



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

2021

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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“The value and importance of e-filing were fully revealed to New York’s Bench and Bar during the COVID-19 pandemic. Our NYSCEF e-filing system played a central role in the virtual court model that we created to safely and efficiently deliver remote justice services. E-filing provided lawyers and litigants with vital access to our virtual courts and minimized the number of people entering our courthouses to file and submit papers in person. As we look to the future, we must continue to leverage and expand this powerful tool in order to improve court access, service, efficiency and productivity.”

A handwritten signature in blue ink that reads 'Janet DiFiore'.

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

Preface

February 25, 2021

I am pleased to submit this Report¹ on the status of New York State's electronic filing ("e-filing") program.

The success of this program has been the result of a group effort, and I want to acknowledge our many partners, including the bar, the County Clerks, and the Advisory Committees that have helped shape this program and ensure that it is responsive to the needs of all e-filers. I also want to thank the Legislature and the Governor for their significant support of the e-filing initiative of years past, and for considering the further legislative actions recommended herein to enable New York to make the best use of e-filing, and in a manner that best meets the needs of the bench, the bar, the County Clerks and, the People of New York. The steady expansion of the e-filing program reflects a growing recognition of the many benefits of the program, offers significant efficiency and reliability to the courts and litigants, and most notably provides the necessary and steady access to the Courts during the current public health emergency.



Hon. Lawrence K. Marks
Chief Administrative Judge of the State of New York

1. This Report complies with the mandate of the Judiciary Law Sec. 212(2)(u)(i)(A) for an annual report that evaluates the state's experience with e-filing programs in the courts.

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I. Executive Summary

In 2020, the e-filing program of the New York State Courts continued its expansion across New York State. The work of the e-filing team of the Unified Court System (“UCS”) was, however, greatly complicated and made significantly more challenging by the novel coronavirus. In addition to carrying out the intensive work normally required to expand e-filing, the e-filing staff were required to take a number of steps specifically to respond to the virus and to attempt to ameliorate its adverse effects on the practice of law in New York and the operations of the courts.

Over 3 million cases have been electronically filed through the statewide e-filing application, the New York State Courts Electronic Filing System (“NYSCEF”). In the past year, the expansion of e-filing in Supreme Court and Surrogate’s Court continued. E-filing programs are in place in civil cases in Supreme Court in 60 of the state’s 62 counties. The number of e-filed cases on appeal in the Appellate Divisions since inception more than doubled in 2020 compared to 2019. E-filing in CPLR 325 (d) cases in the Civil Court of the City of New York expanded to all five boroughs and e-filing was introduced in the Housing Court in all five boroughs as well.

The NYSCEF system has always provided a convenient means for users to serve and file documents electronically. The existence of e-filing proved to be a huge benefit for the bar and litigants in 2020, with the onset of the pandemic. Of particular importance in 2020 and continuing into 2021, e-filing allows filers to avoid the potential health and safety concerns associated with trips to the courthouse, access to which has been substantially limited during this period. E-filing was not, however, permitted by law or in operation in all courts and types of cases across the state in 2020. Thus, e-filing was not in a posture on its own to fill the gaps created when access to the courthouses was reduced due to the pandemic. Therefore, within a short time after the virus arrived in New York State, the UCS e-filing team

created and implemented the Electronic Document Delivery System (“EDDS”), which enables attorneys to transmit documents in electronic form to courts in which the NYSCEF system is not available. This system, a temporary measure to assist litigants and the bar during the pandemic, was made available in 320 courts in 2020.¹

In the year ahead, the court system will extend the e-filing revolution to even more cases, counties, and courts. Among other things, in 2021 we expect to expand e-filing in civil cases in Supreme Court to the remaining two counties in the state where it does not exist; bring the remaining Surrogate’s Court jurisdictions and the whole of the Court of Claims into the operational system; implement e-filing in no fault cases in the New York City Civil Court; increase the use of e-filing in the Appellate Divisions and begin e-filing in the Appellate Term; move ahead on e-filing in criminal cases; and expand EDDS to the Town and Village courts.

Section II of this report describes the status of the e-filing program, provides detailed information on its progress, and explains our plans for the next year and those to follow.² Among other things, we summarize the expansion of e-filing in Supreme Court, Surrogate’s Court, the New York City Civil Court, and Housing Court; describe the growth of e-filing in the Appellate Divisions; report on our efforts to address the effects of the pandemic through EDDS and other measures; address

1. Among others, in City courts (civil and criminal), County Court – Criminal Term, New York City Civil and Criminal Courts, District Court (civil and criminal), Family Court, and Supreme Court – Criminal Term in New York City.

2. This report complies with the mandate of Judiciary Law § 212 (2)(u)(i)(A) for an annual report that evaluates the state’s experience with e-filing programs in the courts.

integration of NYSCEF with case management systems in Supreme Court; and summarize the status of our work to introduce e-filing in Family Court, and the Superior Criminal courts, and to expand beyond 325 (d) and Housing cases in the New York City Civil Court. We also outline system improvements and the training and outreach we have provided.

Section III summarizes the comments and suggestions about e-filing received in response to solicitations by UCS from County Clerks, bar associations, other entities, individual attorneys, and others, and our responses thereto.

Section IV describes UCS's proposal for legislative changes and the reasons why we believe it should be enacted. Our experience with e-filing during the pandemic has clearly demonstrated the need for the court system, like other sectors of society, to make significantly greater use of the powers of digital technology in carrying out our mission. After reflection on the history of e-filing in New York and our experience during the pandemic, we propose legislation ([Appendix A](#)) that would

- broaden the authority the Chief Administrative Judge currently has to institute e-filing in the superior civil courts, the Family Court, and the superior criminal court by permitting e-filing on a consensual or mandatory basis in all such courts and all types of cases therein;
- authorize the Chief Administrative Judge to establish programs of electronic filing through NYSCEF in civil and criminal cases in the lower civil and criminal courts, both on a consensual and a mandatory basis; and
- permit the issuance of rules by the Appellate Divisions authorizing e-filing in the Appellate Term.³

The expanded authority of the Chief Administrative Judge would, however, continue to be subject to an obligation to consult interested parties prior

to introducing e-filing in a court in a county, the consent of the County Clerks, District Attorneys, agencies, and the relevant bar for programs of mandatory e-filing, and protections for unrepresented litigants and attorneys who lack information or equipment needed to e-file.

These proposals have been endorsed in their entirety by the Chief Judge's Commission to Reimagine the Future of New York's Courts in both November 2020 and January 2021. As the Commission noted in its more recent report:

E-filing has become an essential tool for improving access to justice to all litigants across the State. During the early stages of e-filing more than 20 years ago, it was reasonable to expand e-filing in phases that required Legislative approval, but today that process is outdated and inefficient. The COVID-19 pandemic has compelled the need to permit significant expansion of e-filing at an accelerated pace. In order for the UCS to respond to the technological demands of today's modern world, the [Chief Administrative Judge] must be afforded discretion to institute e-filing in consultation with affected stakeholders. We recommend that the [Chief Administrative Judge] be empowered to institute e-filing in any or all of the State's trial courts in any case type, and that the existing restrictions on the [Judge's] discretion to establish mandatory e-filing in case types which are currently excluded be repealed. Implementing these legislative changes will enhance access to justice without delay⁴

The Commission's recommendations are insightful and correct. E-filing has been put into place in the New York State Court System with extraordinary deliberation and caution. The rollout of e-filing has been underway in accordance with the legislative scheme since 1999, that is, for 22 years. The Federal

3. The legislation (Section 18) would also remove certain sunsets that are in place in the current law. Ch. 237 of the Laws of 2015, as amended by Ch. 58 of the Laws of 2020, Part XXX, Subpart B, Item 55, Section 1.

4. Structural Innovations Working Group, Commission to Reimagine the Future of New York's Courts, *The Expansion of Electronic Filing – A Report and Recommendations* (January 2021), p. 16.

courts and other state courts proceeded with vastly greater expedition. It is clear, and is underscored by the experience during the pandemic, that we need to increase greatly the pace of the expansion of e-filing. Since e-filing has been a dramatic success in New York State, and in view of the overwhelmingly favorable reception it has had, which we reported on in previous Annual Reports and which we summarize in this Report, there is no reason to be hesitant about doing this. There is a plain need to remove legislative restrictions upon the e-filing program, to allow the Chief Administrative Judge to administer the program in our discretion and as guided by our unique knowledge of the procedures and conditions of all of New York's many courts, and to bring the benefits of digital technology to the bar, litigants, County Clerks, judges and courts, and the public, including the taxpayer, much more widely and more quickly than has been done up to now.

II. The Status of E-filing in the New York State Courts and Our Plans for the Future

A. E-Filing in Civil Cases – Supreme Court, Surrogate’s Court, Court of Claims, NYC Civil Court, and Housing Court

For many years after the introduction of electronic filing in 1999, the ability of the Court System to develop the program was subject to significant legislative constraints. Pursuant to legislation enacted in 2015 (L. 2015, Ch. 237), the authority of the Chief Administrative Judge was expanded. Under current law, he may designate the trial courts, case types and counties in which e-filing may be employed in the Family Court, the Superior Criminal Court, the Supreme Court, the Court of Claims, the Surrogate’s Court, and the New York City Civil Court.⁵ This authority, however, remains subject to some significant limitations: the Chief Administrative Judge is not permitted to establish a program of mandatory e-filing in some of these courts in whole or in part and in various categories of cases in these courts. The Chief Administrative Judge does not have the power under current law to establish e-filing programs in the lower civil and criminal courts.

E-filing has now been authorized by the Chief Administrative Judge in at least one court in 60 of the state’s 62 counties.⁶ In civil cases, e-filing programs are in place in 60 counties in Supreme Court and in 47 counties in Surrogate’s Court. At present, e-filing is authorized as follows:

Consensual E-Filing. Consensual e-filing in civil cases at the trial-court level is authorized:

- In Supreme Court in 60 counties (14 counties are consensual only);⁷
- In Surrogate’s Court in 47 counties (12 counties are consensual only);⁸
- In the Court of Claims in 19 counties in two districts (expansion to all matters is expected in the near future);
- In the New York City Civil Court, in e-filed cases removed from Supreme Court in all five boroughs of the City pursuant to CPLR 325 (d); and
- In Housing Court in New York City in all five boroughs, as well as in the Harlem Community Justice Center.

Mandatory e-filing. Mandatory e-filing is authorized in civil cases at the trial-court level as follows:

- In various categories of cases in Supreme Court in 46 counties; and

5. E-filing programs are authorized by administrative orders issued by the Chief Administrative Judge with the approval of the Administrative Board of the Courts, which set forth the courts and case types in which e-filing may be employed. Current authorizations are listed in the most recent Administrative Order, AO/247/20, dated Oct. 20, 2020 (accessible on the NYSCEF website (www.nycourts.gov/efile)). Another Administrative Order is expected to be issued in February 2021, which will, among other things, expand e-filing to Surrogate’s Court in 54 counties.

6. In 2019, NYSCEF functionality was made available for litigants in matters before the Litigation Coordinating Panel (Uniform Rule 202.69).

7. By Administrative Order AO/98/20, dated May 8, 2020, all civil matters in Supreme Court in 53 counties were to be accepted for consensual e-filing unless approved for mandatory e-filing pursuant to previous administrative order. At present, 33 counties have mandatory e-filing in all types of cases for which mandatory e-filing is permitted, with consensual for the balance; 13 counties have mandatory e-filing in most of the case types for which mandatory e-filing is permitted, with consensual for the balance; and 14 counties have consensual e-filing only.

8. There are 35 counties in which mandatory e-filing is available in the matters that have been authorized by Administrative Order for mandatory e-filing, but in which other matters are e-filed on a consensual basis.

- In Surrogate's Court in 35 counties (soon to be 43).⁹

From the introduction of e-filing in New York in 1999, **3,018,593 cases** have been e-filed with NYSCEF. Through the same period, **38,602,640 documents** have been e-filed.¹⁰

In the past ten years there has been steady progress in the e-filing program, as can be seen in three charts that can be found in [Appendix B](#). One shows the number of documents filed in Surrogate's Court statewide by year since 2010; another the number of documents filed with NYSCEF (excluding those in Surrogate's Court) statewide by year since 2010; and the number of cases initiated in NYSCEF (excluding Surrogate's Court matters) by year since 2010.

At present, documents are being e-filed in Surrogate's Court through NYSCEF statewide at the rate of about **3,700 per day** and in the other NYSCEF courts statewide at the rate of about **30,000 per day**.

Cases that were commenced in hard-copy format can be converted to e-filing in courts where e-filing is authorized. In 2020, there was a notable increase in conversions, especially due to the pandemic. In Supreme Court statewide, **22,448 cases** were converted and in Housing Court, **16,600 cases** were converted.¹¹

116,642 attorneys and other persons have been active registered public users of the NYSCEF system (i.e., excluding court and County Clerk

users) since its inception.¹² This figure includes attorneys appearing *pro hac vice* who register with NYSCEF on a case-by-case basis, as well as authorized filing agents for attorneys.

16,822 unrepresented persons have been active NYSCEF filing users,¹³ even though all of these users were under no obligation to take part. Further, **these users have e-filed 163,896 documents with NYSCEF**.¹⁴ For these litigants, NYSCEF provides improved access to justice, an important point to which we will return.

Since the issuance of our last report, despite the grave challenges presented by Covid-19 and a resulting limitation on resources, e-filing programs were initiated in Supreme Court in eight of the 10 remaining counties in which e-filing had not yet been introduced: consensual e-filing in Wyoming County (in all case types)¹⁵ and in Fulton, Hamilton, and Herkimer Counties;¹⁶ and mandatory e-filing in Greene, Montgomery, Schenectady, and Schoharie Counties.¹⁷ During this period, new e-filing programs were authorized in Surrogate's Court in five counties: consensual programs in Bronx, New York, Nassau, and Richmond Counties¹⁸ and a mandatory program in Broome County.¹⁹

A pilot program was introduced at the end of 2017 for the consensual e-filing and service of documents in actions commenced in Supreme Court, Civil Branch, New York County and later removed to the New York County Civil Court pursuant to CPLR 325 (d).²⁰ This project was

9. The cases subject to mandatory e-filing in the Surrogate's Courts are probate and administration proceedings and miscellaneous proceedings relating thereto.

10. The numbers in this paragraph are as of Dec. 31, 2020.

11. The statistics in the immediately preceding paragraph and in this one are as of Feb. 11 and 8, 2021.

12. As of Feb. 8, 2021. This does not include those who obtained IDs for the NYSCEF Practice System.

13. That is, they filed at least one document in an e-filed case or recorded their consent in a case.

14. The statistics in this paragraph are as of Jan. 12, 2021.

15. Pursuant to Administrative Order AO/116/20, effective May 29, 2020.

16. Pursuant to Administrative Order AO/247/20, effective Oct. 21, 2020 (except for Herkimer, effective Nov. 18, 2020).

17. Pursuant to Administrative Order AO/247/20, effective Oct. 21, 2020 (except for Schoharie, effective Nov. 18, 2020).

18. Pursuant to Administrative Order AO/116/20, effective May 29, 2020 (except for Nassau, effective June 29, 2020).

19. Pursuant to Administrative Order AO/247/20, effective October 21, 2020.

20. A party to such a case is not required to participate in e-filing in the Civil Court.

extended later to Queens County and then in 2020 to all five boroughs.²¹

The 2018 Report to the Chief Judge of the Special Commission on the Future of the New York City Housing Court recommended that the Housing Court make a transition from paper to e-filing. The Housing Court is an extremely busy one; in the year of the Report there were 230,427 new filings.²² Thereafter, as we discussed in our 2020 Report, UCS, recognizing that expansion of e-filing to this court would represent a notable advance for the cause of access to justice, studied introduction of e-filing in the court.

Rules for e-filing in the Housing Court were prepared, submitted for public comment, and promulgated.²³ In 2020, e-filing on a consensual basis was introduced in the Housing Court in all five boroughs and in the Harlem Community Justice Center.²⁴ Thus far, 45,857 Housing Court cases have been filed through NYSCEF and 208,575 documents have been e-filed in that court.²⁵

B. E-Filing in the Appellate Divisions

In 2018, pilot projects in e-filing in civil cases through the NYSCEF application were introduced in the Appellate Divisions statewide. Thus, there is a uniform system of e-filing on appeal at the intermediate level through NYSCEF statewide, and between the superior trial courts and the Appellate Divisions.²⁶ A single set of statewide rules for the implementation of e-filing in the Appellate Divisions was promulgated. Attorneys, then, e-file

documents in civil cases at the superior trial-court level and in the Appellate Division throughout the state through a single application – NYSCEF. The NYSCEF application allows for an efficient creation of the record on appeal using the trial-court documents already on file with NYSCEF. This uniformity ensures efficiency and convenience for the bar, as well as for the courts and County Clerks.

Since 2018, the number of civil case types open to e-filing in the Appellate Divisions has expanded. In 2020, mandatory e-filing in the First and Third Departments of the Appellate Divisions through NYSCEF was extended to embrace all matters, including criminal and Family Court cases, except for original special proceedings and attorney matters and, in the Third Department, two other case types.²⁷ In 2020, e-filing was made mandatory in the Second Department in all matters originating and electronically filed in the Supreme and Surrogate's Courts in Nassau, Richmond, Queens, Suffolk, Westchester, Orange, Dutchess, Putnam, and Rockland Counties.²⁸ Beginning April 1, 2021, all matters not previously so subject will be subject to mandatory e-filing in the Fourth Department.²⁹ As e-filing is not yet in operation in criminal cases and Family Court cases at the trial-court level, expansion in regard to these case types involves the use of NYSCEF for the electronic filing of briefs and records on appeal in cases that were in hard-copy format in the trial court.

From inception to the end of 2020, **18,607 appeals** have been e-filed in the Appellate Divisions. This figure is over twice the comparable number of e-filed appeals as of the end of 2019.

21. Pursuant to Administrative Order AO/247/20, effective Nov. 9, 2020 (Kings) and Dec. 7, 2020 (Bronx and Richmond).

22. UCS Caseload Management Project – NYC Civil Court Annual Trends for 2018.

23. Section 208.4-a of the Uniform Rules for the Trial Courts.

24. Pursuant to Administrative Orders AO/149/20 (New York, effective July 13, 2020 and Kings, effective Aug. 10, 2020); AO/209/20 (Bronx and Harlem Community Justice Center, effective Sept. 8, 2020); and AO/209A/20 (Queens and Richmond, effective Oct. 5, 2020).

25. Through Dec. 31, 2020. Of the total cases, 16,600 were converted to e-filed status.

26. In some venues, e-filing is not yet in operation in a particular type of case at the trial-court level, but is available in the Appellate Division.

27. See Notice to the Bar and the Public posted on the First Department's home page at nycourts.gov/courts/ad1/index.shtml and the Third Department's Notice at nycourts.gov/ad3/e-file/efileschedule.html.

28. "Electronic Filing" under "E-Filing" at www.courts.state.ny.us/courts/AD2/.

29. See link to a Notice on the court's home page at nycourts.gov/courts/ad4/.

C. Plans for Further Expansion in Civil Cases

The growth of e-filing in New York State is shepherded by the Statewide Director of the UCS Division of Electronic Filing in the State Courts, Jeffrey Carucci, who is in frequent contact with court administrators and County Clerks across the state about e-filing. Through such contacts, the Director identifies courts and offices of County Clerks that may be ready to introduce e-filing, either on a consensual or mandatory basis, or to expand existing programs. He works closely with the courts, County Clerks, and E-Filing Advisory Committees³⁰ to develop plans for introduction or expansion of e-filing that will meet the needs of all concerned. He consults with relevant interested groups or organizations, such as the District Attorney and the criminal bar in regard to criminal cases and agencies that are active in Family Court. With each e-filing rollout and expansion in a court or county, we have provided advance public notice of our plans, solicited comments and suggestions, including by notices posted on the UCS website, and consulted broadly with the local bar and interested groups. Introductions and expansions in Supreme Court have always taken place by agreement of the County Clerk and the UCS.

Based upon consultations with County Clerks and courts, we anticipate that in 2021 additional counties will be added to the list of those now participating in the e-filing program. Our aim is to see further expansion of e-filing in existing counties and implementation of e-filing in the remaining two of our 62 counties in civil cases in Supreme Court and in the remaining 15 counties in Surrogate's Court, with this occurring in seven counties in Surrogate's Court early in 2021.

For the future we envision, subject to consultation with all concerned, an expansion from consensual e-filing to mandatory e-filing in civil cases in Supreme Court in all counties in which mandatory e-filing does not yet extend to all types of civil

cases in which such e-filing is permitted by law. We plan to introduce mandatory e-filing in new counties in Supreme Court and in Surrogate's Court early in 2021, as follows: in all new civil actions and proceedings (except as otherwise provided) in the Supreme Court in Cayuga and Yates Counties in the 7th Judicial District; and, in Surrogate's Court in all new probate and administration proceedings and miscellaneous proceedings related thereto, in Columbia, Greene, Rensselaer and Schoharie Counties in the 3rd Judicial District, in Lewis County in the 5th District, and in Orange, Putnam, and Rockland Counties in the 9th District. Further, an Administrative Order will, we hope, be issued early in 2021 that will authorize mandatory e-filing for all types of cases in which such filing is statutorily permitted but not yet authorized in Supreme Court in Bronx, Kings, Queens, and Richmond Counties.

The imminent Administrative Order will give us e-filing in Surrogate's Court in a total of 54 counties compared with the current 47, with 43 having mandatory e-filing compared to the current 35. The Order will provide for the following in Supreme Court: 39 counties will have mandatory e-filing in all types of cases for which mandatory e-filing is statutorily permitted, with consensual for the balance; 9 counties will have mandatory e-filing in most of the case types for which mandatory e-filing is permitted, with consensual for the balance; and 12 counties will have consensual e-filing only.

E-filing staff aim to establish consensual e-filing in all districts and all case types in the Court of Claims in 2021. We also hope to initiate e-filing in no fault matters in New York City Civil Court and, if our legislative proposal is enacted, in the Appellate Term in consultation with the Appellate Divisions this year.

E-Filing staff plan to revise and update the NYSCEF application in regard to certain aspects of Surrogate's Court procedures.

30. There are six Committees on e-filing: in Civil Court, Family Court, Supreme Court (Civil), Surrogate's Court, and Supreme and County Court (Criminal), and one on Legal Services.

To assist unrepresented litigants, we plan to revise the pages on our website for these litigants to make them simpler and more user-friendly.

Further, we plan to expand e-filing in the Appellate Divisions in certain types of matters or to certain documents (e.g., consolidated appeals, remittiturs).

D. E-Filing in Superior Criminal Cases, Family Court, and Town and Village Courts

In 2020, UCS consulted with the E-Filing Advisory Committees for criminal and Family Court cases. We continued our work in preparation for e-filing in these cases, but the arrival of the pandemic brought about a halt to further progress in these areas in 2020. Some development work was also done with the aim of bringing digital technology through NYSCEF to the internal operations of the Town and Village Courts.

1. Criminal Cases

UCS e-filing staff continue to work with the Advisory Committee on E-Filing in Supreme and County Court Criminal Cases (Hon. Michael V. Coccoma (Ret.), Chair) on analysis and preparation for a pilot program for e-filing of the accusatory instrument and the filing and service of subsequent documents in Supreme Court and County Court. The Committee and its subcommittees met more than a dozen times since the 2019 annual report on e-filing, most recently in February 2021.

E-filing staff have developed procedures and a module for the internal processing of Article 730 orders and the resulting reports, and the distribution thereof by the court. The work done on this has assisted e-filing staff in regard to development of criminal e-filing more broadly. The NYSCEF module will permit the electronic transfer of the proposed 730 order to the judge for signature and then back to the 730 clerk and to interested parties. A portal exists through which

clinics can upload a report to the court. There is no public access to these documents during this process. The Article 730 processing will be introduced in Kings County or another interested jurisdiction in 2021.

In 2021, we will continue our efforts on a pilot project that will allow court reporters to send transcripts in criminal cases to the Appellate Division using NYSCEF. This project will take place in one Appellate Division with the cooperation of one County Clerk.

With regard to e-filing in Superior Criminal cases more broadly, e-filing staff have worked with the Advisory Committee and a Working Group thereof, as well as with various stakeholder organizations. A flow chart has been created for Supreme Court and County Court criminal matters that illustrates typical filings and how they are processed by the court. A list has been developed of the documents that are regularly filed in a criminal case in these courts. Draft screens have been prepared that take account of and reflect document flow and processing in these cases.

Demonstration sessions have been held for Committee members and stakeholder organizations to review and test the functionalities of the NYSCEF screens. The Committee also reviewed the document list and suggested requirements that need to be met for the types of documents filed, including with respect to sealing or restricted access.

Judge Coccoma reached out to Superior Criminal courts within the state to ascertain interest in proceeding with a pilot e-filing program. Courts in ten counties indicated an interest: those in Cortland, Erie, Kings, Monroe, New York, Onondaga, Queens, Richmond, Suffolk, and Westchester Counties.³¹ In 2018, there were 21,847 new criminal felony filings in Superior Criminal Court in these ten counties.³² Stakeholder groups were formed in these counties. UCS e-filing staff held meetings with nine of the groups and demonstrated/reviewed the e-filing

31. Essex may be willing to join this group soon.

32. UCS Caseload Management Project – Supreme Criminal Felony Annual Trends for 2018; UCS Caseload Management Project – Superior Criminal Felony Annual Trends for 2018.

process proposed for criminal cases and discussed the draft screens. Many of the organizations represented had had little familiarity with NYSCEF and its capabilities prior to these meetings. Staff distributed questionnaires and requested comments regarding the proposed e-filing module and the draft screens. Input was received and reviewed and modifications were made to the screens as a result.

Images of the modified screens were resubmitted to the groups for further comment. Additional modifications were made. In 2019, the Working Group and stakeholder representatives met with UCS e-filing staff and representatives of the UCS Division of Technology (“DOT”) for a further review of the screens. After that, the screens were finalized with input from DOT staff. Programming began in 2020. We plan to begin a pilot program for Criminal e-filing in at least three counties in 2021. We will bring the remaining counties on board thereafter.

The rules subcommittee of this Advisory Committee has met numerous times to develop appropriate rules for criminal cases. Work on the proposed rules continues. We expect that draft rules will be submitted to UCS Counsel in 2021. Public comment will be sought once proposed rules are completed.

UCS e-filing staff is aiming to put in place connections that will allow data entered into NYSCEF and the case management program that is in place in some Superior Criminal courts to be automatically transferred between the two systems, thereby producing labor and cost savings for the courts. Thus, we plan to include in the pilot project at least one county in which this case management program is operating in the Superior Criminal court in order to explore this data transfer.

The introduction of EDDS in May 2020, which we describe later, has spurred interest in e-filing in criminal courts. **80,105 documents** were transmitted electronically to a court in criminal cases statewide through EDDS by the end of 2020.

As we have already noted, e-filing through NYSCEF in criminal appeals is available in two Departments of the Appellate Division and soon will be available in a third even though the cases are processed in hard-copy form at the trial-court level.

2. Family Court Cases

NYSCEF staff have worked with Family Court staff on development of a Family Court module in NYSCEF. Here, too, we seek to achieve significant efficiencies through automated data transfer from NYSCEF to case management systems not only for the Court, but for agencies that appear regularly in these cases.

The Family Court Advisory Committee met in 2020 to review work and discuss plans for the future and will meet further in 2021. An initial meeting for this year was held in February 2021. **112,367 documents** have been transmitted via EDDS in Family Court matters statewide through the end of 2020, which suggests that there is interest in e-filing in these kinds of cases.

A list of commonly-filed Family Court documents has been created. We have prepared draft NYSCEF screens for Family Court e-filing and a draft set of rules has been under study. E-filing staff discussed with the Committee the possibility of using NYSCEF to deliver documents in support proceedings to Support Magistrates. We are looking toward instituting a pilot program in which e-filing through NYSCEF would take place in Family Court cases in up to six counties and will consider concentrating on venues outside the City of New York. The Advisory Committee will continue to work with e-filing staff in development of a pilot program in authorized counties.

3. Town and Village Courts

In the first quarter of 2021, we expect to expand EDDS to some limited Town and Village courts. Further, e-filing staff are working on plans to introduce digital files in several Town and Village courts upstate in 2021. This pilot program will permit these courts to maintain documents in electronic format in NYSCEF. At this stage, the process will be an internal one only, with no filing

or service of documents by litigants. Electronic filing and service of documents by litigants in these courts have not been authorized by CPLR 2111 (a) and will await approval of the Judiciary's legislative proposal.

E. Exemptions from E-Filing

The e-filing legislation provides special protections for unrepresented persons appearing in our courts and for attorneys who lack the knowledge or equipment needed to e-file.

1. 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 it. The law bars courts and County Clerks from seeking to require 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.”³³ These litigants will e-file only if they want to do so and take action in order to be able to participate. If they wish to take part, they must have a computer, a scanner, an internet connection, and an e-mail address; apply for a user ID and password that are specific to their case; take whatever training they feel they need, in the same manner as all other parties in the case or through any special program that may be developed by NYSCEF staff; and record their participation in NYSCEF for the case so that the system can recognize them when they submit filings.

The court system takes important steps to ensure that unrepresented litigants understand their position and their relationship to e-filing. First, when a new e-filed case is commenced in Supreme Court, for instance, the rules require that service of process be made in hard-copy form, which

must be accompanied by a promulgated form “Notice of Electronic Filing” in hard copy advising the defendant/respondent that the filer has commenced the action electronically and clearly stating that unrepresented persons are statutorily exempt from e-filing. Those who might wish to e-file are referred to a dedicated court system website for the unrepresented.³⁴ Unrepresented persons who choose to e-file are also encouraged to contact the clerk or the Help Center³⁵ in the court where the action was filed.

Many e-filing forms describe, in plain language, how e-filing works and what the rights of the unrepresented are.

Further, legislation and rules require that the clerk explain to an unrepresented party the options for e-filing in plain language and inquire whether he or she wishes to take part.³⁶ Such litigant may participate only after having been presented with information in plain language about the program. The litigant's request to e-file shall be documented in the case file, which constitutes a mechanism to promote compliance by court and County Clerk staff. If an unrepresented party chooses to take part, he or she may revoke participation for any reason at any time merely by filing and serving a form so stating.

Many unrepresented persons have voluntarily participated in e-filing – **16,822** – but we have never had a substantial number of complaints from these persons. Nor did we have complaints during 2020 in any significant number from unrepresented persons in e-filed cases who have not taken part in e-filing. The E-Filing Resource Center received e-mail inquiries or requests for assistance from unrepresented persons and responded to all of them in as helpful a manner as possible.

33. CPLR 2111 (b) (1).

34. The NYSCEF website for the unrepresented is designed specifically for such litigants. On this site they can find, in clear language, detailed information about e-filing and their rights. There are instructions that walk the unrepresented through the process of obtaining an ID and Password and creating a NYSCEF account through which filings will be made. Unrepresented persons can make practice filings as often as they wish on a training site.

35. Help Centers exist in many courts to provide information about courthouse procedures to the unrepresented.

36. CPLR 2111 (b) (1).

We have promulgated various e-filing forms in Spanish. In 2021, we will continue to translate and post more such forms in Spanish and in other languages as well. As we discuss below, we plan to examine existing UCS “do it yourself” programs (DIY) with a view towards integrating them with NYSCEF.

Periodically, UCS leadership takes steps to remind County Clerks and Chief Clerks in e-filing courts of the rights of unrepresented persons with regard to e-filing and of the procedures needed to safeguard those rights. We have promulgated an “Unrepresented Litigant Fact Sheet” drawn from the website that can and should be used by clerks to provide information about e-filing to the unrepresented. We have issued a form that clerks are to use to gather information about unrepresented litigants who do not choose to e-file so that the information can be included in NYSCEF together with an indication that the litigants are not participating in e-filing; inclusion of this information in this way will prevent attorneys who are participating in e-filing from inadvertently failing to serve documents in hard copy on litigants who are not participating in e-filing, especially the unrepresented.

In the past, some comments were received in response to UCS solicitations in connection with the Annual Report on E-Filing asserting that clerks on some occasions and in some venues had not handled filings by the unrepresented correctly. Often, the incidents referred to in these comments were not brought to the attention of the Chief Clerk or County Clerk of the venue in question, a supervisor in the office, or UCS e-filing staff at the time they occurred, notwithstanding that UCS e-filing staff have repeatedly asked that they be informed whenever any such incident is thought to have taken place anywhere in the state. Absent notice about these previous incidents, the Chief Clerk, County Clerk, and e-filing staff were not able to investigate and take immediate action to respond.

In an effort to improve communications, UCS established a statewide e-filing advisory committee on unrepresented litigants. This committee met in 2020 and in 2021.

Further, pursuant to our 2020 Report, UCS e-filing staff created a central e-mail box that legal services attorneys statewide can and should use to provide contemporaneous notice to UCS e-filing staff of any suspected errors with regard to e-filing involving unrepresented litigants that they may encounter. The staff of the E-Filing Resource Center will respond promptly to all such communications. UCS has urged legal services groups to inform all of their attorneys statewide about the existence of this e-mail box and to ask them to use it whenever they believe they have encountered a problem anywhere in the state. Notification of the existence and function of this box was sent to 177 legal services groups. In 2020, not a single message was sent to this box informing the staff of perceived problems with e-filing encountered by unrepresented persons.

2. Attorneys

Attorneys who lack the knowledge or equipment needed to e-file are not required to do so. To obtain an exemption from e-filing these attorneys need only file and serve a form certifying to their lack of knowledge or equipment.

F. E-Filing and the Pandemic

As with society generally, the work of UCS e-filing staff was disrupted to a great extent by the arrival and persistence of the coronavirus. The operations of the courts and the County Clerks’ offices statewide were notably curtailed by the pandemic. For a substantial period of time, courthouses were closed to many normal activities or access to the courts was significantly curtailed, except for emergency applications. UCS administrative offices were also affected. These effects of the virus made it substantially more difficult than in the past for the e-filing staff to carry on their work expanding e-filing around the state. Nevertheless, throughout the pandemic, even when executive orders shuttered much of commercial and governmental activity in the state, e-filing staff

were either working remotely or at their desks at UCS headquarters, continuing to do the planning and development work needed to carry out the expansions of e-filing that were described earlier. The UCS E-Filing Resource Center was available to assist users of the NYSCEF system by responding to e-mail messages.

It was, however, necessary to eliminate temporarily our customary live training sessions in e-filing for attorneys, paralegals, and other users, as we discuss later. Furthermore, even though e-filing staff were at work, their ability to expand e-filing to courts around the state was adversely affected in many instances by the absence of key personnel from those courts or County Clerk offices. Despite this, we still made notable progress in expanding e-filing, as we described above. The ability of the court system to do this during these challenging days is owing to the great dedication of the members of the UCS e-filing team.

Of course, the disruptions in the normal operations of the courthouses and the County Clerks' offices also created difficulties for practitioners statewide, who in addition had to confront the effects of the virus upon their offices, office staff, and clients. The availability of the NYSCEF system proved to be a professional life-saver for many practitioners who were already experienced in using the application or learned how to do so during the year. NYSCEF allowed attorneys and their staff members to serve documents easily upon adversaries and to file documents with courts around the state during 2020, when there were so many grave and unprecedented obstacles to doing so in hard-copy format. Except in the earliest phase of the pandemic, the NYSCEF Resource Center was available throughout the year to all attorneys and other users who needed help. The impact of the pandemic on the practice of law and the administration of justice in New York State would have been immensely more severe but for the existence of the NYSCEF system.³⁷

NYSCEF could not, however, help everyone. In some courts and in some types of cases, such as cases in Family Court or lower criminal court, NYSCEF is not yet operational. As we note above, e-filing is not even statutorily permitted in the lower civil and criminal courts. In light of these limitations, UCS e-filing staff undertook a major project in 2020 to empower practitioners and litigants to transmit documents in electronic form outside the NYSCEF system, in courts or case types to which NYSCEF did not yet reach.

In a remarkably short time after the shutdown instituted in March, staff members of the Division of Electronic Filing, working with the UCS Division of Technology, created the Electronic Document Delivery System, which allows attorneys, paralegals, lawyers' services, and the unrepresented to deliver documents electronically, in portable document format (PDF), to courts that do not accommodate the filing of documents through NYSCEF. This application is a secure platform accessible on a dedicated portal of the UCS website. Among the courts that accept documents transmitted through EDDS are City courts (civil and criminal), the New York City Civil Court, County Court – Criminal Term, New York City Criminal Court, District Court (civil and criminal), Family Court, and Supreme Court – Criminal Term in New York City. Documents transmitted through EDDS are treated as "filed" when the attorney or other user receives a notice from the court clerk or County Clerk or upon publication of notice on a webpage of the County Clerk.

Documents that are received by the court clerk or County Clerk through EDDS will be printed out by the staff and filed in the appropriate case file. Where the Universal Case Management System or other case management system of the court permits, the court or County Clerk staff may file the documents in that system without having to print out and re-scan them. The EDDS system also assists with the conversion of hard-copy cases to e-filed status in courts where e-filing is operational.

