appearances and other remote practices implemented during the pandemic reduced some of the burdens associated with in-person appearances for many litigants. The pilot should ensure that litigants in these proceedings continue to be able to access the full range of remote services and associated benefits that other court users enjoy. By providing greater access to courts remotely, our courts can continue to provide legal services to our communities effectively, efficiently and safely.

Implementing NYSCEF in Civil Court consumer credit action would allow *pro se* defendants to overcome many existing barriers to navigating the court system. These challenges include lengthy delays in accessing court files<sup>2</sup> for defendants who need to file legal papers to vacate default judgments, respond to motions, and consider settlement options.<sup>3</sup> Moreover, if and when the physical court files are retrieved, key documents are often missing.<sup>4</sup>

With the backlog in the court docket and Electronic Document Delivery System (EDDS) filings, it has become a regular occurrence for hearings to proceed where the Judge does not have the court file or motion papers before them and rely entirely on information and assurances provided by plaintiff's counsel. E-filing would allow many *pro se* assistance programs to immediately access courts records and assist with filing in the same session.

### Supreme Court

During the pandemic Supreme Court opened e-filing to other practice areas. Eventually, many matters in Supreme Court were mandatory e-filing. Currently, e-filing has proven to be a huge asset to Supreme Court. When the pandemic started, the only access to filing was through the mail, or the

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<sup>2</sup> In our experience, it takes on average 6 to 8 weeks to obtain NYC civil court files older than 3 years and these files are archived in offsite storage facilities.

<sup>3</sup> The most common filings in consider debt cases require access to affidavits of service, motions to dismiss and for summary judgment.

<sup>4</sup> NY Judiciary Law § 255-255-B (Public right to inspect and copy records and filings in New York courts).

## Appendix E

dropping off of documents in the courthouses. This proved to be precarious. Original documents were lost through the mail, and the documents were not timely filed.

E-filing allowed for instantaneous filing of documents and review of files. For matters with attorneys, it was extremely needed. Unfortunately, the *pro se* were left behind. Clerks' offices were not open to accept documents, and clients were unable to access their files. Those without computer skills could not review their cases, or answer pleadings.

Though some practice areas in Supreme Court see limited *pro se* litigants, others can have over 50% of their cases with *pro ses*. Some of these matters, such as matrimonial, include issues of custody and orders of protection. If the court is to continue to serve all New York, it must create safeguards for the unrepresented.

### Family Court

NYC Family Courts recently expanded the use of e-filing to all five boroughs. Previously, documents were emailed to the clerks through EDDS. Unfortunately, with the practical shut down of family court for certain matters, the EDDS system failed New York. Petitions that were emailed were lost, multiple petitions were filed and not linked, so matters were on in different courts for the same issue. Litigants were not notified, and after waiting almost a year, their matters were dismissed. There was limited ability to mark matters as urgent (except for orders of protection), so petitions languished. Cases were not docketed for months, and then notifications went out haphazardly.

Family Court, which handles many of the same matters as Supreme Court, must continue using e-filing in all boroughs. Though most matters are begun by *pro se* litigants, through the right to counsel, many receive an attorney early in the case. Attorneys would then have access to filed petitions and other reports. Litigants who can use computers would be able to e-file. The number of litigants entering the courthouse would decrease.

Recently an attorney had to obtain an order. She entered the courthouse and was told that it was at capacity and had to wait to see a clerk. Courthouses should not be at capacity for filing of documents. With e-filing, these issues would lessen. Petitions could be filed in real time, orders uploaded immediately. Clients would not have to wait for their orders, many of which are time sensitive.

We believe the time for e-filing in family court has come and recommend that CAJ Marks and OCA maintain e-filing in all of New York City.

### Housing Court

In the housing context tenants are increasingly represented by counsel in eviction defense cases, however, there will always be unrepresented tenants who will need to access the courts often in emergency situations like when they receive a marshal's notice of eviction, or when they need to commence a Housing Part action for emergency repairs or harassment.

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One issue that has become apparent since the introduction of NYSCEF for housing court proceedings, is that the Housing Court is struggling to maintain complete records in paper or online. Documents that are submitted in court or generated in court, including *pro se* answers, settlement stipulations and substantive motions, are not being uploaded in a timely fashion or at all. Similarly, it takes a long time sometimes for cases to get uploaded after a request to convert. The court also sometimes loses files and advises that they don't know where files are and it is up to the parties to reconstruct the missing files. We are also seeing orders that judges have read to the parties in open court are then edited after the parties have left the court and when they are uploaded they are inconsistent with what the parties believe had been ordered. Some parties, who may have consented to e-filing in a stipulation are not taking the subsequent step to go into NYSCEF to consent to service by email which can lead to errors in service and missed communications. We need clearer guidelines for professional and lay users of NYSCEF and better support for the courts to ensure that they are handling any paper so that the complete court record is available online for the court and the litigants. While it is remarkably convenient for practitioners to have access to full court files online, tenants and their advocates have consistently raised concerns that the vast amounts of information that is available through NYSCEF may be used against tenants by future landlords, possible creditors or employers, abusers or data miners. Tenants in the New York City area have struggled to overcome discrimination based on past participation in housing litigation using tenant "blacklists." The availability of even greater volumes of readily accessible digital information about tenants may make it ever harder for tenants to secure new housing, credit, jobs or professional licenses they may apply for. Employers, creditors and data miner, could also review easily available online housing court information to determine personal or financial characteristics of a potential or current employee, borrower or consumer. Survivors of domestic violence or other forms of abuse could be vulnerable to further harm if their abusers have easy access to information in online housing court records. In the same way that family court and divorce matters are considered confidential to non-attorneys, it would be strongly preferable if there were some limit to the public availability and use of housing court records.

In the context of eviction cases, *pro se* tenants need to be able to quickly file orders to show cause (OSCs) to stop evictions and vacate defaults. Tenants need options to file electronically using an online tool that walks tenants through the process of drafting and filing papers or to file in person in the courthouse if they cannot access the electronic system. Tenants will need assistance uploading supporting documents. Clear instructions must be provided for this in the electronic version of the system and assistance in the courthouse must be provided to ensure that documents are uploaded correctly. All tenants represented and *pro* need their OSCs to be reviewed quickly by the court. There needs to be a process for tenants to be able to convey signed OSCs quickly and electronically to the City Marshal's to stop evictions and to serve upon their adversary or opposing counsel.

Similarly, in affirmative cases initiated by tenants and tenant groups, an online tool for helping tenants file HP cases where filing fees can be assessed or waived via NYSCEF is an important component in a successful shift to tenant e-filing. Again, there must still be an in-person option for tenants to file in the courthouses rather than online. Communications from the court via NYSCEF need to be sent to tenant phones via text and not only by email for communication with tenants to be effective. Additionally, more must be done to facilitate and simplify the service requirements for commencement of *pro se* HP cases as this is a longstanding problem for unrepresented tenants resulting in countless dismissals for lack of jurisdiction. Such unsuccessful attempts at filing are a

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waste of judicial resources and serve to frustrate tenant efforts to timely obtain repairs and halt landlord harassment.

The Legal Aid Society commends the OCA for their efforts to expand the use of e-filing and technology in our courts. We support the expansion of e-filing and the proposed amendment to grant the CAJ the authority to implement mandatory e-filing in New York courts, subject to the recommendations herein.

Thank you for your consideration,



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**Justice in Every Borough.**

**NEW YORK STATE BAR ASSOCIATION  
COMMERCIAL AND FEDERAL LITIGATION SECTION  
COMMENTS RE: NEW YORK STATE COURTS ELECTRONIC FILING PROGRAM**

The New York State Bar Association (“NYSBA”) Commercial and Federal Litigation Section supports and recommends the proposed legislative amendments to CPLR Article 21-A. The proposed amendments seek to expand the Unified Court System (UCS) and the Chief Administrative Judge (CAJ)’s discretion to require electronic filing, by consensus or mandate, in any type of case. This change would render e-filing mandatory in those instances that currently require party consent. The NYSBA Commercial & Federal Litigation Section believes this proposed legislative change will promote efficiency, improve access to the courts, and keep the court system in line with current cultural trends.

Expanded e-filing is consistent with industry norms and societal norms, where digital communication is increasingly the normative standard. E-filing creates efficiencies in the litigation process by speeding up notification of and access to documents filed with the court, and creates an immediate record of filings that is easily accessible to litigants. These benefits accrue to lawyers and *pro se* parties. It is also a less costly process than hard-copy filings, which impose printing and delivery costs on the filer. Finally, e-filing promotes waste reduction and, as a result, environmental benefits.

The e-filing proposal comports with current ethical guidelines. The New York Rules of Professional Conduct require that lawyers remain abreast of the technology used to serve clients and practice law<sup>1</sup> and must meet CLE requirements in cybersecurity.<sup>2</sup> In light of this, the burden of an electronic filing requirement on attorneys is minimal.

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<sup>1</sup> New York Rules of Professional Conduct, Rule 1.1, Comment 8

<sup>2</sup> 22 NYCRR § 1500.2 Definitions.

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The NYSBA Commercial & Federal Litigation Section believes e-filing will improve access to the court system by decreasing costs associated with filing and allowing litigants the convenience of filing from virtually anywhere. Although we are sensitive to concerns about access to high-speed internet, especially in rural areas and for *pro se* litigants, we nonetheless believe those concerns are adequately addressed by the exemptions available to *pro se* litigants and to those who demonstrate technological deficiencies or other good cause.<sup>3</sup> In fact, e-filing may benefit *pro se* litigants by enabling them to file with the court when they may otherwise be unable to travel to file in person and by allowing them to avoid expenses for postage and potentially voluminous photocopying.

For the aforementioned reasons, NYSBA's Commercial and Federal Litigation Section approves the proposed amendments. We are confident the proposed amendments will benefit the litigants, their counsel, and the court system through efficiencies of time and expense.

Respectfully submitted,

New York State Bar Association  
Commercial and Federal Litigation Section  
Ignatius A. Grande, Section Chair

December 15, 2022

Approved by the NYSBA Commercial & Federal Litigation Section Executive Committee,  
December 14, 2022

Legislative & Judicial Initiatives Committee

Michael Rakower, Co-Chair  
Anthony Harwood, Co-Chair  
Monica Ayala-Talavera  
Carolynn Beck  
David Gorvitz  
Ignatius Grande  
Alyssa Grzesh  
Helene Hechtkopf

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<sup>3</sup> NY Uniform Trial Court Rules 202.5bb(b), (c) and (e).

## Appendix E

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Patrick Klingman  
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December 15, 2022

Mr. Jeffrey Carucci  
Director, OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

We write on behalf of the Managing Attorneys and Clerks Association, Inc. ("MACA"), in response to your October 28, 2022 invitation to comment on our experience with NYSCEF generally and proposed legislation to expand e-filing and to authorize the Chief Administrator to institute e-filing in all trial courts statewide. As we do each year, we welcome this opportunity and thank you and the Office of Court Administration ("OCA") for seeking the views of the bar on these important subjects.

As you know, MACA is comprised of approximately 125 law firms with litigation practices, primarily large and mid-sized firms, as well as the Attorney General's Office. Our members' positions within our respective firms and concomitant responsibilities afford us a breadth of understanding of the day-to-day operations of the various state and federal court systems. Our members have extensive experience with e-filing in NYSCEF, in other states' e-filing systems and in the federal e-filing system. In a majority of our member firms, managing

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attorney or managing clerk staff perform the actual filing of litigation papers in NYSCEF. Additionally, some of our member firms handle matters that fall outside standard civil litigation, such as matrimonial actions, proceedings in Family Court and Criminal Court, and residential foreclosure and consumer credit actions, either as part of their regular business or on a pro bono basis.

### General Assessment

We continue to find NYSCEF a very effective tool, both as our means of serving and filing court papers and as courts' readily accessible online record of their cases. The technology is reliable; we very rarely experience a service disruption. In this regard, NYSCEF compares very favorably with the federal CM/ECF system.

In our experience, a substantial factor in NYSCEF's success is the NYSCEF Resource Center (a.k.a. the Statewide E-Filing Resource Center). Their staff operate an effective help desk that provides competent e-filing problem-solving services. In addition, leadership of the Center for many years has been receptive to our feedback and suggestions, sought our input on new proposals and developments and alerted us to e-filing-related changes to help us ensure our firms adapt efficiently.

Some years ago we voiced concern that new staff needed to be recruited to the Center as the staff at that time approached retirement age. We are very pleased now to be working with an excellent new generation of NYSCEF Resource staff alongside the Center's senior staff with whom we've worked for years. We are confident that recent retirements will not diminish the quality of this superb public resource.

### Our 2021 Comments and Suggestions

We stand by the comments and suggestions we made in our letter of December 22, 2021, attached. We firmly believe that NYSCEF should replace hard copy court files throughout the State's trial courts in all types of cases. We also believe the future effectiveness and reliability of NYSCEF depends on its continual improvement to meet the needs of litigants and the courts. Accordingly, inclusion of proper funding for the development of new NYSCEF functionality in the 2023 budget for the judiciary is as much of a priority for us as legislation to expand e-filing throughout the trial courts.

### NYSCEF Returns for Correction in Violation of CPLR, Uniform Rules

In our experience, court personnel who deem a filing to be deficient use features in NYSCEF to return the papers to the e-filer for correction. Under NYSCEF's return-for-correction processes, returned papers are not accepted for filing until resubmitted in corrected form. A return for correction is thus, functionally, a rejection of the filing.

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CPLR 2102(c) provides, however, that “a clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court.” The Administrative Board of the Courts approved the adoption of Uniform Rule 202.5(d) to implement this law in Supreme Court and County Court. Uniform Rule 202.5(d) prohibits County Clerks and Chief Clerks of Supreme Court or County Court from rejecting filings unless they are defective in one or more of five enumerated ways (such as omission of an index number, filing in the wrong court, lack of signature).

These provisions are extremely important to managing attorneys and managing clerks (and the lawyers we support) because they provide clarity as to what is required in order for papers we file on behalf of our firms not to get rejected. For the process of preparing and filing court papers to work efficiently, we must be able to advise our colleagues and clients whether a filing will be rejected; court staff use of NYSCEF to return for correction for reasons other than those enumerated in Uniform Rule 202.5(d) subverts our ability to do so.

Notably, CPLR 2102(c) resulted from a lawsuit against the New York County Clerk for allegedly using arbitrary standards for rejecting court filings, some fifteen or twenty years ago. Based on the experiences of members of our community who formerly worked for a County Clerk, the adoption of Uniform Rule 202.5(d) not only prevented such problems from recurring but also helped the Court function more efficiently because the rule essentially is a checklist that replaces subjective standards for what can be accepted or rejected.