37. "It was ... noted by several committee members that the NYSCEF system has been a phenomenal tool allowing the legal profession to continue its important work during this unprecedented public health crisis. Parties who may not have first been eager to e-file, quickly found e-filing to be a great convenience." Report of Surrogate's Court Advisory Committee on E-Filing, Hon. Craig J. Doran, Chair, Feb. 8, 2021.

Using a no-fee form of letter application to the court that is filed through EDDS, an attorney can request that the judge permit conversion of the case. If the application is approved, it is routed to the County Clerk, who carries out the conversion.

Except to convert hard-copy cases to e-filed ones, the EDDS system is to be used only where NYSCEF is not available because EDDS is less capable than NYSCEF. Unlike NYSCEF, the EDDS system does not provide a mechanism for the service of documents electronically, and EDDS does not offer a number of other important functionalities that are available through NYSCEF. The user must arrange for service to be made outside EDDS in accordance with the Civil Practice Law and Rules or other applicable law. Unless directed otherwise by the court, EDDS is not available for the filing of emergency applications.

The EDDS system went into operation on May 4, 2020.³⁸ In addition to allowing for secure and convenient filing of digitized documents in courts or case types where NYSCEF is not available and to convert hard-copy cases, thereby reducing foot traffic in the courthouses of the state, EDDS facilitates the virtual court operations of UCS, which have been expanded greatly during the pandemic.³⁹ EDDS is operational in 320 courts statewide. Among other things, EDDS has proven to be especially useful for criminal and Family Court cases. **80,105 documents** in criminal cases were transmitted by EDDS from May 4, 2020 onward and **112,367** in Family Court matters.⁴⁰ Documents are being transmitted to courts statewide through EDDS at the rate of about **4,200 per day**. In [Appendix B](#) is a chart showing the transmissions of documents through EDDS by week in 2020.

In 2020, using the EDDS platform, the E-Filing Division also created a video transfer application that allows the saving and dissemination of preliminary hearings on felony complaints pursuant to Criminal Procedure Law 180.65. We are currently doing this in three counties. The

e-filing staff are also examining the possible use of EDDS as a means by which non-court documents can be transmitted to County Clerks.

Furthermore, we hope to expand EDDS to Town and Village courts. The EDDS system and the experience with it that we have gained thus far will assist us as we work to bring e-filing through NYSCEF to criminal cases in the superior courts and to Family Court and, later on, once e-filing is authorized there, in the lower courts.

The EDDS system will remain an important tool for practitioners and others wishing to file documents with the courts during the pandemic. Beyond that, however, the future of electronic filing in New York State will continue to rest with the NYSCEF system. Thus, UCS will seek to expand NYSCEF even more broadly, and do so more quickly, during the remainder of the pandemic and in the years ahead.

G. Improvements to the E-Filing Application and Productivity Enhancements

UCS e-filing staff continually monitor NYSCEF to ensure that it meets the needs of all users and that it remains as efficient, effective, and easy-to-use as is possible. UCS regularly incorporates enhancements into NYSCEF, and this occurred in 2020.

We are currently working on the creation of a Virtual Evidence Room. This will allow the participants at a conference, hearing, or trial to transmit evidence (exhibits) to a court by remote means. Upon receipt, the court or authorized court user will be able to review and mark the exhibits for admission in accordance with the rulings of the judge.

Staff of the Division of Electronic Filing are working on a pilot project that would permit the transmission of transcripts in criminal matters to

38. Pursuant to Administrative Order AO/87/20. The system was modified and explained by several later Administrative Orders. The current such Order is AO/267/20, dated Nov. 6, 2020.

39. For more information on the EDDS system, see the EDDS Notice and Frequently Asked Questions on the EDDS home page (at <https://appscontent.courts.state.ny.us/NYSCEF/live/edds.htm>).

40. Through Dec. 31, 2020.

the Appellate Division by court reporters through NYSCEF. We are working with one Appellate Division and one County Clerk on this project.

In 2021, we will be looking into enhancing functionality for certificates and remittiturs in Appellate Division cases. We also made certain program enhancements for Surrogate's Court cases, including creation of a "To Do" list for court users. In the near future, we will be studying changes in functionality to allow subfiles to be created that would conform to the case management system in use in Surrogate's Court.

In 2020, we added a new functionality after consultation with the Matrimonial Practice and Advisory Committee (Hon. Jeffrey S. Sunshine, Chair) and the Guardianship Advisory Committee (Hon. Thomas P. Aliotta, Chair; Michele Lippa Gartner, Esq., Special Counsel for Surrogate and Fiduciary Matters). This functionality assists Court Examiners and Court Evaluators in MHL Article 81 matters and attorneys for children in matrimonial cases. A new area was created in NYSCEF where the names of Evaluators, Examiners and attorneys for children can be recorded in cases in which they are appearing in these capacities and they can obtain access to the NYSCEF file and file reports or other documents.

In 2020, we modified the application to add a functionality that allows attorneys of record to remove themselves from a representation recorded in the NYSCEF case file when authorized by the CPLR. We also added to NYSCEF the capability for courts to upload mass notices to large numbers of cases, which assists courts to get messages out to parties and attorneys in a quick and efficient way.

We continue our work on e-signatures by judges, which are authorized by Administrative Order under certain circumstances. Thirty-four Justices in one venue in Supreme Court are now using the UCS e-signing program, which is integrated with NYSCEF. 6,430 e-signed decisions have been issued through this program.⁴¹ The response of these Justices to this program has been extremely

positive. Our plan is to add more Justices in 2021. After further results and feedback have been received and evaluated, we hope to expand use of this application to other counties statewide.

UCS e-filing staff, working with DOT, have developed a bar coding application that is integrated with NYSCEF. This application allows court staff to scan conference orders into NYSCEF in an extremely rapid and efficient manner; the bar code on each order serves as the mechanism that ensures that the order is automatically filed in the correct case file in NYSCEF. This saves time and work for court clerks, provides quicker notification and access to the parties, and is a more accurate way to scan. The application is being used on a pilot basis in Supreme Court in one venue. The aim is to bring this application to other venues and courts and to other kinds of documents.

The e-filing staff are planning, resources permitting, to begin discussions soon looking toward integration with the NYSCEF application and expansion of current UCS "do-it-yourself" ("DIY") programs, which assist users to prepare for filing certain kinds of documents, such as various documents required in uncontested matrimonial cases. The DIY programs provide easy and clear instructions on how to complete forms specifically tailored to the unrepresented. Integrated and expanded programs would be able to assist unrepresented persons in, for example, these matrimonial cases to complete the required forms correctly and then, if those litigants choose to e-file, to file them with the court through NYSCEF.

We continue to devote attention to ways in which NYSCEF can further improve the productivity of courts and County Clerk offices and reduce costs for courts, County Clerks, and, ultimately, the taxpayer, such as by reducing data entry. Data entry can be reduced because e-filing gives us the opportunity for the electronic transfer of key elements of data from NYSCEF to the case management program of the court or County Clerk.

41. As of January 2021.

At present, NYSCEF data on the caption and from the Request for Judicial Intervention are automatically transferred from NYSCEF to and incorporated in the case management systems in Supreme Court.

In recent years, UCS installed an up-to-date case management application, known as the Universal Case Management System (“UCMS”), in the Surrogate’s Court and in some counties in Supreme Court. Integration of this application with NYSCEF has been operational in Surrogate’s Courts statewide for more than four years and is now underway in some Supreme Courts where UCMS is in operation. In 2021, UCMS will be introduced in additional counties in Supreme Court, including several in New York City, and in the New York City Civil Court and Housing Court. As a result, data and, in some courts, images of documents are and will be easily transferred from NYSCEF into UCMS, thereby bringing about a significant improvement in productivity for the court and the County Clerk.

H. Training and Outreach to the Bar

In 2020, we continued to make training and assistance easily available to attorneys. We provided an on-line self-help training tool that allows users to experiment with all the functions of NYSCEF without limitation and at no charge. Assistance was also available from the court system’s e-filing “help center,” the UCS E-Filing Resource Center, by e-mail throughout the business day, from 8 AM to 6 PM. Due to the pandemic, in-person staffing of the Center was reduced, but staff members have been working remotely answering inquiries by e-mail. E-mails come into the Center not only during regular business hours, but throughout the night and the early morning and on weekends, with these last being addressed the first thing in the morning every business day. The Center regularly receives and responds to e-mail inquiries from unrepresented persons about e-filing. Since March 2020, the Resource Center staff have answered hundreds of e-mails each day. Currently, the Resource Center answers all inquiries within 24 hours. We are planning to reactivate telephonic

responses in the near future. The comments made by users about the Resource Center and its staff have long been very complimentary and continue to be so.

Due to the pandemic, e-filing staff were not able to provide live training classes in New York City for users in the greater metropolitan area, which we have made available for years. Nor, for the same reason, was similar training available in other participating counties around the state.

For over six years, the Resource Center has been offering frequent live training on-line, initially through Skype and now through Microsoft Teams, which is accessible to attorneys and other users, including unrepresented persons who may be considering participating in NYSCEF filing, from their desktops or laptops. All users can register for training classes through the website. Even in normal conditions, the ability to register on-line and take a training session through Microsoft Teams is a great convenience for attorneys, the unrepresented, and paralegals seeking to learn how NYSCEF works, and this functionality became much more useful last year. In 2020, due to the pandemic, we expanded on-line training, providing two-hour training sessions for attorneys and other users and granted two CLE credits to participating attorneys at no charge with the cooperation of UCS’s Judicial Institute. Prior to 2020, we had made CLE credits available for attorneys who took any of our live courses, but not the on-line course then provided, which was a one-hour course; our change in this procedure was a response to the difficulties created by the pandemic.

We express our appreciation to Judge Gail Prudenti, Dean of Hofstra Law School, for her assistance to our training program. Judge Prudenti made available Hofstra Professor John Tsiforas,⁴² who has worked with Resource Center staff to provide multiple CLE sessions on a remote basis. We are grateful to Professor Tsiforas for his help.

42. Director of Law and Technology, Distance Education and Analytics, and Visiting Professor.

E-filing staff have posted recorded training sessions on-line in a special section of the e-filing website and are considering the preparation of short instructional videos on particular aspects of NYSCEF and the posting of these on the NYSCEF site.

The e-filing staff will continue to make CLE credit available in the future for attorneys who take an on-line NYSCEF course. We hope that the public health crisis will be such that we will be able once again to provide live training sessions some time in 2021. NYSCEF e-filing staff have provided thousands of hours of such free CLE credit. E-filing staff have also provided extensive training to judges and County Clerk and court personnel. We will continue to provide such training in 2021 and beyond.

III. The 2021 Report: Consultation, Outreach, and Input

A. Consultation and Outreach

For this 2021 report, the UCS again undertook large-scale efforts to consult with interested persons and groups about e-filing.

We posted notices seeking comment on the public UCS website and on the home page of the UCS e-filing website. Notice was also published in the *New York Law Journal*.

Further, we reached out directly to over 558 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. We sent follow-up e-mails to a number of these recipients.⁴³

In the solicitation letters, the Court System 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, if proposed and adopted, authorize the Chief Administrative Judge to expand mandatory e-filing.

In addition, we consulted with all six of the E-Filing Advisory Committees and sought input not only from their members, of whom there are 134 (27 persons are members of working groups, but not the full Committee in the case of the Supreme and County

Criminal Committee), but through them from other interested persons and groups.

UCS believes that this outreach should have come to the attention of large numbers of individuals and organizations, an audience, we estimate, of many thousands of people.

Attached as [Appendix C](#) is a list of the E-Filing Advisory Committees and their memberships. Attached as [Appendix D](#) are copies of the letters of the Statewide E-Filing Director soliciting comment, and Notices posted on the UCS and NYSCEF websites and in the *Law Journal*. Attached as [Appendix E](#) are lists of the persons, entities, agencies and groups (not including the County Clerks) to which we sent letters or e-mail messages soliciting comment and suggestions.

B. Input Received and Responses Thereto

1. Overview of the Input Received

Although we directed our solicitations at a large audience of practitioners, interested groups, and others across the whole of New York State, we received this year, as in prior years, a modest number of responses: not including submissions from the Advisory Committees, a Committee member, the Statewide Coordinating Judge for Matrimonial Cases, and County Clerks, we received a total of 120 comments, from individuals (e.g., attorneys, paralegals, administrative assistants) and groups (e.g., bar associations, legal services groups). Clearly, the low rate of response is a reflection of the widespread satisfaction with e-filing in New York State among the bar, legal groups, the public, courts, judges, and staff.⁴⁴

43. These efforts at outreach comply with requirements of Judiciary Law § 212 (2)(u).

44. In connection with last year's report, the Surrogate's Court Advisory Committee wrote that its members "feel that the NYSCEF program is a great product, and the lack of comments and/or issues is a verification of that." Letter of Hon. Craig J. Doran, Chair, Surrogate's Court Advisory Committee, Dec. 18, 2019, p. 2.

We also received comments from 16 County Clerks and the New York State County Clerks Association.

All of the comments from the County Clerks and the County Clerks Association indicate very strong support for e-filing and for its expansion. A number of the County Clerks mention in their submissions how important the availability of e-filing was to their work during the pandemic in 2020. The Association writes that UCS “has done a superb job of developing the electronic filing application” and states that it “wishes to continue its strong support for further expansion of this program.” The Association supports the proposed legislation.⁴⁵

Of the total of 120 responses, 32 commentators express opinions in favor of the expansion of electronic filing or mandatory electronic filing along the lines of the proposed legislation. Nineteen write in favor of e-filing and the NYSCEF system, in some instances together with suggestions. Fifty make suggestions, or combine suggestions with compliments for the NYSCEF system (e.g., “efiling is generally a great system,” “[I]ove the efiling system and generally it works great”). Some of the suggestions concern e-filing on appeal (which was introduced on a pilot basis only relatively recently, in 2018); most suggestions are of a technical nature involving particular functions of the NYSCEF application. One attorney asks a question. Thirteen persons, some of whom are not attorneys or litigating attorneys, criticize aspects of the NYSCEF application.

Only three of the submissions broadly oppose the proposed expansion of mandatory e-filing, but these submissions are wide of the mark. The three writers explain their opposition on the ground that they are older practitioners, with two of them noting also that they practice alone and lack skill with computer technology.⁴⁶ As was pointed out

earlier, current law exempts any attorney who lacks the knowledge or equipment needed to e-file, as indeed two of these writers actually acknowledge, and that exemption can be invoked by the very simple means of submitting a certificate so reporting. The Judiciary’s legislative proposal would not alter this exemption one iota.

Assuming for the sake of context that the UCS’s solicitations came to the attention of 2,000 attorneys and others (and we think that estimate is low), the rate of expressed opposition to mandatory e-filing among those recipients would be an infinitesimal .15 %.

In addition, two attorneys write to express concerns about e-filing by the unrepresented, in one instance with specific reference, it appears, to consumer debt collection cases.⁴⁷ We address the letters submitted by these attorneys in [Appendix I](#).

All the bar groups that submitted comments this year favor electronic filing and its expansion. Among these are the Richmond County Bar Association, the New York State Creditors Bar Association, and the Federal Bar Association (Southern District of New York Chapter), which support the proposed mandatory e-filing amendment. The Managing Attorneys and Clerks Association favors expansion of e-filing to all counties and courts and the Appellate Courts Committee of the New York County Lawyers Association writes that it approves efforts to expand e-filing. In addition, in the summer of 2020, the following leading bar groups in the matrimonial field expressed support for extending to the Chief Administrative Judge the authority to mandate e-filing in matrimonial cases, both contested and uncontested, which current law prohibits: the Family Law Section of the New York State Bar Association, the Women’s Bar Association of New York State, and the New York

45. Position Statement, New York State Association of County Clerks, Hon. Michael C. Bartolotti, President.

46. Message of James S. Hinman, Esq., Jan. 23, 2021; Message of Samuel L. Rosenberg, Esq., Jan. 5, 2021; Letters of John Michael Mowry, Esq., Dec. 15, 2020, Jan. 18, 2021. One of the three also expresses a general dislike for mandates and another indicates that he fears the eventual arrival of “Big Brother.”

47. Letter of Hazel R. Caldwell, Esq., Jan. 31, 2021; Letter of Mary McCune, Esq., Legal Services NYC, Feb. 1, 2021.

Chapter of the American Academy of Matrimonial Lawyers.⁴⁸ In September 2020, the Director of the Family/Domestic Violence Unit of the Legal Aid Society, which handles hundreds of contested and uncontested matrimonial matters throughout New York City, informed Hon. Jeffrey S. Sunshine, the Statewide Coordinating Judge for Matrimonial Cases, that the Society supports mandatory e-filing in matrimonial matters.⁴⁹

The following are excerpts from comments received this year:

"We strongly urge that mandatory electronic filing be adopted across the board in New York State.... Workers in all fields of employment have had to keep pace with changes in technology and adapt to new systems, and the legal profession should be no different

Laurie M. Lambrix, Esq.

Legal Assistance of Western New York, Inc.

"The NYSCEF system is easy to use and the platform is reliable and stable.... NYSCEF works well because of the competent technical support it receives from its developers and the user support the statewide resource center provides, from top to bottom."

"....

".... We would like to see NYSCEF expanded to all counties and all courts"

Managing Attorneys & Clerks Assn.

(of about 125 law firms)

"The ... Committee ... applauds the Unified Court System's efforts to expand electronic filing. Electronic filing drastically enhances the efficiency of the court system and prevents the wasteful process of travelling to a courthouse to file paper.

"....

"E-filing works wonders for busy attorneys."

Appellate Courts Committee, New York County Lawyers Association

(pp. 2, 4)

"[E]-filing has become a necessary tool that MFJ's attorneys have come to rely on in order to continue to provide high-quality legal representation to our clients. MFJ recognizes the many benefits that e-filing provides for practitioners

....

"E-filing has become an essential tool for attorneys representing individuals with low incomes"

Cristina Quiñones-Betancourt, Esq.

Mobilization for Justice (pp. 2, 6)

"A very intuitive and solid system. By far the best electronic filing system I have used. Beats [the Federal] Pacer by miles.

"It's easy to figure out, very stable, very-well staffed

"I give it a grade of A +."

Chris Romanelli, Esq.

"I am admitted in NY, MA, CA and IL as well as in Federal Court. I use e-filing systems from four states and [the Federal] ECF. NYSCEF far exceeds any of the others. It is much more intuitive and an easy to use interface. Though improvements might be available, based upon the alternative, I would not change a thing."

Daniel J. Schneider, Esq.

"I am very happy with this system. I use the Federal Court system as well, and this New York system is drastically easier to use."

Jeffrey I. Klein, Esq.

48. Resolution, Family Law Section, New York State Bar Assn., July 9, 2020; Press Release, Women's Bar Association of the State of New York, Aug. 28, 2020; Letter of Ronnie Schindel, Esq., President, New York Chapter, American Academy of Matrimonial Lawyers, to Hon. Jeffrey S. Sunshine, Aug. 20, 2020.

49. Letter of Laura A. Russell, Esq. to Hon. Jeffrey Sunshine, Sept. 9, 2020.

"The NYSCEF system is very well done. It is far superior to the federal ECF system. It is generally more intuitive than the federal system, and it is easy to use and accessible by anyone without charge."

Peter J. Weishaar, Esq.

"I consider electronic filing and the ability to access Court documents 24 hours a day, 7 days a week to be a revolutionary innovation, and all for ... the good..."

"The New York electronic filing system is generally excellent and user friendly. In many ways it is superior to the Federal system"

Samuel E. Kramer, Esq.

"I think E-Filing is the best thing to happen to the Court System, I would like to see everything go to E-Filing"

Debra A. Goodrich

Delaware County Clerk

"... I find the NYSCEF system to be very user friendly and I encourage e-filing to be made mandatory across the state."

Derrick F. Moore, Esq.

"Overall e-filing has been terrific."

Marybeth M. Bevan, Esq.

"My experience with NYSCEF has been great for the Housing Courts."

Stonee Tsui Chi Yeung, Esq.

"NYSCEF is easy to use, and it is easy to refer to documentation already filed on the system. I believe that the NYSCEF system represents a massive improvement over serving and filing of hardcopy submissions."

John A. Del Duco III, Esq.

"This remains a user friendly system. Much, much easier to use than the Federal ECF system."

Robert J. Miletsky, Esq.

"Before e-filing, I used to run around personally filing papers in courts etc. E-filing is time saving, more efficient and more convenient."

Saul Cohen, Esq.

"[C]lear and understandable fields and a user-friendly site should be always the goal ... I find the state court site much better than the federal ones, so top marks to state court there."

James Montgomery, Esq.

"It bedevils me how forty years after the first microcomputers, the nation's legal system still requires paper filings at a counter in a clerk's office. I strongly support electronic filing for the savings in client fees, the lessening of traffic congestion in the streets around the courthouse and the lower carbon footprint that e-filing provides."

Peter Lomtevas, Esq.

"As a practicing attorney I have found e-filing extremely easy and convenient. I strongly recommend mandatory e-filing for all cases."

Joseph M. Dash, Esq.

"Having the ability to e-file in some counties but not others put an administrative burden on my practice. As a result, I am a supporter of the proposal to lift the restraints upon the discretion of the Chief Administrative Judge to introduce [the] mandatory e-filing program in any court and/or action."

David Arpino, Esq.

"In reflecting on the experiences of 2020, it is my belief that expansion of the available mandatory case types would be welcomed by practitioners."

...

"Suffolk County is eager to further expand mandatory electronic filing and looks forward to serving as a pilot county for the implementation of Criminal E-filing."

Judith A. Pascale

Suffolk County Clerk

“Once acclimated to the NYSCEF system, attorneys seem quite pleased with the ease of use and quick response times. We couldn’t be happier with the decision to move into e-filing and look forward to its expansion.”

Matthew Bacon

Oswego County Acting County Clerk

“Love the e-filing system and generally it works great.”

Elizabeth Eilender, Esq.

“I am very happy with how NYSCEF works, and would like to see it expanded to major city courts like Rochester, NY.”

Michael A. Furlano, Esq.

“I write to express my strong support for mandatory e-filing in New York State. As a younger attorney, it boggles my mind why we are still exchanging paper in litigation. It is an antiquated and inefficient practice due to the advent of computers, tablets, and smart phones.”

Brendan P. Hall, Esq.

“The implementation of mandatory universal e-filing of all cases in the State should be expedited.”

David Scott Heier, Esq.

UCS has consulted closely with the six E-Filing Advisory Committees in 2020 and in 2021 in connection with this report. We have received statements from all of them, as well as comments from one of their members. These reports speak very favorably of progress to date, look forward to the further growth of e-filing, and endorse the proposed legislation.

2. Inclusion and Posting of All Comments, Summary of Comments, and Responses

All comments received in connection with this report are to be found in their entirety in [Appendix F](#) through [Appendix H](#),⁵⁰ specifically, comments from: the various E-Filing Advisory Committees, a member thereof, and the Statewide Coordinating Judge for Matrimonial Cases ([Appendix F](#); County Clerks ([Appendix G](#)); and bar associations, other groups, unaffiliated attorneys, and other individuals ([Appendix H](#)).

In [Appendix I](#), we provide a summary of and discuss the principal comments received this year (to the extent the comments are not addressed in the body of this report).⁵¹

All submissions received have been posted on the UCS website.⁵² In addition to the responses to the comments we are making in this report, Statewide Director Carucci is in the process of sending individual responses by letter or e-mail to commentators.

50. This complies with Judiciary Law 212 (2) (u) (i) (A).

51. This complies with the obligation to “address ... such comments” in this report. *Id.*

52. This complies with a mandate of Judiciary Law § 212 (2)(u)(i)(A).

IV. Legislative Recommendations and The Reasons Supporting Them

Overall, e-filing continues to work very well in New York State. Of course, as we noted earlier, the pandemic made law practice much more difficult in 2020 than in prior years, including by reducing staff availability in and access to courthouses and County Clerk offices, but the situation for the bar would have been substantially worse but for the availability of the NYSCEF system during this time. The benefits brought about by e-filing are confirmed by the experience of the courts, County Clerks, and Advisory Committees in 2020 and over previous years; by the paucity of objections received in response to our solicitations for this report and previous reports; and by the very many favorable comments that have been made about e-filing this year, in connection with reports in past years, and in other settings by County Clerks, bar groups, individual attorneys, and many others in New York State, including frequent recommendations that e-filing be expanded. In short, it is indisputable that e-filing has been a major success. The utility and importance of e-filing were revealed more clearly and fully than ever before during the health crisis of this past year when everyone has seen and realized how much e-filing can do and how easily it can do it.

Current legislation, however, significantly constrains the Chief Administrative Judge from exercising discretion to implement e-filing in the ways in which, and in the courts and counties where, it could be most useful to the practice of law and the administration of justice to all in this state. Legislative action is required.

A. Summary of Proposed Legislative Changes And Reasons Therefor

1. In General

The Judiciary proposes that the Legislature adopt a measure that will reduce the constraints and prohibitions on the authority of the Chief Administrative Judge over the implementation of e-filing in the courts. The proposed legislation would (i) empower the Chief Administrative Judge to authorize mandatory e-filing in all types of cases in the Supreme Court, Surrogate's Court, the Court of Claims, New York City Civil Court, Family Court, and Superior Criminal courts; (ii) extend to the Chief Administrative Judge the authority to institute e-filing programs, either on a voluntary or consensual basis, in any cases in

the state's lower civil and criminal courts; and (iii) extend the authority of the Appellate Divisions to implement electronic filing to include the Appellate Term.

The electronic filing program was created to bring the benefits of digital technology to the courts, the County Clerks, the bar, litigants and the public. These benefits include:

- e-filing saves the bar and litigants the time and expense of serving documents because service is done promptly and automatically through NYSCEF.
- e-filing eliminates trips to the courthouse to file documents.
- e-filing levels the playing field for solo and small-firm practitioners and legal services groups that lack the resources of large law firms and improves access to justice.
- NYSCEF provides immediate notice to attorneys of the issuance of decisions, orders, judgments and the like.
- NYSCEF gives easy access to the entire file of a case, 24 hours a day, seven days a week, from

an attorney's desk in the office or at home or elsewhere.

- NYSCEF benefits self-represented individuals who are familiar with or able to learn about computers and how NYSCEF works, but NYSCEF will not be imposed upon such litigants; the self-represented will e-file only if they choose to do so.
- e-filing contributes to more uniform practice across the state and even across courts.
- NYSCEF is simple to learn and easy to use.
- e-filing enhances efficiency and productivity for judges and courts and reduces costs for courts, County Clerks and local governments.
- e-filing improves the security for documents by reducing the incidence of misplaced documents, allowing courts and County Clerks to keep track of users who have accessed files, and reducing the risks of damage to documents from floods or other casualties.
- NYSCEF gives County Clerks and courts a greatly improved ability to maintain the confidentiality of sealed files and files for which confidentiality is otherwise required.
- NYSCEF promotes a green environment, reducing the number of trips attorneys or messengers would otherwise be required to make and saving vast amounts of paper needed in litigation.

Since from the commencement of e-filing in New York State in 1999 legislation has significantly restricted the ability of the Court System to expand the e-filing program, the Judiciary was required over the years to make many applications to the Legislature for changes in the law to permit UCS to put in place e-filing programs in particular courts and groups of cases. In light of the beneficial impact of the e-filing program and in response to the growing enthusiasm for e-filing among the bar, the courts, and the County Clerks, such expansions were in time authorized, but still with substantial restrictions attached to them.

Currently, in accordance especially with Chapter 237 of the Laws of 2015, the law extends authority to the Chief Administrative Judge to institute e-filing on a consensual basis or a mandatory basis in civil and criminal cases in the superior trial courts of civil and criminal jurisdiction. Many significant exclusions or restrictions create a complex patchwork of electronic filing in the state. The Chief Administrative Judge has authority to establish e-filing on a consensual basis in civil cases in the Supreme Court, the Court of Claims, Surrogate's Court, the New York City Civil Court, and Family Court. He lacks authority, however, to do so in the civil courts of lesser jurisdiction. So, a program for consensual e-filing can be instituted in the Judge's discretion in New York City Civil Court in certain cases or all cases, but not in those same kinds of cases in a City Court. The Judge has the authority to establish e-filing on a consensual basis in criminal cases in the Superior Criminal court. He has no authority, however, to institute a program of e-filing in criminal actions in the courts of lower criminal jurisdiction.

Further, the Chief Administrative Judge has the power to mandate electronic filing in civil cases in the superior trial courts. The Judge has no authority, however, to mandate electronic filing in certain kinds of cases. In the New York City Civil Court, mandatory e-filing is permissible, but in only one type of case. Mandatory e-filing may be instituted in one or more classes of cases in counties designated by the Judge in Surrogate's Court, but not in the Court of Claims. In Supreme Court, the Chief Administrative Judge can institute a program of mandatory e-filing in one or more classes of cases in counties specified by him, but a number of types of cases, such as matrimonial actions and Article 78 proceedings, are excluded from those that can be subject to this form of e-filing. Certain residential foreclosure actions and consumer credit cases are excluded from those eligible for this form of e-filing, but with the exception that the Chief Administrative Judge may eliminate the requirement of consent insofar as it applies to the filing by a represented party of commencement papers in these cases. Despite the foregoing, however, the exclusion of the

residential foreclosure and consumer credit cases does not apply in certain small groups of counties.

The law empowers the Chief Administrative Judge to mandate electronic filing in certain juvenile delinquency proceedings and in certain abuse and neglect proceedings in Family Court, but not in other kinds of cases and only in a maximum of six counties. The law empowers the Chief Administrative Judge to mandate electronic filing in cases in the Superior Criminal court, but he may do this only in a maximum of six counties.

The exclusions and prohibitions that give rise to this very complicated e-filing landscape constrain, at this point unnecessarily, the effort to expand e-filing across the state. The exclusions and prohibitions prevent the achievement of the full benefits that e-filing brings to practitioners, litigants and others, and hamper the ability of the Chief Administrative Judge to respond flexibly to the needs of particular courts and kinds of cases. This happens although the roll-out of e-filing in New York is not in its early stages, when legislatively-imposed restrictions on the growth of the program were understandable, but has been underway for many years. Chapter 237 alone was enacted more than five years ago. By contrast, the federal Electronic Case Filing system and similar systems in many states have been fully established and in operation for a substantial number of years.

The benefits of e-filing outlined above have become increasingly apparent to the bar over the years and the approval of NYSCEF has grown continually. The benefits accrue to the bar across the board. Thus, for example, we find this year a letter from a non-profit legal services firm that serves low-income clients through seven offices across 14 mostly rural counties in western New York. The firm notes the savings in time and energy that it enjoys due to automatic service through NYSCEF and access to court files from the attorneys' desks, thus avoiding trips to the courthouse that can take up to half a day. "Requiring electronic filing," this firm writes,

"will greatly increase access to justice for litigants."⁵³ A legal services group that represents low-income persons, the elderly, the disabled and others in New York City, especially in Housing Court, is in favor of the amendment to CPLR Article 21 that is included in the Judiciary's legislative proposal:

E-filing has become an essential tool for attorneys representing individuals with low incomes because it: provides an efficient way to quickly check case files; permits the filing of documents without the expense of mailing; saves time that would otherwise be spent commuting to court to file documents in person; and prevents entire court files and motions from being lost as they are physically transferred from one part of the court to another. Indeed, it is not uncommon for motions ... to be lost in the Housing Court when they are filed in person.

Another benefit of e-filing is that it removes the discretion of the court clerks at the filing window to reject filings in person [without basis].⁵⁴

The Corporation Counsel of the City of New York also writes in favor of electronic filing and the Judiciary's legislative proposal:

NYSCEF has proven itself an efficient "one-stop shopping" system that allows litigants to simultaneously file and serve court documents from the convenience of their home or office.... In so doing, NYSCEF conserves judicial and party resources, while also making the practice of law a greener and more environmentally friendly enterprise.

There is, Counsel writes, "no question in my mind that NYSCEF should be available to all courts in New York State."⁵⁵

53. Letter of Laurie M. Lambrix, Esq., Director of Litigation and Advocacy, Legal Assistance of Western New York, Jan. 25, 2021.

54. Letter of Cristina Quiñones-Betancourt, Esq., Mobilization for Justice, Inc., Jan. 25, 2021.

55. Message of Hon. James E. Johnson, Corporation Counsel, City of New York, Feb. 1, 2021.

The pandemic in 2020 has fully revealed and greatly underscored the extent and importance of the benefits of e-filing and heightened the imperative that our state expand e-filing more quickly and implement it more widely, as our legislative proposal would help to do. Many County Clerks, groups, and attorneys have made this point in the comments submitted in connection with this report. In 2020, the NYSCEF system was a critical resource for very many attorneys and litigants unable to navigate the hard-copy world and the courthouses of the state. As one of the County Clerks writes, “[w]hat would we have done without e-filing this past year !!!”⁵⁶ And the Corporation Counsel states that, in the face of the operational challenges posed by Covid-19, the Law Department “was able to keep much of its state court legal operations smoothly afloat because of the significant contribution of NYSCEF to our overall efficiency.”⁵⁷ But from the other side of the coin the effects of the pandemic cast a dramatic light on the potentialities – improved efficiency and lower costs for attorneys and their clients, the courts and County Clerks and local government, enhanced access to justice, an evening of the playing field for those lacking significant resources with those who have them, and much more besides – that we are failing fully to avail ourselves of because of the restricted nature of e-filing in this state.

Our work with the EDDS system is highly instructive in this regard. UCS e-filing staff worked very hard to create EDDS and put it in place in hundreds of courts as soon after the pandemic began as possible, within roughly two months. EDDS filled the gap created by the absence of e-filing through NYSCEF in many courts and counties, allowing hundreds of thousands of documents to be transmitted electronically to those courts in a secure manner. But clearly, as we noted above, EDDS can only be

a temporary application; NYSCEF is a much better, more feature-laden system and is the e-filing system of the New York State Court System, now and for the future. The fact that the Court System was obliged to create EDDS to substitute for NYSCEF where the latter was unavailable conveys to us in a striking manner this lesson – we need to expand e-filing through NYSCEF to all courts, all case types and all counties and we need to do this expeditiously. We need to remove the restrictions that stand in the way of doing so and give the Chief Administrative Judge the flexibility needed to proceed in the most efficient and effective way possible. This is what the proposed legislation will do.

For so long as the pandemic endures, expansion of e-filing will be central to maintaining access to the courts and County Clerks’ offices across the state while keeping attorneys, litigants, judges, staff, and the public safe through avoidance of physical contact in those courthouses and offices. Beyond this, though, the Governor, other public officials, and many in the private sector have noted the importance of drawing lessons from our experience confronting the pandemic that will help us build a post-pandemic future that is better than it otherwise would be. With this in mind, the Chief Judge in June 2020 created a Commission to Reimagine the Future of New York’s Courts. In November 2020, a committee of this group produced a report that, among other things, recommends that New York enact the proposed legislation that accompanies this Annual Report. The committee wrote:

In-person filing wastes attorney time, client money, and court resources, and is especially dangerous during the global health crisis we are currently experiencing.... By implementing mandatory, standardized e-filing

56. Letter of Hon. Elizabeth Larkin, Cortland County Clerk, Jan. 22, 2021.

57. See Footnote 54.

throughout the state, courts can save time and money and keep everyone safe.⁵⁸

There is no reason to hesitate about the enactment of the proposed legislation, especially as the roll-out is not in its infancy. First, e-filing has built a solid record of success. Second, the legislation would not impose mandatory e-filing in all courts and case types on its effective date, nor would it even establish voluntary e-filing in all courts of lower jurisdiction. Rather, the legislation simply extends to the Chief Administrative Judge the authority to institute e-filing in all categories of courts and cases and to mandate e-filing where appropriate. He will act to expand e-filing reasonably and judiciously, respecting the realities on the ground in the many different courts across the state and the needs of the bar, litigants, interested organizations, and the public, as well as courts and County Clerks. There are hundreds of courts in the state adjudicating daily a vast range of cases. In this complex reality, the Chief Administrative Judge is the person in the best possible position to know the relevant facts that exist in a particular court or county or in litigation in a particular type of case; to act with the necessary care and reason in the process of determining where and when and in what form e-filing should be considered for introduction in a particular court; and to expand e-filing in particular courts and case types in the way that best promotes the smooth and effective practice of law and advances the cause of the sound administration of justice in the state. He will be able, along with the Administrative Board of the Courts, and with input from the relevant bar and court and County Clerk staff, to issue rules for e-filing in each specific court that will be suitable for practice in that court. Where special requirements are needed in a particular court or type of case to ensure that e-filing works well for everyone, attorneys, organizations, unrepresented litigants, and others, the rules can be crafted to assure that outcome.

In addition, the proposed legislation will continue to require the Chief Administrative Judge to consult broadly with all interested persons and groups. He consults with Advisory Groups and the legislation would continue that process for all courts. Before e-filing is put into operation in a court and county, he must and does consult with all those interested in the proposed expansion, offer an opportunity for comments to be made, and consider those comments. Where applicable, he must obtain the consent of the County Clerk to a proposed expansion. He has been doing this for years and the work has been successful and productive, as shown by, among other things, the fact that at present e-filing is in operation in civil cases in some form in 60 of the state's 62 counties. And the County Clerks continue to urge more expansion.

Further, the proposed legislation provides that with regard to any proposal for mandatory e-filing in criminal cases in a county, in the courts of lower jurisdiction and in Superior Criminal courts, the Chief Administrative Judge must also consult with and obtain the consent of, in addition to the County Clerk where applicable, the District Attorney and the criminal defense bar of the county, must provide those who appear in such actions an opportunity to comment, and must consider those comments. Under the proposed legislation, similar provisions will apply to matters in Family Court, where, before mandatory e-filing may be introduced in a court in a county, the consent of the presentment and child protective agencies and the family court bar is required.

There is no justification for opposing the proposed expansion of e-filing out of concern that it might have adverse effects upon any portion of the bar or litigants. Those who might hypothetically suffer from the expansion are unrepresented litigants and attorneys who lack the knowledge and equipment necessary to e-file. But if the proposed legislation is enacted, it will maintain in place

58. Online Courts Working Group, Commission to Reimagine the Future of New York's Courts, *Initial Report on the Goals and Recommendations for New York State's Online Court System* (Nov. 9, 2020), p. 9.

More recently, a second committee of the Commission issued a report that endorses the legislation the Judiciary is currently proposing. See Structural Innovations Working Group, Commission to Reimagine the Future of New York's Courts, *The Expansion of Electronic Filing – A Report and Recommendations* (January 2021).

for all courts the protections that exist now with respect to unrepresented litigants and attorneys lacking knowledge or equipment. Neither may be compelled to participate in e-filing in New York. The clerk shall explain to the unrepresented party the party's options for electronic filing in plain language and the consent of the party shall be documented in the case file. If an attorney lacks the knowledge or equipment needed to take part, he or she need only file a certificate so stating in order to be exempted. Thus, the situations of the unrepresented and attorneys who are not able to e-file present no reason for failing to approve this legislation.

2. Matrimonial Actions

One notable category of civil case in which mandatory e-filing is prohibited by current law is matrimonial actions. The proposed legislation would lift this ban. These are, of course, sensitive matters, but here too there is no reason for hesitation about allowing for mandatory e-filing if and where the Chief Administrative Judge might decide to implement it.

First, and once again, we seek authorization for the Chief Administrative Judge to act, but such action will not be taken unless the circumstances in a court in a particular county at the time make mandatory e-filing by attorneys in matrimonial cases appropriate.

Second, the Chief Administrative Judge must carry out the extensive consultation with the matrimonial bar in a county that was described earlier and he will do so. E-filing will not move forward if some good reason for delay in a particular court or venue is presented to the Chief Administrative Judge nor over the objection of the County Clerk.

Matrimonial files are confidential (DRL § 235) and must remain so. Confidentiality, however, is entirely compatible with inclusion of these matters in the e-filing program. Any case designated in NYSCEF as a matrimonial matter automatically, upon commencement, is placed behind a firewall

that prevents anyone from having access to the documents filed in that matter except for counsel on the case, any participating unrepresented parties, and only those County Clerk or court staff who have permission to work on such cases.⁵⁹ It would be impossible for other persons to access the case files.

To protect against the possibility of human error, NYSCEF includes among its functionalities an electronic audit trail. This means that, if an issue were ever to arise, NYSCEF could identify by User ID all those who had accessed confidential documents in a particular case. If unauthorized persons were to obtain access to matrimonial files, NYSCEF could learn that.

NYSCEF, as an automated application with built-in security, does not make errors that fallible humans sometimes make when dealing with hard-copy files. In NYSCEF, matrimonial files are not misplaced or inadvertently left on a copy machine or a counter for unauthorized persons to see. Therefore, we believe, the confidentiality of matrimonial files is more secure if documents are filed with NYSCEF than they are in a hard-copy regime.

We do not say this because of hopeful thinking. For years, NYSCEF has empowered the County Clerk to seal individual civil files or documents in NYSCEF when directed by the court pursuant to Part 216 of the Uniform Rules for the Trial Courts. The sealing functionality of NYSCEF works very effectively. It permits sealing in accordance with the particular requirements of any court order (e.g., sealing all documents to everyone other than the parties).

Furthermore, we have experience with maintaining the confidentiality of *matrimonial cases themselves within the NYSCEF application*. Under governing law matrimonial cases may be e-filed on a consensual basis when authorized by the Chief Administrative Judge. Beginning in April 2013, authorization was given for consensual e-filing in these cases in Supreme Court in an increasing number of counties, now totaling 60. Thus far,

59. NYSCEF limits the court and County Clerk staff who may have access to these files to those who are authorized to work handling cases of this type. Staff without such rights cannot view these files via through NYSCEF.

61,169 matrimonial cases⁶⁰ have been e-filed in the Supreme Court on a consensual basis. All the documents e-filed in these cases have been placed behind the firewall.⁶¹ These cases have been kept confidential, indeed, with the heightened security just mentioned. Although **897,801 documents have been e-filed** in these matrimonial cases,⁶² we have been informed of no problems with the operation of NYSCEF's confidential shield in these cases. Thus, significant actual experience in matrimonial cases strongly supports the Judiciary's proposal.

Before consensual e-filing in matrimonial matters went into effect, the court system informed the bar in the affected counties and sought comment. We received very few comments from any members of the bar expressing doubt about the proposed introduction of consensual e-filing in these cases.

Furthermore, in response to our solicitations for this report, despite the fact that thousands of attorneys have experienced e-filing in matrimonial cases already on a consensual basis, we received no objections specifically directed to the proposed lifting of the existing restriction on mandatory e-filing in these cases. The results were very similar in response to our solicitations for the 2018 and 2019 reports. In January 2019 and again in January 2020, the Executive Committee of the State Bar Family Law Section voted its support for legislation that would allow the Chief Administrative Judge to mandate e-filing in matrimonial cases. As we noted earlier, in the summer of 2020, the Executive Committee voted 108 to 0 in favor of mandatory e-filing in both contested and uncontested matrimonial actions, and mandatory e-filing was also approved by the New York Chapter of the American Academy of Matrimonial Lawyers and the Women's Bar Association of the State of New

York, which has more than 4,000 members across New York State and is the largest women's bar association in the country.⁶³ The Legal Aid Society also favors mandatory e-filing in matrimonial cases.⁶⁴

Therefore, the only conclusion that can be reached is that the matrimonial bar overwhelmingly supports our efforts to expand e-filing in matrimonial cases. Judge Sunshine, the Statewide Coordinating Judge for Matrimonial Cases and Chair of the Matrimonial Practice and Advisory Committee, has submitted a letter in connection with this report in which he strongly urges legislative action to enable the Chief Administrative Judge to require electronic filing in matrimonial actions.⁶⁵ "The advantages of mandatory electronic filing in matrimonial actions," he writes, "cannot be overstated"⁶⁶

The experience of e-filing in matrimonial cases has meaning beyond that type of case. The enthusiasm for e-filing among the matrimonial bar illustrates the view that the bar more generally will have towards e-filing as it expands into new areas. Further, the sealing functionality of NYSCEF mentioned above applies in all kinds of actions. The shielding of the confidentiality of files that is employed in matrimonial actions can be applied by NYSCEF to any other kind of case in which the law requires that confidential treatment be given.

3. Other Points

The proposed legislation would take a very significant step toward greater access to justice by making e-filing a tool available in cases in the lower courts, when and as the Chief Administrative Judge, after the required consultation, determines and subject to whatever requirements may be put in place in rules applicable in those courts.

60. Through Dec. 31, 2020.

61. Pursuant to Administrative Order, documents currently e-filed in matrimonial cases shall not be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk. Administrative Order, AO/247/20, dated Oct. 20, 2020, App. B. The rules bar e-filing of forensic evaluation reports in custody, visitation and other matters concerning children. *Id.*

62. Through Dec. 31, 2020.

63. See Footnote 47.

64. See Footnote 48.

65. Letter of Hon. Jeffrey S. Sunshine, Jan. 25, 2021.

66. *Id.*

The lower courts are among those in which New Yorkers have the most business. These courts play a crucial role in dispensing justice in a broad range of cases, and also in collecting fines and fees for state and local government. Many of the litigants in these cases do not reside near the courthouses in which their cases are adjudicated. Many of these litigants are unrepresented. For these litigants, especially those in rural areas and those without easy access to transportation, and for attorneys, e-filing will allow them to file documents with these courts conveniently and securely, and it will permit service of documents in a manner that is as easy and as inexpensive as one could hope for. E-filing spares the unrepresented who wish to e-file from having to take time off from work or family responsibilities to come to the courthouse. It offers attorneys and those unrepresented who choose to take part the many other benefits of e-filing described earlier. The unrepresented who choose to take part and other filers thus have much greater access to case documents and the workings of the court than has ever been possible in the paper world, and have a vastly improved chance to understand and keep track of what is happening in their cases. Further, for these courts and the judges and non-judicial personnel in them, e-filing can greatly improve efficiency and productivity, which of course redound to the benefit of the bar, litigants, and the public.

The scope of the potential benefits from the increased access to justice that NYSCEF makes possible is suggested by the fact, noted above, that **16,822 unrepresented litigants** have chosen to e-file and have e-filed **163,896 documents**, this in a universe that has until recently largely been limited to Supreme Court and Surrogate's Court cases.

From the perspective of the court, NYSCEF allows for greatly improved oversight of the progress of cases in any court. A judge can easily see, including at night or over the weekend, all that is happening in a particular case, all the filings that have been made, and the issues raised. The opportunity for better, more expeditious, and more thorough judicial oversight of cases in an inventory presents

itself when the cases in the inventory are e-filed ones.

E-filing offers the Court System an opportunity to expedite the processing of criminal cases on appeal by improving the maintenance of the case file in the trial court. At present, the handling of case files, transcripts, and exhibits in hard-copy form at the trial-court level often leads, we are advised, to lengthy delays on appeal while, where applicable, the record on appeal is being completed. Such delays are obviously harmful to the defendant, but also to the People, particularly in the event that a retrial is ordered and a long time has passed since the first trial.

V. Conclusion

The record of e-filing to date, with over 3 million e-filed cases and almost 39 million e-filed documents, and the comments we have received this year, in prior years, and in other settings demonstrate beyond dispute that e-filing, where available, is working very well in the courts of this state, for litigants, practitioners, judges, courts and County Clerks. We have made progress, but it is clear, as the pandemic has brought home to us with a sense of urgency, that we need to move much more broadly and with expedition to achieve the 21st century court system that we have envisioned. Opening all of the state's courts and all types of cases to the possibility of e-filing when and as appropriate and lifting the restrictions that currently constrain the ability of the Chief Administrative Judge to implement e-filing in the ways that make the most sense for our many case types and courts, as we propose in our legislative package, are actions necessary to carry us further. The time has certainly arrived to take these reasonable steps. After 22 years of experience with e-filing, this legislative proposal is hardly precipitate. The record of these years is such as to make clear that hesitancy and carve-outs and limitations encased in legislation are unwarranted and unhelpful.

The e-filing work that UCS is engaged in every day is transforming the courts of our state and the manner in which litigation is conducted here. The process of transformation shall advance even further if our legislative proposal is enacted. The Unified Court System and its e-filing staff will continue to work hard to build upon the very considerable success that has been achieved to date in this vital program.

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Judiciary's Legislative Proposal

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Legislative Bill Drafting Commission
08703-01-1

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 1*
(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 and other
laws relating to the use of elec-
tronic means for the commencement

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 s17 Felder s07 Kaplan s58 O'Mara s10 Sanders
s52 Akshar s59 Gallivan s26 Kavanagh s62 Ortt s23 Savino
s36 Bailey s05 Gaughran s63 Kennedy s01 Palumbo s32 Sepulveda
s30 Benjamin s12 Gianaris s28 Krueger s21 Parker s41 Serino
s34 Biaggi s22 Gounardes s24 Lanza s19 Persaud s29 Serrano
s57 Borrello s47 Griffo s11 Liu s13 Ramos s39 Skoufis
s04 Boyle s40 Harckham s50 Mannion s61 Rath s16 Stavisky
s44 Breslin s54 Helming s42 Martucci s38 Reichlin- s45 Stec
s25 Brisport s46 Hinchey s02 Mattera Melnick s35 Stewart-
s08 Brooks s27 Hoylman s53 May s48 Ritchie Cousins
s55 Brook s31 Jackson s37 Mayer s33 Rivera s49 Tedisco
s14 Comrie s43 Jordan s20 Myrie s60 Ryan s06 Thomas
s56 Cooney s09 Kaminsky s51 Oberacker s18 Salazar s03 Weik

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:

- a049 Abbate a063 Cusick a021 Griffin a051 Mitaynes a111 Santabarbara
a092 Abinanti a045 Cymbrowitz a100 Gunther a015 Montesano a090 Sayegh
a031 Anderson a018 Darling a139 Hawley a145 Morinello a099 Schmitt
a122 Angelino a053 Davila a083 Heaste a065 Niou a076 Seawright
a107 Ashby a072 De La Rosa a028 Hevesi a037 Nolan a084 Septimo
a035 Aubry a003 DeStefano a128 Hunter a144 Norris a016 Sillitti
a120 Barclay a070 Dickens a029 Hyndman a069 O'Donnell a052 Simon
a030 Barnwell a054 Dilan a079 Jackson a091 Otis a114 Simpson
a106 Barrett a081 Dinowitz a104 Jacobson a132 Palmesano a005 Smith
a060 Barron a147 DiPietro a011 Jean-Pierre a088 Paulin a118 Smullen
a082 Benedetto a009 Durso a134 Jensen a141 Peoples- a022 Solages
a042 Bichotte a048 Eichenstein a115 Jones Stokes a057 Souffrant
Hermelyn a004 Englebright a077 Joyner a058 Perry Forrest
a117 Blankenbush a074 Epstein a125 Kelles a023 Pheffer a110 Steck
a098 Brabenc a109 Fahy a040 Kim Amato a010 Stern
a026 Braunstein a061 Fall a105 Lalor a086 Pichardo a127 Stirpe
a138 Bronson a080 Fernandez a013 Lavine a089 Pretlow a102 Tague
a012 Brown a008 Fitzpatrick a097 Lawler a073 Quart a064 Tannousis
a093 Burdick a124 Friend a126 Lemondes a019 Ra a071 Taylor
a085 Burgos a046 Frontus a135 Lunsford a038 Rajkumar a001 Thiele
a142 Burke a095 Galef a123 Lupardo a006 Ramos a033 Vanel
a119 Buttenschon a050 Gallagher a129 Magnarelli a062 Reilly a116 Walczyk
a094 Byrne a131 Gallahan a036 Mamdani a087 Reyes a055 Walker
a133 Byrnes a007 Gandolfo a130 Manktelow a043 Richardson a143 Wallace
a103 Cahill a002 Giglio, J.A. a108 McDonald a078 Rivera, J. a112 Walsh
a044 Carroll a148 Giglio, J.M. a014 McDonough a149 Rivera, J.D. a041 Weinstein
a136 Clark a066 Glick a146 McMahon a068 Rodriguez a024 Weprin
a047 Colton a034 Gonzalez- a137 Meeks a027 Rosenthal, D. a059 Williams
a140 Conrad Rojas a017 Mikulin a067 Rosenthal, L. a113 Woerner
a032 Cook a150 Goodell a101 Miller, B. a025 Rozic a096 Zebrowski
a039 Cruz a075 Gottfried a020 Miller, M. a121 Salka a056 Zinerman

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).

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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 and other laws relating to the use of electronic means for the
23 commencement and filing of papers in certain actions and proceedings, as
24 amended by section 1 of item SS of subpart B of part XXX of chapter 58
25 of the laws of 2020, 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, 2021; 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, 2021].

4 § 19. This act shall take effect immediately.

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NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION
LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

MARC C. BLOUSTEIN
LEGISLATIVE COUNSEL

OCA 2021-1

IN SUPPORT OF

S.

A.

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 and other laws relating to the use of 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

This measure is being introduced at the request of the Judiciary.

Summary of the Measure's Provisions

This measure would expand current authority for the use of e-filing in the courts, as follows:

In the trial courts

At present, the Chief Administrative Judge's statutory authority to institute e-filing in the trial courts – while much broader than it once was – is still limited in some important respects. Although he may institute voluntary e-filing in a broad spectrum of cases – all civil cases in Supreme Court, the Court of Claims, the Surrogate's Court, and the New York City Civil Court; all criminal cases in Supreme and County Courts; all cases in Family Court – and he may institute mandatory e-filing in many civil cases in Supreme Court along with some in superior criminal court and Civil and Family Court, he may not require e-filing in some major classes of civil cases in Supreme Court (*e.g.*, matrimonial and Article 78 cases), nor may he require it in more than six counties each in criminal court and Family Court. Further, no form of e-filing – whether voluntary or mandatory – may be instituted in the civil courts of lesser jurisdiction or in the local criminal courts.

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Under this measure, the Chief Administrative Judge would be permitted to institute 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, as follows:

- *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 4.* Makes a technical, non-substantive change in paragraph 3 of CPLR 2111(b).
- *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

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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 14.* Makes a technical, non-substantive change in paragraph (d) of section 10.40(2) of the Criminal Procedure Law.
- *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.

In the appellate courts

At present, CPLR 2112 grants the Appellate Divisions broad authority to implement e-filing in appeals brought before them. This proposal does not change that. It does, however, clarify that the Appellate Divisions' authority extends to permitting them to institute e-filing in Appellate Terms they have established (*see* Bill section 5).

Justification

A. *State's Long Experience with E-Filing.* As far back as 1999, almost a quarter of a century ago, the State began to introduce pilot programs in the use of electronic means for the purpose of commencing certain categories of cases and of filing court papers with judges and serving them on adverse parties. *See* L. 1999, c. 367. In the years since, those programs have been continued and progressively expanded - to apply to a broader spectrum of cases in additional courts. *See* the Appendix to this memorandum for a list of all statutory enactments to date that have expanded the e-filing program in New York. As has been well-documented in numerous analyses and reports prepared over the past 21 years to assess the effectiveness of e-

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filing in New York's State courts, the pilot programs have been very successful and greeted with great enthusiasm by both bench and bar¹.

E-filing's many virtues have been well-documented. They include:

- benefits for all sectors of the bar, particularly solo and small-firm practitioners who lack the resources of large law firms and attorneys in rural counties who must travel long distances to reach a courthouse.
- savings to the bar in the time and expense of serving other parties (*i.e.*, the e-filing system serves other parties automatically and instantaneously, providing immediate access to the newly-filed documents).
- reduced costs and enhanced efficiency for the bench, County Clerks (especially in connection with storage and retrieval of court documents) and local governments.
- increased security for documents in reducing the incidence of lost documents, in allowing courts to keep track of which users have accessed the files, and in protecting against loss of documents due to fire or flood. Relatedly, increased ability of the County Clerk and the courts to maintain the confidentiality of sealed files and files for which confidentiality is otherwise required.
- convenient access to the entire court file of a case, 24 hours a day, seven days a week
- promotion of a green environment, reducing the number of trips attorneys must make to the courthouse to file papers and the amount of paper required in litigation.
- demonstrated success in Federal courts and in other state courts.

B. *Need for Further Expansion of E-Filing.* Even before the COVID-19 pandemic struck late last winter, it had become evident that there was a need for further expansion of e-filing and for the elimination of several restrictive features of the existing e-filing program. In particular:

- In 2015, the Legislature gave permanent status to a program, first authorized in 2009, in the use of mandatory e-filing in the courts. L. 2015, c. 237. In doing this, the Legislature excepted several classes of cases from this program including, most significantly, matrimonial actions². See CPLR 2111(b)(2)(A). Whatever the rationale for that exception when it was enacted, it is now abundantly clear that the exception has grown to be obsolete and counterproductive. E-filing in matrimonial cases has long been used on a consensual basis and all indications are that requiring its use in those cases would be no less appropriate than it is in other classes of cases that now are subject to mandatory e-

¹ Most recently, the great success of New York's increasing use of e-filing in the courts has been heralded in the report of the Structural Innovations Working Group of the Commission to Reimagine the Future of New York's Courts. See *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group of the Commission to Reimagine the Future of New York's Courts* (December 2020). The principal recommendation included in this report is the legislative enactment of the instant measure.

² Although the 2015 legislation prohibited use of mandatory e-filing in matrimonial actions, it did not bar use of e-filing in such actions where the parties all consented thereto.

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filing. Indeed, we are advised that there are many in the matrimonial bar, along with most County Clerks, who strongly favor extending mandatory e-filing to matrimonial actions for many reasons not least of which is the fact that maintaining dual-track filing systems is cumbersome and costly. Most recently, the members of the Executive Committee of the Family Law Section of the State Bar voted unanimously to support this proposal.

- The 2015 legislation authorizing use of mandatory e-filing also created an exclusion for residential foreclosure and consumer debt actions in Supreme Court. Under present law, other than for purposes of initial filings in these cases and, until September 1, 2021 (*see* L. 2020, c. 58, Item SS), with exemption for certain statutorily-stipulated counties where mandatory e-filing was in effect prior to 2015, e-filing may not be made mandatory in these cases. And, yet, the experience we have had in the exempt counties since 2015 has been highly positive, with no indication of problems that would contraindicate continued application of mandatory e-filing in them beyond the coming sunset, or, indeed, that would dictate against permanent elimination of the existing exclusion for the benefit of practitioners in all counties.

With the emergence of the pandemic, it also became evident that broad authorization for use of e-filing in *all* of the State's trial courts was very much needed. As we entered the pandemic season, e-filing was statutorily-permitted only in Supreme Court, the Court of Claims, the Surrogate's Court, the New York City Civil Court and, on a very limited basis, in Family Court and in superior criminal courts³. *See* CPL 10.40(2)(a); Family Court Act §214(b). There was no authority for use of e-filing in the NYC Criminal Court and the District, Town, Village, and City Courts outside the City. This was truly unfortunate as the pandemic shuttered public and private institutions across the State. These courts – which, aside from Family Court, all serve as criminal courts and, upstate, as courts of lesser civil jurisdiction including small claims, landlord/tenant, and commercial claims – are typically among the courts most frequented by New Yorkers. They play a crucial role in dispensing justice in a broad range of case types and in collecting fines and fees for State and local government. Many of the litigants in these courts are self-represented and quite often do not reside near the courthouses in which their cases are being heard. For these litigants, especially those in rural areas without easy access to transportation, the availability of e-filing during the pandemic would have enabled them and, where they are represented, their attorneys, to safely, conveniently and securely file their court documents with the court and with their adversaries. For self-represented litigants, in particular, it would have spared them from having to take time off from work to attend court in many matters. And, for courts and the judges and nonjudicial personnel that serve them, the availability of e-filing would have promoted a safer working environment as much unnecessary foot traffic in courthouses could have been avoided.

The pandemic and its impact upon our communities should serve as the strongest possible incentive to expand the availability of e-filing to all courts of our Judiciary. Note that enactment of this measure would not automatically institute e-filing in all courts. Consistent with the careful and deliberate way in which, historically, e-filing has been introduced in the courts that now use it, this measure would only permit, but not require, the Chief Administrative Judge to institute e-filing programs in the lower courts of the State. Actual roll-out of these

³ Authorization for use of e-filing in Family Court and superior criminal court will expire on September 1, 2021. Also, while there is statutory permission for mandatory e-filing in these courts, it is limited, in both instances, to six venues. *See* Family Court Act §214(b)(ii)(2); CPL 10.40(2)(b)(ii).

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programs would be undertaken in the future as community needs, court resources, and local bench/bar interests dictate.

In short, this measure will simplify and clarify e-filing's role in the administration of justice in New York. Moreover, by expanding that role to permit use of e-filing in more courts and in more classes of cases, this measure can be a vital step in protecting public health for all those who must work in and use the courts at a particularly anxious time in our state's history."

C. *Effective Date.* This measure, which would have no meaningful fiscal impact, would take effect immediately.

Legislative History: None. New proposal.

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Appendix

The following is a chronicle of the statutory evolution of e-filing in New York State since its inception in 1999:

L. 1999, c. 367, effective 7/27/1999

The State's introduction to e-filing. This measure authorized use of consensual e-filing in Supreme Court in one county in New York City and in one county outside the City, to be selected by the Chief Administrative Judge with the approval of the Administrative Board of the Courts. Under chapter 367, e-filing would be available for the filing of papers in commercial and tax *certiorari* cases in Supreme Court to commence a case and, as well, for the exchange of legal papers between counsel for the parties in such cases where all have consented to such exchange. Chapter 367 was scheduled to sunset on July 1, 2002, approximately three years after its enactment. In the wake of its enactment, consensual e-filing was authorized for commercial cases in the Commercial Divisions of Supreme Court in Monroe and New York Counties; and for tax *certiorari* cases in Supreme Court in Westchester County.

L. 2002, c. 110, effective 6/28/2002

This measure continued the e-filing programs established by chapter 367 for another year, *i.e.*, until July 1, 2003. Also, in order to permit broader experience with e-filing under the programs, the measure expanded the number of venues in which consensual e-filing could be authorized to include commercial claims in the Commercial Divisions of Supreme Court in Albany, Monroe, Nassau, New York, Suffolk, and Westchester Counties; and tax *certiorari* cases in Supreme Court in Monroe, New York, Suffolk, and Westchester Counties. Finally, the measure authorized – for the first time - use of consensual e-filing in the Court of Claims.

L. 2003, c. 261, effective 7/29/2003

This measure continued the e-filing programs established by chapter 367 and modified by chapter 110 for another 26 months – until September 1, 2005.

L. 2004, c. 384, effective 8/17/2004

Responding to community requests, this measure expanded the number of venues and classes of cases in which consensual e-filing could be authorized to include commercial claims and tort cases in Supreme Court in Albany, Bronx, Kings, Monroe, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties; commercial claims in Supreme Court in Erie County; tax *certiorari* cases in Supreme Court in Bronx, Kings, Monroe, New York, Queens, Richmond, Suffolk, and Westchester Counties; and cases in Surrogate's Court in Erie County.

L. 2005, c. 504, effective 8/16/2005

This measure continued the e-filing programs established by chapter 367, as amended, for another four years – until September 1, 2009. Again recognizing growing community

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enthusiasm for e-filing in the courts, this measure further expanded the number of venues and classes of cases in which consensual e-filing could be authorized to include commercial claims, tax *certiorari* and tort cases in Supreme Court in Albany, Broome, Bronx, Erie, Essex, Kings, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan, and Westchester Counties; and *all* classes of cases in Supreme Court in Broome County. At the same time, it continued authority for e-filing in cases in Surrogate's Court in Erie County.

L. 2007, c. 369, effective 7/18/2007

This measure further expanded the number of venues in which consensual e-filing could be authorized in commercial claims, tax *certiorari* and tort cases in Supreme Court to include Livingston County, along with Albany, Broome, Bronx, Erie, Essex, Kings, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan, and Westchester Counties (and *all* classes of cases in Supreme Court in Broome County). At the same time, it continued authority for e-filing in cases in Surrogate's Court in Erie County and added comparable authority for e-filing in cases in Surrogate's Court in Chautauqua, Monroe, Queens, and Suffolk Counties. Finally, it added authority for consensual e-filing in the New York City Civil Court in claims brought by a provider of health services specified in section 502(a)(1) of the Insurance Law against an insurer for failure to comply with Insurance Department rules promulgated pursuant to section 5108(b) of the Insurance Law.

L. 2008, c. 95, effective 5/27/2008

This measure authorized the Chief Administrative Judge to permit consensual e-filing in all classes of cases in Supreme Court in Erie County, along with Broome County.

L. 2009, c. 416, effective 9/1/2009

Marking the tenth anniversary of New York's experience with consensual e-filing programs, this measure made permanent the Chief Administrative Judge's authority to permit such programs; and expanded that authority so that it could be used to permit e-filing in *any* class of cases in Supreme Court in any county, in Surrogate's Court in *any* county, in the Court of Claims statewide and in the New York City Civil Court. The measure also, for the first time, permitted establishment of mandatory e-filing programs, albeit limited to certain categories of commercial claims in New York County, tort cases in Westchester County, and one or more classes of cases (excluding matrimonial actions, Article 78 proceedings, proceedings under the Mental Hygiene Law and Election Law proceedings) in one other county outside New York selected by the Chief Administrative Judge. This authority for mandatory e-filing was made subject to a three-year sunset (September 1, 2012).

L. 2010, c. 528, effective 9/17/10 [retroactive to 9/1/09]

This measure built upon the changes instituted by chapter 416 of the Laws of the preceding year, especially as they applied to the newly-authorized deployment of mandatory e-filing in civil parts of Supreme Court. Specifically, the measure authorized the Chief Administrative Judge to permit mandatory e-filing in the same categories of

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commercial claims in Westchester County as it had authorized for such claims in New York County; and replaced authority for the Chief Administrative Judge to permit unrestricted (but for the exceptions created under chapter 416) mandatory e-filing in a single county outside New York with authority to permit such e-filing in the following four counties: Livingston, Monroe, Rockland, and Tompkins. The measure also added the requirement that each local county clerk okay institution of mandatory e-filing in his or her county before it could be required. Finally, the measure imposed a continuing and more detailed annual reporting requirement for the Chief Administrative Judge relating to the operation of e-filing programs.

L. 2011, c. 543, effective 9/23/2011

This measure expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court. Specifically, it authorized their establishment in Supreme Courts in New York City in commercial claims without regard to the amount in controversy; and in a broader array of counties than had been authorized by chapter 528 of the Laws of 2010 (adding Allegany, Essex, and Onondaga Counties, and permitting mandatory e-filing in all classes of cases (excluding matrimonial actions, Article 78 proceedings, proceedings under the Mental Hygiene Law and Election Law proceedings) in Westchester). The measure also permitted the Chief Administrative Judge to authorize mandatory e-filing in Surrogate's Court in any county, and in the New York City Civil Court in claims brought by a provider of health services specified in section 502(a)(1) of the Insurance Law against an insurer for failure to comply with Insurance Department rules promulgated pursuant to section 5108(b) of the Insurance Law. Finally, the measure created additional advisory committees to assist the Chief Administrative Judge in meeting a responsibility to provide the Legislature with continuing evaluations of the State's e-filing programs and to help plan for institution of e-filing in criminal courts and Family Court.

L. 2012, c. 184, effective 7/18/2012

This measure further expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court. Specifically, it again added to the array of counties that had been authorized by chapter 528 of the Laws of 2010 (and modified by chapter 543 of the Laws of 2011), this time to include Erie and Suffolk Counties. At the same time, it authorized the Chief Administrative Judge to extend mandatory e-filing to any class of cases (with the same exclusions applicable to mandatory e-filing in upstate counties¹) in Supreme Court in the counties of New York City. Lastly, the measure authorized the Chief Administrative Judge to institute consensual (and, under limited circumstances, mandatory) e-filing in criminal superior courts and in Family Court.

L. 2013, c. 113, effective 7/12/2013

This measure once again expanded the breadth of mandatory e-filing programs in civil parts of Supreme Court, adding Nassau County to the array of counties that had been authorized by chapter 528 of the Laws of 2010 (and modified by chapter 543 of the Laws of 2011 and chapter 184 of the Laws of 2012).

L. 2015, c. 237, effective 8/31/2015

Appendix A

This measure made permanent the Chief Administrative Judge's authority to permit institution of mandatory e-filing programs in all counties and in most classes of cases⁴. Also, it continued permanently, without change, programs of consensual and mandatory e-filing in Surrogate's Court and the New York City Civil Court; programs for consensual e-filing (and filing by FAX) in the Court of Claims; and existing authorization for the use of e-filing, both consensual and mandatory, in criminal superior courts and in Family Court subject to sunset on September 1, 2019. Finally, this measure authorized use of e-filing in the Appellate Divisions at the discretion of each Judicial Department subject to the same exclusions for mandatory e-filing applicable in the trial courts. Beyond these substantive changes, the measure relocated statutes governing e-filing from the State's Unconsolidated Laws to the CPLR and other appropriate procedural statutes in the Consolidated Laws⁵.

L. 2017, c. 99, effective 7/24/2017

This measure eliminated the exclusions of certain classes of cases as to which the Appellate Division could require mandatory e-filing. Henceforth, an Appellate Division could make *all* classes of cases before it subject to such e-filing. Also, this measure extended by one year, until September 1, 2018, the two-year sunset on permission for the deployment of mandatory e-filing in residential foreclosure and consumer debt proceedings. Finally, the measure changed the due date for the Chief Administrative Judge's annual report to the Legislature on e-filing (from April 1 to February 1).

L. 2018, c. 168, effective 7/31/2018

This measure extended by another year, until September 1, 2019, the sunset on permission for the deployment of e-filing in residential foreclosure and consumer debt proceedings.

L. 2019, c. 212, effective 8/29/2019

This measure extended by another year, until September 1, 2020, the sunsets on: (1) authorization to deploy e-filing in criminal superior courts and in Family Court, and (2) permission for the deployment of mandatory e-filing in residential foreclosure and consumer debt proceedings.

L. 2020, c. 58, Item SS, effective 4/3/2020

This measure extended by another year, until September 1, 2021, the sunsets on: (1) authorization to deploy e-filing in criminal superior courts and in Family Court, and (2) permission for the deployment of mandatory e-filing in residential foreclosure and consumer debt proceedings.

⁴ The legislation preserved the same exclusions from mandatory e-filing as were already in place.

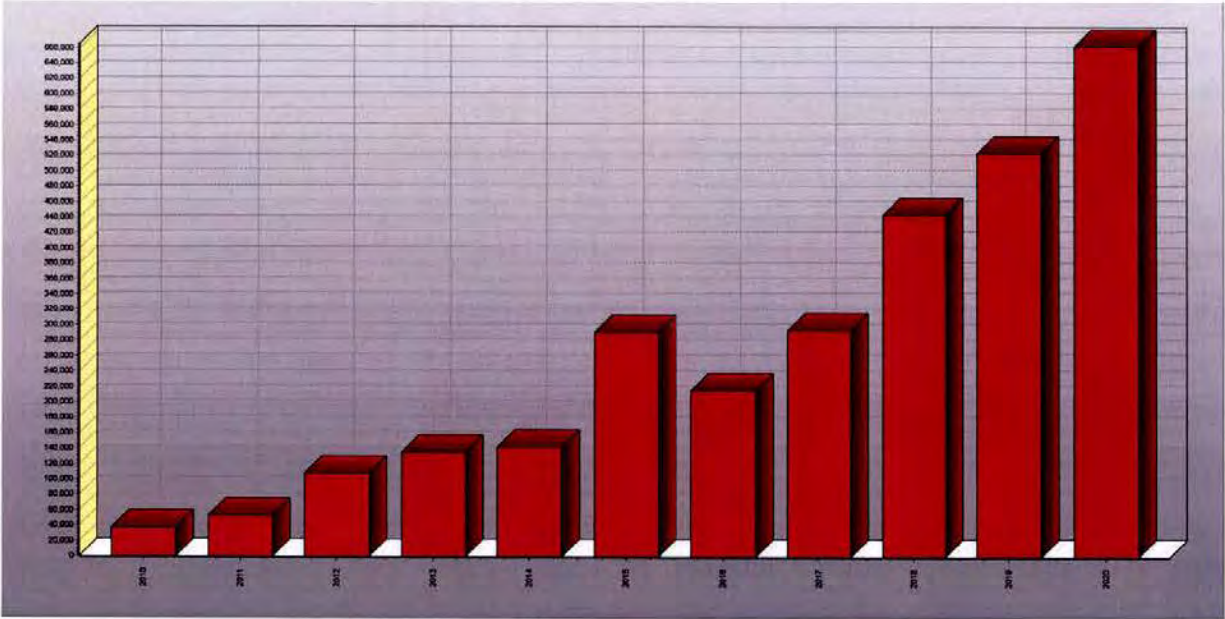
⁵ When originally enacted, the statutes enabling use of e-filing were placed in provisions of the State's Unconsolidated Laws. This made it very difficult for judges and lawyers to find these statutes. Accordingly, this measure relocated them in more familiar, more easily accessible places.