We believe court personnel use of NYSCEF to return filings for correction may signal that courts need Uniform Rule 202.5(d) expanded in order to function efficiently. If so, the Managing Attorneys and Clerks Association is ready and willing to assist in the process of assessing courts’ needs and drafting a proposed amendment. It remains imperative, however, that court filings not be rejected except for a reason enumerated in Uniform Rule 202.5(d) or its equivalent.

\* \* \*

Again, we are grateful for the opportunity to comment on NYSCEF. We are enthusiastic supporters of the system and eagerly look forward to the expansion of e-filing, improvements to NYSCEF functionality and bringing the use of returns for correction into compliance with the CPLR and the Uniform Rules.

Respectfully submitted,

s/ Peter McGowan  
MACA President  
Managing Attorney  
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December 22, 2021

Mr. Jeffrey Carucci  
Director, OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, Room 1062  
New York, New York 10004

**Re: New York State Courts Electronic Filing Program**

Dear Mr. Carucci,

We are writing on behalf of the Managing Attorneys and Clerks Association, Inc. ("MACA"), in response to your November 15, 2021 invitation to comment on our experience with NYSCEF generally and make e-filing mandatory across the State's trial courts. We welcome this opportunity and thank you and the Office of Court Administration ("OCA") for seeking the views of the bar on these important subjects.

As you know, MACA is comprised of approximately 125 law firms with litigation practices, primarily large and mid-sized firms. Our members' positions within our respective firms and concomitant responsibilities afford us a breadth of understanding of the day-to-day operations of the various state and federal court systems. Our members have extensive experience with e-filing in NYSCEF, in other states' e-filing systems and in the federal e-filing system. In a majority of our member firms, managing attorney or

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managing clerk staff perform the actual filing of litigation papers in NYSCEF. Additionally, some of our member firms handle matters that fall outside standard civil litigation, such as matrimonial actions, proceedings in Family Court and Criminal Court, and residential foreclosure and consumer credit actions, either as part of their regular business or on a pro bono basis.

### General Assessment

Overall, MACA's experience with NYSCEF continues to be very positive. As frequent users of NYSCEF, we benefit from the efficiency and accessibility it offers first-hand. The e-filing platform is easy to navigate and is user-friendly. Some features we enjoy include the simplicity of choosing an e-filing category, the PDF checker and the ability to e-file multiple documents simultaneously without having to re-select the filing party for each document. NYSCEF has proven to be flexible and able to keep pace with changing technology. NYSCEF is well supported by its developers and the Electronic Filing Resource Center. The Resource Center has continually offered excellent user support, which includes the ability to call or email the Help Desk, creation of a new E-Filing Chat forum and increased online training sessions.

Additionally, the Resource Center's leadership is extremely effective in their readiness to assess the needs and concerns of the bar and to implement change to improve the court system. There are some areas of functionality our membership would like to see NYSCEF further develop.

### Carrying Over Representation; Notice of Appeal; and Record on Appeal

We feel that there is potential for significant benefit through integration of the NYSCEF system between the various trial divisions and the Appellate Division.

Currently, when an appeal is taken in an e-filed case, the appellant must establish a new NYSCEF docket for the appeal, re-enter the relevant party information, and re-file the notice of appeal and other initial case documents on the new appeal docket. Appellant must then wait for the appellate division to assign a case number, and then serve his or her adversary with a notice of the opening of the appeal docket and case number in hard copy. Appellant must continue to serve any interlocutory papers in hard copy until either the respondents' counsel records a representation on the NYSCEF appeal docket or 14 days have elapsed, whichever is sooner. Similarly, a respondent does not receive formal notice of the opening of the appeal until he or she receives the hard copy notification from the appellant, and then must record a representation in NYSCEF in order to begin receiving notifications of filings in the appeal.

While these steps may be appropriate for appeals from non-e-filed cases, they make little sense for appeals from e-filed cases. All the information an appellant must enter to create the appeal docket in NYSCEF is already available on the NYSCEF docket for the case at the trial level, or in the Informational Statement the appellant filed therein.

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When a respondent has already consented to, and become accustomed to, receiving email service in the proceeding below, requiring hard copy service of the notice of creation of the appeal docket on the respondent, then requiring the respondent to re-record his or her representation in the appeal docket, serves only to put additional costs and burdens on both parties, and to create confusion and the potential for missed notifications.

We recommend OCA consider ways to automate the process of establishing the NYSCEF docket for an appeal from an e-filed case. The establishment of the NYSCEF appeal docket could be achieved, for instance, by automatically forwarding the party and representation information recorded on the trial court docket to the Appellate Division. Alternatively, similar to what is currently required for filing a Request for Judicial Intervention, an appellant could be required to complete an online form when filing the Informational Statement, which could automatically populate the required information for the appeal docket.

We also recommend modifying both the NYSCEF system and the Electronic Filing Rules of the Appellate Division to eliminate the requirement of a hard copy service of the notice of creation of the appeal docket and subsequent filings until the respondent records a representation. Instead provide that such service happen automatically via NYSCEF email notifications on the parties to the appeal as soon as the appeal docket is created.

These changes would streamline the process for creating appeal dockets in NYSCEF, and would ensure that all parties receive prompt notification of the creation of the docket and any filings thereon as soon as they are made. There would be no prejudice or additional burden to any party, as the parties have already been participating in an e-filed case in the court below. Appeal docket information collected automatically would be more accurate and less prone to data-entry error by the user, reducing the burden on the court staff.

Relatedly, the ability to create the Record on Appeal from the official docket of the trial division of the Supreme Court would be a significant enhancement. The e-filed NYSCEF case list and documents are the official docket and record of e-filed cases in the trial divisions of the Supreme Court, and most of the documents that would constitute the record on an appeal from an e-filed case are already available on the NYSCEF docket. Despite this, parties spend considerable time, money, and resources to downloading, compiling, and combining those documents into a separate Record on Appeal in both digital and hard copy format for filing with the Appellate Division.

A more economical and practical approach is to have the programmers of NYSCEF develop a process so that parties can select the documents relevant to their appeal from the official docket of the Supreme Court and have those documents transmitted to the appellate court. Our members envision a process that would be similar to preparing a judgment roll when entering a judgment in the Supreme Court. The party

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appealing need only verify all documents necessary for the Record on Appeal are entered on the official docket. Adding a function to create the Record on Appeal would ease the burden on parties with minimal impact on current court operations.

### Hyperlinking

As previously proposed, our membership would like OCA to further develop NYSCEF to include automatic hyperlinking of legal citations after a document has been e-filed. We believe this functionality should be added for the benefit of all e-filing courts in the Unified Court System (“UCS”). Although hyperlinking is currently only required by the Commercial Division, it will inevitably be required by other courts as technology advances. Hyperlinking to the legal citation enables judges, court staff and practitioners to evaluate parties’ arguments more efficiently. Just as practitioners have a responsibility to keep up with technology, so must NYSCEF. We strongly believe that litigants and their lawyers should not be burdened with the extra cost and time pressure of hyperlinking before they e-file, particularly when an automated solution is attainable. The time spent hyperlinking diminishes the time spent drafting compelling legal arguments. While many MACA members have the resources to hyperlink documents prior to e-filing, it is particularly burdensome for solo and small firm practitioners who do not. We urge OCA to review the federal NextGen CM/ECF e-filing system, which includes the creation of hyperlinks to text-searchable e-filed documents, and adapt that functionality for NYSCEF.

### Integrating Calendars

We recommend court calendars and appearances be integrated into NYSCEF, so parties are notified of scheduled appearances via NYSCEF email notification. Currently, NYSCEF does not generate calendars or notify parties of upcoming appearances, as a result, parties must rely on separate databases to receive notifications of their scheduled appearances. Parties would benefit from using NYSCEF as a single platform to search their cases, dockets, and appearances.

### Adjourning Multiple Motions Simultaneously

A function we would like to see developed in NYSCEF is the ability to adjourn more than one motion at a time. Currently, if a litigant wishes to adjourn the briefing schedule of more than one motion, the stipulation to adjourn must be filed in each motion sequence. A better approach would be to allow the litigant to select more than one motion sequence in which to apply a stipulation to adjourn.

### Printing Docket Sheets

A function our members would like to see restored is the ability to print a full document list of the official docket on NYSCEF. Currently that feature is limited to the

parties who have consented to e-filing. The public should have access to view and print the document list.

Overall the experience of MACA has been that NYSCEF is a useful resource which deserves to be implemented to the fullest extent possible in a standardized manner across the state court system. With additional enhancements, NYSCEF can become more useful to the bench and bar.

### Response to Legislative Proposals

MACA enthusiastically supports expansion of mandatory e-filing across the State's trial courts. In particular, we support the enactment of legislation to allow the Chief Administrative Judge ("CAJ") to institute e-filing on a mandatory, standardized basis.

NYSCEF has proven to be a reliable and efficient platform to access the courts. The rapid expansion of NYSCEF during the pandemic is an indicator that the bench, bar and the public are ready for further expansion of e-filing. In order to maximize the benefits NYSCEF has to offer, it is necessary to permit mandatory e-filing. The CAJ is capable of, and experienced in, managing the further expansion of e-filing in a manner that avoids delay that results from being required to await legislative action in each instance.

We believe the recommendations in support of the legislative amendments proposed by the UCS to expand e-filing are aimed at promoting the creation of a more efficient and effective court system in New York State.

Again, we are grateful for the opportunity to comment on NYSCEF. We are enthusiastic supporters of the system and eagerly look forward to improvements and to expansions of mandatory e-filing.

Respectfully submitted,

s/ Peter McGowan  
MACA President  
Managing Attorney  
Sidley Austin LLP  
pmcgowan@sidley.com





December 15, 2022

Jeffrey Carucci  
Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, Rm. 1062  
New York, New York 10004  
efilingcomments@nycourts.gov

Re: Comment on New York State Courts Electronic Filing Program (NYSCEF)

Dear Mr. Carucci:

Thank you for the opportunity to comment on the New York State Courts Electronic Filing Program (NYSCEF) and the proposed amendments to Criminal Procedure Law §10.40, the New York City Criminal Court Act, Family Court Act §241, CPLR Article 21A and other relevant statutes to authorize the Chief Administrative Judge to make electronic filing mandatory across New York State.

We remain excited anticipating this technological step forward for our courts and stakeholders. As our courts continue to assess the impact of the pandemic and paths forward, NYSCEF, a platform to allow remote filing and service of legal papers as well as remote access to court filings, must be expanded and implemented for our criminal courts. Over the past years, defense providers voiced this need to provide greater access to the Courts for the communities it serves. Access should no longer be restricted to business hours in person. It is disappointing that plans to expand access to courts by piloting NYSCEF in identified Supreme Courts, Criminal Term, were delayed

and have yet to resume. There is no greater time to test and implement NYSCEF than now as we assess and imagine our courts with the impact of the pandemic.

Together, we bring a broad perspective of our community that we serve in need of greater access to our courts. We represent thousands of people in criminal, family, immigration, and civil legal matters every year. We practice in some of New York's busiest courthouses and have seen the impact the pandemic has had on our clients and communities first hand. We have been active stakeholders, voicing such needs for greater access in testimony before Commission to Reimagine the Future of New York's Courts and its working groups. We continue to call for the development and implementation of electronic filing via a secure and well-developed portal.

We must however provide access to all including vulnerable populations who are often penalized for the digital gap inside our court system. We also have grave concerns about privacy and security of confidential client information, accessibility of data, and mandating a statewide system before rules are promulgated and a full pilot program launched. Although we agree there are many benefits to an electronic filing system in New York's court system, these benefits can only be fully realized after rules have been promulgated and the system is thoroughly tested. Our offices continue to welcome the opportunity to be part of this project from its inception and remain invested in ensuring the new system is accessible and efficient while also protecting the privacy of all its users and litigants.

As we continue to assess our courts together and develop paths forward, we must address concerns with NYSCEF as we develop and implement a much need platform to provide greater access:

- **Security and Privacy Concerns**

We must provide security and privacy required in a digital platform that will hold critical confidential, and highly sensitive information of thousands of New Yorkers. Our offices share the Commission's privacy and security concerns, as detailed in its 2020 report.<sup>1</sup> The vulnerable populations we represent, those accused of crimes, parents accused of child neglect and abuse, undocumented immigrants, survivors of domestic and sexual violence, are especially at risk of the life altering consequences should their court records ever be improperly accessed. We must protect against improper access of a person's court record which may compromise their employment, housing, immigration status and ruin their life. Yet, far more information is needed now about how court documents, discovery and sensitive information will be stored, secured, and accessed only by counsel, prosecutors and court personnel while a case is pending. If discovery materials are to be uploaded, we need to ensure that only counsel have access to discovery materials. Documents filed electronically should remain confidential and not be accessible to the public unless and until there is a conviction. If *ex parte* applications are filed, the electronically filed

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<sup>1</sup> <https://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>

document and the fact of its filing should be unavailable for viewing online by any other party.

- **Rules for NYSCEF Are Needed Before It Can Be Rolled Out Across the State**

We cannot expand and mandate NYSCEF into new areas, such as criminal matters, without first conducting and completing the proper process to promulgate rules. Committees were established to draft rules to define how the electronic filing portal will be used and its impact on the legal rights of the parties involved. Proposed rules would then be subject to public comment,<sup>2</sup> and final rules are then published. *See, e.g.*, NY Ct. Rules 202.5 (setting forth rules for Civil matters). Yet, to date, no proposed rules have been shared with any committee regarding implementation for criminal matters. No such rules have been offered for public comment nor promulgated. We must move forward now on Rules and such Rules must address critical legal issues, such as:

- Categories or types of legal matters which will require mandatory electronic filing;
- Instruction on registration and access rights for counsel and filing agents, including notifications as to which parties will have access to the filed documents;
- Procedural rights as to filing deadlines and accuracy of filings and service;
- Provision for emergency applications, including the filing of Orders to Show Cause and Temporary Restraining Orders, how papers will be conformed without missing statutory deadlines and how cases will be calendared.

- **Conduct Full Pilot Project**

With criminal matters, proper testing and feedback first must be conducted through a pilot project before an untested portal replete with confidential information be mandated statewide. During the development of NYSCEF for criminal court, many stakeholders working together provided invaluable and critical feedback leading to significant revisions of NYSCEF screens. However, such feedback occurred prior to substantial changes in bail and discovery reform leaving questions as to additional required updates to address changes in law. The current platform needs to be thoroughly tested by all parties (prosecutors, defense counsel, and court) to determine if there are any issues and address the needs of all before mandating electronic filing statewide.

In conclusion, there is much more we need to understand about the vulnerabilities and security measures needed for electronic filing, how to protect the privacy of litigants and how to ensure greater access before New York rolls out a state-wide mandatory e-filing system in all its courts. We strongly recommend that the project first be piloted in several localities, as was recommended

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<sup>2</sup> OCA, for example, posts requests for comments publicly using, in part, the OCA website, here: <https://ww2.nycourts.gov/rules/efiling/index.shtml>.

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in 2019, allowing the system and its accompanying rules to be tested and gathering critical stakeholder feedback before the system is mandated and implemented across all courts in New York State.

We hope to continue the conversation with your office on this issue. Please reach out with any questions.

Sincerely,

Lisa Schreibersdorf  
Executive Director  
Brooklyn Defender Services

Justine Olderman  
Executive Director  
The Bronx Defenders

Justine M. Luongo  
Attorney-in-Chief  
Criminal Defense Practice  
The Legal Aid Society

Alice Fontier  
Managing Director  
Neighborhood Defender  
Service of Harlem

Stan German  
Executive Director  
New York County Defender Services

Lori Zeno  
Executive Director  
Queens Defenders



NEW YORK STATE BAR ASSOCIATION

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December 15, 2022

Jeffrey Carucci, Director  
OCA Division of E-Filing  
Office of Court Administration  
25 Beaver Street, 9<sup>th</sup> Floor  
New York, New York 10004

Re: Request for Comment, New York State Courts Electronic Filing Program

Dear Mr. Carucci,

I write in my capacity as President of the New York State Bar Association (NYSBA) in response to your October 28, 2022, request for comment regarding New York State Courts Electronic Filing Program.

NYSBA has longstanding policy in support of electronic filing in New York State courts. Our 2007 Report of the Task Force on the Electronic Filing of Court Documents analyzed the best practices of existing e-filing initiatives in the United States and made recommendations to implement such a system in New York State courts. (Report Attached).

Our subsequent 2012 Report on the Progress Toward Implementing Statewide Electronic Filing in New York Groups wherein we call for the Statewide adoption of electronic filing in New York. (Report Attached).

Although not policy of our Association, our Task Force on the Modernization of Criminal Practice stresses the importance of extending e-filing to address Town and Village Justice Courts. (Attached).

I hope that the enclosed reports provide insights useful to the formation of your forthcoming report. Should you wish to further discuss NYSBA's policy on electronic filing, please do not hesitate to contact me or our General Counsel, David P. Miranda, at [dmiranda@nysba.org](mailto:dmiranda@nysba.org).

Respectfully,  
Sherry Levin Wallach, Esq.  
President, New York State Bar Association



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**Committee on Technology and the Legal Profession**

December 15, 2022

Re: Request for Comment on Electronic Filing in New York Courts

At this point, given the technological requirements of practicing law with any degree of competence absolutely requiring some level of technological skill, and given further that electronic filing on NYSCEF is no more complicated than the other technological skills expected of attorneys (such as electronic research, remote appearances, email communications and the like), and given further the ease of access to free CLE programs on electronic filing with NYSCEF provided by OCA, the exception for attorneys who do not have access to a computer or an internet connection should be struck as out of date. We submit that with the availability of outside services that are available to assist counsel, there remains no legitimate basis for an attorney to attest that he or she should be exempt from e-filing.

While the exception for pro se litigants should remain for the time being, OCA should work with the Court Clerks of each county to create a simpler process for pro se litigants to obtain a non-attorney filing account and should provide tutorials for its use. At the very least, pro se litigants wishing to abstain from filing electronically, should be required provide counsel and the court with their cell phone number for purposes of texting and/or email address so that counsel and the court can communicate with each other and the pro se be able to electronically submit their documents to court staff for e-filing/service on their behalf.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.



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### TASK FORCE ON THE MODERNIZATION OF CRIMINAL PRACTICE

December 15, 2022

#### **Re: Request for Comment on New York State Courts Electronic Filing**

The Task Force on Modernization of Criminal Practice submits comments regarding the proposal to expand e-filing to criminal matters throughout the state. As the Chief Administrative Judge seeks to expand e-filing to become more uniform and effective, it is important to address the obstacles in Town & Village Justice Courts that may prevent uniformity in e-filing from the commencement of criminal matters.

There are more than 1200 Town and Village Justice Courts throughout the state, and they are staffed by individuals of varying ages, education, and experiences, both legal and technological. More than 60% of justices are non-lawyer judges of whom only a high-school degree is required. Many of the courts sit on a part-time basis, disposing of criminal matters on scheduled District Attorney dates as few as two to three times per year (some courts without clerks), whereas others meet weekly and employ full time court clerks. These courts rely on local revenue to cover salaries, equipment, and training, but they may apply for JCAP grants of limited amounts to supplement services (including the provision of law books, treatises, and appropriate training for justices and non-judicial court staff). Many of these courts sit in rural areas, burdened by the lack of reliable internet access and the lack of frequent public transportation. Some courts do not have or rely on computers, some judges do not use email, and many courts are inappropriately staffed to manage e-filing from the commencement of a criminal matter.

Depending on the complexity of a criminal matter, multiple parties may submit documents in criminal matters: law enforcement (accusatory instruments); courts (orders of protection, probation terms, conditional discharge terms, driver's license revocation paperwork); prosecuting agencies (discovery, statements of readiness, 710.30 notices, Grand Jury notices); probation (pre-sentence reports); psychiatrists (730 reports), in addition to an innumerable amount of regularly filed motions. Criminal matters may be disposed of at arraignment or at first appearance by plea or other disposition. In simpler, less complex matters that resolve on the first or second appearance, there may not be sufficient time or staff to e-file the documents involved before the court disposes of the matter. To delay court proceedings for completion of e-filing on every case would be to burden already over-loaded criminal dockets and to require more appearances than necessary.

The e-filing proposal allows unrepresented persons to be exempt from e-filing and for attorneys to opt out of the system. Such options will result in a hodgepodge filing system for courts, requiring understaffed courts to juggle keeping track of which cases follow which rules. It may be too confusing for a municipality-based system to handle.

Although e-filing has aspirations of convenience for many parties, it cannot be uniform or effective where justice courts are ill-equipped to handle it, staff ill-trained to monitor it, and parties given the option to ignore it.

**HOUSE OF DELEGATES  
Agenda Item #5**

**RESOLUTION OFFERED BY TASK FORCE ON E-FILING**

WHEREAS, the Task Force on the Electronic Filing of Court Documents was created and charged with collecting data on the e-filing initiatives and programs throughout the United States, analyzing the best practices from each, and making recommendations to the Office of Court Administration regarding whether and how e-filing might best be implemented within the New York State courts; and

WHEREAS, the Task Force has conducted surveys of New York attorneys, the New York County Clerks and the Chief Clerks of New York Surrogate's Courts, and has studied the electronic filing program of the United States Courts, and has studied the filing programs and pilots of other state courts, and has extensively studied the currently authorized pilot of Filing By Electronic Means (FBEM) conducted in New York State courts; and

WHEREAS, electronic filing of court documents offers significant advantages over paper filing including savings of costs and time to clients and attorneys, savings of storage costs to the court system, minimalization of misfiling of documents, access to filed documents at any time from a remote location, and uniformity of filing procedures, among other advantages; and

WHEREAS, attorneys within New York who have participated in mandatory electronic filing in Federal Court or in New York State Supreme Court under the FBEM pilot program have by significant majority indicated an overall positive experience; and

WHEREAS, the FBEM pilot has been successful where employed, but is seriously underutilized due to the requirement that all participants to an action under the pilot affirmatively opt into electronic filing; and

WHEREAS, the Task Force has issued a report, analyzing the electronic filing of court documents and making recommendations regarding the full scale implementation of an electronic filing system;

**NOW, THEREFORE, IT IS**

**RESOLVED**, that the New York State Bar Association hereby endorses the report and recommendations of the Task Force on Electronic Filing of Court Documents; and it is further

**RESOLVED**, that the officers of the Association are hereby empowered to take such steps as they may deem warranted to implement this resolution, and to affirmatively take such steps to ensure a fully implemented electronic filing system, including but not limited to (1) support for implementation of electronic filing in the Supreme Court and Surrogate's Court in each county as the county becomes ready to undertake it, and in the Court of Claims, (2) support for the authority of the Chief Administrator of the Courts to plan and direct future expansion of electronic filing in New York, and (3) support for the provision of resources to the Office of Court Administration and the Offices of the County Clerks to properly enable electronic filing, and to consider the creation of an entity within the Association to collaborate with the Office of Court Administration and the New York State Legislature in order to ensure such implementation.



NEW YORK STATE BAR ASSOCIATION



# NYSBA

## Report on the Progress Toward Implementing Statewide Electronic Filing in New York Courts

Approved by the Association's Executive Committee  
on March 30, 2012



**REPORT ON THE PROGRESS TOWARD IMPLEMENTING  
STATEWIDE ELECTRONIC FILING IN NEW YORK COURTS**

COMMITTEE ON COURT STRUCTURE AND OPERATIONS:  
SUBCOMMITTEE ON ELECTRONIC FILING

**EXECUTIVE SUMMARY**

The New York State Bar Association (“NYSBA”) Committee on Court Structure and Operations: Subcommittee on Electronic Filing (respectively “Committee” and “Subcommittee”) submits this report on the progress toward the implementation of mandatory, universal electronic filing (“e-filing”) of court documents throughout New York State, and recommends the following for NYSBA’s continuing efforts toward achieving this goal:

- (1) That NYSBA support legislative amendments that expressly:
  - a. Authorize mandatory e-filing in all courts across the State, with the exception of opt-outs for *pro se* litigants and for those attorneys who lack the technical capacity to participate;
  - b. Allow court administrators, including the Chief Judge, Chief Administrative Judge (“C.A.J.”) and District Administrative Judges, to adopt rules regulating the form, manner and methodology of e-filing;
  - c. Streamline the implementation process by minimizing or eliminating the need for input from non-judicial officers; and
  - d. Direct court administrators to phase-in mandatory e-filing in the various counties in an orderly fashion that accounts for the particular needs of the county clerks’ offices.

## Appendix E

- (2) That NYSBA urge the Legislature to recognize the substantial cost and time savings that will result from a Statewide e-filing system, and to provide adequate funding for implementation;
- (3) That NYSBA support the decision of the Chief Judge and C.A.J. to implement the New York State Courts Electronic Filing system (“NYSCEF”), developed by the Office of Court Administration’s Division of Technology (respectively “OCA” and “DOT”), as the single, uniform e-filing system for all courts across the State; and
- (4) That NYSBA and local bar associations and organizations:
  - a. Support OCA’s efforts to provide training materials and classes to educate members of the bar on NYSCEF; and
  - b. Develop avenues for members of the bar to provide constructive feedback to OCA regarding their experiences with NYSCEF.

Section I of the report summarizes NYSBA’s policy on e-filing, and identifies the fundamental advantages of a mandatory, Statewide system. Section II explains the legislative and administrative history of e-filing in New York, as well as NYSCEF’s technological aspects, including system architecture, security and available training. Section III outlines the current availability of e-filing in New York, and discusses the unique role the county clerks play in implementing e-filing on a county-by-county basis. The report ends with the Subcommittee’s conclusions and recommendations in Section IV.

### I. INTRODUCTION

NYSBA's position on electronic filing is clear: the House of Delegates, by resolution dated March 31, 2007, called for the implementation of universal and mandatory electronic filing in all New York State courts without undue delay. Relying on the work of the NYSBA Task Force on E-Filing of Court Documents ("Task Force"),<sup>1</sup> the House of Delegates has acknowledged the potential cost and time savings from "an ideal fully implemented e-filing system," as well as the need for simplicity and uniformity in any such system. Now, five years after the House of Delegates' resolution and the Task Force's report, the Subcommittee, under the guidance of Henry M. Greenberg, Esq., and NYSBA Past-President Stephen P. Younger, Esq., Co-Chairs of the full Committee, has reviewed the Task Force's recommendations in light of intervening developments and the current legislative and administrative framework to identify opportunities for NYSBA to provide further assistance in achieving this goal.

Importantly, and as over 10,000 practitioners can attest, New York's current e-filing system, NYSCEF, has proven to be a dependable and efficient program offering a range of benefits, including, but not limited to, the following:

- (1) Instant World-Wide Filing: No longer will an attorney race to the clerk's office before 5 o'clock or travel hundreds of miles to file papers in the proper county—now, courtesy of e-filing, practitioners can file court documents from the convenience of their own offices, homes, vacation spots, or anywhere else that has internet access;

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<sup>1</sup> In June 2005, NYSBA President A. Vincent Buzard created the Task Force, co-chaired by Sharon Stern Gerstman, Esq. and Wallace L. Leinhardt, Esq., to analyze the status of e-filing initiatives throughout the United States, to gather data from affected constituencies in New York State, and to formulate recommendations as to whether and how e-filing should be implemented within our courts. After two years of extensive work, the Task Force issued a comprehensive report providing a clear vision for "an ideal fully implemented e-filing system" in New York State and recommendations on how NYSBA can assist OCA and other stakeholders in realizing this goal.

## Appendix E

- (2) Automatic Service: In addition to accepting filings, NYSCEF automatically effects and records service of all papers after the summons—eliminating the use of affidavits of service and relieving judges of the need to hear the “age-old practice of bickering among lawyers about whether they received a copy of this or that”<sup>2</sup>;
- (3) Universal Online Access: Digital storage of electronic documents provides litigants, courts, and the public the additional benefit of instant access to court papers anytime and anywhere, as well as greater transparency in our judicial system;
- (4) Extensive Cost Savings: Use of electronic files in lieu of physical documents eliminates the cost of purchasing paper, printing and copying, storage and disposal, and service by mail, overnight delivery or messenger: estimated savings for each e-filed document range from \$40 to \$95,<sup>3</sup> and, for a mandatory, universal e-filing system across the State, total “hundreds of millions of dollars a year”<sup>4</sup>;
- (5) Environmentally-Friendly: Electronic documents provide a “greener” and more environmentally friendly method for filing and service, not only by reducing the amount of paper used, but by eliminating the need to transport literally thousands of tons of paper each year to courts across the State and attorneys around the globe; and
- (6) Increased Security: NYSCEF contains a comprehensive technological infrastructure providing security for all e-filed documents “that is far greater than that which exists for documents in paper form.”<sup>5</sup> Documents uploaded to NYSCEF are encrypted, backed-up and preserved on multiple computer servers in separate locations in the State, ensuring

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<sup>2</sup> William Glaberson, *Amid Stacks of Paper, “E-Court” is Finally in Session*, New York Times, July 7, 2011, section A20.