Appendix B

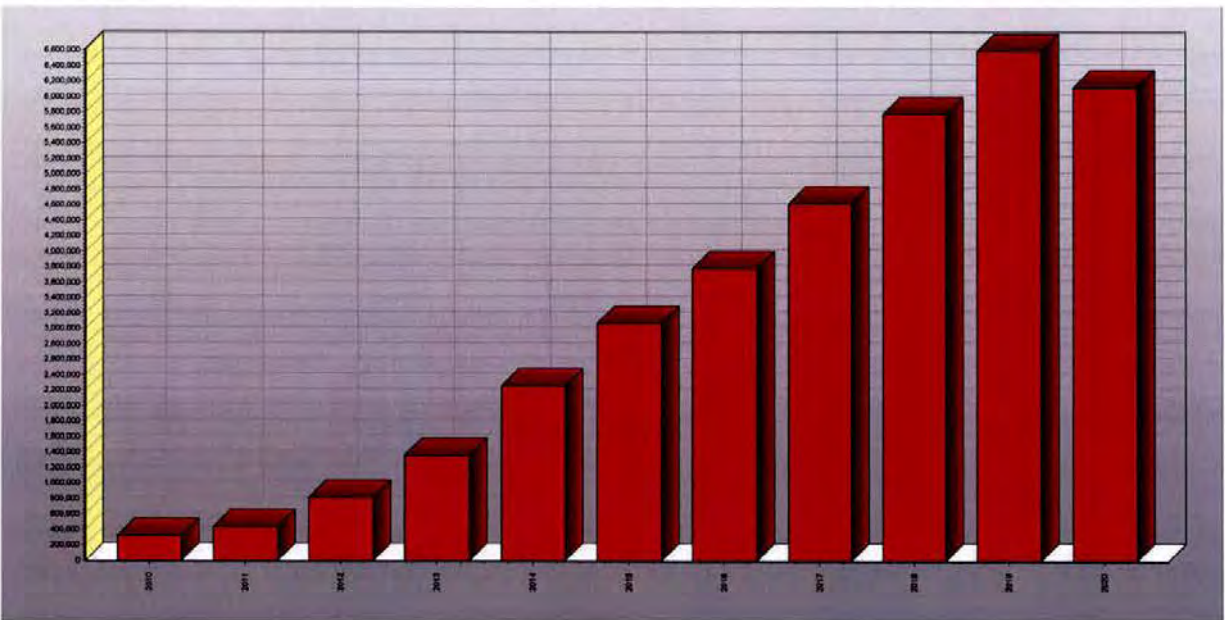
Progress Charts

Appendix B

SURROGATE'S DOCUMENTS FILED VIA NYSCEF 2010 - 2020

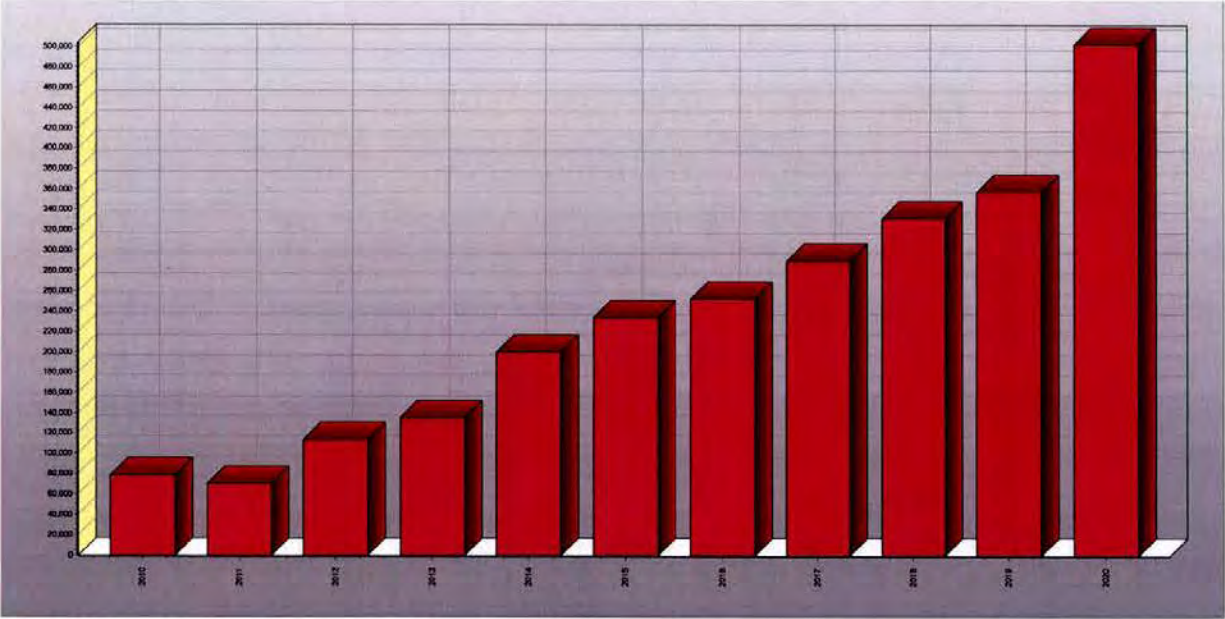


DOCUMENTS FILED VIA NYSCEF 2010 - 2020 (excluding Surrogate's)

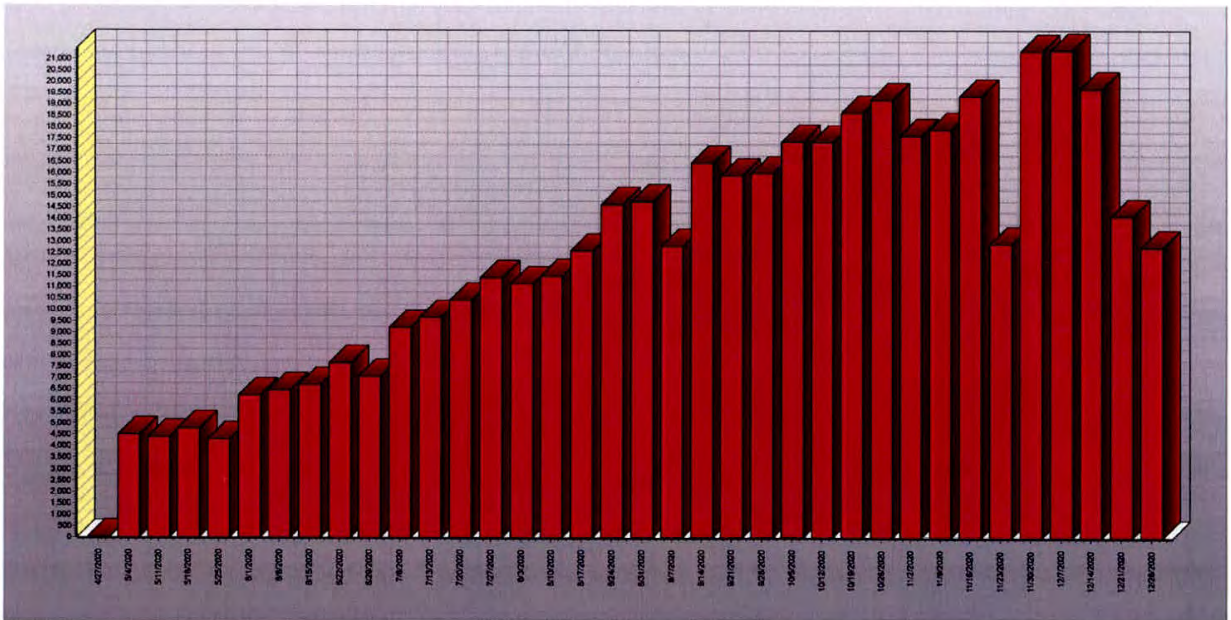


Appendix B

CASES CREATED VIA NYSCEF 2010 - 2020 (excluding Surrogate)



DOCUMENTS TRANSMITTED VIA EDDS WEEKLY 04/27/20 - 12/28/20



Appendix C

E-Filing Advisory Committees

Appendix C

SUPREME COURT (CIVIL) ADVISORY COMMITTEE ON E-FILING

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

Committee Chair

Hon. Timothy C. Idoni
County Clerk, Westchester
County, NY, White Plains, NY

Committee Vice-Chair

Jeffrey Carucci
Director, OCA Division of E-Filing
E-Filing Statewide Administrator

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Phyllis Mingione, Esq.
Mindy Jeng, Esq.

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Michael Alperstein, Esq.
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Plan (18-B), New York State
Supreme Court, Appellate
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Williamsville, NY

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Jeffrey Harradine, Esq.
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Reidy, LLP, Rochester, NY

Hon. John R. Higgitt
Acting Justice, Supreme
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Adrienne Holder, Esq.
(Tashi Lhewa for Adrienne Holder)
Attorney-in-Charge, Civil Practice,
Legal Aid Society, New York, NY

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Steuben County Clerk
Bath, New York

Hon. Bradford Kendall
Dutchess County Clerk
Poughkeepsie, NY

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Hon. Paula Feroletto, Buffalo, NY

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Chief Clerk, Civil Division,
NYS Supreme Court, Kings
County, Brooklyn, NY

Hon. Nancy T. Sunshine
County Clerk, Kings,
County, Brooklyn, NY

SURROGATE'S COURT ADVISORY COMMITTEE ON E-FILING

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

Committee Chair

Hon. Craig Doran
Administrative Judge,
7th Judicial District

Committee Vice-Chair

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Director, Division of Electronic Filing

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Phyllis Mingione, Esq.

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Surrogate's Court

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Surrogate's Court

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Surrogate's Court

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Nancy Burner & Associates,
PC, E. Setauket, NY

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& Flom LLP, New York, NY

Appendix C

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

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

Committee Chair

Hon. Michael V. Coccoma, JSC (ret.)
Former Deputy Chief
Administrative Judge for the,
Courts Outside New York City

Committee Vice-Chair

Jeffrey Carucci
Director, Statewide
Coordinator for E-Filing

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Attorney in Charge, Center for
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Chief Defenders Association of
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2013-present, New York, NY

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Poughkeepsie, NY

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Case Management Coordinator,
New York County Supreme Court
Criminal Branch, New York, NY

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Westchester Supreme
& County Court

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Director, Statewide Coordinator for E-Filing

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Court Task Force, New York, NY

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Attorney (Assigned Counsel
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State Supreme Court, Appellate
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Legal Services, NYC Administration
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Family Court, Buffalo, NY

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Director, Attorneys for Children
Program, New York State Supreme
Court, Appellate Division, Second
Department, Brooklyn, NY

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Brooklyn, NY

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Legislative Counsel, Office
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Coordinator for E-Filing

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Mindy Jeng, Esq.

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Unit Director, HOPP
Regional Coordinator,
Central Islip, NY

Barbara Finkelstein, Esq., CEO
Legal Services of the Hudson Valley

Chris Gibson
Court Clerk Specialist,
Deputy Statewide E-filing
Coordinator

Steve Helfont
Director, Division of Policy
& Planning, Office of
Court Administration

Hon. Timothy C. Idoni
Westchester County Clerk

Jacob Inwald
Director of Foreclosure
Prevention, Legal Services NYC

Catherine Isobe
Brooklyn Legal Services,
Brooklyn, NY

Joseph Kelemen
Executive Director, Western
Law Center, Buffalo, NY

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Legal Aid Society
New York, New York

Hon. Elizabeth Larkin
Cortland County Clerk

Daniel Marren
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New York State Supreme Court,
8th Judicial District

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Administrator (retired),
NYS Supreme Court,
New York County

Phyllis Mingione
Principal Court Attorney,
Statewide E-Filing Office

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Program Director, Housing Unit
Legal Aid Society of
Rochester, New York

Silvia Orna
Chief Operating Officer, Latino
Justice PRLDEF, New York, NY

Hon. Nancy Sunshine
Kings County Clerk

Maha Syed
Executive Director,
The New York Legal
Services Coalition

Appendix D

Letters of the Statewide E-Filing Director
and Notices Seeking Comment

Appendix D



NEW YORK STATE

Unified Court System

OFFICE OF COURT ADMINISTRATION

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

Nancy J. Barry, ESQ.
CHIEF OF OPERATIONS

JEFFREY CARUCCI
Director – OCA Division of Electronic Filing

December 28, 2020

SENT VIA E-MAIL

To: Hon. County Clerk

Re: New York State Courts Electronic Filing Program

Pursuant to Judiciary Law § 212, the Chief Administrative Judge of the State of New York must submit to the Legislature, the Governor, and the Chief Judge an annual report evaluating the state's experience with electronic filing and containing recommendations for further legislation. Preparation of this report includes consulting with County Clerks in whose counties an e-filing program has been implemented and soliciting comments from all County Clerks on both implementation and proposed legislation for inclusion in the report due this year on February 1, 2021.

The changes under consideration relate to the authority of the Chief Administrative Judge to expand mandatory e-filing. Under current law, the Chief Administrative Judge decides the courts and case types in which e-filing should proceed. Mandatory e-filing, however, is prohibited in certain civil case categories in Supreme Court, such as Article 70, Article 78, election law, matrimonial, and Mental Hygiene Law cases.

In particular, we invite comment regarding the proposed legislation which would lift the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in all civil case types.

As always, if any of the current legislative exclusions from mandatory e-filing were eliminated, a mandatory program could be implemented by order of the Chief Administrative Judge issued only after consultation with the Bar, the legal services providers and other groups. See, CPLR 2111(2)(C)(i). Moreover, in Supreme Court, the consent of the County Clerk of an affected county would be required. CPLR 2111(2)(C)(ii).

Appendix D

This proposal would not alter other existing e-filing safeguards. Unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate; and attorneys lacking the equipment or knowledge would continue to have the right to opt out of e-filing. Finally, the e-filing system would continue to assure confidential treatment of cases such as matrimonial actions, as provided elsewhere under State law.

In order that we may have the time needed to prepare the report, Chief Administrative Judge Lawrence K. Marks has asked that you please submit any comments by January 25, 2021. All comments received will be included in the Annual Report. Comments should be sent by e-mail or regular mail to either of the following addresses:

Jeffrey Carucci, Dir.
OCA Division of Electronic Filing
Office of Court Administration
25 Beaver Street, Rm 823
New York, New York 10004

E-mail: jcarucci@nycourts.gov

We look forward to your commentary: your observations are an important part of our efforts to ensure that the Court System's e-filing program continues to expand in a measured, responsive, and appropriate fashion. And as always, thank you for all your hard work, and that of your staff, to make e-filing a successful reality in your county.

Yours truly,



Jeffrey Carucci

cc: Hon. Lawrence K. Marks, Chief Administrative Judge
John W. McConnell, Esq., UCS Executive Director
Nancy Barry; UCS Chief of Operations
Eileen D. Millett, Esq., UCS Counsel

Appendix D



NEW YORK STATE

Unified Court System

OFFICE OF COURT ADMINISTRATION

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JEFFREY CARUCCI
DIRECTOR, OCA DIVISION OF E-FILEING

December 22, 2020

To: Bar Associations, Legal Service Providers, Other Interested Organizations, and Attorneys

Re: New York State Courts Electronic Filing Program

As you may know, the Office of Court Administration submits a report each February 1 to the Legislature, the Governor, and the Chief Judge evaluating the State's experience with the Unified Court System's electronic filing system. I write to invite your comments on electronic filing for inclusion in that annual report in 2021.

I write as well to solicit your observations, for inclusion in the February report, on a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state – in any or all of the State's trial courts.

This recommendation was endorsed in a recent report of The Commission to Reimagine the Future of New York's Courts, created last June by Chief Judge Janet DiFiore and charged with, *inter alia*, examining the use by the UCS of technology and online platforms, and making recommendations to improve the delivery and quality of justice services, facilitate access to justice, and better equip the UCS to keep pace with society's rapid evolving changes and challenges.¹ Addressing electronic filing generally, the Commission reported: "In-person filing wastes attorney time, client money, and court resources, and is especially dangerous during the global health crisis we are currently experiencing." (Report, p.9) It further stated: "By implementing mandatory, standardized e-filing throughout the state, courts can save time and money and keep everyone safe. However, the existing exceptions for pro se litigants and technologically challenged attorneys should remain." (*id.*)

¹ Initial Report on the Goals and Recommendations for New York State's Online Court System, Online Courts Working Group of the Commission to Reimagine the Future of New York's Courts, November 9, 2020 ("Report"), available at <http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>.

Appendix D

Currently, the Chief Administrative Judge is restrained from making e-filing mandatory throughout New York State. The Commission's proposal -- to lift the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in any court and/or action -- would not alter requirements of consultation with the Bar, legal services providers and other groups (as well as the need for consent of the County Clerk in affected counties outside New York City in Supreme Court matters) in advance of any future expansion or affect other existing provisions in the e-filing legislation. Further, unrepresented persons in cases in which e-filing would otherwise be mandatory would continue to be exempt from e-filing unless they affirmatively choose to participate. Moreover, attorneys in such cases would continue to be able to opt out of e-filing if they lack the equipment or knowledge to participate. Finally, the proposal would not alter current requirements of confidentiality in the treatment of actions that require it.

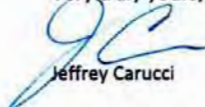
In order that we may have the time needed to prepare the report, I ask that you as a group or any of your individual members submit any comments by January 25, 2021. All comments received will be included in the Annual Report. Comments should be sent by e-mail or regular mail to either of the following addresses:

Jeffrey Carucci, Dir.
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004

efilingcomments@nycourts.gov

We look forward to your comments on this program and proposal.

Very truly yours,



Jeffrey Carucci

cc: Hon. Lawrence K. Marks, Chief Administrative Judge
John W. McConnell, Esq., UCS Executive Director
Nancy Barry; UCS Chief of Operations
Eileen D. Millett, Esq., UCS Counsel
Marc C. Bloustein, UCS First Deputy & Legislative Counsel

Appendix D

NOTICE SEEKING COMMENTS ON ELECTRONIC FILING PROGRAM

In accordance with Section 212 of the Judiciary Law, the Chief Administrative Judge of the State of New York will submit to the Legislature, the Governor, and the Chief Judge not later than February 1, 2021, a report evaluating the state's experience with electronic filing for the commencement of actions and proceedings and the service and filing of papers therein and containing such recommendations for further legislation as are deemed appropriate. The report will include a proposed amendment to CPLR Art. 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state – in any and all of the State's trial courts. The Unified Court System welcomes the submission of comments about the implementation of the electronic filing program and the proposed amendment(s) from the organized bar; legal services groups; public defenders; 18-B attorneys; unaffiliated attorneys; victims' rights organizations; persons in whose county a program has been implemented in any of the courts therein; unrepresented parties; and any other interested persons. Comments received will be posted on the website of the Court System and included in the report. The report will also address such comments.

Comments should be submitted to Jeffrey Carucci, Director, OCA Division of Electronic Filing, on or before January 25, 2021. Comments should be sent by e-mail or regular mail to one of the following addresses:

Jeffrey Carucci, Dir.
OCA Division of Electronic Filing
Office of Court Administration
25 Beaver Street, Room 823
New York, New York 10004

E-mail: efilingcomments@nycourts.gov

December 22, 2020

Comments on Mandatory E-Filing Programs in the NY State Courts

- Admin (#100 to 154)
- Courts (#200 to 221)
- Appellate Division Rules
- Senior Credit Reform Rules
- Comments
- Requests for Public Comment
- Request on Mandatory E-Filing



Request for Public Comment

In preparation for an annual report on the subject of electronic filing (e-filing), to be submitted to the Legislature, the Governor, and the Chief Judge, the Chief Administrative Judge is seeking comments from the public about the Unified Court System's e-filing program. Observations and recommendations on this subject are welcome from attorneys, litigants, and other members of the public. Additionally, the report will include proposed amendments to relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state – in any and all of the State's trial courts – comments regarding the proposed amendment(s) are also welcome.

Notice

Interested parties may email comments to efilingcomments@nycourts.gov, or submit by letter to Jeff Carucci, Dir., OCA Division of E-Filing, Office of Court Administration, 25 Beaver Street, Room 823, NY, New York 10004. Comments must be received no later than January 25, 2021.

Comments received will be posted on the website of the Court System and included in the report. The report will also address such comments.

Introduction

What's New

- ▶ CORONAVIRUS UPDATES
- ▶ Feb. 02 - Commission to Reimagine Future of NY's Courts Issues Additional Recommendations
- ▶ Jan. 27 - NYC Civil Court Launches Online Dispute Resolution Pilot Program
- ▶ Jan. 13 - Hon. Deborah Kaplan Named NYS Justice Task Force Co-Chair

Sign up for the NY Courts new:
Emergency Alert Portal



Court Closings & Alerts

New York State Court System



Request for Public Comment



The State of Our Judiciary 2020

NYCOURTS.GOV NEW YORK STATE UNIFIED COURT SYSTEM

<p>More What's New</p> <p>THE COURTS</p> <ul style="list-style-type: none"> Court Leadership Court Locator Court Interpreters Forms Rules Careers <p>PROGRAMS & SERVICES</p> <ul style="list-style-type: none"> Access to Justice Accessibility (ADA) Alternative Dispute Resolution Court Research: Data & Stats Criminal History Searches Language Access Law Libraries 	<p>e-COURTS</p> <ul style="list-style-type: none"> e-Filing e-Track Decisions <p>REPRESENTING YOURSELF, COURTHELP</p> <ul style="list-style-type: none"> Do-It-Yourself (DIY) Forms Help Centers Legal Basics Sealing a Conviction <p>THE LAW</p> <ul style="list-style-type: none"> Divorce Domestic Violence Foreclosure <p>COURT ADMINISTRATION</p>	<p>JURORS</p> <p>LEGAL PROFESSION</p> <ul style="list-style-type: none"> Attorney Registration Attorney Search Attorney / Client Relationship CLE In-House Counsel Legal Consultants Pro Bono <p>JUDGES</p> <ul style="list-style-type: none"> Judges' Profiles Judicial Resources <p>DISCRIMINATION, BIAS & MISCONDUCT COMPLAINTS</p> <p>PRETRIAL SERVICES</p>	<p>SEARCH NYCOURTS.GOV</p> <p>TOPICS A to Z</p> <ul style="list-style-type: none"> FAQ's PUBLICATIONS PUBLIC AFFAIRS PUBLIC INFORMATION RELATED SITES CONTACT US <div style="display: flex; align-items: center; gap: 10px;">  <p>AMERICANS with DISABILITIES</p> </div> <p> Court Closings/Alerts</p> <p>SOCIAL MEDIA </p>
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Español 中文(简体) Français 한국어 ਪੰਜਾਬੀ Русский العربية Lákk Kreyòl Ayisyen

Appendix E

Persons, Entities, Agencies and Groups
to which Solicitations Were Sent

Appendix E

1ST JUDICIAL DISTRICT (NEW YORK COUNTY)

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Asian American Legal Defense and Education Fund
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Center for Constitutional Rights
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Latino Justice PRLDEF
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5TH JUDICIAL DISTRICT (HERKIMER, JEFFERSON, LEWIS, ONEIDA, ONONDAGA, OSWEGO COUNTIES)

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6TH JUDICIAL DISTRICT (BROOME, CHEMUNG, CHENANGO, CORTLAND, DELAWARE, MADISON, OTSEGO, SCHUYLER, TIOGA, TOMPKINS COUNTIES)

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Madison County Bar Association
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Otsego County Bar Association
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Tompkins County Bar Association
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**NYS Mental Hygiene Legal
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7TH JUDICIAL DISTRICT (CAYUGA, LIVINGSTON, MONROE, ONTARIO, SENECA, STEUBEN, WAYNE, YATES COUNTIES)

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Public Defender Livingston County
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**American Academy of Matrimonial
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8TH JUDICIAL DISTRICT (ALLEGANY, CATTARAUGUS, CHAUTAUQUA, ERIE, GENESEE, NIAGARA, ORLEANS & WYOMING COUNTIES)

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9TH JUDICIAL DISTRICT - DUTCHESS, ORANGE, PUTNAM, ROCKLAND, WESTCHESTER COUNTIES

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12TH JUDICIAL DISTRICT (BRONX COUNTY)

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Appendix E

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Appendix F

Submissions Received from the
E-Filing Advisory Committees
and the Statewide Coordinating
Judge for Matrimonial Cases

Appendix F



WESTCHESTER COUNTY CLERK

Timothy C. Idoni
County Clerk

February 3, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

Dear Judge Marks:

I am writing in my capacity as Chair of the New York Supreme Courts (Civil) E-Filing Advisory Committee which met earlier today to review the proposed legislation allowing for the expansion of electronic filing (e-filing) and the permission for the Chief Administrative Judge to institute e-filing in any or all courts of any case type. It's our understanding that the legislation will be designated as OCA 2021-1 when presented to the State Legislature next week.

Our committee has been meeting regularly over the past three years as prescribed under State law to offer our advice and recommendations on the expansion of e-filing programs across the entire State of New York. We have watched the program evolve positively and admire the e-filing staff at the Office of Court Administration which has helped sixty counties adopt e-filing programs. We have seen the program progress with the hard work of local bar associations, interested groups and County Clerks to allow for its innovation and modernization of the entire court system.

We understand that Article 6 of the New York State Constitution provides that the State Legislature may delegate to the Chief Administrative Judge any powers to regulate practice and procedure in the courts. Over the past twenty years, e-filing has expanded gradually but today access to the courts through e-filing is exponentially greater. The Covid-19 crisis has helped us realize that e-filing allows the court system to readily meet the needs of the public, as it obviates the need for physical appearance in the courts. Virtual court proceedings have benefitted from electronic filings.

This bill would give the Chief Administrative Judge the power to expand e-filing without waiting another year for legislative approval. E-filing has been proven over these many years to provide the courts with a modern way of processing documents with additional significant benefits financially and even environmentally.

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The Chief Administrative Judge should have the discretion to institute without limitation. The Unified Court System is comprised of hundreds of different courts of various types. The Chief Administrative Judge is fully capable of responding to implement said program and the pandemic has demonstrated the need for swift action.

After twenty years of testing and experience the next evolutionary step is to make the e-filing program permanent. The legislation still allows for safeguards as the Chief Administrative Judge must still receive consultation and input, provide for opt-outs and preservation of the rights of unrepresented litigants, and to maintain confidentiality. **Our committee strongly recommends the passage of OCA2021-1.**

Sincerely,



Timothy C. Idoni
Westchester County Clerk
Chair, New York Supreme Court (Civil) E-Filing Advisory Committee

cc: New York Supreme Court (Civil) E-Filing Advisory Committee
J. Carucci, OCA

Appendix F

SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING
For the New York State Unified Court system

Hon. Michael Coccoma, Chairperson
*Former - Deputy Chief Administrative Judge
Outside New York City*

Jeffrey Carucci, Vice-Chairperson
*Director, OCA Division of
E-Filing*

February 4, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, NY 10004

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

Dear Judge Marks:

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" and "rules" subcommittees, were eager to reconvene on February 2, 2021. This group last met in December of 2019, at a meeting in which after nearly 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. 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. 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. Those plans were paused by the COVID-19 public health emergency, as all programming resources were allocated to the issues caused by the virus. We were so close . . .

- This committee as well as the nine designated Courts scheduled to be the first to go forward, remain committed and ready to proceed as soon as the resources are made available and the programming is complete. We intend to meet with the representatives of each county and their stakeholder groups: Cortland, Erie, Kings, Monroe, New York, Queens, Richmond, Suffolk, and Westchester Counties.¹ As the program and

¹ Onondaga and Essex Counties have also expressed an interest and have/or will be assembling a stakeholder group.

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SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING For the New York State Unified Court system

functionality of the screens is built the group will be able to further review and test as we once again prepare to launch this program.

- The “rules” subcommittee will also resume regularly meeting 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 must draft equivalent rules for the electronic filing of documents in the Superior Court that are not adequately addressed in the existing e-filing rules. Once we complete this task, the proposed rules will be submitted to counsel’s office and the Administrative Board for approval.² 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 with their specific/local practices.
- Over 35 committee members, representing a broad spectrum of the legal community, including, representatives from the Supreme/County Courts, County Clerks’ Offices, District Attorneys’ Offices, Criminal Defense Bar, Public Defender Offices, and other Legal Service Organizations, participated in our February 2, 2021 meeting. All of them are ready to pick up where we left off in December 2019, as the COVID-19 virus has reinforced the immediate need for electronic filing. While this committee may be unable to report on specific e-filing experience(s) at this time, we are able to report on 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.³ The experience and ease of this electronic transmission created through EDDS have increased the desire for the NYSCEF pilot program with its significant additional benefits. As technology continues to prove just how invaluable a tool it can be, as it has clearly shown during this public health emergency, this e-filing program cannot come quick enough. We are aware that the implementation of this important program depends very much on current court resources. We strongly recommend that NYSCEF is made a priority and that more resources are allocated to the NYSCEF Division so that this important program will be a reality in 2021.
- Additionally, the committee overwhelmingly supports proposed legislation (OCA 2021-1) permitting the expansion of e-filing and lifting the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in any court and/or action, with the inclusion of the current safeguards maintaining confidentiality of the record.

² The Chair and Vice Chair met with OCA’s Criminal Justice Deputy Counsel, Anthony Perri, on February 4, 2021. Mr. Perri will be joining the full committee in our next meeting and will join the rules subcommittee in upcoming meetings to continue the drafting of e-filing rules for the Superior Criminal Courts.

³ To date, over 80,000 documents have been transmitted via EDDS in Criminal matters statewide.

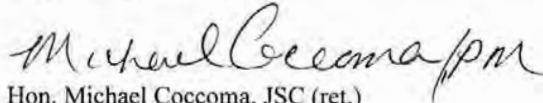
Appendix F

SUPREME AND COUNTY (CRIMINAL) ADVISORY COMMITTEE ON E-FILING
For the New York State Unified Court system

The committee looks forward to continuing working together to test 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 look forward to finally being able to report on the implementation of the pilot e-filing program in the Superior Court in our next submission.

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

Respectfully submitted,



Hon. Michael Coccoma, JSC (ret.)

Chairperson

Supreme and County (Criminal) Advisory Committee on E-Filing

cc: Committee Members

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January 1, 2021

Jeffrey Carucci, Dir,
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Re: Criminal E-filing

Dear Mr. Carucci:

I write in my capacity as a member of the Rules Sub-Committee of the Advisory Committee on Criminal E-Filing, to comment upon the proposal to implement e-filing in the Supreme Court, Criminal Term. As the Attorney-in-Charge of the Center for Appellate Litigation, I have an interest in ensuring that e-filing requirements, if implemented, assist in establishing a complete record of the proceedings in the trial courts for purposes of the defendant's criminal appeal.

The Center for Appellate Litigation is a 50-lawyer not-for-profit law firm that represents indigent clients in criminal appeals and post-conviction proceedings in the Appellate Division, First Department, and in Bronx and Manhattan Supreme Court. CAL prides itself on its outstanding oral and written appellate advocacy, its commitment to high quality and holistic indigent defense, and its dynamic and innovative approaches to representing its clients.

The implementation of an e-filing system in Supreme Court, Criminal Term, should include rules and procedures designed to ensure that all significant documents in the litigation make it into the system. Because many documents, beyond just formal motion papers, are submitted by the parties in court, more or less formally, the e-filing system must have the capacity to capture and record those documents.

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Many criminal cases include pro se motions by defendants and letters by family members. There is e-mail correspondence by the litigants over matters like requests to charge. Cases may also include documents filled out in court, such as waivers of the right to be present at side bar conferences, waivers of the right to appeal, and waivers of indictment. And those cases could well include documents generated in court, including jury notes, predicate felony statements, and commitment sheets. Additional documents, such as court decisions handed up to the bench in support of an argument and hard-copy requests to charge are frequently generated.

Many of these documents fail to make it into the Supreme Court file that becomes, for the indigent defendant, the “record on appeal” in cases heard on the original record in the First Department. Rarely do all of them make it. Rather, they must be painfully reconstructed by the litigants to supplement the record provided to us by the appellate court, often delaying the appeal by several months.

In order to ensure that those documents make it into any e-filing system, the court staff must have the capacity as well as the obligation to scan, save, and record those filings in the e-filing system. Any e-filing system that fails to capture those critical documents would not serve as a substitute for the actual court file and would not be useful in ensuring a complete record of the proceedings.

Additionally, the gathering of critical trial exhibits often, in and of itself, delays the perfection of an appeal by an additional two to three months, as these exhibits are kept in the trial ADA’s file, which has already been sent to storage by the time that the defendant’s appellate counsel is assigned. If these exhibits could be scanned into the e-filed record at the time of trial, appeals would be speeded up significantly.

Moreover, anything that could be done to reduce the often-significant lag time between the filing of the notice of appeal for indigent criminal defendants and the assignment of appellate counsel would be most welcome.

In addition to ensuring a complete record, an e-filing system must have the capacity to handle sensitive, non-public documents. In a typical criminal case, numerous documents are submitted to the court that by statute cannot be publicly disseminated, including criminal history reports, presentence investigation reports, and C.P.L. § 730 reports. In addition, other documents, such as pre-pleading memorandums, may well contain personal, medical, or psychiatric records or information, that ought not to be shared beyond the litigants. While an e-filing system must protect the confidentiality of such documents, it should be designed so that those documents – frequently the critical documents to the case and the appeal – are available to the litigants at the trial proceedings and subsequently on appeal.

Lastly, any e-filing system should be designed to prevent the mining of information by companies for potential resale or reuse. Although some court documents are publicly available during the pendency of a case, those same documents would have to be sealed upon dismissal, acquittal, post-conviction reversal, or imposition of youthful offender status. The e-filing system should be designed so that documents, though publicly available during the pendency of the

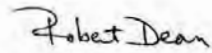
Appendix F

matter, cannot be bulk downloaded by data mining companies at that stage so as to undermine any subsequent sealing.

In sum, any e-filing system should be designed with the appellate process in mind. The system should be designed to contain a complete set of all necessary documents, should address confidentiality concerns, and should ensure proper sealing of information upon post-conviction relief being granted.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert Dean".

Robert S. Dean
Attorney-in-Charge

STATE OF NEW YORK

Hon. Craig J. Doran
Supreme Court Justice



Seventh Judicial District
Administrative Judge

February 8, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

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

Dear Judge Marks,

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.

The committee has met two times since the 2020 report on electronic filing:

- The first meeting was held on October 20, 2020 and focused on proposed mandatory e-filing in Broome County Surrogate's Court. After our review the committee voted unanimously to recommend your approval of this action, and Administrative Order 247/20, formally launched the mandatory e-filing program in the Broome County Surrogate's Court, effective October 21, 2020.
- The second meeting was held on February 1, 2021, to discuss and vote our recommendation on proposed mandatory e-filing programs in the Surrogate's Court in Columbia, Greene, Rensselaer, Schoharie, Lewis, Orange, Putnam, and Rockland Counties. The committee members considered the comprehensive steps taken to notify bar associations, legal organizations, and other interested persons of the proposed mandatory programs. After intensive outreach, the committee having received no comments in opposition, voted unanimously to recommend your approval of the above-mentioned mandatory e-filing programs.
- An additional discussion was held at our last meeting regarding the 2021 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 mandatory across the state in all of the State's trial courts.¹

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Appendix F

Hon. Lawrence K. Marks

Page 2.

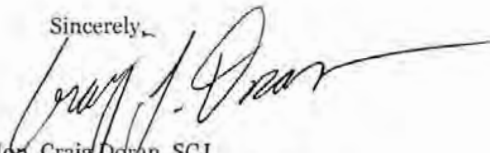
February 8, 2021

This committee, representing a broad spectrum of the legal community, has been meeting regularly over the past 5 years and has keenly reported the Surrogate's Court steady e-filing expansion across the state. As of the next Administrative Order later this month, which will include the authorization of the proposed mandatory programs for the Surrogate's listed above, there will be 54 Surrogate's Courts with active e-filing programs throughout the state. The Committee was also informed that after a canvass of the 8 remaining Surrogate's Courts without e-filing programs, most of these Courts have begun the initial process seeking authorization to e-file in 2021. This progress, over the years, has been made possible by the ongoing support and hard work of many, i.e., court staff, bar associations, legal service providers, committees, etc. However, as the Committee remarked, it is the hard work of Jeff Carucci and his dedicated and professional E-Filing staff that has propelled this enormous project forward throughout the state, and kept it moving and adapting in response to the challenges caused by the COVID-19 virus. It was also noted by several committee members that the NYSCEF system has been a phenomenal tool allowing the legal profession to continue its important work during this unprecedented public health crisis. Parties who may not have first been eager to e-file, quickly found e-filing to be a great convenience. 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 complete the expansion to the remaining Surrogate's Courts.

The members of the committee believe that the NYSCEF program is a valuable tool and also recommends without any reservations 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. The COVID-19 virus has highlighted the immediate need for the expansion of this program. The solid foundation of the NYSCEF system has provided access to the courts without requiring the physical presence of parties and as result has contributed in keeping each other safe during this public health crisis.

Thank you for considering our input as you prepare your annual report evaluating the state's experience with electronic filing.

Sincerely,



Hon. Craig Doran, SCJ
7th Judicial District Administrative Judge
Chair, Surrogate's Court Advisory Committee on E-Filing

Cc: committee

¹ The proposed legislation was endorsed by *The Commission to Reimagine the Future of New York's Courts*, created by Chief Judge Janet DiFiore.

County Courthouse
Phone: 585-412-5292

27 North Main Street
Fax: 585-412-5328

Canandaigua, NY 14424
jsavage@nycourts.gov

Appendix F



CIVIL COURT OF THE CITY OF NEW YORK

111 CENTRE STREET
NEW YORK, NY 10013

ALIA A. RAZZAQ
CHIEF CLERK

February 8, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

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

Dear Judge Marks,

This letter is submitted by the NYC Civil Court Advisory Committee on E-Filing in compliance with its obligation to consult with the Chief Administrative Judge regarding the court's experience with programs utilizing electronic means for the commencement of proceedings and service of papers therein, and providing recommendations for further appropriate legislation.