<sup>3</sup> Report of the Chief Administrative Judge, E-filing in the New York State Courts 3 (June 2011) citing Case File Xpress, *A Case Study: Time is Money: e-filing Saves Both*, at 6 (2010).

<sup>4</sup> See Report of the Chief Administrative Judge, E-filing in the New York State Courts 3 (June 2011); see also Jonathan Lippman, *E-filing Program Must be Retained; Our Experience Justifies Expansion*, NYLJ, May 1, 2001, at 23, col 3.

<sup>5</sup> Report of the Chief Administrative Judge, E-filing in the New York State Courts 8 (June 2011).

## Appendix E

preservation of all documents in the event of a natural disaster or computer malfunction, and NYSCEF features protections against hackers and viruses, including advanced encryption, real-time system monitoring, and on-site server maintenance.<sup>6</sup>

Despite the clear benefits of NYSCEF, the road to implementation has been long (over 12 years) and there is far to go before a Statewide system is achieved. As discussed below, the Legislature has authorized e-filing on a piecemeal basis, county-by-county, and, in stark contrast to the implementation of the federal e-filing program, New York law does not give the Judiciary exclusive control of the process. Instead, the C.A.J. must obtain the approval of various constituencies who otherwise have no part in court structure and operations. This fragmented implementation, coupled with inclusion of non-judicial officers, has resulted in delays that were absent from the federal experience.

It is the Subcommittee's view that while the progress over the past 12 years has been, at times, slow, OCA's current e-filing system, NYSCEF, is well-suited to the needs of the State's Judiciary, practitioners, litigants and the general public. Therefore, the Subcommittee calls for the Statewide adoption of NYSCEF as soon as practicable, which the Subcommittee believes accords with the goals set in 2007 by the House of Delegates.

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<sup>6</sup> *Id.*

## II. HISTORY OF E-FILING IN NEW YORK STATE

There are two elements in the history of e-filing in New York State: (1) the legal and administrative authority authorizing e-filing; and (2) its technological creation and implementation. A proper understanding of New York's current system can be achieved only through an analysis of both.

### A. Legislation, Regulations and Administrative Orders

#### 1. The Pilot Program: L.1999, ch. 367

The New York Legislature authorized e-filing as a mere pilot program in 1999,<sup>7</sup> which it amended six times before making it a permanent fixture in 2009.<sup>8</sup> Originally known as the "Filing by Electronic Means," or FBEM, the program was scheduled to run for a three-year period beginning on July 1, 1999.<sup>9</sup> Under FBEM, as well as its eventual successor NYSCEF, litigants were able to file and to serve court documents simply by uploading them to the FBEM website.

The pilot program consisted of three key elements. First, it authorized the C.A.J. to establish a consensual e-filing program in commercial cases in the Commercial Division of the Supreme Court, Monroe and New York Counties and tax certiorari claims in the Supreme Court, Westchester County.<sup>10</sup> Commencement of these actions could now be performed upon electronic delivery of the requisite papers to the court clerk,<sup>11</sup> and, following physical service of

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<sup>7</sup> L. 1999 ch. 367.

<sup>8</sup> L. 2002, ch. 110; L. 2003, ch. 261; L. 2004, ch. 384; L. 2005, ch. 504; L. 2007, ch. 369; L. 2008, ch. 95.

<sup>9</sup> Judiciary L. § 212, as amended by L. 1999, ch 367.

<sup>10</sup> See Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367; CPLR § 2103(f)(6), as amended by L. 1999, ch. 367. This legislation additionally authorized facsimile commencement for commercial cases in the Commercial Division of the Supreme Courts of Monroe and New York County; as well as for tax certiorari cases and mental hygiene and conservatorship proceedings in Suffolk County, as well as claims against the State of New York in the Court of Claims. Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367.; Ct. Cl § 11(i), as amended by L. 1999, ch. 367.

<sup>11</sup> See CPLR § 304, as amended by L. 1999, ch. 367.

commencement papers, counsel could exchange interlocutory service electronically.<sup>12</sup> While FBEM offered numerous time and cost savings, “participation in this experiment [was] strictly voluntary” and “only to take place upon the written consent of the parties and of the judge assigned to the case.”<sup>13</sup> Thus, if the party initiating a lawsuit elected to use the e-filing system, the opponent could veto that decision by simply withholding consent.

Second, this legislation amended the CPLR and other statutes to expedite the process of e-filing. Most notably, the legislation amended the CPLR and Judiciary Law to allow payment of court fees by credit card.<sup>14</sup> The legislation also amended the CPLR to authorize the use of documents in electronic form,<sup>15</sup> and to clarify the definition and procedure surrounding electronic service.<sup>16</sup>

Third, the C.A.J. was required to issue a written report on the success of the FBEM pilot to the Governor, Legislature and Chief Judge by April 1, 2002—three months before the pilot’s sunset date of June 30, 2002.<sup>17</sup>

### 2. Expanding the Pilot Program

Beginning in 2002, the Legislature extended and expanded FBEM six times until the program lost its pilot status and became a permanent fixture in New York courts in 2009.

FBEM received its first one-year extension in 2002, pushing the sunset date to July 1, 2003.<sup>18</sup> This first amendment also expanded the coverage of the pilot program by allowing

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<sup>12</sup> See CPLR § 2103(7), as added by L. 1999, ch. 367.

<sup>13</sup> Mem. of Unified Court System, Bill Jacket L. 1999, ch. 367.

<sup>14</sup> See CPLR § 8023 as added by L. 1999, ch. 367 and Jud. L. § 212(2) as amended by L. 1999, ch. 367.

<sup>15</sup> CPLR § 2101, as amended by L. 1999, ch. 367.

<sup>16</sup> CPLR § 2103, as amended by L. 1999, ch. 367.

<sup>17</sup> Judiciary L. § 212, as amended by L. 1999, ch. 367.

<sup>18</sup> Judiciary L. § 212, as amended by L. 2002 ch. 110.



## Appendix E

voluntary e-filing in commercial division cases in Supreme Court, Albany, Nassau, and Westchester Counties.<sup>19</sup>

In 2003, the Legislature extended FBEM for an additional two years until September 1, 2005,<sup>20</sup> because, as stated in the Sponsor's Memo, e-filing "requires further study and extending these programs will permit additional time to evaluate the performance and utility of these modern methods of exchanging information."<sup>21</sup>

FBEM was amended a third time in 2004, significantly expanding the counties and types of cases that were eligible for the e-filing. The law authorized e-filing in commercial division cases in the remaining counties in New York City (Bronx, Kings, Queens and Richmond), as well as in Supreme Court, Erie County. E-filing also was authorized for tax certiorari claims in Supreme Court, Bronx, Kings, Queens, and Richmond Counties, and a new Surrogate's Court e-filing pilot was started in Erie County. Finally, this amendment expanded e-filing to tort claims in all of the pilot jurisdictions, which by this time included Albany, Monroe, Westchester, New York, Bronx, Kings, Queens, Richmond, Nassau and Suffolk Counties.<sup>22</sup>

The pilot program was amended a fourth time in 2005, postponing the sunset until September 1, 2009, and authorizing e-filing in five additional counties: Niagara, Broome, Essex, Onondaga, and Sullivan.<sup>23</sup> The 2005 amendment also authorized the C.A.J. to implement e-filing for commercial, tax certiorari, and tort claims in all counties already authorized for the e-filing program.

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<sup>19</sup> See CPLR § 2103, as amended by L. 2002 ch. 110.

<sup>20</sup> L. 1999 ch. 367, as amended by L. 2003, ch. 261.

<sup>21</sup> Sponsor's Mem., Bill Jacket L. 2003, ch. 261.

<sup>22</sup> L. 1999 ch. 367, as amended by L. 2004, ch. 384.

<sup>23</sup> L. 1999 ch. 367, as amended by L. 2005, ch. 504.

## Appendix E

The pilot, now known as the New York State E-filing program (“NYSEF”),<sup>24</sup> was amended a fifth time in 2007, authorizing e-filing for all commercial, tax certiorari and tort cases in Supreme Court, Livingston County. The Surrogate’s Court e-filing pilot was further expanded to include Chautauqua, Monroe, Queens and Suffolk Counties. Additionally, e-filing was expanded to the civil courts of New York City, but only for no-fault automobile cases which were brought by a health provider against an insurer for failure to comply with Insurance Department regulations.<sup>25</sup>

In 2008, the NYSEF pilot was amended for the sixth and final time, authorizing voluntary e-filing for all cases in Supreme Court, Erie County.<sup>26</sup>

By 2009, the pilot program had extended far beyond tax and commercial cases in Supreme Court, New York, Monroe and Westchester Counties to a wide range of actions in 18 counties, including Supreme and Surrogate’s Courts,<sup>27</sup> as well as the Court of Claims and New York City Civil Courts. Cumulatively, over 10,000 attorneys had registered for the pilot program, electronically filing almost 160,000 cases and over 350,000 documents.<sup>28</sup>

### 3. Entered into Law: L. 2009, ch. 416

With the passage of L. 2009, ch. 416, e-filing shed its pilot program label, was renamed the New York State Courts Electronic Filing System (“NYSCEF”),<sup>29</sup> and became a permanent fixture in New York courts. The 2009 amendment authorized the C.A.J. to implement consensual e-filing programs across the State in Supreme Court, Surrogate’s Court and the Court

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<sup>24</sup> Sponsor’s Mem., Bill Jacket L. 2007, ch. 369 (“formerly referred to as ‘Filing by Electronic Means’ or FBEM’; now being referred to as ‘NYS Efiling’ or ‘NYSEF’ . . .”).

<sup>25</sup> L. 1999 ch. 367, as amended by L. 2007, ch. 369. See also N.Y. Ins. L. § 5108(b) requiring prompt payment by insurers to health insurance providers in automobile no-fault cases.

<sup>26</sup> L. 1999 ch. 367, as amended by L. 2008, ch. 95. This made Erie and Broome county Supreme Courts the only two in New York to have authorization for e-filing in all Supreme Court cases.

<sup>27</sup> The counties of Albany, Bronx, Broome, Chautauqua, Erie, Essex, Kings, Livingston, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan, Westchester.

<sup>28</sup> Sponsor’s Mem., Bill Jacket L. 2009, ch. 416.

<sup>29</sup> See Sponsor’s Mem., Bill Jacket L. 2009, ch. 416.

## Appendix E

of Claims, as well as New York City Civil Courts. More importantly, the 2009 legislation authorized e-filing on a mandatory basis for certain cases<sup>30</sup> over a three-year pilot period in Supreme Court for three counties: New York (breach of contract cases and a variety of commercial cases worth over \$100,000); Westchester (tort cases); and one county outside of New York City to be selected by the C.A.J.<sup>31</sup> The mandatory pilot program included an “opt-out” provision, exempting *pro se* litigants and attorneys who certify that they either do not possess, or lack the requisite knowledge of, the computer equipment necessary to e-file.<sup>32</sup> Lastly, the 2009 law required the C.A.J. to file a report evaluating the mandatory pilot with the Governor, Legislature, and Chief Judge by April 1, 2012, before it sunset on September 1, 2012.<sup>33</sup>

In 2010, the Legislature authorized mandatory e-filing for commercial division cases in Supreme Court, Westchester County,<sup>34</sup> and extended the mandatory pilot to include Supreme Court, Livingston, Monroe, Rockland and Tompkins Counties.<sup>35</sup> The 2010 legislation also amended the Judiciary Law to allow payment of court fees by credit card.<sup>36</sup>

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<sup>30</sup> Cases generally eligible for e-filing included fiduciary duty, business torts, transactions under the uniform commercial code, transactions involving commercial real property, shareholder derivative actions (without a monetary threshold) commercial class actions, transactions with commercial banks, internal affairs of business organizations, commercial insurance coverage, the dissolution of business organizations, and applications to stay or compel arbitration. However, cases prohibited from mandatory e-filing included actions to collect professional fees, actions seeking declaratory judgments to insurance coverage for personal injuries or property damage, residential real estate disputes, proceedings to enforce a judgment, first party insurance claims, and certain attorney malpractice claims. For the complete list see L. 2009, ch. 416.

<sup>31</sup> Excluding matrimonial actions, election law proceedings, article 78 proceedings and proceedings brought under the mental hygiene law. L. 2009, ch. 416.

<sup>32</sup> See L. 2009, ch. 416

<sup>33</sup> L. 2009, ch. 416.

<sup>34</sup> Notably, this legislation would signal the demise of the facsimile machine’s role in e-filing programs. The fax machine, for so long the silent endowment of e-filing legislation, was essentially put out to pasture by this amendment, which now limited fax transmissions to the filing of papers in the Court of Claims. L. 2010, ch. 528.

<sup>35</sup> Excluding matrimonial actions, election law proceedings, article 78 proceedings and proceedings brought under the mental hygiene law. L. 2010, ch. 528.

<sup>36</sup> See N.Y. Jud. L. § 212(2)(j) as amended by L. 2010, ch. 528. Note that the provision for payment of credit cards was originally located in the CPLR before being repealed and moved to its current location by L. 2005, ch. 457.

## Appendix E

The 2010 legislation placed a number of new requirements on the C.A.J. before either consensual or mandatory e-filing could be implemented where authorized by law. Prior to implementing a consensual program, the C.A.J. must consult with the relevant clerk, and, for any mandatory program, the C.A.J. must obtain the clerk's actual consent. The law also required the C.A.J. to compile an annual report for the Governor, Legislature, and Chief Judge by the first of April, but only after consulting with affected county clerks, and allowing the clerks to submit their own comments for inclusion. Lastly, the law required the C.A.J. to establish an advisory committee to assist and consult on future implementations of e-filing, with at least one-half of its members to be designated by the New York State Association of County Clerks.<sup>37</sup>

The most recent e-filing legislation was signed into law in September 2011, authorizing further development of the mandatory program, and signaling the Legislature's acceptance of e-filing's inevitable spread to other areas, including criminal matters and Family Court. Mandatory e-filing was expanded to include tort, breach of contract and various commercial cases in all of New York City, and the \$100,000 minimum for mandatory e-filing was eliminated. Allegany, Essex, Onondaga, and Westchester Counties also became eligible for mandatory e-filing, subject to the approval of the respective county clerks.<sup>38</sup> Additionally, New York City civil courts became eligible for mandatory e-filing, but only for one type of case. Finally, the 2011 legislation authorized the C.A.J. to expand mandatory e-filing to all Surrogate's Courts—provided the affected bar associations are consulted before implementation. The statutory sunset for the mandatory pilot program was postponed until September 1, 2015.<sup>39</sup>

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<sup>37</sup> L. 2010, ch. 528.

<sup>38</sup> Excluding matrimonial actions and proceedings brought under the Election Law, Article 78 Proceedings, and the Mental Hygiene Law. L. 2011, ch. 543

<sup>39</sup> L. 2011, ch. 543.

The 2011 amendments placed additional reporting and collaborative requirements on the C.A.J., such as the inclusion of comments from State and local bar groups and organizations in annual reports to the Legislature and Governor.<sup>40</sup> The 2011 law also created an e-filing advisory committee composed of representatives from bar associations and organizations, as well as four advisory committees to assist and consult in the implementation of new e-filing programs in Surrogate's Court, New York City civil courts, criminal courts, and Family Court.<sup>41</sup> The criminal and Family Court committees were also to assist the C.A.J. in drafting the reports evaluating and recommending the implementation of e-filing, both of which were due to the Governor, Legislature, and Chief Judge by January 1, 2012.<sup>42</sup>

#### 4. Current Rules, Regulations and Administrative Orders

Following each legislative installment discussed above, the C.A.J. has promulgated Administrative Orders and Uniform Rules to implement consensual and mandatory e-filing programs in courts across the State. However, due, in part, to the recent legislative requirement that the C.A.J. obtain the consent of multiple advisory groups and various non-judicial officers, e-filing has been implemented in only a fraction of the courts in New York where authorized by law.

Article 22 of the New York Codes, Rules and Regulations contains the Uniform Rules regarding e-filing. E-filing in the Supreme Court is governed by Uniform Rule 202.5-b for the consensual e-filing program, and Uniform Rule 202.5-bb for mandatory e-filing program.<sup>43</sup> E-filing in the Court of Claims is governed by Uniform Rules 206.5 and 206.5aa, and e-filing in Surrogate's Court and the New York City civil courts are governed by Uniform Rules 207.4-a

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<sup>40</sup> L. 2011, ch. 543.

<sup>41</sup> Juvenile Delinquency Proceedings under Article 3 and Abuse or Neglect Proceedings under Article 10.

<sup>42</sup> L. 2011, ch. 543.

<sup>43</sup> The mandatory program is also complimented by Uniform Rule 202.5(d), which forbids County Clerks from accepting legal papers that are covered by the mandatory e-filing program.

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and 208.4-a, respectively. Each of these rules provides practitioners with general definitions of e-filing, as well as various considerations when commencing an action by e-filing, including: creation of a NYSCEF user account;<sup>44</sup> obtaining consent to e-file;<sup>45</sup> emergency exceptions to e-filing;<sup>46</sup> submitting exhibits and discovery materials;<sup>47</sup> signatures on e-filed documents;<sup>48</sup> service;<sup>49</sup> and adding parties to e-filed actions.<sup>50</sup>

The Uniform Rules also provide protections for “secure information” contained in electronic documents, including “individually identifiable health information, a social security number, a credit card, bank account number, an individual’s date of birth or home address, a minor child’s name, or trade secrets.” Anyone using NYSCEF is required to certify whether or not an electronic document contains “secure information” before it is uploaded, and the computer system automatically restricts access to the document to the actual parties to the action, filing agents, the county clerk and the court.<sup>51</sup> These protections are in addition to those already applicable to paper documents filed with the court clerk.

Further, the Rules include an “opt-out” provision in connection with the mandatory e-filing program for *pro se* litigants and attorneys who certify in good faith that they either do not possess, or lack the requisite knowledge of, the computer equipment needed to e-file. Any party seeking to use this provision is required to file a notice with the court certifying that they are qualified to opt-out.<sup>52</sup>

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<sup>44</sup> 22 NYCRR § 202.5 -b(c)(2).

<sup>45</sup> 22 NYCRR § 202.5-b(b)(2)(i).

<sup>46</sup> 22 NYCRR §§ 202.5-b(d)(1)(ii), 202.5-bb(b)(2), 202.5-bb(c)(3).

<sup>47</sup> 22 NYCRR §§ 202.5-b(d)(6), 202.5-b(j).

<sup>48</sup> 22 NYCRR §§ 202.5-b(e); 22 NYCRR § 207.4-a(f); 22 NYCRR § 208.4-a(e)

<sup>49</sup> 22 NYCRR §§ 202.5-b(f), 202.5-b(b)(3), 202.5-b(c), 208.4-a(d), 207.4-a(g).

<sup>50</sup> 22 NYCRR §§ 202.5-b(g), 202.5-bb(c)(2).

<sup>51</sup> 22 NYCRR § 202.5-b(d)(3)(iii). Note, however, that the document would still be available for public inspection at the office of the County Clerk, unless it is sealed by the court. *Id.*

<sup>52</sup> 22 NYCRR § 202.5-bb(e).

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Presently, the C.A.J. has implemented mandatory e-filing for various actions across the State. In Supreme Court, the C.A.J. has implemented mandatory e-filing for: commercial, contract and tort actions in New York County; commercial actions in Kings County; medical malpractice actions in Bronx County; and all newly commenced matters in Rockland and Westchester Counties, except for proceedings under CPLR Article 78, Mental Hygiene Law, Election Law and matrimonial actions.<sup>53</sup> Additionally, mandatory e-filing has been implemented for probate and administrative proceedings in Surrogate's Court in Chautauqua, Erie and Monroe Counties.<sup>54</sup>

Likewise, the C.A.J. has implemented consensual e-filing for commercial, tort, and tax certiorari actions in Supreme Court, Albany, Niagara, Onondaga, and Suffolk Counties; commercial, tort, tax certiorari, and workers' compensation matters in Supreme Court, Bronx, Erie, Kings, Queens, Richmond, and Westchester Counties; commercial, tort, tax certiorari, CPLR article 75 and 78 proceedings, guardianship, matrimonial, and mental hygiene matters for Supreme Court, Broome County; commercial, tort, and workers' compensation matters in Supreme Court, Nassau County; commercial, tort, tax certiorari, workers' compensation and Department of Health matters in Supreme Court, New York County; probate and other administrative proceedings in the Surrogate's Court of Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne and Yates Counties; designated claims in the Albany District<sup>55</sup> of the Court of Claims; and no fault automobile cases brought by a health

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<sup>53</sup> Chief Administrative Judge of the Courts, Administrative Order (5/18/11).

<sup>54</sup> Please note that this report includes the projected jurisdictional additions to the mandatory e-filing pilot program for 2012 as identified by C.A.J. Prudenti. *See* Memorandum from Chief Administrative Judge regarding Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>55</sup> Which includes Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady, Ulster, Warren, and Washington Counties.

provider against an insurer for failure to comply with Insurance Department regulations in New York City civil courts.<sup>56</sup>

### 5. Local Rules Affecting E-filing

As the C.A.J. implements e-filing in courts across the State, it will be important for practitioners to be cognizant of applicable local rules. For now, the small number of local rules addressing e-filing generally defer to the current NYSCEF framework, typically by reiterating NYSCEF rules or pointing practitioners to NYSCEF's webpage.<sup>57</sup>

It must be noted, however, that certain courts require that e-filed motions be accompanied by a "working copy" or courtesy hard copy" in paper form.<sup>58</sup> For example, in Supreme Court, Queens County, Part 14 requires a paper copy of motion papers to be submitted "prior to the submission of the motion to the court for determination,"<sup>59</sup> while Part 31 requires a physical copy of motion papers "on the return date of the motion/application."<sup>60</sup> This is also the case in various trial parts of the Commercial Division of Supreme Court, New York County.<sup>61</sup> Erie County, on the other hand, currently does not require working copies, unless required by the individual justice.<sup>62</sup> The lesson, as usual, is that practitioners must be aware of applicable local rules, especially as e-filing becomes more prevalent throughout the State.

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<sup>56</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12). Please note that the implementation of e-filing in the various counties of New York is subject to change with legislation and administrative orders by C.A.J. Prudenti. For the most up to date state of the law, please check: NYSCEF Rules and Legislation, New York State Unified Court System, <https://iapps.courts.state.ny.us/nyscef/RulesAndLegislation>.

<sup>57</sup> See New York County Courthouse Procedures, Procedure II; New York County Justices Rules Rule 14; Erie County E-filing Doc. 1; Queens County Supreme Civil Term Part 5, 10.

<sup>58</sup> A "working copy" is defined as "a hard copy that is an exact copy of a document that had been electronically filed in accordance with [the rules.]" See 22 NYCRR 202.5-b(a)(2)(vii).

<sup>59</sup> Queens County Supreme Civil Term Part 14 Rules.

<sup>60</sup> Queens County Supreme Civil Term Part 31 Rules.

<sup>61</sup> Commercial Division of New York County Part 39 & 56 Rules.

<sup>62</sup> Erie County E-filing Doc. 1



### **B. Technology and Implementation**

If the Legislature and C.A.J. are responsible for the legal authority behind New York’s e-filing program, it is OCA’s Division of Technology (“DOT”) that actually created it—currently in the form of NYSCEF. Much to the DOT’s credit, this work was done wholly in-house, relying mainly on open-source software and ongoing technological advances resulting in savings of hundreds of thousands of dollars to taxpayers over the past decade. The technology behind NYSCEF creates not only the website where the user interfaces with the system (the “front end”), but also a complex and secure infrastructure for receiving and storing electronic filings, processing payments, effecting service, and transmitting data to courts, clerks and other end users across the State (the “back end”).

For New York’s e-filing system to ensure maximum efficiency and ease of access for practitioners filing in any State court, then, as the Task Force concluded, it “should use a uniform method of access and filing throughout the state. All courts should be accessible through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties.” The Subcommittee, as did the House of Delegates, wholly supports this recommendation for two reasons: (1) the use of different e-filing websites by individual clerks across the State in lieu of NYSCEF’s standard interface would increase the opportunity for human error as well as the number of computer systems subject to malfunction; and (2) the use of different e-filing websites will require additional time and expense to develop extra layers of internet architecture and web services before e-filed documents and information can be transmitted and interpreted by all end users, including trial and appellate courts across the State.

The Subcommittee has evaluated the form and functionality of OCA’s current e-filing system, and concludes that NYSCEF is sufficient to provide both a uniform user experience in

accord with the report and recommendations of the Task Force, as well as a secure technological infrastructure able to maintain and serve court documents. The Subcommittee, therefore, recommends that NYSBA support OCA's decision to use NYSCEF as the single, uniform e-filing system for all courts in New York State.

### 1. User Accounts and Electronic Signatures

Before an individual can use NYSCEF either to access or to e-file documents, he or she must create an individual account—which can be done quickly and efficiently through NYSCEF's website.<sup>63</sup> The user, once logged into the system, is then able to access his or her active cases, upload documents, or search the entire database. In addition, a NYSCEF user account provides the vehicle for certifying a user's identity, and the act of logging into NYSCEF constitutes a signature for purposes of Part 130 of the Rules of the Chief Administrator.<sup>64</sup> Thus, if the user is filing a brief, notice or even affirmation bearing his or her name, the user can electronically sign the document with a typewritten “/s/” instead of printing, physically signing, and scanning documents—wholly eliminating the need to create a paper version. Documents bearing another person's name, however, must bear that person's signature (physical or electronic) before uploading to the system.<sup>65</sup>

### 2. NYSCEF User Interface

NYSCEF also provides a uniform method of access and filing that complies with the Task Force's recommendation that e-filing occur “through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties.” This interface has been updated to provide easier access as well as to comply with the Americans with Disabilities Act.

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<sup>63</sup> New York State Unified Court System, *New York State Court Electronic Filing – Create Account*, at <https://iapps.courts.state.ny.us/nyscef/CreateAccount> (last visited Jan. 5, 2012).

<sup>64</sup> 22 NYCRR § 202.5-b(e).

<sup>65</sup> *Id.*

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For example, all information has been re-coded into static pages to ensure compatibility with text readers for the visually impaired. The DOT also developed NYSCEF to maximize compatibility with OCA's electronic case management system, which the DOT also created.

Some have argued that alternative systems may be more “user friendly” when compared with NYSCEF, and that a clerk, not OCA, should determine what final system will be used in the clerk's office. As discussed above, however, the use of a single interface would maximize efficiency by eliminating the need for users to learn different e-filing websites, as well as the corresponding opportunities for human error. Thus, while there may be room for improvements to NYSCEF, any potential benefits associated with allowing non-standardized interfaces across 62 counties are substantially outweighed by the potential burdens, particularly where NYSBA and local bar associations and organizations are free to work alongside OCA to improve NYSCEF's user interface and technical functionality.

Further, NYSCEF's standard interface corresponds to its standardized method for gathering and transmitting data to multiple end users throughout the State. When a document is electronically filed, the relevant e-filing system gathers data according to the website's particular user interface, and then transmits the data in the system's own language to a variety of end users, including OCA, court staff, case management systems, court clerks, and, when the system effects and records service of process via email, parties to the litigation. Any change in a system's user interface—as well as any differences among competing systems used by individual clerks—such as website layout, number of data fields, and coding language, would result in variations in how data is collected and transmitted to the end user. The use of NYSCEF as New York's uniform e-filing system would provide an efficient and streamlined method for ensuring compatibility of all data regarding documents e-filed in any court across the State—foreclosing the need to spend

time and money constructing additional architecture and web services to facilitate communication between competing e-filing systems. This is of particular importance if New York's e-filing system is to effect and record service of process, and to communicate with case management systems used in different courts.

### 3. Creation of Streamlined and Secure System Architecture

The e-filing process captures a variety of sensitive data through the website and documents uploaded to NYSCEF concerning users and litigants, including names, addresses, social security numbers, medical records and credit card information. Security, therefore, is of vital importance to any e-filing system.

In response to potential security risks, the DOT has implemented a number of safeguards to protect against unlawful access to secure information, as well as loss of information due to computer malfunction:

**User login information:** all user and password information is both generated and stored in a single central location by the DOT. When passwords are generated, they are one way encrypted, which cannot then be unencrypted or reverse-engineered. NYSCEF also limits the number of login attempts, and automatically logs a user out after inactivity.

**Credit card information:** NYSCEF does not store credit card information for users, to protect against potential hackers, and all such information is encrypted before transmission via NYSCEF's secure website.

**Virus protection for e-filed documents:** NYSCEF safeguards the integrity of uploaded files through the use of the PDF/A file format and advanced virus scanning tools tailored to those files. The PDF/A format creates wholly self-contained documents, eliminating imbedded links and multimedia in a non-PDF/A format that may be compromised. By limiting all data to one format, virus scanning is streamlined and optimized.