The Committee met on February 2, 2021 to update the members on the "new" electronic filing programs introduced in the New York City Civil Court since publication of its 2020 report. There is much progress to report, as e-filing in the New York City Civil Court has expanded significantly. Consensual e-filing was introduced in the New York City Civil Court for all Landlord and Tenant matters in every county including the Harlem Community Justice Center.¹ Additionally, e-filing of CPLR 325(d) cases has been expanded to all counties. These programs have been implemented successfully, amidst the challenges of a public health crisis, and have been welcomed and very well received by court users.²

¹ After publishing for public comment Section 208.4-a of the Uniform Rules for the New York State Trial Courts relating to the electronic filing of actions in the New York City Civil Court were amended/approved by the Administrative Board of the Courts and effective July 13, 2020.

² As of January 31, 2021, over 279,000 documents have been e-filed and there have been over 3000 requests to convert paper filings in Housing Court to electronic filing.

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The Advisory Committee has also discussed the steps that must be taken to introduce additional e-filing programs in Civil Courts, and is committed to moving forward with additional implementations, most notably in the area of insurance no-fault litigation. The Committee is aware of the courts' limited resources but nevertheless strongly recommends that introduction of all e-filing programs become a priority. NYSCEF and electronic filing platforms have proven to be invaluable in keeping our courts "open" and accessible to all parties as the Court System navigates the public health crisis. 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 where NYSCEF is not available.³ The experience with electronic transmission through EDDS and the availability of NYSCEF in limited case types have increased requests for e-filing programs in all case types in this court, as e-filing is efficient, convenient and provides 24-hour access to court files.

A Committee member observed that the present crisis may be viewed as an opportunity to introduce and/or increase self-represented party participation in electronic filing, in that many more self-represented parties may be likely to respond if they knew they could do so remotely.⁴ Additionally, although self-represented parties are never obligated to e-file, there may be self-represented litigants who wish to avail themselves of the convenience of remote court access and are 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. Additionally, the Committee was informed that NYSCEF will contact Administrative Judge Kathie Davidson to offer NYSCEF assistance in a pilot program in Westchester County, which will be offering a network of fully equipped, remote access sites in houses of worship located across Westchester County. The Committee agreed to continue these discussions to ensure that all persons have meaningful access to the courts, especially during this public health crisis.⁵

³ Over 178,661 documents have been transmitted via EDDS in Civil matters citywide. One member recommended that the drop-down list for documents that can be transmitted via EDDS should also include a Notice of Appearance and "other". The NYSCEF team will examine the suggested additions.

⁴ A suggestion was made to integrate the UCS "Do It Yourself" program with NYSCEF to further assist self-represented litigants as they e-file. However, limited resources will unfortunately delay any such programming. An additional suggestion is to have information more readily available on-line regarding a "how to" e-file for self-represented litigants – this suggestion will be further addressed by the NYSCEF team.

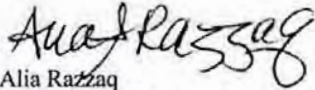
⁵ The committee also discussed the need for better communication by the Court as to court openings/closures during this pandemic.

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The Committee also addressed the Chief Administrative Judge's Annual Report on E-Filing for 2021 and the proposed legislation. The Committee supports legislation to ease current restraints upon the Chief Administrative Judge to introduce mandatory 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.

The Committee looks forward to continuing to work together on "new" e-filing platforms for this Court and we look forward to continuing to report on the benefits of e-filing in the NYC Housing Court in future reports.

Respectfully submitted,



Alia Razzaq
Chief Clerk of the Civil Court
Chairperson
Civil Court Advisory Committee on E-Filing

cc: committee members

Appendix F



DOREEN M. HANLEY
CHIEF CLERK

Family Court of the State of New York City of New York

60 LAFAYETTE STREET
NEW YORK, N.Y. 10013

STEPHEN G. BYRNES
FIRST DEPUTY CHIEF CLERK

February 8, 2021

Honorable Lawrence K. Marks
Chief Administrative Judge
New York State Unified Court System
25 Beaver Street
New York, N.Y. 10004

Dear Judge Marks:

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

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.

The committee met on February 2, 2021, to update the members on the progress toward electronic filing of Article 3 and Article 10 proceedings. Feedback and comments have been solicited from committee members.

Progress toward an E-filing program in Family Court has been limited as most programming resources were engaged with the emergent issues caused by COVID-19. The development of screens to allow the initialization of Article 3 and Article 10 proceedings in the New York State Courts Electronic Filing (NYSCEF) system has been discussed in the past as an initial phase to electronic filing in Family Court, and the committee is committed to reengage in the efforts to move these plans forward as resources allow. The first phase of the program, we anticipate, will include utilizing NYSCEF to electronically deliver documents to the court, and electronic service of papers on the parties. Future phases envisioned include the transfer of data directly into the court's case management system (UCMS) and to compatible systems used by litigating agencies. Of noted importance, as a result of the virus, the NYSCEF team and the Division of Technology created the Electronic Document Delivery System ("EDDS,") so that attorneys were able to electronically transmit documents to the Court in a secure platform.¹ All members agreed that EDDS was much needed, welcomed and appreciated, as it helped deal with the uncertainties caused by the COVID-19 virus. However, all agreed that NYSCEF would be the preferred System for the future of the Family Court.

¹ To date, over 151,000 documents have been transmitted via EDDS in Family Court matters statewide.

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Honorable Lawrence K. Marks
February 8, 2021
Page 2

While the advisory committee cannot report on the experience with E-filing in the Family Court, the committee is committed to push forward with efforts to complete the first phase of the project. It will be assembling a "working committee" and will maintain regular meetings. The committee is hopeful it will be able to report our experience with E-filing next year. The committee is also very aware of the many unrepresented parties appearing in Family Court proceedings and will make certain the program addresses all specific needs for these parties. The committee has also discussed that rules will need to be developed and will be in contact with Counsel's Office once the rules are proposed. The committee will also be working with the Division of Technology to program initialization screens and to consider and identify counties to pilot these authorized electronic filings.

The committee can report that all but one of the Appellate Divisions have authorized E-filing in Family Court Matters. As E-filing is implemented in Family Court, the ability to electronically transfer data and case files through NYSCEF from Family Court to the Appellate Division will increase efficiency and convenience to the Court. One committee member with experience in the E-filing of Family Court matters authorized within the Appellate Division commented: "In all, the transition to E-filing has been successful and very few of the attorneys on the Court's assigned panels have opted out of E-filing."

The committee also discussed the proposed legislation allowing for the expansion of E-filing in any or all courts of any case type, and the committee strongly supported the legislation that would allow the Chief Administrative Judge to implement these E-filing programs.

Thank you for your consideration regarding the Family Court Advisory Committee's input regarding the plans for E-filing in the Family Court.

Respectfully Submitted,

Doreen M. Hanley

Doreen M. Hanley
Chief Clerk of the Family Court
Chairperson,
Family Court Advisory Committee on E-Filing

cc: Committee Members

Appendix F



NEW YORK STATE

Unified Court System

OFFICE OF COURT ADMINISTRATION

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JEFFREY CARUCCI
DIRECTOR, OCA DIVISION OF E-FILING

February 5, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

Re: Legal Services Advisory Committee on E-Filing

Dear Judge Marks:

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 the unrepresented and any difficulties that the unrepresented might encounter anywhere in the state. Further, the Committee is interested in suggestions about how to improve electronic filing for the unrepresented and to address any other concerns the legal services community might have about other aspects of electronic filing.

The Committee met on February 1, 2021. The Committee reviewed its purpose, reviewed minutes from our prior meeting, and discussed several steps that had been taken to improve the processing of electronic filing for unrepresented litigants.

The committee once again discussed the September 2019 memorandum regarding the rights of the unrepresented in electronically filed cases throughout the state, that had been distributed to all County Clerks and Chief Clerks of the Supreme and Surrogate's e-filing Courts. The memorandum had as an attachment, the *Unrepresented Litigants Fact Sheet*, incorporating information regarding the rights of the unrepresented developed from the NYSCEF rules and the UCS website for unrepresented persons. This Fact Sheet was created to explain the options that an unrepresented party has to e-file and to assist clerks in their legislative charge to explain such parties options for electronic filing and to inquire whether they are interested in participating. Additionally, it was discussed that a notice to the unrepresented about their rights was to be posted prominently in every courthouse in which e-filing is operational. It was also noted that a Notice of Electronic Filing, which in every e-filing case must be served upon the defendant or respondent with the commencement documents in hard-copy format, also informs the unrepresented person at the very outset of the case that they are exempt from e-filing and will only e-file if the choice to do so is made by the litigant.

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The Committee was also reminded that in September 2019, we had agreed to create a UCS e-mail 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 an unrepresented person, in an attempt to resolve any such issues as it occurs. Notification of this new email address was sent to 177 legal services groups. To date, there have been no comments received through this special email box.

The Committee also addressed the Chief Administrative Judge's Annual Report on E-Filing for 2021. The e-filing legislative proposal that will accompany the Annual Report and be submitted to the Legislature for action this year, was discussed. The committee supports the proposed legislation to lift the current restraints upon the Chief Administrative Judge to introduce mandatory 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. The current public health emergency has highlighted the immediate need for the expansion of e-filing to all courts. The committee has also discussed ways to increase avenues for self-represented litigants that may lack the necessary technology to gain remote access to the Courts. The committee was informed that NYSCEF will contact Administrative Judge Kathie Davidson to offer NYSCEF assistance for the pilot program being rolled out in Westchester County, which will be offering a network of fully equipped remote access sites in houses of worship located across Westchester County. The committee agreed to continue these discussions and to discuss additional concepts to ensure all persons have meaningful access to the courts, especially amid this public health crisis.

Some members of the Committee have made other suggestions for improvements to the processes used in e-filed cases. One Committee member stated that unrepresented persons sometimes make known to legal services attorneys that their papers have been returned, but without a reason or that they do not understand the reason for the return. This member urged that clerks should provide a reason whenever a document is returned for correction. Although there were no specific examples of this - it was decided that NYSCEF will review this matter with both Supreme and County Clerks to make certain communications are clear. One County Clerk Committee Member provided an example of their county's procedure that provides a clear list of reasons informing the litigant the reason for the return of their document in every instance.

The committee was also updated as to the work that has begun by NYSCEF staff together with another committee to create forms in multiple languages with a view towards having e-filing forms initially in Spanish and with a goal to expand to additional languages - this work has begun in the Civil Court and remains a work in progress.

Lastly, the Committee will continue to pursue the exchange of views and suggestions among its members. The committee was scheduled to meet in May 2020, however, the May meeting was postponed due the emergent issues caused by the COVID-19 public health emergency. As we continue to work through these challenging times, all efforts will be made to meet more regularly and to provide a bit more notice for the scheduling of future meetings. We intend to meet again in April/May. The Committee also hopes that use will be made of the special e-mail box by legal services attorneys whenever they encounter any problems with e-filing affecting an unrepresented litigant anywhere in the state so that e-filing staff can intervene promptly and correct any difficulties when brought to their attention. The Committee will continue

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to work on all the proposals for improvements that were made at the meeting and will make recommendations as appropriate at our next meeting.

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.

Respectfully submitted,



Jeffrey Carucci
Director, OCA Division of E-Filing
Chair, Legal Services Advisory
Committee on E-Filing

cc: Committee Members

Appendix F



STATE OF NEW YORK
UNIFIED COURT SYSTEM
360 ADAMS STREET
BROOKLYN, NY 11201
(347) 296-1527

LAWRENCE K. MARKS
Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating Judge for
Matrimonial Cases

Mr. Jeffrey Carucci
Director, NYS Courts E-Filing
Office of Court Administration
25 Beaver Street
NY, NY 10004

January 25, 2021

Re: Mandatory E-Filing in Matrimonial Actions

Dear Mr. Carucci:

As Statewide Judge for Matrimonial Cases and Chair of the Matrimonial Practice and Advisory Committee, I write to urge the need for legislative action to adopt a legislative proposal which the Office of Court Administration will submit to the Legislature for the coming session. This proposal would authorize the Chief Administrative Judge, in his discretion, to require mandatory/voluntary electronic filing in matrimonial actions. Under the proposal, before instituting mandatory electronic filing in matrimonial actions in Supreme Court, the Chief Administrative Judge must first consult with local bar associations, attorneys and county clerks. The proposal contains exceptions for self-represented litigants and attorneys lacking technology skills so there is no danger of depriving such persons of access to justice. Any concerns about breaches of privacy are satisfied by the fact that, consistent with section 235 of the Domestic Relations Law, papers in a matrimonial action that is electronically filed are not accessible on-line to persons other than the parties and counsel.

The advantages of mandatory electronic filing in matrimonial actions cannot be overstated even without the current pandemic during which electronic filing has proved invaluable as a means of commencing matrimonial actions while paper filings are restricted due to public health concerns. Starting in May, 2020 when the expansion of the NYSCEF system for matrimonial actions first became available, the number of e-filed cases has steadily increased during the pandemic. In 2020 there were 17,351 contested e-filed matrimonial cases compared to 2,330 in 2019, approximately 7.5 times the number. Similarly, in 2020, there were 24,474 uncontested e-filed matrimonial cases compared to 4,373 in 2019, approximately 5.6 times the number.

The increase in matrimonial e-filed cases is not surprising. The advantages of electronic filing include not only a means to commence and pursue matrimonial actions during the pandemic, but also a streamlined and economical filing process, access to case files, expeditious review of filed papers, enhanced security, easy notifications to parties and easy resubmission of papers, free and fast service of subsequent papers, and for the general community diminished reliance on paper, a greener environment, and public savings through more economical and efficient court operations.

Mandatory E-filing in matrimonial actions was endorsed during the summer of 2020 by the Women's Bar Association of the State of New York, The New York State Bar Association Family Law Section, and the New York Chapter of the American Academy of Matrimonial Lawyers. I strongly urge legislative action to enable the Chief Administrative Judge to require mandatory e-filing in matrimonial actions.

Sincerely yours,



Jeffrey S. Sunshine, J.S.C.

cc: Susan Kaufman, Esq,
Counsel

Appendix G

Comments from County Clerks



VIA EMAIL jcarucci@nycourts.gov
Jeffrey Carucci
Statewide Coordinator for Electronic Filing
25 Beaver Street
New York, New York 10004

Position Statement

Support the continued expansion of E-Filing Court Documents with the Office of Court Administration

With the assistance of County Clerks, judges and local bar associations, the Office of Court Administration has done a superb job of developing the electronic filing application through which the New York State Court Electronic Filing System (NYSCEF) functions. The NYSACC wishes to continue its strong support for further expansion of this program.

During this current COVID-19 pandemic, technology has proven invaluable to continue government operations while keeping individuals safe, and NYSCEF is certainly a fine example. Having successful partnerships that create proper procedures and utilize the necessary technology is instrumental to the continued success of the NYSCEF System. All stakeholders in NYSCEF were able to reap the benefits of said partnership by relying upon the system to ensure that the business of the New York State Court System continue even in a virtual environment.

Specifically, we recommend that legislation be promulgated to allow for approval of mandated e-filing to all case types. Also, the law should be amended to allow for expedited approval so additional counties can begin E-Filing. Additionally, the elimination of sunset clauses would remove the need for counties to continually seek approval from the state legislature for their already successful E-Filing programs.

NYSACC President

Hon. Michael C. Bartolotti, Putnam County Clerk (845) 808-1142

Appendix G



Kevin Rothermel
ACTING COUNTY CLERK

Teresa Torres
ADMINISTRATOR

OFFICE OF THE BRONX COUNTY CLERK
BRONX SUPREME COURT
851 GRAND CONCOURSE, RM 118
BRONX, NY 10451
TEL: (866) 797-7214 - FAX: (718) 590-8122



Kay Amer
FIRST DEPUTY COUNTY CLERK

Reginald Jackman
SECOND DEPUTY COUNTY CLERK

January 21, 2021

Jeffrey Carucci
Director – NYS Courts E-Filing
OCA Division of Electronic Filing
via email: jcarucci@nycourts.gov

Mr. Carucci:

Over the past year, and certainly with the COVID-19 pandemic, it is clear that the ability to electronically file documents is integral to the continued successful operation of the New York State Court System. Both represented and unrepresented parties were able to proceed with filing in the Court from the safety of their homes and offices. With 24-hour digital access to records, clients could review documents in their case file, easing their concerns on pending litigations without making in-person appearances or inquiries. At no additional cost to the clients, E-File provides the ability to view, print and file documents, along with the flexibility to do so from anywhere with internet access.

With cases being E-filed, clients seeking advice or counsel can simply provide the case index number for review of the action. This allows for expedited access to the case and timely answers to their questions or concerns. Additionally, attorneys and outside agencies can review the case file without physically appearing or requesting them at the Court.

The unexpected and unprecedented challenges of the past year have proved that it is time for mandatory electronic filing of all Civil case types.

Over the last 12 months, clients had the ability to request that Supreme Court matters be converted from a "Hard Copy" filing to an E-filed matter. This allowed individuals to proceed in matters without the worry of mailing documents to the Court. Once the document has been uploaded to E-file, the filer receives immediate notification and confirmation of the filing. No longer will clients have to rely on postal services, as they were also greatly affected by the pandemic. There were countless instances where mailings were never delivered or were received upwards of 120 days after the original postmarked date, greatly delaying the filing process.


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The Bronx County Clerk's Office provided clients with contact information, including newly created email boxes, to facilitate more direct communication to specific departments. Informational materials were also created, with the goal of easing any concerns and answering any questions that a party may have regarding electronic filings.

Under the direction of Administrative Orders issued throughout the COVID-19 pandemic, this office has commenced 22,893 cases and uploaded 47,199 documents into the E-file system. An additional 1,698 clients have registered to participate in the E-file system and our office has converted 945 "Hard Copy" cases to E-file. In this time of uncertainty, the court has provided clients with the stability and assurance that their case files are our highest priority.

It is worth noting that this was all accomplished while much of our staff worked remotely, and without interruption to daily operations. The public and the Bar Association embraced Electronic Filing, creating thousands of new NYSCEF user accounts across New York State and allowing matters to commence and move forward at a time when it was needed most. I strongly urge you to move forward, and to continue to provide the public, with this vital service and expand mandatory E-file practices in the State of New York.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Rothermel", written over a horizontal line.

Kevin Rothermel
Acting County Clerk
Bronx County

Appendix G

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



January 22, 2021

Jeffrey Carucci, State Wide Coordinator for E-filing
Office of Court Administration
60 Centre Street
New York, NY 10007

Dear Mr. Carucci,

Thank you for this opportunity to again comment on the successful implementation of e-filing in our office

What we would we have done without e-filing this past year!!!

As COVID basically shut down all normal operations in our office, we could not have continued to serve the public without e-filing. While in person filings ceased completely for several months, we continued to accept filings as allowed by the Office of Court Administration both by being partially staffed in the office and remotely by half my staff working from home.

The need to e-file forced many attorneys who were previously reluctant to e-file to use this system. Once they filed their first case, they did not resume hard copy filings in consensual cases. The efficient process of e-filing and the clear, concise instructions on the NYSCEF site enticed them to continue to e-file.

Kudos to Jeffrey Carucci and his staff who quickly worked out a temporary method for those counties who had not commenced e-filing to accept filings electronically through EDDS. While this was a temporary procedure for counties to use who had not commenced e-filing or for all counties to accept criminal filings electronically, it demonstrated the importance of continued electronic filing.

We have e-filed in Cortland County since 2014. We started with consensual e-filing, and once the majority of attorneys were comfortable with the concept and the procedure we made the transition to mandatory e-filing in 2018. Pro se applicants are either guided on how they can take advantage of the e-filing program or their papers are accepted in hard copy. They are never pressured to choose either method as many do not have the technological resources to e-file.

I strongly support any legislation that allows the Chief Administrative Judge to determine whether or not mandatory e-filing in civil cases should be instituted in any county. Statute provides that the consent of the County Clerk and consultation with the Bar and legal services is required before any mandatory program is initiated. The legislature has provided sufficient checks to allow for the Administrative Judge to initiate such programs.

I look forward to working with the Office of Court Administration as the Civil E-filing program expands to Criminal E-filing as well.

Sincerely,


Elizabeth Larkin, Cortland County Clerk

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Dear Mr. Carucci;
I think E-Filing is the best thing to happen to the Court System , I would like to see everything go to E-Filing, it has saved a lot of space and time for my Office.
Sincerely,
Debra A Goodrich
County Clerk

Please be CAREFUL when clicking links or opening attachments from external senders.

Appendix G



OFFICE OF THE
COUNTY CLERK OF DUTCHESS COUNTY
22 Market Street
Poughkeepsie, New York 12601
(845) 486-2374

Bradford H. Kendall
County Clerk

Anne-Marie Dignan
Deputy County Clerk

Lisa Ayala
Deputy County Clerk

Jeffrey Carucci, Dir.
OCA Division of Electronic Filing
Office of Court Administration
25 Beaver Street, Rm 823
New York, New York 10004

December 29, 2020

Dear Director Carucci:


Pursuant to Judiciary Law § 212, the Chief Administrative Judge of the State of New York must submit to the Legislature, the Governor, and the Chief Judge an annual report evaluating the state's experience with electronic filing and containing recommendations for further legislation.

It is my understanding that there is proposed legislation which would lift the current constraints on the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in all civil case types. Currently mandatory e-filing is prohibited in certain civil case categories in Supreme Court, such as Article 70, Article 78, election law, matrimonial, and Mental Hygiene Law cases.

Over the past year, e-filing has been critical in maintaining access to the courts during the COVID 19 pandemic. Administrative orders expanding e-filing to Article 70, Article 78, election law, matrimonial actions and MHL cases facilitated access to the courts while ensuring the health and safety of the litigants, court personal and the judiciary. Simply put, without e-filing justice would have ground to a halt. It is time to codify this.

It is my hope that in 2021, the Legislature will vest in the Chief Administrative Judge the ability to implement mandatory e-filing in the currently excluded case types. Given the safeguards in place, I believe the experience not just in the past year but since the inception of e-filing justifies this legislation.

Sincerely:


Bradford H. Kendall

Appendix G

State of New York



Nancy T. Sunshine
County Clerk, Kings County

360 Adams Street
Brooklyn, NY 11201

January 25, 2021

Jeffrey Carucci
Statewide Coordinator for Electronic Filing
VIA EMAIL jearucci@nycourts.gov

Dear Mr. Carucci:

As Kings County Clerk, I endorse the expansion of mandatory e-filing of matrimonial actions in Kings County, and join with the other stakeholders who seek the elimination of the present exclusion of matrimonial cases from mandatory e-file programs statewide.

In Kings County, the success of mandatory e-filing in civil cases is demonstrated by the steady increase and high volume of cases e-filed in civil matters. In 2016, over 30,000 cases were e-filed. In 2017 and 2018, over 35,000 cases were e-filed each year. In 2019, over 38,000 cases were e-filed in Kings County in civil matters, justifying at this time the expansion of mandatory e-filing to Matrimonial cases in Kings County. In 2020, due to the pandemic, Kings County authorized consensual e-filing for all matters, including Matrimonial. There were over 28,000 non-Matrimonial cases filed in NYSCEF in Kings County in 2020. It is important to note that there was a two month stay of filing new actions in New York State due to the pandemic. From May 25th to the end of the year, there were 3,068 Matrimonial actions commenced in NYSCEF and over a thousand Matrimonial cases were converted from hard copy filing to e-filing as well.

Stakeholders from around New York State further support the mandatory e-filing of matrimonial cases statewide (e.g., County Clerks, the Executive Committee of the Family Law Section of the New York State Bar Association). Further support for the expansion of e-filing in matrimonial cases is amply demonstrated by the success of consensual e-filing of matrimonial cases in the forty-two counties where authorized to do so. There is simply no reason to not recognize the successes of consensual e-filing in matrimonial cases and adopt mandatory e-filing in matrimonial cases, which will enhance efficiency by eliminating dual tracking systems and costly inefficiencies both fiscally and in personnel time management.

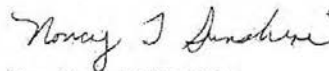
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Likewise, the positive experience of counties with mandatory e-filing in residential foreclosure and consumer credit actions supports the elimination of the present statewide exclusion of these cases. Notably, there has been a marked increase in voluntary pro se participation in e-filing in civil cases in Kings County. In the early years of e-filing, pro se participation was in the single digits, whereas more recently, that number is now in the hundreds. Notably, in 2019, over 417 pro se litigants participated in e-filing in civil cases. That number increased in 2020, including many new Matrimonial actions commenced in NYSCEF after May 25, 2020. Such participation in e-file civil actions does reflect some modest participation by pro se litigants in consumer credit and foreclosure actions. Clearly, these numbers establish that pro se litigants, who choose to participate have done so; and the law which clearly permits pro se litigants to be exempt from e-filing in mandatory cases is properly implemented in Kings County.

Therefore, as Kings County Clerk, I support the expansion of mandatory e-filing to matrimonial, consumer credit and foreclosure actions, both statewide and in Kings County. It should not go unnoticed that the New York State Association of County Clerks supports the law to be amended to permit expedited approval of e-filing in Counties. Significantly, the collaboration between the County Clerks, OCA and other stakeholders has produced an efficient, effective, transparent electronic filing system in New York State, which with time only gets better with the input of stakeholders and implementation by OCA. Accordingly, amendment of the law to permit expedited approval of the expansion of e-filing will further the expansion and continued enhancements of e-filing to the betterment of all.

In conclusion, the importance and benefits of e-filing has been well established during the pandemic during which time the Kings County Clerk, as well as the courts, have functioned and continue to function efficiently and effectively. There is no better time than now to eliminate all restrictions and expand mandatory e-filing to all case types.

Sincerely,



Hon. Nancy T. Sunshine
County Clerk, Kings County

Appendix G

MAUREEN O'CONNELL, RN, JD
County Clerk



OFFICE OF THE COUNTY CLERK

240 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501-4249
TELEPHONE: 516 571-2661
FAX: 516 742-4099

January 22, 2021

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

Dear Mr. Carucci,

Please allow this correspondence to serve as a reply to your request seeking comments evaluating our experience at the Nassau County Clerk's Office with the NYSCEF e-filing program and proposed legislation to expand mandatory e-filing. It is my hope that this information will assist Chief Administrative Judge Lawrence K. Marks as he prepares his annual report on electronic filing for submission to the Legislature, the Governor and the Chief Judge.

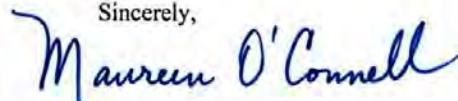
As one of the pilot counties for the NYSCEF program, my office was the first statewide to work with your staff and the Department of Technology for the purpose of implementing electronic filing of Small Claims Assessment Review (SCAR) petitions. Since e-filing of SCARs launched in 2009, we have electronically filed more than 225,000 Nassau County SCAR petitions through the NYSCEF system. Currently, the majority of our civil filings are comprised of mandatory cases primarily in torts, contracts, commercial and commercial foreclosures, civil forfeiture, and tax certiorari case types, as well as consensual cases in consumer credit transactions, residential foreclosures and matrimonial actions. We saw a significant increase in new actions commenced via e-filing. In fact, in 2020 e-filing accounted for more than 95% of new civil case filings, and more than 65% of all new consensual matrimonial cases. The COVID-19 pandemic was a contributing factor in the significant increase in the commencement of new filings via e-filing, especially in matrimonial actions. Additionally, Nassau County converted more than 4,200 cases from existing paper-filed cases to e-filed cases through the Electronic Document Delivery System (EDDS).

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I want to take this opportunity to thank you for continuing to dedicate the resources necessary to make this program better every year. Your efforts toward making system enhancements and programmatic changes necessary for participation in e-filing have been a model to follow as we expand mandatory e-filing in our county to include as many case types as possible. To that end, we would welcome and encourage the expansion of mandatory e-filing to include matrimonial, residential foreclosure and consumer credit cases.

This has been a collaborative effort, and I am appreciative of your commitment to enhance the system, streamline filing requirements, and be responsive to the needs of practitioners, while reducing paper consumption. I hope the relationship that has developed between Nassau County and NYSCEF may continue to serve as a model throughout the state.

Sincerely,



Maureen O'Connell
Nassau County Clerk

Appendix G



**NIAGARA COUNTY
COUNTY CLERK'S OFFICE**
COURTHOUSE
P.O. BOX 461
LOCKPORT, NY 14095-0461

JOSEPH A. JASTRZEMSKI
County Clerk

MATTHEW L. PARISH
First Deputy County Clerk

(716) 439-7022
(716) 439-7035 Fax

January 14, 2021

Jeffrey Carucci Dir.
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street
New York NY 10004

RE: Statewide Mandatory E-filing Program

Dear Mr. Carucci,

We here in Niagara County, wholeheartedly support the proposed amendment to CPLR Article 21A to allow the Chief Judge and Chief Administrative Judge authority to make e-filing mandatory across New York State.

We were one of the first counties to implement e-filing and have never regretted that decision. E-filing has streamlined so many of our tedious paper processes and allows us to process a much greater volume of cases faster, and more efficiently. Admittedly, e-filing was met with some resistance from attorneys, and staff alike. However, once everyone was trained, and began processing via NYSCEF, most were convinced.

During the height of Covid-19 restrictions, all filings were mandatory e-file – even those that were not eligible prior – Matrimonials, for example. The staff of NYSCEF worked diligently with our office to address any system issues, requests and answer the many questions we had with processing all our case types electronically. Again, there were questions, concerns and resistance from attorneys. But it must be noted that as of November 2020, when paper filing was once again allowed, we have not had one attorney file a matrimonial action in paper. I believe they prefer e-file over paper now.

I thank you for the time, support and efforts of you and your staff.

Very truly yours,

Joseph A. Jastrzemski
Niagara County Clerk

Appendix G

From: Matt Bacon
Sent: Tuesday, January 12, 2021 10:18 AM
To: Jeffrey Carucci
Subject: E-Filing Comments

The Oswego County Clerk's office began consensual e-filing in 2016 and have since moved into mandatory e-filing. Since day one, we have had a good working relationship with the NYSCEF staff and they have facilitated the transition from paper to electronic filing seamlessly. To maximize NYSCEF's effectiveness, we have worked with local attorneys to make sure they are familiar with the NYSCEF system. Once acclimated to the NYSCEF system, attorney's seem quite pleased with the ease of use and quick response times. We couldn't be happier with the decision to move into e-filing and look forward to it's expansion.

Thank you,

Matthew Bacon
Acting County Clerk
(315) 349-8613



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Appendix G



PUTNAM COUNTY CLERK'S OFFICE

County Office Building
40 Gleneida Avenue
Carmel, New York 10512
Tel. (845) 808-1142
Fax (845) 225-3953

MICHAEL C. BARTOLOTTI
County Clerk

JAMES J. McCONNELL
First Deputy County Clerk

January 27, 2021

VIA ELECTRONIC MAIL

Jeffrey Carucci
Statewide Coordinator, E-Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119M
New York NY 10007

Dear Mr. Carucci:

Putnam County instituted mandatory electronic filing of all permitted actions on May 3, 2017. We also allowed for permissive e-filing on all other case types. On October 17, 2018 Putnam County expanded mandatory commencement via e-filing for Residential Mortgage Foreclosure and Consumer Credit Transactions.

In 2020, 1,801 civil actions were commenced in Putnam County. Of the actions filed in 2020, 1,682 representing 93% were electronically filed. In addition, 64 cases were converted from paper to NYSCEF.

We are extremely pleased with the efficiency that electronic court filing has brought to this office. The NYSCEF system is a comprehensive, fully functional and secure means to electronically file court documents. We feel extremely comfortable with the controls within the system and are ecstatic with the amount of participation from the members of our local bar. As such, we fully support any initiative to expand the powers of the Chief Administrative Judge to expand mandatory electronic filing to all case types upon consultation with the respective County Clerk.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Bartolotti".

Michael C. Bartolotti
Putnam County Clerk

MCB/mb

Appendix G



Queens County Clerk
Clerk of the Supreme Court
Commissioner of Jurors



Audrey I. Pheffer
Queens County Clerk
Clerk of the Supreme Court &
Commissioner of Jurors
Francis K. Kennn, Esq.
Chief Deputy County Clerk

Kevin Rothermel
Administrator – County Clerk
Jo Ann Shapiro
Administrator – Jury Division
Diane Matero, Esq.
Counsel to the County Clerk

January 21, 2021

Jeffrey Carucci
Director
OCA Division of Electronic Filing

via email: jcarucci@nycourts.gov

Dear Mr. Carucci:

One year ago, it was inconceivable to imagine how quickly our world would change; however, the unexpected challenges of the past year prove that it is time for mandatory electronic filing of all civil case types. While some aspects of society may be paused to deal with the uncertainty of a global pandemic, access to justice, a fundamental principal to the rule of law, cannot. Chief Administrative Judge Lawrence Marks' decisive action in issuing administrative orders to allow for electronic filing in all case types while in the midst of the pandemic, ensured the protection of that fundamental principal while simultaneously safeguarding the health and safety of the public, bar and court personnel.

The Queens County Clerk's Office seamlessly implemented the orders of the Chief Administrative Judge and almost 35,000 proceedings were electronically commenced in Queens County since the start of the pandemic. Matrimonial actions accounted for over 5,000 of those proceedings, of which over 75% were uncontested. Additionally, over 1,000 consumer credit actions, almost 350 Article 81 guardianship proceedings and 80 Article 78 proceedings were commenced.

Court personnel uploaded almost 55,000 documents into the NYSCEF system last year and easily converted over 2,300 cases into the electronic filing system from hard copy. This was all accomplished while most of our staff worked remotely from the safety of their own homes. The public and bar also responded well to electronic filing, creating thousands of new NYSCEF user accounts. These actions demonstrate that the time is ripe for the implementation of mandatory electronic filing.

EXECUTIVE OFFICE: 88-11 Sutphin Boulevard, Room 105, Jamaica, New York 11435, (718) 298-0601
89-17 Sutphin Boulevard, Room 244, Jamaica, New York 11435, (718) 262-7223
120-55 Queens Boulevard, Room CJI, Kew Gardens, New York 11415, (718) 298-0621
25-10 Court Square, Room B58, Long Island City, New York 11101, (718)298-0624

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Page 2

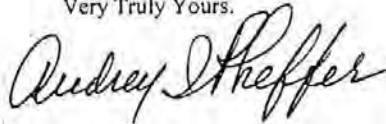
Mr. Jeffrey Carucci

January 21, 2021

Electronic filing has already proven to be cost-effective and convenient, but the past year highlighted how truly critical electronic filing is to keep our judicial system functioning. The NYSCEF system is already designed to ensure the confidential treatment of matters and exempts unrepresented litigants from electronic filing unless they opt-in and allows attorneys to opt-out. The NYSCEF resource center also offers valuable training giving all users the essential skills needed to successfully use the electronic filing system. I applaud NYSCEF's collaboration with my office to address concerns and provide continuous enhancements to the system.

I fully support legislation to expand the authority of the Chief Administrative Judge to allow mandatory electronic filing in all civil case types. Moreover, I strongly urge continuing voluntary electronic filing in matrimonial, Article 78 and Article 81 proceedings in Queens County, until the adoption of mandatory electronic filing. The continuation of voluntary electronic filing is critical to ensuring access to justice and protecting the health and safety of all involved during these very uncertain times.

Very Truly Yours,

A handwritten signature in black ink that reads "Audrey I. Pheffer". The signature is written in a cursive, flowing style.

Hon. Audrey I. Pheffer
Queens County Clerk

Appendix G



DONNA G. SILBERMAN
County Clerk

COUNTY OF ROCKLAND
OFFICE OF THE COUNTY CLERK

1 SOUTH MAIN STREET - SUITE 100
NEW CITY, NEW YORK 10956-3549
Phone # (845) 638-5070
Fax # (845) 638-5647
Email : rocklandcountyclerk@co.rockland.ny.us
Website: rocklandcountyclerk.com

Deputy County Clerks
Jamie Graham
Joseph Alongi
William Phillips

January 22, 2021

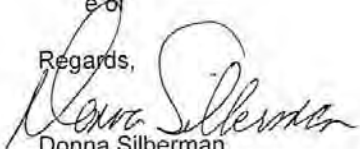
Mr. Jeffrey Carucci, Director
Office of Court Administration
Division of Electronic Filing
25 Beaver Street, Room 823
New York, New York 10004

Dear Mr. Carucci:

Rockland County supports e-filing and would be in favor of making all cases mandatory, with the exception of pro-se applicants.

The major e-filing benefits are as follows:

- Reduce paper transactions
- Eliminate need for customers to appear personally in our office
- Reduce processing and scanning costs: ie: personnel and office supplies

e of
Regards,

Donna Silberman
Rockland County Clerk

Craig A. Hayner
County Clerk

Shauna M. Sutton
Deputy County Clerk
Charles A. Foehser II
Deputy County Clerk



Saratoga County
Clerk's Office

Saratoga County Municipal Center
40 McMaster Street, Ballston Spa, NY 12020
Telephone (518) 885-2213 FAX (518) 884-4726

January 15, 2021

Jeffrey Carucci, Dir. OCA Division of Electronic Filing OCA
25 Beaver Street, Rm 823
New York, New York 10004
jcarucci@nycourts.gov

RE: Expansion of Mandatory E-Filing

Dear Mr. Carucci:

I am in receipt of your recent inquiry regarding feedback from County Clerk's Offices in reference to the proposed legislation which would lift the current restraints upon the discretion of the Chief Administrative Judge and to introduce the Expansion of Mandatory E-filing.