**Encryption of data regarding e-filed documents while in transit:** NYSCEF segregates the files containing images of electronic documents from the data connecting those documents to a particular case during transmission. The image is secured according to the SHA-1 protocol designed by the National Security Agency, using a 160-bit secure hash algorithm that cannot be reverse-engineered. The data containing this

hash is digitally signed using authenticated security certificates. This ensures the security of the document while in transit from a user to NYSCEF.

Maintaining the integrity of e-filed documents: NYSCEF's network is secure from access by individuals both outside and within the DOT through multiple sub-systems, use of static IP addresses, and network segregation by internal firewalls. In short, NYSCEF sends the different pieces of information relevant to any e-filing to separate locations behind separate firewalls within its own network.

Maintaining system integrity: the DOT uses a cluster of multiple redundant servers spread across two separate physical locations in New York. This redundant architecture maximizes NYSCEF's availability in case of systemic failures. Thus, the failure of one or more servers at either location would not cause an interruption of service as the alternative site servers would continue the operation of NYSCEF. The DOT's System Architecture Group further maintains the optimization of all software servers and monitors work-flow to ensure efficiency within the system.

It is the Subcommittee's opinion that the NYSCEF system, as created and administered by the DOT, has sufficient security measures to protect sensitive information concerning users and litigants alike. And, even assuming that private vendors can achieve the same security offered by the DOT, any expansion of electronic records management beyond the DOT would serve only to expand the number of vulnerability points and potential security threats.

#### 4. Technical Support and Training across the State

OCA has appointed a Statewide Coordinator for E-Filing, Mr. Jeffrey Carucci, to oversee implementation and training across the State, and has created an E-Filing Resource Center<sup>66</sup> with publications and training materials to assist users in learning and navigating NYSCEF. The DOT also staffs dedicated support technicians available 24 hours a day, 7 days a week to answer any questions that may arise during the e-filing process.<sup>67</sup>

The E-Filing Resource Center's website provides a central location where users can learn nearly everything they need to know about e-filing, complete with user manuals, FAQs,

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<sup>66</sup> New York State Unified Court System, *Statewide E-Filing Resource Center*, at <http://www.nycourts.gov/suptmanh/EFRC.htm> (last visited Jan. 5, 2012).

<sup>67</sup> New York State Unified Court System, *Contact Us*, at <https://iapps-train.courts.state.ny.us/nyscef/ContactUs> (last visited Jan. 5, 2012).

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demonstration videos, PowerPoint presentations, and the opportunity to register for free hands-on training classes.<sup>68</sup> OCA also publishes an e-filing newsletter, with contributions from the Chief Judge, the C.A.J., and other e-filing participants across the State.<sup>69</sup> And, of particular importance, OCA has developed NYSCEF training classes: each class provides 2.0 Continuing Legal Education (CLE) credit hours (1.0 credit in Professional Practice and 1.0 credit in Law Practice Management), and can be taught by OCA or any other local accredited organization. Many counties have successfully conducted these training sessions, with some, like Westchester County, holding classes every week.

Apart from OCA's training materials and resources, local courts have developed their own resources and training materials, with the 9th Judicial District as an exemplar.<sup>70</sup> Through the 9th District's website, users can find relevant announcements and protocols addressing local timetables and preferences for courtesy copies, etc.<sup>71</sup>

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<sup>68</sup>New York State Unified Court System, *NYSCEF Training Resources*, at <https://iapps.courts.state.ny.us/nyscef/TrainingResources> (last visited Jan. 5, 2012).

<sup>69</sup>New York State Unified Court System, *NYSCEF News*, at <http://www.nycourts.gov/supctmanh/NN%20links%20page.htm> (last visited Jan. 5, 2012).

<sup>70</sup>New York State Unified Court System, 9<sup>th</sup> Judicial District, *E-Filing Information*, at <http://www.nycourts.gov/courts/9jd/E-file.shtml> (last visited Jan. 5, 2012).

<sup>71</sup>*Joint Protocols for New York State Courts E-Filing (NYSCEF): Cases Filed in Westchester County*, available at <http://www.nycourts.gov/courts/9jd/efile/WestchesterCountyJointProtocols.pdf> (last modified Jan. 13, 2011).

### III. AVAILABILITY OF E-FILING IN NEW YORK COURTS

Despite the numerous laws and administrative orders allowing e-filing, it has been implemented only in a small percentage of courts, leaving New York's program far behind its federal counterpart. Today, the federal Case Management/Electronic Case Files system ("CM/ECF") is used for both civil and criminal cases in all District Courts, all Courts of Appeal, all Bankruptcy Courts, the Court of Federal Claims, the Court of International Trade, and the Judicial Panel on Multidistrict Litigation. Over 500,000 attorneys use the CM/ECF program, resulting in approximately 6,000,000 documents being e-filed each *month*.<sup>72</sup> In comparison, by 2009—the tenth anniversary of e-filing in New York State—only 10,000 attorneys had registered for NYSCEF, and roughly 350,000 documents had been electronically filed in fewer than 160,000 cases.<sup>73</sup>

It is the Subcommittee's view that for e-filing to achieve its greatest potential, it must be used in all courts across the State. Such expansion would increase exponentially the benefits enjoyed at the trial-level courts, by, for example, allowing appellate courts simply to log-into NYSCEF and view the electronic documents already filed. No more records on appeal, no more certifications by counsel, no more printing multiple copies of each bound volume—just universal access to one e-filing system.

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<sup>72</sup> *Annual Report of the Director of the Administrative Office of the United States Courts* (2010), at [http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport\\_2010/Technology.aspx](http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport_2010/Technology.aspx) (last visited Jan. 5, 2012).

<sup>73</sup> Sponsor's Mem., Bill Jacket L. 2009, ch. 416.

## Appendix E

### A. Implementation where Authorized by Statute and Administrative Order

#### 1. Supreme Court

##### a. Consensual:

Authorized	62 Counties <sup>74</sup>
Implemented	13 Counties Albany, Bronx, Broome, Erie, Kings, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, and Westchester <sup>75</sup>

##### b. Mandatory:

Authorized	13 Counties Commercial and Tort cases in Bronx, Kings, New York, Queens, and Richmond; and Certain Cases <sup>76</sup> in Allegany, Essex, Livingston, Monroe, Onondaga, Rockland, Tompkins, and Westchester <sup>77</sup>
Implemented	5 Counties New York (commercial, contract, and tort actions); Kings (commercial actions); Bronx (medical malpractice actions); Westchester (all newly commenced matters [except CPLR Article 78 proceedings, Mental Hygiene Law Proceedings, matrimonial actions, and Election Law proceedings]); and Rockland (all newly commenced matters [except CPLR Article 78 proceedings, Mental Hygiene Law Proceedings, matrimonial actions, and Election Law proceedings]) <sup>78</sup>

<sup>74</sup> L. 2009, ch. 416.

<sup>75</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>76</sup> These include one or more types of cases designated by the Chief Administrative Judge except for CPLR Article 78, Mental Health Law Article 81, matrimonial, and Election Law proceedings.

<sup>77</sup> L. 2011, ch. 543.; see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author).

<sup>78</sup> Chief Administrative Judge of the Courts, Administrative Order (5/18/11); see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).



2. Courts in New York City

a. Consensual:

Authorized	Civil Courts <sup>79</sup>
Implemented	Only no-fault automobile actions brought by a health provider against an insurer for failure to comply with Insurance Department regulations <sup>80</sup>

b. Mandatory:

Authorized	Civil Courts <sup>81</sup>
Implemented	Only no-fault automobile actions brought by a health provider against an insurer for failure to comply with Insurance Department regulations <sup>82</sup>

3. Surrogate's Court

a. Consensual:

Authorized	62 Counties <sup>83</sup>
Implemented	11 Counties Certain matters in Cayuga, Chautauqua, Erie, Livingston, Monroe, Ontario, Queens, Seneca, Steuben, Wayne and Yates <sup>84</sup>

<sup>79</sup> L. 2009, ch. 416.

<sup>80</sup> See Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>81</sup> L. 2011, ch. 543.

<sup>82</sup> See L. 2011, ch. 543; see Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>83</sup> L. 2009, ch. 416.

<sup>84</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

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b. Mandatory:

Authorized	62 Counties (local bar association must first be consulted) <sup>85</sup>
Implemented	3 Counties Probate and administration proceedings in Chautauqua, Erie, and Monroe Counties <sup>86</sup>

4. Family Court

a. Consensual: None

b. Mandatory: None

5. Criminal Courts

a. Consensual: None

b. Mandatory: None

6. Appellate Division

c. Consensual: Fourth Judicial Department by CD-ROM<sup>87</sup>

d. Mandatory: None

7. Court of Appeals

e. Consensual: By CD-ROM<sup>88</sup>

f. Mandatory: None

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<sup>85</sup> L. 2011, ch. 543.

<sup>86</sup> See Memorandum from Chief Administrative Judge on Mandatory Electronic Filing in the New York State Courts [Amended Version] (Jan. 4, 2012) (on file with author); Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>87</sup> 22 NYCRR § 1000.3(h).

<sup>88</sup> 22 NYCRR § 500.2.

8. Court of Claims

a. Consensual:

Authorized	Statewide <sup>89</sup>
Implemented	Albany District <sup>90</sup>

b. Mandatory: None

9. County, City, Town and Village Courts

g. Consensual: None

h. Mandatory: None

**B. Role of County Clerks in the Uniform Implementation of NYSCEF**

County clerks, as the constitutional officers bound to protect the integrity of and access to public documents, including records for Supreme Court and county courts,<sup>91</sup> will play an integral part in the implementation of uniform e-filing in New York State. The clerk’s role, however, is two-fold: he or she serves both as an elected local official, and as a constitutionally-designated officer of the Judiciary.<sup>92</sup> As a result of the county clerk’s “dual roles,” there appear to be dual interests vying for the clerk’s attention: (1) the authority of the Chief Administrative Judge to manage the form of electronically filed documents, as well as the manner in which court records

<sup>89</sup> L. 2009, ch. 416.

<sup>90</sup> Chief Administrative Judge of the Courts, Administrative Order (1/12/12).

<sup>91</sup> New York Constitution, article VI, §6(e) and 22 NYCRR § 80.1(a).

<sup>92</sup> This distinction has been recognized by the Court of Appeals for over a century (*Olmstead v Meahl*, 219 NY 270, 275 [1916]; *Whitmore v Mayor of New York City*, 67 NY 21, 22 [1876]) and by the Attorney General (2005 Ops Atty Gen No. 2005-8 [informal opinion] [“When acting as a clerk of the court, the county clerk is considered a state officer, but in her other general duties the county clerk is considered a local officer”]), has been utilized by courts to determine a clerk’s liability as an agent for the State Judiciary or a locally elected county officer (*Nat’l Westminster Bank, USA v State of New York*, 76 NY2d 507, 509 [1990]; *Ochsenbein v Shapley*, 85 NY 214 [1881]; *Ashland Equities Co. v Clerk of New York County*, 110 AD2d 60 [1st Dept 1985]; *Brown v State of New York*, 130 Misc 2d 1073 [Ct Cl 1986] [holding Monroe County Clerk acted “as a local elected county officer in filing a Federal tax lien”]), and is a basic component of New York’s Freedom of Information Law (*Newsday, Inc. v Empire State Development Corp.*, 98 NY2d 359 [2002]; Comm on Open Govt FOIL-AO-14225 [2003] [“As you may be aware, county clerks perform a variety of functions, some of which involve county records that are subject to the Freedom of Information Law, and others, including those of your interest, which may be held as clerk of a court”]).

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are filed and maintained,<sup>93</sup> and (2) the clerk's independent responsibility to manage the affairs of his or her office as it relates to retention and maintenance of local records.

If the end game for New York State is the implementation of a uniform e-filing system, then the current framework advances this goal by accounting for the county clerk's dual roles and striking a delicate balance between these potentially competing interests. Following the 2009 law first authorizing mandatory e-filing, the C.A.J. is required to consult with the affected county clerks prior to implementing any voluntary program, and, in the case of mandatory e-filing, to obtain the clerk's consent. The reasoning behind this new requirement was succinctly stated in the 2010-legislation's bill jacket: "This change will ensure that counties are well-prepared to meet the demands generated by mandatory e-filing." Under current law, therefore, the non-judicial role of the county clerk is protected by prohibiting the Judiciary from forcing clerks to adopt a new e-filing system such as NYSCEF unless and until the clerk's office is ready to do so. As a result, OCA has absorbed the costs associated with implementing NYSCEF by developing web services to allow communication with any clerk's pre-existing e-records system, providing the technical support and training for the clerks' offices, and reimbursing the clerks for fees associated with accepting credit card payments for court filings.

At the same time, the current law ensures uniformity and efficiency for attorneys, litigants and other users across the State by preserving control over the form, manner and methodology of e-filing with the Chief Judge, C.A.J. and District Administrative Judges. Under

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<sup>93</sup> The Constitution grants all supervisory powers over the Unified Court System to the Chief Judge, and creates the position of C.A.J. to "on behalf of the chief judge...supervise the administration and operation of the unified court system (NY Const, art VI, § 28[b]; see also 22 NYCRR § 80.1[a]; *Corkum v Bartlett*, 46 NY2d 424, 428-29 [1979] ["the Chief Judge's administrative powers are complete, and the Chief Administrator may employ them fully when and while and to the extent that they have been delegated to him"]; *Bloom v Crosson*, 183 AD2d 341 [3d Dept 1992] *aff'd* 82 NY2d 768; *Bartlet v Evans*, 110 AD2d 612, 614 [2d Dept 1985]; *Durante v Evans*, 94 AD2d 141, 143 [3d Dept 1983] *aff'd* 62 NY2d 719 [1984]). Judiciary Law § 211(1)(e), (f), in turn, states that the administrative powers of the Chief Judge include "the form, content, maintenance and disposition of court records" and "methods and systems of the unified court system."

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the 1962 and 1978 amendments to the New York Constitution, the State’s Judiciary was reorganized into the present Unified Court System,<sup>94</sup> which incorporated New York’s existing single Statewide Supreme Court<sup>95</sup> “[un]bounded by county or other lines which subdivide the state.”<sup>96</sup> The Supreme Court, while undivided across the State, has seats in each county, and the Constitution designates the 62 county clerks as the clerks of the entire Supreme Court. As a practical matter, it would be contrary to the basic structure of the Supreme Court, as a single Statewide institution, to allow 62 peer court clerks to adopt their own policies and procedures regarding Statewide e-filing that are contrary to each other or to the Chief Judge. Likewise, inconsistencies in the look and operation of any e-filing system would be contrary to the interests of members of the bar: uniformity is vital for simple and efficient use by attorneys and litigants in New York State.