Please be advised that Saratoga County would be in favor of the Expansion of Mandatory E-filing, especially regarding the divorce cases. With the effects that COVID-19 has had on our counties, we, in Saratoga County, are definitely in agreement with this initiative, as long as the initiative would continue to assure confidential treatment of cases such as matrimonial actions, as provided elsewhere under State law.

If you should need anything further, please do not hesitate to contact me.

Sincerely,

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

Craig A. Hayner
Saratoga County Clerk

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RUSSELL REEVES
CLERK

DOREEN HUEBNER
DEPUTY CLERK



ERIN MASON
DMV DEPUTY CLERK

845-807-0411
FAX 845-794-6928

SULLIVAN COUNTY CLERK'S OFFICE
SULLIVAN COUNTY GOVERNMENT CENTER
100 NORTH STREET
PO BOX 5012
MONTICELLO, NY 12701

January 28, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

Dear Judge Marks:

It is my understanding that Article 6 of the New York State Constitution provides that the State Legislature may delegate to the Chief Administrative Judge any powers to regulate practice and procedure in the courts. I am writing to express my support for the proposed legislation allowing for the expansion of electronic filing and authorizing the Chief Administrative Judge to institute e-filing in any or all courts of any case type.

Sincerely,

Russell H. Reeves
Sullivan County Clerk

Appendix G

COUNTY OF SUFFOLK



JUDITH A. PASCALE
COUNTY CLERK

January 22, 2021

Mr. Jeffrey Carucci
Director of E-Filing
NYS Office of Court Administration
25 Beaver Street
New York, New York 10004

Dear Mr. Carucci:

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

Like every County Clerk throughout the State, particularly those who E-file, 2020 was both a challenging and progressive period. Reallocating staff to a remote work environment within a period of hours would not have been possible had the major bulk of Suffolk County's caseload not been mandatory prior to the onset of the Covid-19 pandemic. This transition was further eased by the outstanding support and response of the NYSCEF Resource Center.

My sincere thanks to you and everyone at the Resource Center for your assistance as we navigated the ever-changing landscape of the Executive and Administrative Orders issued in an effort to stem the spread of this virus, thus protecting the public, judicial staff, and Court and County Clerk employees. Resource Center staff continues to be a tremendous asset to Suffolk County in our ability to maintain, if not exceed, the level of service constituents and the legal profession have come to expect and enjoy.

With the addition of filing all non-mandatory cases as consensual, Suffolk County has seen a ninety percent (90%) rate of new electronic case commencement. This denotes an increase from seventy-nine percent (79%) in 2019. Having returned to the normal application of mandatory and consensual filings in early November, the majority of practitioners continue filing their cases electronically. This is seen most significantly with matrimonial actions. Many of those practitioners had never been involved with E-filing prior to the implementation of the Covid-19 restrictions. Happily, these once reluctant practitioners have continued commencing new cases electronically and seek to convert paper cases to E-filing. This is a testament to the convenience and simplicity of filing via NYSCEF.

Civil Practice Law and Rules 2111(2-a), which expires September 1, 2021, extends the grandfathering of seven counties' authorization to continue mandatory E-filing of residential

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foreclosures and consumer credit actions. These are the most common mandatory E-filed cases in which we receive hard copy submissions from unrepresented defendants. This is assurance that their due process rights are being protected under the current authorization. Over the nearly eight years since residential foreclosures became mandatory in Suffolk County, my office has received no comments, calls, letters or other information suggesting that defendants have not received proper notice or that their 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 continues to be unrestricted through the use of this technology.

I support the passage of legislation that would allow the Chief Administrative Judge discretion to authorize all case types be made mandatory subject to the current review process. This will allow for each respective county to choose which case types to file electronically. It has been our observation that mandatory rather than consensual authorization greatly reduces the rate at which opt-outs are filed. It has further been observed that consensual rather than mandatory authorization significantly reduces the rate of electronic commencement. In reflecting on the experiences of 2020, it is my belief that expansion of the available mandatory case types would be welcomed by practitioners.

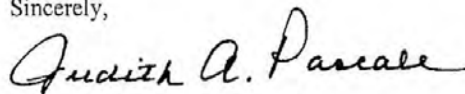
Throughout the pandemic, attorneys were unable to file papers in any significant way until recently. As you know, a requirement for attorneys to obtain approval of a Judge in order to opt-out of E-filing was established in the latter part of last year. Legislation that would codify this requirement should also be proposed. This would bring E-filing closer to the practice mandated by the Federal Court which requires that all filings be done electronically unless good cause is shown to a Judge.

In spite of all of the challenges faced in 2020, electronic filing in Supreme Court enabled the residents of New York State and Suffolk County to continue access to the Courts. Social distancing, limited physical access to government offices and stay at home orders 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 place County Clerks and the Courts in a more advantageous position to respond quickly to any future occurrences like those faced in 2020.

Suffolk County is eager to further expand mandatory electronic filing and looks forward to serving as a pilot county for the implementation of Criminal E-filing.

Thank you again for the opportunity to share the Suffolk County Clerk's Office experience with E-filing and for your continued support.

Sincerely,



Judith A. Pascale
Suffolk County Clerk

Appendix G

OFFICE OF THE WARREN COUNTY CLERK
PAMELA J. VOGEL, COUNTY CLERK
SUEANNE S. LINEHAN, DEPUTY

January 27, 2021

Jeffrey Carucci
NYS Office of Court Administration
Statewide Coordinator for Electronic Filing
25 Beaver Street
New York, New York 10004

Dear Jeff:

As we close out a year that remains without precedent, I would like to take this opportunity to thank you for the tremendous service that you and your team at NYSCEF have provided to not only the New York State Courts – Supreme, County, Surrogate, and Family – but most especially to the elected County Clerks of New York State.

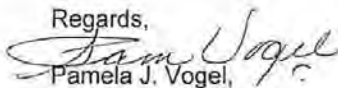
A mandatory e-filing Supreme Court since May 2018, we in the Warren County Clerk's Office have found your organization to be knowledgeable, professional, timely in response, and genuinely easy to work with throughout these last few years. We are most grateful for the guidance that we have received – no issue was too simple or too small for NYSCEF to offer a response. We thank you!

Given the year of pandemic, I truly cannot imagine how we would have ever serviced the public across New York State in addressing legal matters without your founding efforts. Commendable and with great vision to say the least!

On behalf of my own staff at the Warren County Clerk's Office as well as our Justices, Law Clerks, Combined Court offices, thank you so very much. We look forward to the continued expansion of the electronic filing of all documents before the New York State courts and lend our support at all times.

In appreciation, thank you! Be safe and be well.

Regards,



Pamela J. Vogel,
Warren County Clerk

Clerk of the Supreme and County Courts – County of Warren

Appendix G



WESTCHESTER COUNTY CLERK

Timothy C. Idoni
County Clerk

January 27, 2021

Hon. Lawrence K. Marks
Chief Administrative Judge
25 Beaver Street
New York, New York 10004

Dear Judge Marks:

I am writing to express my strong support for the proposed legislation allowing for the expansion of electronic filing (e-filing) and authorizing the Chief Administrative Judge to institute e-filing in any or all courts of any case type. We understand that Article 6 of the New York State Constitution provides that the State Legislature may delegate to the Chief Administrative Judge any powers to regulate practice and procedure in the courts.

Over the past twenty years, e-filing has expanded gradually but today the need to access the courts through e-filing is exponentially greater. While the Chief Administrative Judge can authorize its usage in a voluntary manner, the judge cannot make it mandatory, despite the value it has now been shown to provide. Our Covid crisis has helped us realize that e-filing allows the court system to readily meet the needs of the public, as it obviates the need for physical appearance in the courts or the Clerk's office. This bill would give the Chief Administrative Judge the power to expand e-filing without waiting another year for legislative approval. E-filing has been proven over these many years to provide the courts with a modern way of processing documents with additional significant benefits, financially and even environmentally.

The Chief Administrative Judge should have the discretion to institute e-filing without limitation. The Unified Court System is comprised of hundreds of different courts of various case types. The Chief Administrative Judge is fully capable of implementing the expanded program and the pandemic has demonstrated the need for swift action.

After twenty years of testing and experience the next evolutionary step is to make the e-filing program permanent. And the legislation allows for safeguards as the Chief Administrative Judge must still receive consultation and input, provide for opt-outs and exemptions, and maintain confidentiality. The overwhelming number of County Clerks, practitioners, and bar associations I have been in contact with agree with this assessment.

Sincerely,

Timothy C. Idoni
Westchester County Clerk
Chair, State Supreme Court (Civil) E-Filing Committee

Appendix H

Comments from Bar Associations,
Other Groups, Unaffiliated
Attorneys and Other Individuals

Appendix H



RICHMOND COUNTY BAR ASSOCIATION
25 Hyatt Street, Suite 203, Staten Island, NY 10301
PHONE: 718-442-4500 – FAX: 718-442-2019
rcbaweb@gmail.com

SHEILA T. MCGINN
1860 CLOVE ROAD
STATEN ISLAND, NY 10304
PRESIDENT

January 7, 2021

MICHAEL GERVAZI
PRESIDENT-ELECT

KERRI BRINGSLID
VICE PRESIDENT

TIMOTHY O'DONOVAN
SECRETARY

KAREN SOREN
TREASURER

JAY S. DUSKIN
PAST PRESIDENT

RICHARD LASHER
EXECUTIVE-DIRECTOR
1920-1995

DIRECTORS

VINCENT ALBUNIO
COURTNEY BEGLEY
IRINI BEKHIT
JAMES H. BIRCH
JESSE EISENBERG
MARIA COLONNA EMANUEL
KATHLEEN M. GARRIGAN
MARIA R. GUASTELLA
LESLIE KASEGRANDE
BIJU KOSHY
DENISE MARANGOS-BENITEZ
EVE L. NEWMAN
RICHARD A. ROSENZWEIG
PETER WEINMAN

Attention: Jeffrey Carucci
Director, Statewide Coordinator for Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004
efilingcomments@nycourts.gov

Re: New York State Courts Electronic Filing Program

Dear Mr. Carucci:

Please be advised that the Richmond County Bar Association supports the proposed amendment to authorize the Chief Administrative Judge to make e-filing mandatory across the state in all trial courts.

Very truly yours,
Sheila T. McGinn
Sheila T. McGinn
President

Appendix H

From: Timothy Wan, President
Sent: Tuesday, January 5, 2021 4:40 PM

Subject: RE: Request for Comments re: annual NYSCEF Report and proposed amendment to authorize the Chief Administrative Judge to make e-filing mandatory across the state in all trial courts

Categories: Red Category

On behalf of the New York State Creditors Bar Association, we have no objection to this. We further applaud the Courts for adapting to procedures that help mitigate the effects of COVID-19.

New York State Creditors Bar Association
Timothy Wan, Esq., President



<https://nyscba.org/>



Federal Bar Association
Southern District of New York Chapter

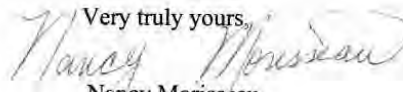
January 20, 2021

Re: New York State Electronic Filing Program

The Federal Bar Association Southern District of New York (FBA SDNY) chapter supports the proposed amendment to CPLR Article 21A and other relevant statutes authorizing Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks to make electronic filing mandatory across the state of New York – in any or all of the State’s trial courts.

We want to emphasize, however, that all electronic filings should remain free and open to the public without any cost. We are concerned, similar to concerns raised about the federal PACER system, that court filings will be walled off and inaccessible to the public unless a payment is made and that the required payment far exceeds any actual cost for the PACER system. We believe access to electronic filings should not be a source of revenue for New York State or for the judiciary as a whole. Open court records should remain just that: open and available to all without cost.

Thank you for your consideration.

Very truly yours,

Nancy Morisseau
President



Managing
Attorneys & Clerks
Association, Inc.

Peter McGowan, *President*
Owen G. Wallace, *Vice-President*
Timothy Beeken, *Treasurer*
Onika McLean, *Secretary*

John D. Bovè, *Immediate Past President*

Jennifer Sharmila Candelario
Brendan Cyr
Dennis Murphy
Bradley Rank
Robert T. Westrom
Ira E. Wiener
Directors

January 22, 2021

Mr. Jeffrey Carucci, Director
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street, 11th floor
New York, NY 10004

Re: New York State Courts Electronic Filing Program

Dear Mr. Carucci:

On behalf of the Managing Attorneys and Clerks Association, Inc. ("MACA"), we write in response to your December 22, 2020 invitation to comment on electronic filing in New York State for inclusion in the Office of Court Administration's 2021 annual report on e-filing. We welcome this opportunity and thank you and the Office of Court Administration for soliciting the views of the bar on this important subject.

As you know, MACA is comprised of approximately 125 mid-sized and large, litigation based law firms and corporate legal departments. Our members' positions within their respective firms and companies and concomitant responsibilities afford them a breadth of understanding of the day-to-day operations of the various state and federal court systems. In particular, our members have extensive experience with e-filing in NYSCEF, in other states' e-filing systems, and in the federal e-filing system. Additionally, some of our member firms handle matters that fall outside standard civil litigation, such as matrimonial actions, proceedings in Family Court, residential foreclosure and consumer credit actions, and matters in Criminal Court, either as part of

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their regular business or on a pro bono basis. In a majority of our member firms, the actual e-filing of documents is performed by managing attorney/managing clerk staff.

Our membership tends to be heavy users of NYSCEF and has a positive view of the NYSCEF system in general. The NYSCEF system is easy to use and the platform is reliable and stable. Many of our members have had equally positive experiences dealing with the Statewide Electronic Filing Resource Center staff who always seem able to assist with any issues we may have, either at the system level or at the local courthouse level. As we have stated in previous correspondence, NYSCEF works well because of the competent technical support it receives from its developers and the user support the statewide resource center provides, from top to bottom.

The quality of the product and personnel behind NYSCEF has never been more apparent than during the Covid-19 pandemic, which has confirmed the value and efficiency to the courts and the bar of the e-filing system. At this time, as we hope to be on the way out of this global pandemic, it seems like a perfect opportunity to address how NYSCEF could be further improved and strengthened. We applaud some of the recent upgrades, such as allowing attorneys to remove themselves from receiving electronic filing notices on a case in certain situations. Other aspects of NYSCEF that we would like to see addressed and enhanced are expansion to all courts and case types and uniformity across those courts and case types. Additionally, we would like to see the development of software that will enable the court to hyperlink and bookmark documents automatically after they have been filed.

As attorneys across the state expand from local to more statewide practice, NYSCEF should be further standardized so filers will have a more consistent experience of how to proceed in any court, county, or case type. Currently, some courts or case types are paper filings, some mandate e-filing, while others permit e-filing on a consensual basis. We would like to see NYSCEF expanded to all counties and all courts, with appropriate coordination with the County Clerks, so as to make case filings in New York State courts more uniform, including the uploading by all courts of calendar notices and decisions on motions and appeals.

E-filing under seal, in particular, could benefit from more standardization across courts. The NYSCEF infrastructure in certain counties permits parties to file documents electronically under seal on a provisional or restricted basis, while others do not. The lack of uniformity causes confusion and can require considerable effort on behalf of the clerk's office and the bar to file one's papers under seal in a given court. It's particularly troublesome in large, fast-moving cases with many parties. We are cognizant that certain case types have inherent issues with confidential information, such as matrimonial actions. However, NYSCEF currently enables parties to file under seal in certain case types in certain counties, and the clerks have the ability to seal entire case files making e-filing a viable option for every case type. Where the ability to file under seal does not

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exist, especially provisionally by parties, either by case type or county, that functionality should be added, and provisional e-filing under seal should be expanded to all e-filing courts and case types.

With respect to functionality, we would like to see NYSCEF further developed to include automatic hyperlinking by the court after a document has been filed. Currently, hyperlinking is only partially utilized in the Commercial Division. When required, it now falls on the filer to hyperlink the document before filing. That process requires access to software, such as Lexis or Westlaw to hyperlink to cited cases. Hyperlinking to documents previously filed on NYSCEF can be very time consuming, particularly with a large filing such as a motion for summary judgment. In many instances, time spent hyperlinking is time taken away from formulating and writing legal argument to the detriment of the litigants the courts are supposed to serve. Many litigants are spending hundreds or thousands of dollars to have a vendor hyperlink their papers for them. As we previously advocated to OCA as well as to the Commission to Reimagine the Future of New York's Courts¹, a better approach to achieve the same efficiencies is for the programmers of the NYSCEF platform to develop a process so that the court could automatically hyperlink any document after it has been filed, much like the court does with respect to converting documents to be searchable using OCR. Providing the court the ability to automatically hyperlink filed documents would make that process uniform for all filed documents and benefit jurists throughout the Unified Court System, not just the Commercial Division. Additionally, while many of our member firms have the resources to hyperlink documents prior to filing, many smaller firms do not have the resources to do so on a consistent basis. Furthermore, some filings are made on a rush basis, which further complicates a filer's ability to hyperlink the document.

In addition to hyperlinking, bookmarking has become common for documents filed on NYSCEF, and required in some situations. Bookmarking certainly makes sense as it creates ease of movement throughout a document. However, the rules on this are not uniform. While the rules require documents filed in the Commercial Division must be bookmarked, several judges require that exhibits not be bookmarked, but rather filed as individual PDFs. While this might facilitate hyperlinking to those documents at a later time, it defeats the general purpose of bookmarking.

Another function we would like to see developed is the ability to relate a document to more than one motion at a time. Currently, a filer may only link a document

¹ Attached hereto is a copy of MACA's letter to the Hon. Lawrence K. Marks, Chief Administrative Judge and Henry M. Greenberg, Esq., Chair of the Commission to Reimagine the Future of New York's Courts, dated June 19, 2020.

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to one motion per filing. If the parties wish to file one stipulation to adjourn more than one related motion, the stipulation must be filed multiple times, once for each motion to which it relates. A similar situation arises if a party intends to file one set of documents in response to multiple motions, e.g., a plaintiff responding with the same set of papers to multiple motions to dismiss. The filer in this situation must file the papers separately for each specific motion. We believe a better approach would be to enable filers to “spread” the filing across multiple motions if the situation calls for that.

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

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Thank you again for the opportunity to comment on NYSCEF. We are enthusiastic supporters of the system, and believe continued expansion and investment in both the development of new system functionality and in the programing staff and support staff is warranted.

Respectfully submitted,

Peter McGowan, Esq.
MACA President
Managing Attorney
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pmcgowan@sidley.com

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MACA Vice-President
Managing Attorney
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ATTACHMENT

MACA LETTER TO OCA AND COMMISSION TO REIMAGINE THE FUTURE OF NEW
YORK'S COURTS
DATED: JUNE 19, 2020



Managing
Attorneys & Clerks
Association, Inc.

Peter McGowan, President
Owen G. Wallace, Vice-President
Onika D. McLean, Secretary
Timothy K. Beeken, Treasurer

John D. Bové, Immediate Past President

Jennifer S. Candelario
Brendan Cyr
Dennis Murphy
Bradley Rank
Robert T. Westrom
Ira E. Wiener
Directors

June 19, 2020

Hon. Lawrence K. Marks
Chief Administrative Judge
New York Office of Court Administration
25 Beaver Street
New York, NY 10004

Henry M. Greenberg, Esq.
Greenberg Traurig
54 State Street
Albany, NY 12207

Proposal to Implement Hyperlinking Functionality in NYSCEF

Dear Judge Marks and Mr. Greenberg,

We write on behalf of the Managing Attorneys and Clerks Association, Inc. (MACA) respectfully to propose that the Unified Court System prioritize the development of functionality in NYSCEF that automatically converts legal citations into hyperlinks to the cited authorities and formally assign the project to the Division of Technology. We are addressing this letter to you in your respective capacities as Chief Administrative Judge and Chair of the Commission to Reimagine the Future of New York's Courts. We fully support Judge DiFiore's goal of focusing on the use of technology and online platforms to improve the New York State Court System and we believe our proposal outlined below fits squarely within this initiative.

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MACA is comprised of 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 processes required to get papers filed in court and the resource constraints under which the State's judicial officers and their staff labor to fulfill the judicial branch's mission of dispensing fair and impartial justice. In particular, our members have extensive experience with the time pressures involved in finalizing court papers for e-filing as well as the pace at which courts are able to render decision under the weight of sizeable caseloads.

The NextGen version of the federal courts' CM/ECF program includes a "Citations Link" feature that creates hyperlinks in text-searchable documents filed on ECF. The programming has the capability to recognize citation formats, much as NYSCEF presently is configured to recognize data that could be a social security number or financial account number as a measure to protect against mistaken filing of confidential personal information that is not redacted in conformance with Uniform Rule 202.5(e). Citations Link instantly creates hyperlinks to Lexis, Westlaw, Google Scholar or to documents filed on the ECF system, enabling judges and court staff to evaluate the parties' arguments and prepare written rulings more efficiently.

This functionality originally was developed locally by courthouse staff at the United States Court of Appeals for the Fifth Circuit who were looking for a way to make the work of their court's judges, law clerks and staff attorneys more efficient. Their homegrown programming identifies standard Blue Book citation forms and converts them to live hyperlinks. Fifth Circuit staff figured out how to do this without expending sums on outside developers and without imposing on their bar other than by requiring use of standard citation formats. Fifth Circuit staff have told us they are available to consult with Division of Technology staff on developing hyperlinking functionality in NYSCEF.

We believe such functionality should be added to NYSCEF for the benefit of every court in the Unified Court System that accepts e-filing: Supreme Court, Surrogate's Court, the Court of Claims and the Appellate Division. As new courts in the Unified Court System are equipped with e-filing, including Civil Court, Criminal Court and, in due time, the Court of Appeals, the efficiencies of hyperlinked citations would inure to judges and staff working in all of them, especially when circumstances require working remotely. Indeed, once the functionality is developed in NYSCEF, it would seem to require little further development to permit courts that still work in hard copy to scan memoranda and feed them into the system for hyperlinking just like papers that are e-filed. We are confident that New York's busy courts would have little trouble redirecting time and energy now spent on looking up authorities if hyperlinking were generally available to them.

As noted, NYSCEF already is configured to scan filings for text that matches patterns for some types of confidential personal information. That capacity to recognize textual patterns is an essential component of hyperlinking functionality like Citations

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Link. Without minimizing the additional development required to add hyperlinking functionality to NYSCEF, as noted above that originally was done for the federal system by courthouse staff working in a busy appellate court. Given our years of experience working with New York Director of E-Filing Jeffrey Carucci and the excellent staff of the Statewide E-Filing Resource Center, our familiarity with the work of the OCA's very able Division of Technology, and our discussions with Fifth Circuit staff about their development of hyperlinking for their court, we believe hyperlinking functionality can be developed for NYSCEF with limited expenditure.

We are cognizant of a proposal by the Commercial Division Advisory Council to require litigants to file hyperlinked papers in Commercial Division cases. Indeed, we have commented on two different such proposals from the Council, including the one that is now pending before the Administrative Board of the Courts. While we respectfully disagree with the means the Council has proposed (litigants hyperlinking their papers before filing), we fully agree with the benefits to judicial efficiency it seeks to achieve; only, we believe the benefits of hyperlinking should be made available throughout the Unified Court System rather than be limited to a single division or category of case. Accordingly, whether the Council's proposal is approved or not, we urge the Office of Court Administration to prioritize the development of functionality in NYSCEF to permit judges and court staff throughout the Unified Court System to hyperlink legal memoranda in order to make their work more efficient and to ease the extra burdens associated with judges and staff working remotely as they have had to do during the coronavirus public health emergency.

* * *

We are grateful to you and your respective organizations for considering MACA's views. If we can elaborate on this proposal or assist in consideration of it in any way, please let us know.

Respectfully,

Peter McGowan
MACA President
Managing Attorney, Sidley Austin LLP
pmcgown@sidley.com

Timothy K. Beeken
MACA Rules Committee Chair
Counsel & Managing Attorney,
Debevoise & Plimpton LLP
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**New York
County Lawyers
Association**

Matthew Bova & Edward E. Smith
Co-Chairs, Appellate Courts Committee

President
Stephen C. Lessard

President-Elect
Vincent T. Chang

Vice President
Adrienne B. Koch

Secretary
Jai K. Chandrasekhar

Treasurer
Richard B. Swanson

January 25, 2021

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

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.¹

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

¹ 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.

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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 wasteful process of travelling to a courthouse to file paper. Still, the current e-filing system can be improved. These comments propose several simple e-filing reforms that could drastically 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.² Now is the time 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.³ 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 the prosecution

² 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).

³ The situation is even worse 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.

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and other state agencies must spend resources scouring old files for exhibits that were admitted years earlier.

Once the record is complete, it still takes years after judgment is imposed for the court system to provide it. It often takes at least a year for counsel to be assigned 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 2014 judgment until May 2016 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, OCA should enact a rule requiring the following simple changes:

- the OCA CRIMS record sheet, which lists all of the court appearances in criminal cases, must 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;
- all materials filed in the trial court and/or contained in the court file must be filed on NYSCEF, including jury notes, *in limine* motions, and substantive email correspondence with the trial court (such as requests to charge, with are often done through email); and
- a copy of each exhibit must be made part of the record and placed on the NYSCEF file.

These reforms will do a lot of good. They should be adopted.

B. The Court of Appeals Should Go All Virtual

Although the Appellate Divisions have gone virtual during the Pandemic, the Court of Appeals has unfortunately not done so. Briefs and records, often collectively consisting of a 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

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briefing must be filed in paper, it still requires paper copies of the motion papers and letters.

The Court of Appeals should nullify any paper-filing requirements as doing so will enhance efficiency and save the taxpayer millions of dollars over a decade on the costs associated with printing/shipping of millions of pages of paper (when papers are filed and served by assigned or government counsel). In turn, the Court of Appeals should join the NYSCEF filing system so papers can be filed there.

At a minimum, the Court of Appeals should amend all of its rules to render a paper 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. Justice should not be pinned to factors outside the party's control. Nor should attorneys have to endure anxiety and time tracking packages, contacting postal services to determine the status of packages, and contacting the court to confirm that a paper has been received. Instead, as in virtually every other court system of which we are aware, a paper 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 wasteful and should be modified.

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 tremendous cost for appellate practitioners and produces little benefit. For one, appellate counsel must purchase expensive pdf-writing software. Worse, counsel must spend valuable time complying with the intricacies of the Technical Guidelines rather than tending to clients' needs. Indigent clients represented by institutional providers suffer the most. Purchasing the required software licenses creates budgetary headaches for providers. Additionally, since many institutional providers have limited support staffs, formatting responsibilities fall onto attorneys who must divert time and energy away from legal work and client communication in order to bookmark and hyperlink their filings.

In sum, there should not be any technical citation requirements. Instead, a table of authorities suffices.

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 the parties. This is senseless and wasteful. 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 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.

E. Rejected E-Filings

Courts routinely reject e-filings that do not comply with formatting and e-filing requirements. The manner in which they do so is often unhelpful. Often, the courts provide neither an explanation of where in the filing the defects appear nor a person to contact regarding their rectification. This can lead to practitioners spending valuable time trying to obtain guidance on how to fix (often minor formatting) errors. OCA should require courts to provide contact information for the person(s) who deem filings defective and eliminate the waste of time and resources current conventions produce.

Respectfully Submitted,

Appellate Courts Committee,
New York County Lawyers Association

EXHIBIT A

**New York
County Lawyers
Association**

STATEMENT OF THE NEW YORK COUNTY LAWYERS ASSOCIATION

Electronic Filing and Service During the Current Pandemic

In response to the current pandemic, some, but not all, New York courts have relaxed the rules governing the filing and service of legal papers by permitting electronic filing and service. And as of March 22, 2020, the Administrative Order of the Chief Administrative Judge of the Courts prohibits filings except in certain enumerated matters and those matters deemed “essential.”¹

To ensure the safety of the thousands of individuals involved in the filing, service, and review of legal documents, we recommend that New York appellate and trial courts, in both civil and criminal cases, quickly enact a rule that requires electronic service/filing of all legal documents and prohibits paper service/filing. See C.P.L.R. § 2103(b)(7) (authorizing the chief administrator to create rules governing e-service). This proposed rule would not require the establishment of any new e-filing systems but would instead merely require courts and litigants to make e-mail addresses available for electronic filing. This rule will facilitate filings in those cases where filing is currently permitted under the March 22nd Order and will continue to facilitate filings once that order is lifted some time in the future.

An exception to this proposed electronic-filing rule should be made for (1) incarcerated individuals and (2) *pro se* litigants who, due to financial, technological, or other hardship, cannot file documents electronically. This rule would be temporary in light of current circumstances and should remain in effect until subsequent rule modification.

This rule should not require consent of the parties and should simply require that courts and litigants make all reasonable efforts to provide an avenue for electronic service and filing. In virtually all pending cases, these avenues are already in place as parties already have access to court and party e-mail addresses. And if e-mail addresses are not currently available to accommodate this simple method, arrangements can easily be made to facilitate electronic filing and service. We are confident that attorneys and courts can, with ease, quickly adapt to this simple change.

We further recommend that the court system continue to make efforts to permit oral argument *via* video or telephone conference during this difficult period.²

¹ <https://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

² The New York County Lawyers Association was founded in 1908 as one of the first major bar associations in the country that admitted members without regard to race, ethnicity, religion or gender. Since its inception, it has pioneered some of the most far-reaching and tangible reforms in American jurisprudence, including through the work of its many committees that provide in-depth analysis and insight into legal practice areas. A version of this statement was approved by the Committee on Appellate Courts on March 22, 2020. The Executive Committee approved this statement as a Statement of the New York County Lawyers Association at its regular meeting on March 25, 2020.

1 West Main Street, 4th Floor
Rochester, NY 14614



Tele: (585)325-2520
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Website: www.lawny.org

January 25, 2021

Jeffrey Carucci, Dir.
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004

Dear Mr. Carucci,

I write on behalf of LawNY to submit comments on electronic filing and whether it should be made mandatory. LawNY is a non-profit law firm representing low-income clients in civil matters free of charge. We cover 14 counties in Western New York, most of which are rural counties, and we have seven offices across those counties. LawNY strongly urges that electronic filing be made mandatory in almost all matters, except for pro se litigants and attorneys who are not able to file electronically due to a lack of competence and/or technology in this area.

Requiring electronic filing will greatly increase access to justice for litigants. This is because it enables an office like LawNY, with a large service area, to instantly obtain court documents in a case that has already been opened or in a case that is being considered for intake. Instead of sending someone to the court to copy the file, which can easily take up half a day, the attorney handling the case can download the entire court file in a matter of moments at her desk. The electronic filing system automatically serves all other parties with any document that is filed, almost instantaneously, further saving time and energy that can be directed elsewhere. Finally, the current system results a patchwork of different courts using different methods of filing. For practitioners working within a large service area the lack of uniformity is annoying. It is hard to see what the benefits are to such a system, and the drawbacks are many.

The pitfalls of a lack of mandatory electronic-filing have been brought into sharp relief during the COVID-19 pandemic. The necessity of filing papers, and copying court files in person became a public health hazard both for attorneys and court staff. This forced the courts to stand up the EDDs system. While EDDs worked well in some jurisdictions, there were at least two supreme courts within LawNY's service area that simply refused to set up the EDDs system within their courts. This caused our attorneys to have to drive for long distances and then physically interact with court staff just to get something filed. This again put our attorneys' health at risk. When we inquired about this, we were told that the administrative judges cannot force a court to implement EDDs. This is a sign of a highly dysfunctional system; a system with insufficient centralized control.



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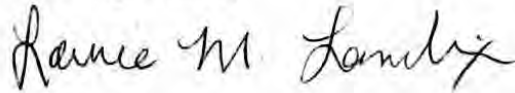
**1 West Main Street, 4th Floor
Rochester, NY 14614**

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Website: www.lawny.org

We strongly urge that mandatory electronic filing be adopted across the board in New York State. It is baffling that this has not already happened. Workers in all fields of employment have had to keep pace with changes in technology and adapt to new systems, and the legal profession should be no different. It is time for the court system to join the 21st century and implement mandatory e-filing.

Thank you for your consideration.

Respectfully submitted,



Laurie M. Lambrix
Director of Litigation and Advocacy



Appendix H

From: Victoria Esposito <VEsposito@Lasnny.org>
Sent: Monday, January 25, 2021 2:38 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments re: proposed efilng rules

Dear Mr. Carucci,

I am attaching our attorneys' comments re: mandatory e-filing. Please note that both these attorneys practice in fairly rural areas.

Please do not hesitate to contact me should you have any questions or concerns.

Respectfully,

Victoria Esposito

- 1) My biggest concern is of course justice courts. While I understand that this proposal would come with funding to upgrade technology and provide training, I remain extremely skeptical. Many of these courts lack email and reliable fax let alone have the ability to upgrade to efilng and virtual proceedings. Is it possible to do? Of course, but I fear it's more daunting than perhaps may be realized. As we've seen through the COVID19 discussions, there seems to be very poor understanding of just how technologically barren many of these courts are. Currently, I have experienced justice courts having poor audio recording, poor record management, refusing to accept money for the sake of undertakings or stays claiming they lack the capacity to do so, etc. This is all after the changes to justice court in 2006, the alleged increase in trainings, and existence of the hotline for assistance. I can't find what the actual exemptions are for pro se litigants (admittedly, I did not look very hard) and I'm assuming it's strictly a pro se litigant is not required to e-file period, the end. If so, I'm ok with that. If there is any judicial oversight in determining who is exempt and who isn't, I'm extremely skeptical of that as well. So to sum up, while this states this proposal is contingent on assessing and implementing sufficient technological upgrades and training, I feel that this has been promised before and has fallen short to the harm typically of indigent Respondents/Defendants.
- 2) There should be a far easier way in which to change attorneys for cases pending. When I started there were a number of cases which the prior attorney was involved in, but e-filing does not allow you access to those or to make filings as they are not listed as "your cases." I believe this is technical in nature as well, as we sign our papers as "of counsel" to LASNNY and the individual attorney is not the counsel of record.) For LASNNY and similar organizations there should be an easier mechanism. There should be easier access between the e-file system and the docket listing for the courts, a hyper link if possible. For the area up here, are the Town and Village Courts (and our 1 city court) going to be brought into the fold on this? It would make life much easier up here.

Victoria Esposito

(she/her/hers pronouns)

Advocacy Director



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January 25, 2021

Jeffrey Carucci, Dir.
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004

Submitted via email to efilingcomments@nycourts.gov

Re: Request for Public Comment on the New York State Courts Electronic Filing System

Dear Mr. Carucci:

On December 22, 2020, the Office of Court Administration (“OCA”) issued a notice seeking comments for inclusion in its annual report evaluating the State’s experience with the New York State Courts Electronic Filing System (“NYSCEF”).¹ The notice also requested feedback on a proposed amendment to CPLR Article 21-A that would make e-filing mandatory in certain cases. In response, Mobilization for Justice, Inc. (“MFJ”) has prepared comments reflecting our attorneys’ experiences with e-filing and addressing the recommendation by the Online Courts Working Group of the Commission to Reimagine the Future of New York’s Courts for mandatory e-filing across the State.²

MFJ envisions a society where there is equal justice for all. We endeavor to achieve social justice by prioritizing the needs of people who have low incomes, have disabilities, are elderly, and/or are disenfranchised by providing direct civil legal assistance and community education, partnering with other organizations, engaging in policy advocacy, and commencing impact litigation. In the past year alone, MFJ has provided legal assistance to 5,155 individual clients and helped a total of 10,828 New Yorkers. Because MFJ is a Universal Access to Counsel (“UAC”) provider, many of our attorneys primarily practice in New York City’s Housing Courts located in Manhattan, the Bronx, and Brooklyn and represent tenants facing eviction. MFJ’s attorneys also represent senior clients in Manhattan Housing Court through the Assigned Counsel Project (“ACP”) and represent

¹ *New York State Court Electronic Filing Program*, UNIFIED COURT SYSTEM OFFICE OF COURT ADMINISTRATION, Dec. 22, 2020, <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/NoticeInterestedParties.pdf>.

² *Initial Report on the Goals and Recommendations for New York State’s Online Court System*, ONLINE COURTS WORKING GROUP OF THE COMMISSION TO REIMAGINE THE FUTURE OF NEW YORK’S COURTS, Nov. 9, 2020, at 1, 11, <http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>.

tenants in Housing Part (“HP”) actions for repairs in the Bronx, Manhattan, and Brooklyn Housing Courts.

Since Governor Andrew Cuomo declared a State of Emergency in March 2020 due to the COVID-19 pandemic³ and Chief Administrative Judge Lawrence Marks authorized the use of e-filing in Housing Court,⁴ e-filing has become a necessary tool that MFJ’s attorneys have come to rely on in order to continue to provide high-quality legal representation to our clients. MFJ recognizes the many benefits that e-filing provides for practitioners, including the ability to quickly access court documents for current and potential clients and expeditiously file emergency applications with the Court. However, MFJ also acknowledges the need to balance the benefits of the continued and expanded use of e-filing against litigants’ need for privacy and the needs of those litigants who are pro se and/or who have limited or no access to technology. Our comments and recommendations regarding the continued and expanded use of e-filing and the proposal that e-filing be made mandatory across the State are provided in detail below:

I. Rules Must Be Enacted to Protect Litigants’ Privacy Concerns and Prevent the Improper Use of Court Documents by Third Parties.

a. Litigants’ Personal and Sensitive Information Must Be Adequately Protected.

Housing Court filings necessarily contain a vast amount of information about tenants including, at minimum: the tenant’s name; address; names of family members residing with the tenant; the tenant’s monthly rental obligations; and the presence of rental subsidies. In addition to this information, Housing Court files often include Confidential Personal Information (“CPI”), as defined by Uniform Rules for the New York City Civil Court (22 New York Code of Rules and Regulations (“NYCRR”) § 208.4(b), such as birth dates, social security numbers, financial account numbers, and the full names of minor children. Frequently, this information is not properly redacted as required by the existing rules.

In addition to CPI, Housing Court files often contain other sensitive personal information, including medical and mental health information. Such information frequently includes: assessments by Adult Protective Services (“APS”); medical and mental health evidence submitted in connection with applications for the appointment of guardians ad litem; medical or mental health evidence submitted to establish a reasonable excuse to vacate default judgments; documentation relating to drug or alcohol abuse or treatment; and evidence regarding tenants’ participation in the HIV/AIDS Services Administration (“HASA”) subsidy program. Such information is often filed without redactions.

With e-filing, improperly filed CPI and sensitive information is instantly made available to the public, and nothing prevents NYSCEF users from viewing and/or downloading that information.

³ See Executive Order 202, Mar. 7, 2020, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf (Declaring a Disaster Emergency in the State of New York).

⁴ See Administrative Order 115/20, May 28, 2020, <http://nycourts.gov/whatsnew/pdf/AO-115-20.pdf> (superseded by Administrative Order 267/20).

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Once confidential or sensitive information has been disseminated in the public sphere, an order to seal the file cannot remove the improperly disclosed information from the public domain. Additionally, with the expanded use of e-filing, tenants' personal information, although already public, has become much more readily accessible. Widespread access to the information contained in Housing Court files may subject tenants to possible identity theft and could even jeopardize the safety of survivors of domestic violence who have a strong interest in shielding their personal information from their abusers. Expanded e-filing could also compound the existing problem with tenant screening reports, also known as the "tenant blacklist," which identifies tenants who have appeared as a respondent in a Housing Court proceeding as a means for landlords to deny their application for new housing. Although the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") banned the use of blacklisting by enacting Real Property Law ("RPL") § 227-f, blacklisting may continue and will be made easier by the expanded use of e-filing if there is no mechanism in place to ensure that the information contained in court files will not be used to unlawfully discriminate against tenants.

Failing to enact adequate safeguards to protect individuals' personal information will undoubtedly prejudice vulnerable litigants by deterring them from seeking certain forms of relief that may require disclosure of sensitive information. Accordingly, MFJ recommends that the NYSCEF site enable litigants to "flag" CPI or other potentially sensitive information that has been improperly e-filed without redactions. Once "flagged" on the NYSCEF website, the material should be temporarily unavailable to the public until the litigant can make the appropriate motion to seal the confidential or sensitive information and permanently restrict its public access on the NYSCEF system. If the litigant fails to make an appropriate motion, the "flagged" documents should revert to being publicly accessible after an established period. Such a system would balance the Court's interest in maintaining publicly accessible records against private litigants' interests in limiting the wide dissemination of CPI and other sensitive information.

Litigants should also be permitted to e-file documents or statements containing sensitive medical information, such as references to HIV/AIDS status, mental health diagnoses or treatment, and references to drug or alcohol abuse or treatment under seal. Unfortunately, the current process used to file motions to seal imposes unnecessary burdens on advocates and unrepresented litigants alike. For example, in the New York State Supreme Court, the process for e-filing sensitive documents with a "restricted" status, which limits access to the documents to court staff and the parties while a motion to seal is decided, requires obtaining a signed temporary restraining order ("TRO") within five business days.⁵ If a litigant is unable to obtain a signed TRO within five business days, or simply fails to bring the signed TRO to the clerk's attention, the sensitive documents automatically lose their restricted status and become available to the public. The alternative to e-filing a motion to seal and TRO, and risking that sensitive documents will automatically be made publicly available on the NYSCEF website, is to file a hard copy of the motion to seal and supporting documents in person.

MFJ recommends that the current requirement imposed in the New York Supreme Court, that documents automatically lose their "restricted" status if a signed TRO is not obtained within a

⁵ *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*, SUPREME COURT, CIVIL BRANCH, NEW YORK COUNTY, HON. MILTON A. TINGLING, COUNTY CLERK OF NEW YORK COUNTY, at 10-11 (revised Aug. 15, 2019), <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf>.

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five-day period, be eliminated completely or, at a minimum, replaced with a much longer timeframe to reduce the risk that litigants' confidential and sensitive personal information will become publicly available on the internet due to their failure to obtain a signed TRO within a short timeframe. This change will make it more likely that litigants and legal advocates will e-file motions to seal and related documents, thereby reducing the burdens imposed on Courts and litigants by in person filing. MFJ also recommends that a similar system be enacted in the Housing Court.

b. Third Parties Must Be Required to Provide Proof of Identity Before Accessing Court Files on NYSCEF.

The current system for reviewing Housing Court files in person requires individuals to fill out a requisition card with their name and address and present it to the Housing Court clerk along with identification. The requisition cards are then preserved in the court file, thereby maintaining a paper trail of who has accessed the file and when they accessed it. In contrast, the current NYSCEF system allows anyone to use the NYSCEF website to search for case files anonymously as a "guest." MFJ recommends that, consistent with the Court's long-standing practice of requiring individuals to provide identification in order to review physical court files, a NYSCEF user should be required, at a minimum, to create an account with their name and address in order to access documents on NYSCEF. Moreover, registration for a NYSCEF user account should only be permitted where a court employee can verify the person's identification as matched to an account, unless the user is an attorney registering with their attorney registration number. The requirement of providing one's name and address will help discourage inappropriate uses of information contained in Housing Court files.

Additionally, when registering for an account to access NYSCEF, and prior to searching for Housing Court cases on NYSCEF, a non-party user should be required to certify that the information contained in the Housing Court file cannot be used to "refuse to rent or offer a lease to a potential tenant," consistent with RPL § 227-f. Although this will not serve as a complete deterrent against unlawful tenant blacklisting, such a measure will help to educate the public about the consequences associated with the improper use of Housing Court records.

c. Court Records Should Be Available on NYSCEF For a Limited Time Only Following the Resolution of a Case.

Housing Court records should not be preserved on the NYSCEF site indefinitely. To further protect litigants' privacy, the e-filed court file should only be accessible via terminals at court houses after a certain amount of time has passed following the conclusion of a case. This will balance the public's right to access court documents against the concern that the NYSCEF site could become a database used by third parties to mine for litigants' personal information and blacklist tenants.

II. A System Must Be Established to Ensure the Availability of Complete Court Files in Active E-Filed Cases.

a. Essential Documents, such as the Petition and Predicate Notices, Must Be Made Available on NYSCEF in E-Filed Cases.

There are currently thousands of active cases in the Housing Court that were filed prior to the COVID-19 State of Emergency and converted to e-filing long after those proceedings were commenced.⁶ As a result, there are many cases in which the court file available on NYSCEF only contains a fraction of the case documents. One common example are Housing Court cases where the landlord commenced a proceeding against a tenant in person, obtained a judgement prior to the COVID-19 State of Emergency, subsequently converted the case to e-filing, and then made a motion to execute the warrant pursuant to DRP-213.⁷ In those cases, the available documents on NYSCEF primarily consist of: the case summary prior to conversion, a court document compiled by the Court that lists what occurred at each court appearance; the landlord's rent ledger (in non-payment proceedings); and the court order awarding the judgment. Crucially, the online court file is frequently missing the documents tenant advocates need in order to represent their clients zealously and effectively, such as the petition and relevant predicate notices.

When court documents are missing from the online court file, the onus falls on the respondent's attorney to obtain copies of the missing documents. Although tenant attorneys will typically first request copies of the missing documents from the landlord's attorney, such requests are often fruitless because many landlord's attorneys lack access to their full court files while working remotely. When this is the case, tenant attorneys are forced to ask the Court to provide copies of court documents via email. Although most judges and their staff are responsive to requests for digital copies of court files, the Court has yet to adopt a uniform approach to handle these types of requests. Additionally, at least one attorney has reported that a judge declined to email her copies of a court file and the judge's clerk advised the attorney to obtain a copy of the Housing Court file in person at the courthouse, notwithstanding the COVID-19 pandemic.

To address the logistical challenges imposed on litigants by incomplete electronic case files and to ease the burden imposed on the Court by having to field countless requests for digital copies of court files, MFJ recommends that a rule be enacted requiring attorneys to upload all documents they have filed in a proceeding once the case is converted to e-filing. For example, in a Housing Court case, the landlord's attorney could annex the missing court documents to their application to convert the case to e-filing and the application should not be granted unless and until the necessary documents have been uploaded to NYSCEF.

⁶ See Administrative Order 87/20, May 1, 2020, <https://www.nycourts.gov/whatsnew/pdf/AO-87-20.pdf> (expanding use of e-filing).

⁷ DRP-213, Aug. 12, 2020, <http://www.courts.state.ny.us/courts/nyc/SSI/directives/DRP/DRP213.pdf> (Management of Pre-Pandemic Eviction Proceedings in the New York City Civil Court (Part I)).

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b. A System Must Be Enacted to Ensure that “So-Ordered” Stipulations are Consistently Uploaded to NYSCEF by the Court.

Another logistical challenge posed by e-filing, at least in the Housing Court, is the fact that there is no system in place to ensure that “so-ordered” stipulations are filed on NYSCEF. As a result, in many cases, the only record available regarding the resolution of a case will be an email from the Court to the attorneys litigating the case that contains the “so-ordered” stipulation as an attachment. If an attorney wants the “so-ordered” stipulation to be e-filed, they must then take the additional step of asking the Court to upload the document. It is imperative that the complete case record be available in e-filed cases to ensure equal access to information and compliance with “so-ordered” stipulations. As such, MFJ recommends that a mechanism be put in place to ensure that the Court automatically uploads stipulations within a reasonable time after they are “so-ordered.”

III. CPLR Article 21-A Should Be Amended to Require Mandatory E-Filing in Certain Cases.

a. E-Filing Should Be Mandatory in Cases Where All Parties Are Represented.

E-filing has become an essential tool for attorneys representing individuals with low incomes because it: provides an efficient way to quickly check case files; permits the filing of documents without the expense of mailing; saves time that would otherwise be spent commuting to court to file documents in person; and prevents entire court files and motions from being lost as they are physically transferred from one part of the court to another. Indeed, it is not uncommon for motions – such as time-sensitive orders to show cause – to be lost in the Housing Court when they are filed in person.

Another benefit of e-filing is that it removes the discretion of the court clerks at the filing window to reject filings in person. A frequent problem experienced by MFJ attorneys and advocates practicing in the Housing Court is that clerks will decline to accept court papers. For example, when one MFJ attorney tried to file an amended answer in person at the Bronx Housing Court, the clerk informed the attorney that she could not file the amended answer because there was already an answer in the file. The attorney was then forced to contact the presiding judge in the case and the judge had to then call the clerk so that the attorney could file the amended answer. Another attorney also reported that the clerk at the window declined to let her file an amended answer – the attorney was able to file the amended answer later that week when she spoke to a different clerk. Accordingly, MFJ enthusiastically welcomes the continued implementation of an e-filing system that will eliminate these sorts of needless roadblocks that only serve to increase the burden imposed on the already-strained court system, litigants, and legal advocates.

Although MFJ supports e-filing in cases where all parties are represented by counsel, it believes that the exception that allows pro se litigants to proceed in person should remain because many unrepresented litigants lack the technology – such as access to the internet, smart phones, and computers – and/or technology skills required to adequately represent themselves in e-filed cases. Indeed, because e-filing requires a computer or smartphone and a wi-fi connection, there is an unsurmountable cost prerequisite to using NYSCEF for certain litigants. MFJ strongly believes

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that no pro se litigant should be penalized and prejudiced due to their lack of sufficient funds or access to technology.

b. Opt-In to Consensual E-Filing by Pro Se Litigants Should Require an Explanation by the Judge on the Record.

The current rules provide a consensual e-filing program that allows petitioners to commence proceeding by e-filing and requires respondents—whether pro se or represented by counsel—to opt-in pursuant to 22 NYCRR §§ 208.4-a(b)(3) and 202.5-b(b)(2). The current rules provide that an unrepresented litigant may consent to e-filing “provided the clerk shall first have explained his or her options for e-filing in plain language.” § 202.5-b(b)(2)(ii). However, MFJ recommends that any consent to e-filing by a pro se litigant require that the presiding judge explain what it means to consent to e-filing on the record, just as a stipulation must be explained pursuant to RPAPL § 746. This change will help ensure that pro se litigants understand the risks associated with e-filing, and that they may not get notice of new court dates or motions made by the opposing party unless they check their e-mail. Unrepresented litigants may feel pressured to opt-in to e-filing or may misunderstand the process and, thus, may opt-in without understanding that they are free to ignore the notice about consensual e-filing. The only way to ensure that an unrepresented party’s rights are protected is to have such consent be given on the record at a court date. The “notice of electronic filing (consensual case)” form should also be amended for use in Housing Court to explain that a pro se litigant must give their consent to the presiding judge on their first court date following conversion.

IV. Conclusion

We thank you for this opportunity to provide feedback regarding e-filing and the proposed amendment to CPLR Article 21-A. We hope our comments will assist you in continuing to improve the e-filing system and promote access to justice for the benefit of all New Yorkers.

Please do not hesitate to contact me directly if you have any questions.

Very truly yours,

s/ Cristina Quiñones-Betancourt
Cristina Quiñones-Betancourt, of counsel to
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cc: Leah Goodridge, *Managing Attorney for Housing Policy*



February 1, 2021

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

Re: Request for Comments on Electronic Filing Program

Dear Mr. Carucci:

Thank you for the opportunity to comment about the proposed expansion of electronic filing in New York State Courts and the impact the expansion would have on our clients and unrepresented litigants in consumer debt collection cases.

Manhattan Legal Services is part of Legal Services NYC (LSNYC), the largest civil legal services provider in the country, with offices in the Bronx, Brooklyn, Queens, Staten Island and Manhattan. LSNYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. For over fifty years, LSNYC has challenged systemic injustices and ensured the well-being of communities across the city. This work includes preventing evictions and preserving housing; demanding access to high-quality education, health care, and economic security; ensuring safety and stability for survivors of domestic violence and immigrants; and fighting for the dignity and respect of all New Yorkers.

LSNYC provides full representation to low-income New Yorkers in the areas of consumer law, including, but not limited to, representing consumers who are defending debt collection lawsuits, as well as advocating for those whose bank accounts have been restrained, or whose wages are being garnished, and filing affirmative cases against debt collectors for violations of the Fair Debt Collection Practices Act. The majority of the clients I represent in consumer matters are elderly and/or disabled, and many of them are limited English proficient ("LEP").

E-filing platforms should only be expanded if the expansion benefits *pro se* litigants in addition to court personnel and attorneys

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Peggy Earisman, Project Director



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The majority of attorneys who use e-filing find it much more convenient than having to file and serve hard copies of papers, but this is not necessarily true of the self-represented.

Many studies have established that low income communities of color are disproportionately affected by debt¹, and that more default judgments are entered for people living in those communities than in others that are more privileged.² Low income communities which are most subject to default judgments are the least likely to have the technology needed to benefit from e-filing.³ Ironically, expanding e-filing has the potential to increase the number of default judgments.

Debt collectors have a long history of abusing the court system by filing a high volume of debt collection cases without sufficient review to verify the debt is valid.⁴ Expanding e-filing will make it faster and cheaper for plaintiffs to file court cases and obtain default judgments without making it easier for *pro se* defendants to defend themselves.

Example:

My office has sued a number of debt collection law firms for filing cases against consumers without a legal basis. Many of these law firms file literally thousands of court actions per year, although they may have ten or fewer attorneys on staff. Expanding e-filing to civil court, where the bulk of these collection cases are filed, will allow them to file motions for default and summary judgment in even higher numbers than they do at present without expanding their staff, and reduce the amount of attorney involvement in each additional case even more.

Debt collectors often file more than one lawsuit against a consumer at a time. Because many of these cases are filed by the same debt buyer and give little or no information about the original creditor, many *pro se* defendants assume the complaints are duplicates and end up defaulting on one or more of them.

Ms. D was served with multiple debt collection lawsuits at the same time by a single debt buyer, so the named plaintiff was identical in all the actions, although the debts involved different credit cards. Ms. D had no idea that there were three court cases against her until she met with me and had already defaulted on one of the actions.

The higher rate of filings made possible by e-filing will only exacerbate this problem.

Most *pro se* litigants lack the technology to be able to use e-filing

If *pro se* consumers had equal access to e-filing, it would help to level the playing field, but that is not currently the case. People who are being sued in debt collection actions are

¹ <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>

² <https://www.neweconomynyc.org/wp-content/uploads/2018/11/Press-Release-CY-PRES-TO-CLARO-11-9-2018-maps.pdf>

³ <https://www.gothamgazette.com/opinion/10022-time-bridge-new-york-digital-divide-heres-how-wifi-internet>

⁴ <https://www.issueab.org/resources/15013/15013.pdf>

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predominately low income and lack financial resources. Most do not have computers or a stable internet connection. For many of them, the only technology they possess that can be used for e-filing is a smart phone. They don't have or know how to use docu-sign or how to save a word document into a PDF document and have no access to a word processing program, printer or scanner.

E-mail, which many of us take for granted, is not used by a majority of my clients and those who do have an e-mail account do not check it regularly.

Most don't know how to set up an account with a username and password and have to be helped to do so. It has taken me half an hour or longer to assist clients to open an account because they simply are not used to choosing a password and struggle to do so given the requirements for numbers and special characters many platforms now have.

Pressures *pro se* litigants feel to opt into e-filing and their lack of understanding of what it entails.

In courts that already have mandatory e-filing, *pro se* litigants have little or no understanding of what e-filing consists of at the time they must make a decision on whether or not to opt in. The clerks do not have time nor is it their role to explain how e-filing works. The forms that accompany the hard copies of complaints that notify the defendant of e-filing options are often incomprehensible to the self-represented. Pre-COVID, when they went to court, the unrepresented were encouraged to opt in, being told that it means they won't have to go to court as often. During COVID, many people feel an added pressure to opt in because they do not want to put their health at risk by traveling to the court and sign up only to find out later that they cannot use the system.

Example:

Mr. F. signed up for e-filing because he was elderly and disabled. He had suffered a traumatic brain injury which affected his judgment as well as his memory. His disability and lack of technology prevented him from being able to actually participate in e-filing. He had to go to court and ask the clerk to assist him every time he had to file a paper. The only technology Mr. F had was a smart phone with a limited data plan. Once he used up his data for the month, he could no longer receive e-filing notifications because he had no internet service and missed several important notifications.

Menus that seem simple and straightforward to attorneys can be incomprehensible to a *pro se* litigant who has never heard of an RJI and does not know what a motion is, or an exhibit, or an affidavit. In addition, a significant number of my clients are illiterate, or have limited literacy, presenting another challenge to using the system.

Many unrepresented litigants have their papers rejected repeatedly because they do not understand the categories and choose the wrong one when filing papers. Others are defeated by a message that pops up saying they have to pay a fee for filing that they

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cannot afford and NYSCEF does not make it clear that they can request a fee waiver or how to do so.

Example:

Ms. S is a college graduate and has a working computer. She went to court to file an answer, but she had not known it had to be served before filing. The clerk told her if she consented to e-filing, she could file the answer that day. Not wanting to have to return to court, she opted in. She was unable to navigate the NYSCEF system for future filings. She missed several e-mail notifications because the case had been inactive for an extended period of time before the plaintiff filed a motion and notifications went into her spam folder. I was giving Ms. S pro se assistance and I had signed up for e-track notifications, so I was able to alert her to the filing, but Ms. S was unable to file a response herself because her username and password no longer worked, or she remembered them wrong. Once she was finally able to access NYSEF, she did not understand what an RJI was or how to get fees waived and as a result, paid a fee she could not afford that she should not have had to pay.

All too often, consumers sued in Supreme Court who opt into e-filing because they think it will save them trips to the courthouse end up having to bring hard copies to the courthouse to be filed because they lack the resources to e-file them from home. In addition, pre-COVID, many judges required hard copies of motion papers be brought to the court on e-filed cases, so the defendants still had to go to court. For low wage workers who risk losing their job if they take time off during the day to go to court to file and for the elderly and disabled whose health presents an obstacle, these personal appearances required even after opting in to e-filing negate its benefit.

For those who lack technology, access to public computers is limited because the need is greater than the supply. Most unrepresented defendants typically have to travel to use a public computer which presents an additional barrier to participating in e-filing, particularly those who are caregivers for a disabled family member, are disabled themselves, or who have minor children.

The court must take steps to make e-filing accessible to all prior to expanding it to more courts

In civil court, approximately 95% of defendants are unrepresented. The legal resources available to them are extremely limited. The Volunteer Lawyer for a Day program (“VLFD”) provides limited scope assistance to *pro se* defendants in a narrow range of consumer debt cases during court appearances. The CLARO program, a partnership between the Feerick Center, the City Bar, and legal services organizations, provides limited scope *pro se* assistance to unrepresented defendants primarily in consumer credit transaction debt collection actions through a daily clinic. During COVID, both programs are operating virtually at a much reduced capacity.

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Most legal services organizations have very few attorneys available to represent defendants in consumer debt collection actions. At Manhattan Legal Services, my office, I am the only attorney who practices consumer law.

Court sponsored access to justice programs and legal services organizations lack the capacity to train and support consumers in the use of e-filing, therefore this support needs to come from the court itself if the court wants to make e-filing universally available.

If the court wants to expand e-filing, it needs to invest in resources and support to make it equally accessible to plaintiffs and unrepresented litigants. This means conducting trainings for new *pro se* participants that explain not only the system, but the legal vocabulary used by it; making NYSCEF more user friendly by defining the different document categories and what they mean; and clarifying when a defendant can ask for a fee waiver and how. It also means providing additional access to public computers where *pro se* defendants live. Current court computers are insufficient to meet the need and most *pro se* litigants do not live near a courthouse.

E-filing must also be equally accessible to those with disabilities and those who are Limited English Proficient. The e-filing menu should be expanded to allow litigants to inform the court of the accommodations they need; list the accommodations available; and provide clear instruction on how to obtain accommodations.

The court seems most comfortable with accommodations related to mobility impairments and less prepared to provide accommodations for other types of disabilities. Although the court has information posted on its website regarding disability coordinators, that information is not kept up to date.

Example:

I contacted the court to ask how a pro se litigant could obtain an accommodation. I called the number posted on the website and in the courthouse as well as sending an e-mail to the address provided. After leaving multiple messages and sending multiple e-mails, someone contacted me months later and said he had not received the e-mails because the e-mail address on the website was not one they checked often. He gave me a different e-mail address and then referred me to the judge, who was the one who had referred me to the disability coordinator in the first place. Neither were aware of information on the court website which was relevant to my application which I had to cite to them in order to get relief for my client.

From speaking to clerks at the courthouse, my understanding is that once an e-filing status has been assigned to a party, it is impossible to change it, making opt-ins permanent. The court must put in place an easy mechanism for *pro se* litigants to be able to opt-out of e-filing after they have opted in should the *pro se* litigant find he or she is unable to use e-filing successfully, or if he or she were able to do so initially, but no longer can because their computer no longer works, or they can no longer afford payments for internet, or due to other changes in circumstances.

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Please feel free to contact me at mmccune@lsnyc.org or 646-442-3143 if you need further information.

Sincerely,

DocuSigned by:
Mary McCune
27007038E9854E3...

Mary McCune
Senior Staff Attorney and
Consumer Law Specialist

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From: Johnson, James E. (Law) <jajohnso@law.nyc.gov>
Sent: Monday, February 01, 2021 3:25 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: Goode-Trufant, Muriel (Law) <mgoodetr@law.nyc.gov>; Rehman, Asim (Law) <asrehman@law.nyc.gov>; Yarde, Ann-Marie (Law) <ayarde@law.nyc.gov>
Subject: NYC Law Department Comments on New York State Courts Electronic Filing Program // Mandatory e-Filing

Dear Mr. Carucci,

As Corporation Counsel for the City of New York, I write in response to your December 22, 2020, invitation for comments regarding e-filing.

The City of New York supports the proposed amendment to CPLR Article 21-a to make e-filing mandatory in all courts.

NYSCEF has proven itself an efficient “one-stop shopping” system that allows litigants to simultaneously file and serve court documents from the convenience of their home or office. NYSCEF eliminates the need for copies of court submissions and in-person service and filing of papers. In so doing, NYSCEF conserves judicial and party resources, while also making the practice of law a greener and more environmentally friendly enterprise.

As one of the largest institutional litigants in the State, the City has faced tremendous operational challenges during the COVID-19 crisis. The Law Department was able to keep much of its state court legal operations smoothly afloat because of the significant contribution of NYSCEF to our overall efficiency. E-filing provided a safe and socially distanced mechanism to continue the practice of law and the important work of government. Even in a pandemic, access to the courts remains essential to the common good and the rule of the law. NYSCEF supported (and continues to support) those salutary ends.

There is no question in my mind that NYSCEF should be available to all courts in New York State. The COVID crisis will continue to present operational challenges, and an extension of NYSCEF will only assist the courts and litigants as we navigate uncharted waters. And were another crisis to occur, an expansion of e-filing to all courts would greatly aid continuity of operations, and the important public policy of unfettered access to the courts.

The proposal provides that further extensions of e-filing will still require the input of stakeholders and consent of the County Clerks. And exceptions to an e-filing mandate are made for unrepresented parties and attorneys without sufficient technological resources. These safeguards will ensure that new extensions of e-filing proceed in a judicious manner.

Thank you for the opportunity to provide these comments.

Sincerely,

James E. Johnson
Corporation Counsel
Law Department
100 Church Street New York, NY 10007

Appendix H

From: Mervine, Leah R
Sent: Friday, January 22, 2021 7:29 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments regarding e-filing

Dear OCA Division of E-Filing,

Our bureau is concerned that the e-filing system as it currently exists does not take into account the way large-volume government offices work. Currently, every case that is e-filed at the Appellate Division must be put into my name as a placeholder until an appellant perfects a brief—it is only then I am able to assign the case. Once a case is assigned, the attorney registers his/her appearance and then I must manually go back in and remove my name from the case. This is an onerous process. We are hopeful that moving forward, with more and more cases being subject to mandatory e-file, e-filed cases can be registered to an office or whole bureau, rather than an attorney. The system, as it exists now, is akin to having every piece of department mail manually opened and filtered personally through me.

Secondarily, our bureau has had adverse experiences with e-filing at the Appellate Division, Fourth Department. We just successfully argued a motion to hold a case in abeyance and for an extension to file a respondent's brief where, in contravention of 22 NYCRR 1000.17 (a) (3), e-filings were accepted by the Court and generated by the Court for the appeal despite the fact appellant inadvertently did not serve entry of initial information for electronic filing notice on us pursuant to 22 NYCRR 1245.3 (c) (4). The case was on the argument calendar when one of our ADAs happened upon it. We were unaware that appeal was perfected, let alone on for argument. The thought that a case could be inadvertently decided without our input is extremely unsettling.

We have also had an issue with consistency. Some items are still sent in hard copy, and some e-filed. In one of our People's appeals (where we are appellant) we are currently having difficulty. The Seventh Judicial Court Reporter's Analyst who is responsible for fulfilling transcript orders informed me in an e-mail: "No transcripts are being efiled from the Court Reporter's office. Hard copies are delivered to the County Clerk's office and I don't know what happens from there."

We hope this feedback will help to improve the system.

Sincerely,
Leah Mervine

Leah R. Mervine
Assistant District Attorney
Chief, Appeals Bureau
Monroe County District Attorney's Office
47 South Fitzhugh Street

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW · YESHIVA UNIVERSITY

Charles Altman
Adjunct Professor of Law

Phone: 646. 837. 0500
Email: charles.altman@yu.edu

January 24, 2021

Jeffrey Carucci
Director E-Filing Division
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: 2021 Annual Report and
Mandatory Electronic Filing Program

Dear Mr. Carucci:

I write in regard your request for comments, dated December 22, 2020. Issues related to internet access and e-filing of court documents are not new¹ but they have gained even greater significance with the Coronavirus pandemic and the implementation of virtual court proceedings.² While, the Unified Court System's NYSCEF is very different than Facebook, Twitter or Gizmodo, there are issues regarding the public perception of online security that are similar.

NYSCEF should clarify its policies regarding redaction, confidentiality and access control. This could be done with appropriate web pages and directories that are easily navigable, and SEO optimized, and with the full text of rules and a Frequently Asked Question section. Please see Exh. A for further details.

Thank you for the opportunity to offer public input on these important matters.

Sincerely,

Charles Altman

Charles Altman

¹ "Lawsuit's Lurid Details Draw an Online Crowd" NY Times, Feb. 22, 2015

² "It's Time to Fix the Fine Print", NY Times, Editorial, January 24, 2021

Appendix H

EXHIBIT A

SAMPLE NYSCEF INTERNET DISCLOSURES & FAQs

RE PRIVACY, REDACTION & SEALING

- A. Disclosure that all NYSCEF documents are generally available to the public instantly on the internet upon submission and without any monitoring (except to the extent that Appellate Divisions or others review documents for compliance with PDF bookmarking and other rules).
- B. Explanation of the differences between rules of redaction, public and restricted access to certain types of documents in certain categories such as mental hygiene, child welfare and matrimonial cases.
- C. A statement as to whether NYSCEF or OCA will disclose to filers of sealed or restricted access documents if there should be any hacking or security breaches of NYSCEF computers which compromise the confidentiality of sealed or restricted access documents.
- D. The availability of procedures to remove public NYSCEF documents that do not comply with sealing and procedures for redaction of specific data elements within previously filed documents.
- E. Distinction between sealing of documents by virtue of a judicial sealing order and de facto sealing or public access restriction of categories of case files by County Clerks.
- F. Procedures (or lack thereof) for removing or redacting intentionally scurrilous material from NYSCEF filed documents.
- G. Procedures for submitting Records on Appeal for documents or in cases that are sealed or have restricted public access.
- H. Procedures when one party files via NYSCEF and the other party, a pro se party, does not consent to NYSCEF filing.
- I. Procedures for removing material from NYSCEF filed documents intended to, or deemed likely to, incite physical harm or violence.

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- J. Method for filing Complaints regarding filings that violate NYSCEF rules.
- K. Remedies against attorneys who knowingly or recklessly make NYSCEF filings in violation of NYSCEF rules, including suspension of NYSCEF filing privileges.
- L. Remedies against attorneys who knowingly or recklessly file sealed documents or NYSCEF restricted access documents in other NYSCEF litigation, without court approval.
- M. Disclosure of the signing of any agreement for the sale by OCA of NYSCEF civil documents in bulk, or on an automated basis, to private data aggregation companies (see Exh. B Item 1) and any ability to opt-out of any such future programs.
- N. Any methods that citizens of other countries (e.g. European Union countries) may utilize to restrict or protect access to NYSCEF disclosure of confidential information within those countries in violation of local laws.
- O. Any methods or procedures by which all parties to a NYSCEF civil matter may request that their filings, other than reported judicial decisions, NOT be publicly available on NYSCEF.
- P. Any methods or procedures by which NYSCEF civil matter documents, other than reported judicial decisions, would be automatically removed from general NYSCEF public access after a set number of years (e.g. 15 to 20 years after filing).

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EXHIBIT B

1. EXCERPT FROM 2019 UCS ANNUAL REPORT

Criminal History Search Revenues

A portion of court system-collected revenue includes fees for services provided by UCS' Criminal History Search Unit, which, since 2003, has **sold criminal history public records** that include felony and misdemeanor convictions from all 62 counties. By law, the Office of Court Administration is solely responsible for the sale of these records produced by a search of its electronic database, charging a \$95 fee per name and date of birth searched. The fee was increased by the State Legislature in April 2019 from \$65 to benefit the Indigent Legal Services Fund. ...In 2019, the Criminal History Search Unit collected \$284.7 million for criminal history search records. (emphasis supplied)

2. INFORMATION REGARDING COMMENT SUBMITTER

Prof. Altman has a background in computer programming, systems design, and the application of computer technology to the legal process. He served as Chair of a NYC Bar Association Subcommittee on Computer Crime and Abuse (1984) and is the Co-inventor of an automated legal negotiation and document creation system - US Patent 6,366,892 (2002).

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From: James S. Hinman
Sent: Saturday, January 23, 2021 5:13 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Attn: Jeffrey Carucci, Director, OCA Division of E-filing - Re: New York State Courts Electronic Filing Program

Dear Mr. Carucci:

As a member of the Monroe County Bar Association, I was made aware of your letter of December 22, 2020 soliciting observations and comments with respect to "a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state - in any or all of the State's trial courts."

I am writing to express my opposition to the proposed amendment insofar as it would make electronic filing mandatory in any or all of the State's trial courts. While I understand that there are many benefits to e-filing, especially for the courts and that it does not pose a burden for the majority of my colleagues, who have technological capabilities and the ability to avail themselves of that option, there are many of us, admittedly fewer in number, for whom electronic filing poses burdens and obstacles that are detrimental to our practice and threaten our ability to continue to practice our profession..

I am a solo practitioner and have been a practicing attorney in New York State for over forty years. I moved my office to my home eight years ago and have had no assistants or staff in over twelve years. I am familiar with many who practice under similar circumstances. I practice mainly in Family Court and criminal defense but, in order to provide complete service to clients, also have occasional matters in Supreme and Surrogate's Courts. Although I attended a training seminar and thought that I would be able to acquire the necessary skills and proficiency to coexist with this process, that has not proven to be the case. I have, therefore, taken advantage of the opt-out provisions in those instances. I did, however, have an appeal, in a retained case, in which electronic filing was required and found it necessary to utilize a third party service in order to meet the filing requirements and, even with their assistance, four attempts were made before the papers were accepted. In total, the electronic filing requirements resulted in substantial additional costs to my clients - over \$1,000.00 in all, when taking into account the fee for the outside assistance and the additional time expended by me meeting the additional requirements. My clients were not wealthy individuals and have three small children - this was a burdensome requirement for them and they derived absolutely no benefit whatsoever over what would have resulted from filing in the traditional manner - appropriate copies of the briefs being filed with the Appellate Division. As a result of that experience, I am no longer willing to handle appeals. If electronic filing is made mandatory in all courts, I will most likely find it necessary to severely curtail my practice stop practicing altogether. That is not something I wish to do at this point in my life, at least not yet.

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Lest you think that I am alone in my beliefs, I assure you that I have talked with many of my colleagues who also find electronic filing to be burdensome and problematic. They, however, are disinclined to express themselves for fear of running afoul of the pressure being exerted to implement mandatory electronic filing. While I realize that electronic filing has many benefits for court staff as well as large firms, corporate clients and public agencies, and recognize it is a process that is increasing in popularity, it is not advantageous for everyone, especially citizen litigants and many solo and small firm practitioners. I have always felt that the practice of law is about serving the needs of the clients, not the courts or those who serve the courts. Quite frankly, I see absolutely no benefits that accrue to my clients from electronic filing.

I realize that electronic filing is here to stay and will most likely expand; however, I am hoping that the opting out provisions remain intact so that those small firm and solo practitioners, such as myself, who lack the capability and necessary abilities to successfully comply without added impediments, can continue to practice the profession we love and help our clients navigate the already difficult process of interacting with the courts and the justice system. The additional time and expense attendant to electronic filing for us could be much better expended in other endeavors.

Thank you for your consideration and for affording me the opportunity to express a contrary opinion. If you would like to discuss my concerns in greater detail, I would welcome the opportunity to do so at your convenience.

Very truly yours,

James S. Hinman
James S. Hinman, P.C.
Post Office Box 67160
Rochester, New York 14617
Telephone: (585) 325-6722
Cell/Text: (585) 704-9954
Fax: (585) 325-4496
jshatly@frontiernet.net

Appendix H

From: info@renscobar.org <info@renscobar.org>
Sent: Saturday, January 16, 2021 10:32 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Fw: RE: Proposed Mandatory E-Filing Across NYS-Request for Comments

Good morning

Following are comments from Hon. Elizabeth M. Walsh regarding mandatory e-filing. These comments were originally sent to the Rensselaer County Bar Association.