The Subcommittee believes that the current framework advances the ultimate goal of universal and uniform e-filing while properly balancing the legal and practical workings of the clerk’s office—as has been demonstrated with tremendous success in Westchester County—by allowing court administrators to phase-in mandatory e-filing in an orderly fashion that accounts for the particular needs of the clerks’ offices, and still retain control of “the form, content, maintenance and disposition of court records” and “methods and systems of the unified court system,”<sup>97</sup> including the authority to adopt NYSCEF as the single, uniform e-filing system for New York State.

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<sup>94</sup> See Art. VI, § 1(a) (“There shall be a unified court system for the state”).

<sup>95</sup> See Art. VI., § 6(d); see also *Nat’l Westminster Bank. USA v State of New York*, 76 NY2d 507, 509 (1990) (“Under the Unified Court System they are but separate parts of a single State-wide Supreme Court”).

<sup>96</sup> *Olmstead v Meahl*, 219 NY 270, 275 (1916).

<sup>97</sup> Judiciary Law § 211 (1)(e), (f).

### IV. CONCLUSIONS AND RECOMMENDATIONS

#### A. Continued Approval of the Task Force's Recommendations

The Subcommittee reaffirms the Task Force's Report and Recommendations, paying particular attention to the following:

- Recommendation 2: Any e-filing system should use a uniform method of access and filing throughout the state. All courts should be accessible through one initial Web site that directs users either through links or drop-down boxes to specific courts and counties.
- Recommendation 5: E-filing should be mandatory; The Unified Court System should provide scanning and e-filing at every courthouse facility.
- Recommendation 6: Every attorney registered to practice law within the State of New York should be required to file and maintain an e-mail address to accept service of any electronic filing.
- Recommendation 7: *Pro se* litigants would be neither required nor permitted to participate in e-filing unless certain concerns are addressed.

As explained above, the Subcommittee agrees that for e-filing to work, it must be universal, uniform, and mandatory. Without belaboring the point, e-filing will save time and money, so the universal adoption of e-filing would maximize the benefits and savings for our State. Similarly, uniformity across the State will ensure efficient implementation by OCA, protect the integrity of the single Statewide Supreme Court, and simplify use for attorneys practicing in different courts across the State. Finally, e-filing's full potential cannot be achieved unless it is mandated (with provisions allowing waivers for *pro se* litigants and practitioners who lack the technical capacity to participate). While some may complain that they lack the technical expertise to e-file, this is the clear minority, and there are ample resources for training should a user seek it.

The Subcommittee also notes that several of the Task Force's recommendations have been implemented since its report was issued, including: (1) funding for hardware, software and

training of county clerk personnel is provided by OCA; (2) documents filed under an attorney's user account are deemed signed and certified; (3) there are no additional fees associated with e-filing; (4) acceptance of payment by electronic means; and (5) the NYSCEF system provides service and access for the public, in addition to being a repository of documents.

### **B. Changes in Legislation**

To achieve a universal, uniform and mandatory e-filing system, the Subcommittee believes that e-filing legislation should be amended to:

- (1) Authorize mandatory e-filing in all courts across the State, with the exception of opt-outs for *pro se* litigants and for those attorneys who lack the technical capacity to participate;
- (2) Allow court administrators, including the Chief Judge, Chief Administrative Judge ("C.A.J.") and District Administrative Judges, to adopt rules regulating the form, manner and methodology of e-filing;
- (3) Streamline the implementation process by minimizing or eliminating the need for input from non-judicial officers; and
- (4) Direct court administrators to phase-in mandatory e-filing in the various counties in an orderly fashion that accounts for the particular needs of the county clerks' offices.

The Subcommittee takes no position on the need for "pilot programs" and "committees" to advise the Chief Judge with respect to expanding the current system, other than to suggest that the Legislature should not infringe on the Judiciary's power to manage its own affairs. While the Subcommittee recognizes that such safeguards may create a system that is more efficient and user-friendly, it is equally likely that these additional steps may postpone the actual implementation of e-filing throughout the State. To the extent e-filing should be implemented in

an incremental fashion, whether for financial, logistical or any other reasons, the Judiciary should be allowed to make that decision.

### **C. Further Expansion by Administrative Order**

The Subcommittee believes that the Chief Judge, Chief Administrative Judge and District Administrative Judges, as the executive officers of the State's Judiciary, should have control over the form, manner and methodology of e-filing where authorized by statute. As explained above, allowing non-judicial officers to "veto" the Chief Judge would violate the integrity of the Unified Court System and constitutional separation of powers.

That being said, the Subcommittee agrees that the constitutional separation of powers authorizes county clerks to postpone implementation until their offices have the resources needed for the transition to e-filing. However, the Subcommittee would strongly oppose any attempt by a non-judicial officer to undermine the authority of the Chief Judge and Chief Administrative Judge with respect to the choice of e-filing systems.

Lastly, the Subcommittee understands that pilot programs may be necessary to develop and tailor the NYSCEF system to handle the needs of specific courts, and that there may be financial or logistical reasons for staggering or postponing implementation; however, we believe that decisions regarding pilot programs and timetables for implementation should be left to the Chief Judge and Chief Administrative Judge, and not micro-managed by the Legislature.

### **D. Expansion of Technology**

The Subcommittee commends OCA's DOT for its efforts designing and refining NYSCEF, and finds the current system to be a great improvement from its predecessor pilot program, FBEM. There, of course, is room for improvement, including greater opportunities for user feedback during the e-filing process. The Subcommittee believes the current NYSCEF



system is suitable for Statewide use, and recommends the swift but efficient adoption of this system in all courts, with the understanding that OCA will continue to revise and improve the system with input and comments from users.

The Subcommittee recognizes that the substantial budget cuts by the Legislature will impact how quickly OCA can implement e-filing, including the DOT's ability to manage technical support and other issues. These budget cuts and the resulting financial constraints will prevent e-filing whether or not it is handled through OCA or outside vendors. However, the Subcommittee expects that DOT has the greatest incentive to reduce costs, as opposed to outside vendors, which DOT has been doing over the past decade through the use of open source software, certain technological advances, and other methods.

### **E. Input from NYSBA and Local Bar Associations and Organizations**

The Subcommittee suggests that NYSBA and local bar associations and organizations, if they are to ensure that attorneys and their clients enjoy the cost and time savings associated with e-filing, should work alongside OCA to ensure that NYSCEF is as efficient and secure as possible. These bar associations and organizations are well-positioned to relay information, including suggestions and critiques, from individuals using NYSCEF to OCA, and the Subcommittee recommends that such organizations take affirmative steps to facilitate such constructive feedback.

### **F. Educating Members of the Bar**

Although e-filing is growing, it is clear that many attorneys are unaware of the full benefit of Statewide use, and, in some cases, of the very existence of NYSCEF. The Subcommittee believes that NYSBA and local bar associations and organizations can provide tremendous assistance in moving this project forward by educating their members, and by urging

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the Legislature to provide the necessary legal authority and finances to implement e-filing as soon as practicable. Once New York State's attorneys realize the benefits of e-filing, they will be a strong force in calling for its immediate expansion and funding.

NYSBA and local bar associations and organizations, in addition to placing pressure on the Legislature, are the ideal vehicles for conducting training sessions for NYSCEF users, including attorneys, legal assistants, and the general public. Because OCA has developed the necessary resources, the cost to run such programs would be minimal, and bar associations are in a much better position to interface with the tens of thousands of users across the State. Lastly, NYSBA and local bar associations and organizations should employ available channels of communication to supply their members with updates on New York's e-filing program, including user requirements, implementation dates, and local rules.

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### **NEW YORK STATE BAR ASSOCIATION COMMITTEE ON COURT STRUCTURE AND OPERATIONS:**

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Hon. Alan D. Scheinkman

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\* The Subcommittee thanks Mr. Paulino and Daniel A. Gross, Esq., Fellow at the Government Law Center of Albany Law School, for their assistance in drafting this report.

## Appendix E

**From:** JP <payne@540production.com>  
**Sent:** Saturday, September 10, 2022 7:13 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Re: Proposed implementation of new mandatory e-filing programs public comment

Hello,

As a pro se litigant who lives out of state, currently involved in a New York City Civil Court action, it would be great if online e-filing were available for the New York Civil Court. Because right now, the only e-filing available for the NYC Civil court is for Landlord and Tenant and No Fault matters only.

Having to mail pleadings to the court is a great hindrance and places an undue, unfair burden for litigants. Because not only do they have to rely on the mail, which is slow and not always certain, but then they are impeded by time due to the fact that the clerks do not get to the mailed in pleadings right away. And then of course there is the time delay because the clerk mails the document back. To give you a sense of how that works, I filed a claim in March 2022 and I recently received a stamped court pleading dated April 30, 2022. I received this April document in late August 2022.

The year is 2022 and it truly boggles the mind that New York City court functions like this. It truly does. Please update your court system, because it would be wonderful if mailing in pleadings (or of course hiring expensive outside services to file for me in NYC) were not the only options at hand.

Living in hope that one day the New York City Civil court will allow e-filing for all, and not just landlord and tenant and no fault matters only,

Juliana Payne

## Appendix E

**From:** BOB GARRASI <bob.garrasi@gmail.com>  
**Sent:** Tuesday, October 4, 2022 4:37 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** USERNAME & PASSWORD SUGGESTIONS...

1. For Pro Se litigants, allow us to use the same username & password across all our cases. What happens with multiple usernames and passwords is that the browser stores them under one nyscef account. Each time we have to use a new username and password for a new case, it knocks the prior username & password in the browser for nyscef.
2. Allow showing of the password via toggle on, toggle off.

## Appendix E

**From:** Marjorie Masters <marjorie.masters731@gmail.com>  
**Sent:** Thursday, November 10, 2022 8:11 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** E-Filing is great if you have access to the necessary technology (which I did/do)

I recently used E-Filing when my husband passed away without a will.

I approached two law offices for help; they both advised me that because it was considered a small estate, it would not be wise for me to spend money on them assisting me and that I should look into contacting the Niagara County Surrogate's Court directly or use E-Filing.

The website(s) were very informative and semi-easy to use. I filed successfully (I made one error that the court was kind enough to correct on my behalf). Because I had access to scanning, email and a great internet connection at home, I had a great experience from a personal point of view.

However, I work for a public school system. My understanding is that a lot of this E-Filing through the court system started when COVID began.

As I'm sure you are aware, educating students during that time exposed the "digital divide" within New York State.

In closing, I am all for E-Filing. I just want to be sure that every citizen of New York State can have access to this.

Thank you for your time.

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**From:** Durga Bhurtel <deb@attorneybhurtel.com>  
**Sent:** Monday, November 14, 2022 2:17 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** In support of E-Filing Amendment of CPLR

Jeffery Carucci,  
Director of OCA Division of E-Filing,

Mr. Carucci:

E-filing has been helping reducing cost for the public especially does not have to go court and file it. Further Pro-Se litigation also should have option to file by using electronic filing ( ECF). Court can provide specific employee to just E-filing for pro se litigant as along as they can use email and they are able to use computer.

Court also should consider to start pilot program of Trial by u sing remote technology. Court also should allow a witness testimony via remote technology which would save substantially time and money of the litigant whose witness has to travel from various location.

I strongly support that E-filing should be expanded.

Thank you very much.

Sincerely

Dev. Bhurtel Esq.  
**Bhurtel Law Firm PLLC**  
Mailing Address:  
353 Lexington Avenue  
Suite # 904  
New York New York 10016  
Phone# 212-461-4628  
URL: attorneybhurtel.com



## Appendix E

**From:** Mevorach, Lisa <LMevorach@DC37.NET>  
**Sent:** Tuesday, November 15, 2022 3:39 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Expansion of NYSCEF and eFiling

Dear Mr. Carucci,

I have been practicing in Supreme for many years and have enjoyed the ease of eFiling. I think it should be expanded into every practice area in Supreme Court and am glad that it is finally available in Surrogates Court. We should also consider expanding eFiling to the Civil Court. As a practitioner in Civil Court, with many low income clients, I find that they are missing out on the efficacy of the filings, and the ability to pull up eFiled documents. This makes it much more difficult to represent and defend my clients, and is discriminatory. Low-income clients and those struggling with consumer debt deserve the same ease of access to their pleadings as we have enjoyed in NYS Supreme Court matters for years now. Furthermore, the EDDS system employed by the Civil Courts rejects many simple filings, which filings like Answers, are easily electronically filed in Supreme Court. As a matter of fact, when you try to electronically file something in the NYC Civil court, the drop down menu does not even permit the filing of something as simple as an Answer. This lack of access to eFiling prejudices our clients. This means that either the pro se defendant or his or her lawyer has to mail in pleadings, and the filing of same sometimes takes months, due to the lack of staff.

I would hope that the NYSCEF system is extended to litigants in NYC Civil Court, and that the practice of forcing Defendants to take off from work to walk pleadings in, or mailing them in to await hand filing ceases. Our consumer debtors deserve the access to justice that Supreme Court litigants have, with all its attendant ease and efficiency.

No one should be denied the benefits of the eFiling system, just because they are in a lower level court. Defending against these consumer debts, or landlord tenant matters, should be on a par with all other litigation in the higher courts. It does a great disservice to this population when they cannot "see" their pleadings online, or efile them.

Thank you for all your efforts in your expansion of the NYSCEF system.

Lisa Mevorach, Esq.

Lisa Mevorach, Esq.  
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## Appendix E

**From:** cmessina smlawny.com <cmessina@smlawny.com>  
**Sent:** Tuesday, November 15, 2022 12:16 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Cc:** Dan Schuller <Schuller@PBElderLaw.com>  
**Subject:** Efiling comments

I am an attorney in the Western New York area who regularly uses NYSCEF.  
I am a member of the Erie County Bar Association Matrimonial Committee and the Practice and Procedure in Family Court Committee.

There needs to be a way to remove an attorney from a case that has been completed.

For instance, in matrimonial actions, there are often post-judgment motions or orders to show cause to enforce a judgment, or revisit child support, or other issues.

Under the current system, the attorney remains as attorney of record in NYSCEF and cannot be removed absent an order of the Court.

When a post-judgment motion is filed electronically, with the attorney still listed, it is theoretically served, though the attorney no longer represents that client.

I have run into this many times in the past couple years.

An attorney must be able to remove him/herself as attorney of record at the close of the case.

Also, there needs to be an option to file a document as "other" as many documents do not qualify as any set forth in the drop-down menus.

If EDDS is to be converted to NYSCEF, the categories of applicable actions and proceedings needs to be expanded in the EDDS drop-down menu. We are past the restrictions of COVID, yet it still only provides for the "emergent" filings that were imposed during COVID.

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## Appendix E

To: eFiling Comments <efilingcomments@nycourts.gov>

Subject: Comments of E-Filing

Dear Mr. Carucci:

I am an early adopter and long-time user of the NYSCEF system. I have seen the system progress and improve. I am a strong proponent of the system. Yet here is a suggestion on limiting its use in certain cases.

The rule is quite clear in New York State: court records are open to the public. Historically, effort was required to go to a courthouse to obtain the record. This effort served as a gate keeper of sorts, in effect limiting access to those who were interested for one reason or another. Open public dockets are extraordinarily efficient, but require no essentially effort to access the records. Not all records should be readily available via a simple internet search. Yet the criteria for sealing a file has been strictly construed by courts interpreting 22 NYCRR 216, leaving many sensitive documents and videos readily available to anyone with a computer. This "either/or" approach does not serve litigants well. There is a middle ground that would comply with our existing statutes while still giving the litigants full access to the files. It would be beneficial to have a means to partially revert back to pre-e-filing days and grant attorneys discretion to file certain items as a hard copy, while simultaneously reflecting that filing in the electronic docket. The hard copy items would be served "the old fashioned way" (CPLR 2103) and delivered to court via US mail or hand delivery. That copy would become the official court file for that one docketed item. The remainder of the e-filing docket is the official court record for those docketed items. The public would still have full access to this part of the court file, provided they travel to the courthouse. This method would be the exception and probably used in a very small minority of cases. Attorneys could be required to sign a statement that they are using this method because there is a good faith reason to do so.

As one example, my office currently represents two infants for psychiatric injuries. For various reasons, including avoiding publicity, the parties are settling pre-suit. Nevertheless, we are mandated by CPLR 1208 to submit psychiatric records for judicial approval of the settlements. The case does not meet the requirements for sealing, but it is a disincentive, to say the least, for the infants' Mother to require her to allow the records to be publicly posted for all to see for all time. Giving counsel the discretion to file hard copies instead of electronically would help minimize the exposure to those who legitimately need access to those records.

John Rand

*John S. Rand*

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## Appendix E

**From:** Alexander "Sandy" Budd <abudd@rlglawny.com>  
**Sent:** Wednesday, November 30, 2022 11:32 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** NYSCEF Comments

Good Morning:

First, I find NYSCEF to be very useful with an overall excellent user experience.

One addition I would like to see is the ability for a non-party, specifically a court appointed referee in a foreclosure action, to record participation in a case. As it stands, we are having to paper serve an appointed referee with certain documents which the referee could receive via NYSCEF if the referee were able to participate in some fashion in the e-filing process.

Thank you!



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ATTORNEYS AT LAW

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## Appendix E

**From:** Mallory Livingston <[mlivingston@vlpcny.org](mailto:mlivingston@vlpcny.org)>  
**Sent:** Wednesday, November 30, 2022 3:25 PM  
**To:** eFiling Comments <[efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)>  
**Subject:** E-Filing

Our program offers free representation to LGBT persons facing discrimination in health care, housing, employment and public accommodations. Our service area is every county north of the Bronx with a focus on a 13 county area in Central New York. Our most popular service is performing free name and gender marker changes for transgender and non-binary persons. We are currently handling approximately 200 to 250 name changes per year.

The e-filing system as it is currently implemented does not take advantage, to its fullest extent, of the efficiency offered by the technology being used. The following are examples of situations where e-filing fails to be as efficient as it easily could be.

1. Now that pandemic rules are over, judges have begun to once again ask for working copies, even in uncomplicated cases such as name changes which should not require working copies. There is not much point in e-filing documents that then have to be printed and mailed anyway.
2. Numerous judges insist on being provided with original birth certificates in e-filed name change applications rather than accepting an e-filed scan of the original document being submitted as genuine by the attorney of record. This slows the process down, sometimes by weeks and often results in the original birth certificate, often a family heirloom, not being returned.
3. There are still some counties, such as Allegany County, that do not accept e-filing of even routine matters such as name change applications.
4. Numerous judges still refuse to seal the records of name changes despite the recent changes to the name change rules implemented as part of the Gender Recognition which require the records to be sealed at the request of the petitioner. Our clients typically choose to endure the risk to their personal safety posed by open records of their name change rather than wait for the outcome of a lengthy and costly appeal. Given the limited resources of our program and others across the state and given the overwhelming need for our services, it is next to impossible for us to have to pursue an appeal in these cases.

Thank you for the opportunity to address the efficiency of the e-filing system.

Very Truly Yours,

Mallory Livingston, Esq.  
(she, her hers)  
LGBT\* Rights Attorney  
Volunteer Lawyers Project of CNY, Inc.  
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Phone 315-849-9234  
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[mlivingston@vlpcny.org](mailto:mlivingston@vlpcny.org)

## Appendix E

**From:** Thomas Leith <[tleith@hlalaw.org](mailto:tleith@hlalaw.org)>  
**Sent:** Thursday, December 1, 2022 11:44 AM  
**To:** eFiling Comments <[efilingcomments@nycourts.gov](mailto:efilingcomments@nycourts.gov)>  
**Subject:** NYSCEF Comments - Legal Assistant Access to E-filed Documents

To help NYSCEF reach its potential in terms of improving ease and efficiency, non-attorney agents of the firm or organization should be allowed access to the e-filed documents. Speaking for a legal service provider receiving multiples of filings per day, the extra steps involved for the legal assistants to notify the attorney to access the document, for the attorney to then access it, download it, and send it back to the legal assistant adds considerable time. It also increases the chance for errors and oversights. Given the legitimate access those non-attorney representatives already have to those materials, it's not clear what purpose the restrictions are serving.

Thank you,

Thomas M. Leith  
Managing Attorney, Criminal & Appeals Programs  
Hiscock Legal Aid Society  
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(315) 422-8191 | [tleith@hlalaw.org](mailto:tleith@hlalaw.org)

## Appendix E

**From:** patwjohnson@me.com <patwjohnson@me.com>  
**Sent:** Thursday, December 1, 2022 2:59 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** E-filing bill

Please send the updated bill memo if any. As for comments, I haven't had to e-file yet and would try to opt out and keep it discretionary until I am comfortable with e-filing. I am on the Schenectady panel for Attorney for the Child. I use an apple computer and there are sometimes translation problems with personal computers. If OCA provided support like it did for the Teams meeting process with OCA staff available to practice with that would be great. As an aside I am grateful for the OCA staff who supported me when I had problems with getting to know and use Teams. OCA provided a process to make appointments for Teams meetings with OCA staff before my first teams meeting. I used this process again when I recently developed problems. Staff were very gracious, effective and informative. Thank you, Pat

PATRICIA W. JOHNSON  
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[patwjohnson@me.com](mailto:patwjohnson@me.com)

## Appendix E

**From:** CARL BIRMAN <carldbirman@gmail.com>  
**Sent:** Thursday, December 1, 2022 3:26 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** E-Filing Via NYCEF

Dear Sir/Madam:

I write to express my frustration in regards to the present state of affairs in regards to NYSCEF, , viewed in the context of the NYS Court System's other cloud-based databasing at the App. Div., and the Court-PASS and Companion Portals at the Court of Appeals. It seems, as a lay user (an attorney without a specialized data management certificate or training), that NYS Courts is wasting money on databasing platforms that, if not duplicative, are certainly wasteful in that they are not uniform. It is a vexing and common situation in the government sector and certainly not unusual. NYSCEF has its issues, but what bugs me is that following litigation at the trial level, one must master additional databasing procedures and rules at the App. Div. - and that these procedures are rules are not uniform from the Second to the Third Department - and that, to make things more vexing still, the COA uses yet another system entirely with its own differing procedures.

This simply makes no sense from a financial standpoint and should be looked into with a view towards streamlining government investments in this databasing architecture.

Thank you for contacting the Birman Law Office in regard to this important legal matter.

Very truly yours,

**CARL D. BIRMAN, ESQ.**

**THE BIRMAN LAW OFFICE D/B/A LAW OFFICE OF CARL D. BIRMAN, PLLC, P.O. Box 13592, Albany, NY 12212 W: 518-952-0516 M: 914-216-1766 \*\*\* LITIGATION INFO MAY BE ATTACHED. DO NOT FORWARD OR DISREGARD. BILLING ADDRESS 7 CORONET CT., SCHENECTADY, NY 12309. ALL LITIGATION VIA EMAIL IS DEEMED ACCEPTED UNLESS YOU OBJECT IN WRITING. ATTORNEY COMMUNICATIONS ARE STRICTLY CONFIDENTIAL AND INTENDED FOR DESIGNATED RECIPIENT ONLY. FEDERAL/STATE/LOCAL PRIVACY PROTECTIONS ARE IN EFFECT; BE GUIDED ACCORDINGLY. \*\***



## Appendix E

**From:** Dylan Cerbini <dylancerbinilaw@gmail.com>  
**Sent:** Friday, December 2, 2022 2:12 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Issue with papers returned for correction

To whom it may concern:

First I would like to say that I love using NYSCEF and I think it's a great program in general. One thing I would change. When you upload documents normally, you are able to view them in a preview screen so that you can double check everything before you file them. This does not happen, however, when you upload documents in response to a return for correction. You click the return for correction button, and then whatever pdf you upload will get directly filed without being able to review it in a preview screen. It would be very helpful to be able to review documents posted in this way one last time before it becomes final. It's slightly too easy to upload things in response to a return for a correction notice as it is right now, and I have made some annoying mistakes this way that have had to be returned for correction an additional time.

Best regards,

Dylan Cerbini, Esq.  
(914)-810-3781

## Appendix E

**From:** Natalie Dock <nataliedock@yahoo.com>  
**Sent:** Monday, December 5, 2022 2:38 PM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** EFILING

The system is arcane, and basic UX is very poor.

As example, if you can't log in and need to re-set your PW, the PW reset email does not seem to actually reset the PW, requiring multiple attempts.

Attempts to reach any tech support go nowhere.

And the clerks do not answer most phone calls, and many refuse to communicate basic information in a polite manner, rushing people off the phone, and often speaking in jumbled acronyms which may be known to them, but not to others.

## Appendix E

**From:** joel@nysdivorce.com <joel@nysdivorce.com>  
**Sent:** Tuesday, December 13, 2022 8:37 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** Request for Public Comment on eFiling rules

I am the author of the Law and the Family New York, 2022-2023 Edition, Law and the Family New York Forms 2022 Edition (5 volumes) (both Thomson Reuters) and the New York Matrimonial Trial Handbook (Bookbaby).

In preparing my annual update to those works I noticed that there are more than a hundred protocols online on the NYCEFS website if one can find them, dealing with e-filing such as NY New York County E-Filing Doc. 2. Doc. 2. Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (Revised August 15, 2019).

There are also several additional protocols on the e-courts website which deal with procedures and have nothing to do with eFiling, such as NY New York County Courthouse Procedures Procedure I. Commencement of Cases

The websites do not indicate the legal effect of these protocols or the source or authority for the promulgation of these protocols. Although there is a link on the NYCEFS website (<https://iapps.courts.state.ny.us/nyscef/HomePage>) for the surrogates court protocols (<https://iappscontent.courts.state.ny.us/NYSCEF/live/protocols.htm>) there does not appear to be a single place on the NYCEFS website where all of these protocols can be found.

Unfortunately, I had to, as they say, “stumble”, upon the protocols while doing my daily search to find updates to the court rules and electronic filing rules which are a mystery to many lawyers. Their existence is not well known by lawyers.

I found the protocols by searching for the word “protocol” on the e-courts website at <https://www.nycourts.gov/google/sitewide.shtml#qsc.tab=0> which brings up about 10 pages of unorganized protocols.

I am aware of the fact that if I have to file documents electronically there is a link on the right side of the County Clerks home page indicating the existence of protocols for that county. However, that link is only available if I have to efile documents in a specific county. There is no way to search for these links without being a user for a case in that county.

Although the 61 Supreme Court may have protocols ( New York County appears to have 8 separate procedural protocols in addition to its eFiling protocol ) which may be located on the specific court’s webpage I am sure that most lawyers who are not internet literate do not know they exist or do not see them when navigating the web site unless they look for them. I am sure most lawyers do not even know to look for them.

## Appendix E

It would be helpful if the NYSCEF website has a link to the Supreme Court e-filing protocols organized by court and county just as it has a link to the individual Surrogate's Courts' protocols, and if the other protocols dealing with procedure be listed prominently on the e-courts website.

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**Joel R. Brandes** is the author of [Law and the Family New York, 2022-2023 Edition](#) , the author of [Law and the Family New York Forms 2022 Edition \(5 volumes\) \(both Thomson Reuters\) and the New York Matrimonial Trial Handbook \(Bookbaby\)](#). His "Law and the Family" column is a regular feature in the New York Law Journal.

**Joel R. Brandes**, concentrates his practice in divorce, equitable distribution, custody and family law appeals. He also works as counsel to attorneys with all levels of experience assisting them with their litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

## Appendix E

**From:** Richard Shin <rwshin@yahoo.com>  
**Sent:** Thursday, December 15, 2022 11:33 AM  
**To:** eFiling Comments <efilingcomments@nycourts.gov>  
**Subject:** user comments on e-filing

Good Morning. I saw the request for public comments today. Fortunately, the time to submit a comment has not expired. I think you would receive more comments if you e-mailed everyone who e-filed during the last year.

1. Overall, the system is easy to use.
2. While doing multiple no-fault summons/complaint filings, I noticed that the system does not allow the user to open up and check the document that has been attached for filing. This can lead to user errors. Allowing the user to open up and check on the attached document before entering payment information will help reduce unnecessary errors.
3. I noticed that the system sometimes gives an "error" notice. This happened several times while uploading trial notices. The system prompts the user to re-submit the document. If the document is re-submitted, however, the document is processed twice and the user's credit card is billed twice. So it turns out that the "error" notice was a false alarm. But the user is charged twice if he follows the system's advice.
4. When I email the clerk's office about errors (Civil Court, Queens filings), no one ever responds. I do not know if the emails are going into a "spam" folder, but this situation should be rectified as soon as possible.

Very truly yours,

Richard W. Shin, Esq.

**NYCOURTS.GOV**