Sincerely,
Beth Muller
Executive Assistant, RCBA

> -----Original Message-----

> From: Hon. Elizabeth M. Walsh <emwalsh@nycourts.gov>

> To: Rensselaer County Bar Association <info@renscobar.org>

> Subject: RE: Proposed Mandatory E-Filing Across NYS-Request for
> Comments

> Sent: Jan 14 '21 09:41

>

> Dear Executive Committee of the RCBA,

>

> I have had a chance to review the memo in connection with the
> proposed mandatory e-filing across NYS. The concerns I have would be
> for the exceptions that seem to be included (i.e. pro se litigants who
> may not have access to the technology needed for e-filing, and
> attorneys who may lack the technology, as well). In my experience
> during the pandemic in Family Court, there are many litigants who do
> not have access to the technology necessary to participate in
> e-filing. Family Court litigants are often poor, sometimes homeless,
> dealing with addictions, mental health issues, etc. So long as an
> exception exists in the mandatory e-filing legislation for pro se
> litigants, and the small number of attorneys who do not have the
> technology needed to participate in e-filing then I believe it would
> be beneficial legislation to pursue.

>

> Thank you.

>

> Respectfully yours,

>

> J. Beth Walsh

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01-18-21;10:53AM;Mowry & Mowry

:3159637268

1 / 1

JOHN MICHAEL MOWRY

ATTORNEY AT LAW
MAIN STREET, BOX 310
MEXICO, NEW YORK 13114

JOHN B. MOWRY (1912-2011)

(315) 963-7266
FAX (315) 963-7268

January 18, 2021

Amy Chadwick, Attorney
Oswego County Bar Association
c/o 26 East Oneida Street
Oswego, New York, 13126

Fax 315-343-0134 ✓

Dear Amy:

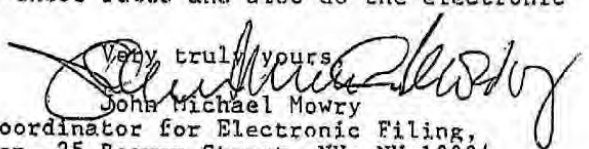
Re. Proposed 21(A) CPLR-Electronic Filing

I respond to an email I found on my handheld I-pad from Jeffrey Carucci, Statewide Coordinator for the Office of Court Administration. He solicited opinions from bar associations and members on the subject of mandated statewide filing by electronic means in proceedings in Supreme Court. A week or two ago I happened to note a similar note regarding statewide filing by such means in the Lewis County Surrogate's Court.

I oppose it because it will very much impact my ability at age 80 to practice law in the State of New York despite the possibility of "opting out" by filing a statement to the effect that I have no means of emailing, do not use a computer, do not have employees, much less employees who are skilled at the use of such electronic means and, further, because I feel that it will prejudice those lawyers who are in my boat when it comes to competing against those who are versed in and can use or have facilities and means to use electronic filing.

The State Bar, Office of Court Administration, et al still mandate completion of 24 hours of continuing education every two years and also require payment of \$300. every two years for me to continue to practice law. Neither of these were required when I was admitted to practice in 1965. Both were added in later years, probably by votes or ukase of those younger than I by a good bit. I rather expect that those now advocating for electronic filing are also alot younger, probably grew up using a computer in grade school and/or have advanced to a level where they have clerks paid by the public to make these rules and also do the electronic communication.

Very truly yours,


John Michael Mowry

cc. Jeffrey Carucci, Statewide Coordinator for Electronic Filing,
Office of Court Administration, 25 Beaver Street, NY, NY 10004
Chair, Assembly Judiciary Committee
Chair, Senate Judiciary Committee
My representatives in Assembly and Senate

Appendix H

From: Michael Furlano <mfurlano@lasroc.org>
Sent: Friday, January 08, 2021 4:32 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-Filing Comment

I am very happy with how NYSCEF works, and would like to see it expanded to major city courts like Rochester, NY.

Michael A. Furlano (he/him)

Attorney

The Legal Aid Society of Rochester, NY

One West Main Street

Rochester, NY 14614

Tel: (585) 295-5763

Fax: (585) 232-2352

mfurlano@lasroc.org

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From: Joch & Kirby <jochnkirby@aol.com>
Sent: Tuesday, December 29, 2020 10:53 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

I fully support efilng, but I also understand that some older attorneys, like my partner, cannot or choose not to learn and depend on supporting staff to do the filing. So what do you do when someone like him needs to file and the supporting staff is not here, but the courthouse is only a block away and he would gladly deliver his documents there directly.

Also, what about the pro se individuals? Some do not always have the means to file electronically, nor the funds to hire an attorney. I guess my bottom line is that you cannot make filing exclusively electronic and need to keep the door open for those who cannot do it by themselves.

Susan C. Kirby, Esq.

Joch & Kirby

319 N. Aurora St.

Ithaca, NY 14850

607-272-7279

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From: lobolenskylaw@gmail.com <lobolenskylaw@gmail.com>

Sent: Tuesday, December 29, 2020 1:09 PM

To: eFiling Comments <efilingcomments@nycourts.gov>

Subject: New York State Courts Electronic Filing Program

Good afternoon – I support without reservation the lifting of the current restraints upon the discretion of the Chief Administration Judge to introduce mandatory e-filing programs in any court and/or action.

LARISA OBOLENSKY

Attorney-at-law

P.O. Box 494

Delhi, New York 13753

607-832-4256

Appendix H

From: Bart <bartdiv@aol.com>
Sent: Tuesday, December 29, 2020 1:38 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Input concerning efilng

Jeffrey Carucci,

I saw that you are requesting input on the subject of efilng. Before I directly give you that, a little of my background. I have been admitted to practice in NY for over 45 years, while in law school, everything was done the "old fashioned way", from research to filing of papers, etc. I was not one of the first to email, coming somewhat late to that also. Yet, I have learned to modernize, so to speak. From online research to service with digital copies and so on. My practice has been primarily limited to matrimonial and family law matters for over 40 years.

My first introduction to efilng came in Westchester county and I learned that it had a number of advantages. At this time, I have actively utilized efilng when and were available; it was, pre-pandemic, voluntary in Nassau; not done at all in Queens and Suffolk(the 3 counties I primarily practice in). With the pandemic, that has changed and it permits my office to function more efficiently, filing papers, paying fees, etc., from my office, without having to "run" into the Courthouse or the County Clerk's office to do so. It also gets me copies of additional papers filed by others from my desk or wherever my laptop is up and running with internet. Again, no need to wonder when a Judgment is signed; no need to "run" into a county clerk's office for a copy(although getting a certified copy, when necessary, requires more).

So, from this dinosaur, you get only positive input from me.

Bart Resnicoff
Law Office of Barton R. Resnicoff
Barton R. Resnicoff, P.C.
3000 Marcus Avenue, Suite 1E5
Lake Success, New York 11042
(516)829-2940
bartdiv@aol.com

Appendix H

From: Saul Cohen <scohen@thecohenlawfirmllp.com>
Sent: Tuesday, December 29, 2020 4:14 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Hi--for the report

Hi. This is Saul Cohen, Esq. I support making eFiling mandatory throughout New York State (with the exceptions in place). Before eFiling, I used to run around personally filing papers in courts etc. E-filing is time saving, more efficient and more convenient. Thank you, Saul

Appendix H

From: Jeffrey Triz <jtriz@venzon.lawyer>
Sent: Thursday, December 31, 2020 10:33 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Mandatory eFiling

As the individual responsible for eFiling in our office, I find it to be far more cost-effective than having to take time to go to the local clerk's office, stand in line and hand-file a document. This is a waste of resources and most importantly, client money.

The eFiling system should be mandatory, for all individuals (except pro se litigants who opt out of it) as in today's day and age there really is no excuse for not having the proper equipment or knowledge to efile. There are frequent training sessions and excellent help for learning how to efile. Computers and printers, as well as internet connectivity is a crucial and vital part of doing business today.

I would definitely encourage the expansion of this program and the powers of the chief justice to make eFiling mandatory.

Jeffrey S. Triz
Senior Paralegal
Venzon Law Firm
300 Delaware Avenue
Buffalo, NY 14202
(716) 854-7888 (office)
(716) 854-0294 (fax)

Appendix H

From: sternandsternesq@aol.com <sternandsternesq@aol.com>

Sent: Thursday, December 31, 2020 12:52 PM

To: eFiling Comments <efilingcomments@nycourts.gov>

Subject: Comments on eFiling

I am writing specifically about the landlord -tenant system conversion to eFiling, however some of the comments also apply to the general eFiling system.

With respect to the landlord-tenant conversion, in my opinion, it has been very badly handled and designed and made unnecessarily onerous. The filing system is made way too burdensome and is designed in such a way that it is impossible to file anything efficiently or to be in compliance with what, as least formerly, the RPAPL required.

Old cases:

The EDDS system and the process of conversion to eFiling is absolutely ridiculous and unnecessarily time consuming and burdensome. We are forced to efile everything anyway so all cases should automatically be converted at either party's request which should be a simple email and then the court should send out notifications. When we have to do it, you have to reenter your information into the EDDS system every time. It does not automatically save it. It does not allow you to upload anything other than applications to efile, but then we get rejected if, for instance, a notice of appearance or a substitution is missing. If we want to file a motion, we have to wait until the case is converted before eFiling and this often takes several weeks. When it is converted, filing a motion is really time consuming as it makes you upload every document separately and the default position is not that it is a nonconfidential document, so you have to keep going back and rechecking that box every time.

New cases.

The system of eFiling is extremely time consuming and onerous and wastes valuable attorney time as effectively only an attorney can efile. I know you allow us to delegate but it is our names on the account and our credit cards which are used. There is no reason why we should have to enter the property addresses or the names of parties. There is no reason why we should separately have to upload the petition and notice of petition or all the documents on a motion. Again, the default position is not that each document is a nonconfidential document, so you have to keep going back and

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rechecking that box every time. There is no mechanism for storing your credit card information so that has to be reentered every time. Then it takes days or weeks to issue an index number and the clerks sometimes reject the document much later even after the index number has been issued.

It is also impossible to keep track of a firm's cases and find things easily as they are listed chronologically without regard to the type of case or the court where it is filed. There is no way to print a list of our cases and no way to search within our cases, The filters that the site does offer do not work.

There is absolutely no one you can contact to ask a question or to easily correct a misfiling. We have had a couple of cases where we accidentally uploaded the wrong document or typed in the wrong designation, immediately realized the error, but had no means of correcting it. The process is too complicated for most of our secretaries and the older attorneys to learn so it winds up being a single attorney at each firm having to spend their entire day e-filing and keeping track of the cases due to the repeated rejections and additional unnecessary procedures. It appears as if they have deliberately made the entire process more complicated than it needs to be, all without a reduction in the filing fees due to the fact that we are now doing 50% of the clerks' work.

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From: Joseph Faraldo <faral@me.com>
Sent: Thursday, December 31, 2020 1:40 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Suggestion

Is it possible to purge some of the cases that I have that have been settled from my list. I am on 4 pages of cases and some of them thankfully have settled and without a way to delete them, unless that exists, then they only take up space and cost time ferreting through them to get to the actives.

Joseph A Faraldo # 1283316

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From: Lance Cimino <ciminolaw@msn.com>
Sent: Thursday, December 31, 2020 3:16 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: e filing

I am a long-time practitioner. I practice in the Federal Courts also where electronic filing has been in place since 2004 in all aspects, best decision ever, it should be available in all courts in New York State and all calendars should be available online on the court website. Criminal County Court calendars as well as Justice Court Calendars are not available, they should be, it is time to come into the 21st century with total electronic filing and information access in each and every court.

This message, as well as any attached document, contains information from the law office of **ATTORNEY STEPHEN LANCE CIMINO**, that is confidential and privileged, or may contain attorney work product. The information is intended only for the use of the addressee named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of this email or attached documents, or taking any action in reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. If you have received this message in error, please (1) immediately notify me by reply email, (2) do not review, copy, save, forward, or print this email or any of its attachments, and (3) immediately delete and destroy this email, its attachments and all copies thereof. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege.

Appendix H

From: dschwarz@optonline.net <dschwarz@optonline.net>
Sent: Thursday, December 31, 2020 4:11 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Wish for a "Place holder" when filing documents, to be filled after other documents, e.g. exhibits, have been filed, to facilitate insertion of hyperlinks and references .

I believe it would be big help to the Court if there could be some way that exhibits referenced in a document could be filed first so that hyperlinks could be inserted into the document which referenced the exhibits which could then be filed, say, in connection with a particular motion, last.

For example, most affirmations submitted on motions reference documents filed as exhibits. It is the usual practice to file the affirmation first and then the exhibits. That does not make the insertion of hyperlinks possible.

When putting motion papers physically together before there was electronic filing, the affirmations went on top with the exhibits beneath and the filing system assumes that order.

I wonder whether some measure could be taken to allow the filing of the exhibits first so as to make their web addresses and document numbers available for the creation of hyperlinks and or document number references in the affirmation referencing the exhibits.

After exhibits were filed, each would have a web address which could be referenced in hyperlinks inserted into the affirmation which references them.

Then, it would be nice if the affirmation with hyperlinks could be inserted ahead of exhibits.

In other words, it would be nice if the system could, on request, create a place holder for an affirmation to be filled in its usual position above, or ahead of, the exhibits referenced in it, on the filing of the affirmation after the exhibits were filed, given document numbers and web addresses.

I have, in preparing papers to be filed which oppose a previously filed motion, inserted hyperlinks to the previously filed documents and believe that has been a help to the Court.

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I hope this “wish” is clear and might even be considered for implementation.

If you have any questions, you are welcome to call me.

David M. Schwarz

dschwarz@optonline.net

(631) 251-7600

Appendix H

From: Marty Borrás <mjborras99@yahoo.com>
Sent: Saturday, January 02, 2021 8:27 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: Rebecca Borrás <singbeccab@gmail.com>; molina.lewis10@gmail.com
Subject: E-filing with no clear guidance

The e-filing system needs a step-by-step instruction guide for those filing "pro se" that includes the exact order in which the documents must be filed so that the filer can obtain the Index Number otherwise cases will be kicked back as many times as necessary for incorrect order and there is no one person to actually speak with for guidance.

A laymen's instruction guide should read as follows:

1. Fill the Order to Show Cause
2. Pull the Verified Petition and upload the packet in this order: Verified Petition, Order to Show Cause, Exhibits
3. Upon receiving the Index Number, add it to the RJI and upload the RJI

The Order to Show Cause packet does not direct the filer to pull the "Verified Petition" portion out and upload it as the first document. This caused the case to be kicked back. The assumption is that everyone has internet access and some sort of savvy in the days of COVID because offices are not allowing people in for questions or guidance for that matter.

Nowhere does it indicate exactly what a "*Caption*" is or what it means. For example, we filed for the Supreme Court to release my brother's remains to my mother and a funeral in the Bronx (as opposed to an ex girlfriend from 15 years ago who tried to claim his remains with no vetting, which under the 4201 law, caused the ME's office to hold the body), we were supposed to add ourselves, the decedent's sisters, in addition to our mother (as we would be speaking on her behalf because without us and as a senior citizen, she would never have been able to navigate this process). Finally, as the defendants, we were supposed to include the OCME and not ust the ex girlfriend.

Nowhere can an instruction be found to the online link where the RJI can be filed. This lack of guidance lead to wasted time and trips to both Supreme Courts in Brooklyn and NYC only to be turned back and given incorrect instruction that

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these documents needed to be *mailed in*. If not for divine intervention, we would still be running in circles and hitting walls every step of the way. The average person in NY may not be able to afford legal guidance, Legal Aid Society was of no use as they don't handle cases like these, no one does. There is no category for a case like this as this is most definitely not a Surrogate case according to the attorney for the ME's office.

Clear guidance could save a grieving family much time and added anguish. We hope to amend the Public Health Law 4201 once this nightmare is over.

Respectfully,

Marty Borrás

Appendix H

From: Stephen Dewey <enforcer@bestweb.net>
Sent: Saturday, January 02, 2021 3:02 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Suggestions

Mr. Carlucci:

It is respectfully requested that we be allowed to file Transcripts of Judgments from Lower Courts into NYSCEF, and requests for Transcripts of Judgments / Exemplified Judgments be requested online as well.

Given the budgetary constraints to befall our Courts, there really cannot be a better time for the **City** Courts to move into NYSCEF. The Attorneys input most of the documentation anyway. The EDDS was simply a waste of time and is tedious (having to fill out my name and information each time. The City Courts can certainly be transferred into NYSCEF at this stage. Even the Bronx and Manhattan have brought over Landlord/Tenant matters electronically. The Clerks are requesting that paperwork (motions, Oppositions, Reply, etc.) be sent by .pdf to the Clerk's email and not by EDDS to expedite matters. It's ridiculous that we cannot purchase in Index Number, file the pleadings and Affs of Service to commence the action through EDDS, so why wait?

Given that **Justice** Courts are each on "their own", at this stage there really is no reason they too cannot have their **Civil** matters brought over to NYSCEF for civil matters. You are generally only training one or two clerks at the most, and it would expedite the matters and reduce physical traffic having to file Complaints and Affidavits of Service in person (which is their "concern" given the Covid Crisis).

Thank you.

Looking forward to a better year 2021!!!!

Respectfully

Stephen P. Dewey, Esq.

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From: Donna Burnett <dburnetty@gmail.com>
Sent: Sunday, January 03, 2021 10:59 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYCEF system

I stumbled upon the May 28,2020 you-tube user training video. I found it quite helpful. However, I am wondering if there is a you-tube matrimonial training video?

If so, I think that would cut down on the questions to staff. Having it advertised that its out there to be viewed would also be helpful.

I think its great to be able to file.

Thank you,
Donna

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From: Irwin Weinstein <iweinstein@burnsharris.com>
Sent: Monday, January 04, 2021 9:35 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYSCEF Comments

The eFiling is generally a great system.

One of my issues is that with the multitude of cases, there seems to be no way to just view 'open' cases and not include disposed cases.

If one narrows by "Active" cases, e.g. "Restored" cases will not be included.

There should be a category of "Open" matters.....

Irwin J. Weinstein

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From: ALVIN SPITZER <alslaw275@gmail.com>
Sent: Monday, January 04, 2021 10:43 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

I find e-filing convenient and a time saver. It also allows me to access original documents,. I totally favor this amendment.

ALVIN L. SPITZER

Appendix H

From: Mitchell Dranow <mdranow@hotmail.com>
Sent: Monday, January 04, 2021 11:02 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYSCEF Filing Comments

My only issue with the system is that, on occasion, I'll get an error warning (a copy of which is attached) about an appellate brief or record that I've tried to e-file. This screen appears and leads me to believe that whatever I've just attempted to file has not been accepted by NYSCEF. Yet, when I review the particular appeal/case filings moments after I get the warning, the document list indicates that the brief or record has been submitted and is pending review. Needless to say, the warning causes great anxiety when it first appears.

Sincerely,

Mitch Dranow

Mitchell Dranow, Esq.
Dranow Appellate Printing, Inc.
Serving the Needs of the Small Firm and Solo Practitioner
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Sea Cliff, New York 11579
(516) 286-2980

Appendix H

From: James J Sexton <sexton@rocklanddivorce.com>
Sent: Monday, January 04, 2021 11:04 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on NY State Courts Electronic Filing Program

Sir/Madam-

I am an attorney practicing matrimonial and family law in the Rockland and New York County areas for approximately twenty years. Prior to my legal career, I obtained my Master of Arts degree from New York University in the field of Media Ecology (the study of technological change on cultural systems) and taught undergraduate courses in technology and ethics at NYU and other colleges. As such, I believe I am uniquely qualified to comment on the issue of technological change in the New York State Court system and the discretion of the Chief Administrative Judge to introduce mandatory e-filing and other similar programs.

For the reasons set forth herein, I fully endorse the removal of the current restraints in place on the Chief Administrative Judge's discretion to introduce mandatory e-filing programs as well as other similar technological solutions/programs.

While the COVID-19 pandemic has created unprecedented challenges for the entire world, as well as unique challenges for our New York State legal community, the level of technological innovation we have seen over the last 9 months has been astounding and a testament to our State's commitment to protecting the integrity and efficiency of the legal system. Changes I believe were well overdue (the expansion of e-filing and the incorporation of videoconference technology into Court proceedings) have "rolled out" impressively - changes that would likely have taken years to see happen in the absence of this tragic virus.

The Court Administration has demonstrated bold leadership during this difficult time and moved swiftly to leverage technological advancements to ensure the swift administration of justice. Attorneys and litigants are fortunate to have forward-thinking people "at the helm" and making changes that, even absent the pandemic, were necessary to maintain efficiency and improve access-to-justice. Attorneys (a traditionally curmudgeonly group) have also "risen to the occasion" and quickly adapted to the changes implemented. We are ALL capable of more innovation and adaptation than we realize. It's hard to move out of our "comfort zone" but, ultimately, it is the only way our systems improve.

While I share the hope that the COVID-19 pandemic will soon be behind us, I hope that the "new normal" that will come after continues to utilize the innovations we all "discovered" during the last 9 months. Mandatory electronic filing creates a more efficient, organized and streamlined process for all

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of us (bench and bar). Our leadership and the Chief Administrative Judge have demonstrated, in 2020, that they are not only qualified to "handle" the discretion to make broad and long-term decisions related to the incorporation of electronic filing and other technologies - they have shown that they will use the authority provided to improve the system for all of us.

I would respectfully urge the Legislature and Governor to grant the Chief Administrative Judge broad authority to implement mandatory electronic filing throughout New York State and make other similar decisions related to the implementation of electronic / virtual "tools" to maintain and improve the efficiency and integrity of our legal system.

Thank you for your consideration.

Respectfully-

James J. Sexton, Esq.
M.A. Media Ecology (NYU 1997)
J.D. (Fordham Law School 2001)

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Appendix H

From: Wendy Samuelson <wsamuelson@samuelsonhause.net>
Sent: Monday, January 04, 2021 12:45 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E filing comments

E filing and videoconferencing has been a great new development! We should definitely keep both in tact, even after the pandemic.

Wendy B. Samuelson, Esq.
Samuelson Hause & Samuelson, LLP

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"We're the calm beneath your storm."

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From: Andrew Miller <Armillar@millerlawny.com>
Sent: Monday, January 04, 2021 1:40 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on E-Filing

E-filing has the potential to be helpful and an improvement for the small practitioner, but as implemented it is more of a burden.

First, since most of the part judges require paper copies, e-filing has simply increased the burden imposed on small firms. Now in addition to filing a paper copy like we always have had to do, we have to scan, redact and e-file a copy. The burden of having to scan and file with the e-file system is not inconsiderable as it is cumbersome and time consuming.

Second, the e-file system as implemented unfairly allows large firms to pass the cost of printing out their litigation papers to their adversaries. Specifically, before e-file, if litigation papers were served in Court a hard copy would also now have to be served on your adversary. But now, firms are using e-file as a means for serving litigation papers. While this sounds good in theory, in practice it means that you get notice of the filing of an electronic copy of say, a summary judgment motion, or similar litigation papers, along with a thousand pages of supporting exhibits, which you now must print out and organize on your own, forcing you to bear costs that were formally those of your adversary. Clearly, for the large firm this may not be much of a big deal, but for the small practitioners, these costs add up.

Law Offices of

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Brooklyn, New York 11242

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From: Lee Miller <nylaw@live.com>
Sent: Monday, January 04, 2021 1:54 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing comments

Dear Director Jeffrey Carucci;

As one of the early users of the e-filing system as an appellate attorney in family court, I am a supporter of it. It is easier, and it eliminates the problem of disposing with briefs (shredder) that piled up under the hard-copy system.

I only write to ask the committee to consider one thing, and that is making instructions about hard-copy filing more clear. *Despite* the e-filing system being mandatory for family court appeals in the third department, I continue to receive hard copies of briefs, hard copies of affirmations of service, hard copies of motions for an extension of time to perfect, etc. from attorney users. The message hasn't been clear - *do not send anything hard copy*, other than the initial e-filing notice, to other counsel on the case. I find that I still need shredder services because, after all this time, people are still sending things - and these are not attorneys who have received special permission to send hard copies, because they simultaneously upload documents. It seems that they believe that service is improper via uploading, and if the committee could make that more clear to practitioners, we could at last eliminate the need for shredding services.

Thank you for soliciting our input.

Lisa Miller, Esq.
Box 456
McGraw, NY 13101

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From: Matthew Porges <mspedes@mspedes.com>
Sent: Monday, January 04, 2021 2:46 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on E-Filing

Thank you for this opportunity to be heard on e-filing. I really appreciate the ability to e-file and hope it will continue to expand to all matters in all courts. It makes filing and payment so much easier, especially in the time of COVID, but also under normal circumstances. I don't have to run from court to court with papers and checks or pay someone to perform those tasks. I can do it all from my laptop, wherever I may be at the time. It also alleviates so many lines in court and, if the entire file is electronic, the paper files do not have to be pulled and re-filed. I would ask that the NY Court do everything it can to have universal e-filing, as in federal court, as soon as possible. Thank you.

Matthew S. Porges, Esq.

New Address:

26 Court Street, Suite 1200
Brooklyn, New York 11242



[Avvo.com](#) Rating of 10.0

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Appendix H

From: Edward Virshup <edvirshup@gmail.com>
Sent: Monday, January 04, 2021 2:58 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: EFS Comments

To Whom It May Concern:

I am a non-attorney Court Examiner and do not have an "attorney registration number" to file my examinations or any other court papers using the EFS system. I suggest setting up private and confidential numbers for those of us (5 or 6 in NY County) similarly situated throughout NYS. Thank you for consideration of this request.
Sent from my iPhone

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From: Joseph Dash <joelaw11220@yahoo.com>
Sent: Monday, January 04, 2021 3:10 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on E-Filing

Dear Mr. Carucci;

As a practicing attorney I have found e-filing extremely easy and convenient. I strongly recommend mandatory e-filing for all cases.

Sincerely,

Joseph M. Dash, Esq.
480 39 Street, 2R
Brooklyn, NY 11232
Of: 718439-3600
Fx: 718-439-1452

Appendix H

From: Brendan P. Hall <BHall@HarrisBeach.com>
Sent: Monday, January 04, 2021 6:15 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Mandatory E-Filing is a Great Idea

Dear Mr. Carucci,

I write to express my strong support for mandatory e-filing in New York State. As a younger attorney, it boggles my mind why we are still exchanging paper in litigation. It is an antiquated and inefficient practice due to the advent of computers, tablets, and smart phones. I can understand a few select exceptions. But on the whole, e-filing is advisable to reduce litigation costs, reduce mounds of paperwork for courts and practitioners alike, and preserve documents, including when exactly a party or court transmitted a particular document.

Please do not hesitate to contact me if you think I can provide any additional information or assistance as part of this process.

Sincerely,

Brendan P. Hall
Attorney

HARRIS BEACH PLLC

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From: Dennis B. Laughlin, Esquire <dennis@donovanlaughlin.com>
Sent: Monday, January 04, 2021 9:10 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Input on mandatory e-filing

Greetings.

I think that each court should have the opportunity to have everything efiled.

I understand that 18-b clients, before they become clients, may be technology-challenged. I understand that some attorney are also technology-challenged.

That challenge should not prevent the rest of us from being able to file electronically in each court. The e-file system should be extended to receive filings for each court. The use of the EDDS system is a step forward, but, there is no compelling reason not to use the e-file system for say Family Court matter. Family Court matters are no more confidential than an action for divorce, and our office files all divorces electronically.

Thus, require each court to provide the option to e-file, understanding that some litigants and some attorneys cannot use that option.

Thank you.

Dennis B. Laughlin, Esquire

Donovan Laughlin and Laughlin, LLC

77 Alden Street; Post Office Box 217, Cherry Valley New York 13320-0217
15 South Main Street, Suite 103, Oneonta New York 13820
(607) 432 6959 ~ Facsimile (607) 264 9094

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From: Nissan Shapiro <nissan@nshapirolaw.com>
Sent: Monday, January 04, 2021 11:46 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on E-Filing

Dear Office of Court Administration,

As a Landlord-Tenant attorney who has recently become familiar with the NYSCEF filing system, i greatly appreciate the effort put in to make the system work.

There are a couple of arrears where I would suggest changes.

1. Provide us the opportunity to add/amend names without going through multiple steps and emails. Especially when it can be done prior to serving any Petitions.

2. Provide a search function within our own cases, that is actually useful. A firm with hundreds of cases can easily get lost trying to find a specific case, unless they use the general search feature.

3. Provide an actual calendar feature so that when i look at a case i know when it is scheduled, instead of then having to go to Ecourts to look for it.

4. Require Respondents who file answers to include emails on their answers.

Best,

Nissan



Appendix H

Sheldon Siporin, Esq.
52 Clark Street, 6F
Brooklyn NY 11201
718-624-3726; juriswrite@gmail.com

January 5, 2021

Jeffrey Carucci, Dir.
Statewide Coordinator for
Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004
efilingcomments@nycourts.gov

RE: New York State Courts Electronic Filing Program

Dear Director Carnucci:

This replies to your letter dated December 20, 2020. In that letter, you solicited comments about proposed amendments to CPLR Article 21A, and other relevant statutes, to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state. I fully endorse your recommendation. This is based on my experience as a member of the New York Bar for more than two decades. The judicial system has been slow to adapt to the 21st Century but the pace of change has been accelerated by the recent pandemic.

As you state in your letter, Covid-19, and the new variants of that virus, have compelled our court system to expand e-filing as well as virtual appearances for health reasons. But technological advances also impel change. We are in the age of the internet and virtual conferencing. In-person paper filing is as slow and cumbersome as mail delivery by the pony express. There was a time when legal research was done laboriously by parsing through paper volumes and supplements. Now similar research is done expeditiously and efficiently by computer. Younger lawyers would be dismayed if we maintained that old fashioned and time-consuming research method.

Paper filing requires attorneys (or their associates) to shuffle to the courthouse loaded down with valises of stapled documents to be stamped and stacked on shelves. Courthouse staff must then organize and file those materials. As noted in your letter, this is wasteful and burdensome for both law firms and judicial personnel. Paper filing is as outmoded and unproductive as research done by hand. No lawyer trained in computer research would return to prior, arduous methods. Neither do lawyers competent in e-filing lament the “good old days” of trekking to the courthouse.

I commend Chief Judge Difiore and the Commission to Reimagine New York Courts for endorsing e-filing, and I fully join in their endorsement.

Respectfully,
Sheldon Siporin Esq.

Member, Brooklyn Bar Association
Member, New York State Bar Association
Member, New York County Lawyers Association
Member, New York City Bar Association

Appendix H

January 5, 2021

Jeffrey Carucci
Dir. Statewide Coordinator
for Electronic Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004

Dear Mr. Carucci:

I am writing to provide comments regarding the Court's electronic filing system.

An Order was issued by the Chief Administrative Judge directing that the court shall not request working copies of documents in paper format. Several judges still request that paper copies be provided to them. This Order should stay in effect even after the pandemic.

Thank you.

Legal Staff at a Law Firm in NY

Appendix H

From: Elizabeth Eilender <eeilender@lawjaros.com>
Sent: Tuesday, January 05, 2021 12:52 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: New York State Court Electronic Filing System-response to request for comments

Love the eFiling system and generally it works great.

Below are my comments/suggestions:

There should be a filing option for "stipulation to adjourn motion in Room 130-Request to So-Order" so that the stip to adj is combined with the so-order request. the way it is now, is that a request to so-order is a separate option from the stipulation to adjourn the motion.

2. There should be a filing option for a filing (such as opposition/cross-motion/stipulation to adjourn) to be able to be applied to more than one motion at a time; for example, when 3 defendants file separate motions for summary judgment, and there is one plaintiff, the plaintiff should be able to file ONE filing in opposition to all 3 motions at the same time instead of having to re-file the same document and all exhibits 3 separate times. same goes for a stip. If one stip covers 3 motions within the text of the stip it should not have to be filed 3x (ie; Mot. Seq. no. 3; Mot. Seq. no 4 and Mot. Seq. no 5).
3. when opening/accessing a completed filing for a motion (or any document in the same filing), there should be an option to open ALL documents concerning the same motion at the same time; for example, open the Notice of Motion, Aff in support and all exhibits in one .pdf document. instead of what we have now which is we have to open every single document separately. (NJ state courts have the system where you can open the motion and all the associated documents filed with that motion at the same time if you choose "select all").
4. re: representation and/or closed cases-is there a way to remove the old/closed case from "MY CASES" without having to "un-represent" the client in the NYSCEF system.

Happy to discuss at any time. Please feel free to call me.

Elizabeth

Law Office of Elizabeth Eilender, PC
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Telephone: (212) 227-2174
E-mail: eeilender@lawjaros.com

Appendix H

From: Weishaar, Peter <pweishaar@mccmlaw.com>
Sent: Tuesday, January 05, 2021 1:25 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYSCEF Comments

I understand that you are looking for comments regarding our experience using the NYSCEF system.

I have two general comments to share:

1. The NYSCEF system is very well done. It is far superior to the federal ECF system. It is generally more intuitive than the federal system, and it is easy to use and accessible by anyone without charge. One of the major drawbacks of the federal system is the barrier that PACER imposes on attorneys and members of the general public who want to search for and view case filings. The system should remain free to access and use.
2. From time to time, I have commercial cases where the parties have exchanged business-confidential information. Under the paper filing system it was much easier to file documents under seal. I have yet to have a case in the NYSCEF system that requires filing documents under seal, but this process seems far more cumbersome under the NYSCEF system and there seems to be a risk that confidential documents end up not being properly sealed. This may simply be due to my own lack of understanding about how this should work. Perhaps there could be training modules or explanations available online, setting forth how to do this in a commercial case?

Thank you.

Peter J. Weishaar, *Partner*
McConville Considine Cooman & Morin, P.C.

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Appendix H

From: Lee Beck <lheit@lawyerladies.com>
Sent: Tuesday, January 05, 2021 6:04 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: response to mandatory e filing

Jeffrey Carucci, Dir. Statewide Coordinator for
Electronic Filing
Office of Court Administration 25 Beaver Street
New York, New York 10004
efilingcomments@nycourts.gov

Dear Mr. Carucci,

This email is in response to the request I received for my opinion regarding mandatory e-filing. I'm very excited someone actually asked for my opinion- I don't think that's ever happened before! First, I hope you are healthy and safe.

I worked for a large firm before e-filing existed, then for myself for a very long time, and then for a defense firm for about one year before Covid. I have learned that e filing can be very time consuming, especially when it involves a long motion with many exhibits. Defense attorneys can NOT bill for that time as it's deemed a paralegal/secretarial function. Many times paralegals get it wrong. I've noticed many attorneys do their own e-filing and either find inappropriate ways to bill for it or have to make up the time. I have seen, on lengthy motions, multiple attorneys and paralegals all working late to get this done. However, it does have its benefits. It is an incredible help to have the ability to be able to access everything online. In fact, I would love it if all courts' computer systems were online. I never understood why attorneys were required to bring a hard copy to court that was also efiled as some of these motions take up boxes that are too heavy for me. I hope you can continue only requiring one method be utilized.

After losing my job in May (as well as my husband losing his job) we are struggling to make ends meet. As I have an underlying health issue and can't leave this house until I am vaccinated I have been looking for a job that is either remote or considering going back out on my own. I do NOT have the money to invest in equipment that would allow me to efile without enduring a battle with my printer/scanner. I hope other attorneys are doing better than I am. If there was a simplified way to efile that would make it much easier. Should that not be possible, perhaps donations to help attorneys who need the necessary equipment or allowing motions/pleadings to be mailed in with an affidavit that e-filing was not available at this time would be helpful.

Thank you for taking the time to read my thoughts/experience on this matter.

Best wishes,

Lee

Lee Heit, Esq.

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From: Sam Rosenberg <samuelinjurylawyer@gmail.com>
Sent: Tuesday, January 05, 2021 10:08 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: mandatory efilng

I am from an older generation that does not want mandatory efilng for many many reasons. I hope you don't make this mandatory. It is a step closer to the BigBrother State. Samuel L. Rosenberg 15 Astor Place Wesley Hills, NY10952

Appendix H

From: Doug Henderson <dhender499@aol.com>
Sent: Wednesday, January 06, 2021 12:41 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-Filing Comments

Dear Mr. Carucci:

I welcome the opportunity to comment on the e-filing system in the Unified Court System. To get straight to the point, the pandemic has placed the statewide court system in a crisis. As President Kennedy noted, when the word "crisis" is written in Chinese, it consists of two characters. One character represents danger, the other opportunity.

The danger has cast an ominous shadow over the entire world that has infiltrated the courts statewide. There is no need to elaborate on the havoc that it has wreaked. However, there is a dire need to delve into opportunity, the other Chinese symbol, as it holds the key to not only allowing the courts to function as they had before the pandemic, but to operate on an even higher level.

To achieve this, seemingly, loft ambition, e-filing must be made mandatory for all those for whom it is not unduly burdensome. Those who are technologically challenged should be excused. But for all others, including *pro se* litigants, e-filing should be mandatory. In doing so, the UCS would save countless hours of attorneys appearing in person to file one form or another, or sitting in a courtroom, waiting hours for their case to be called. This would save invaluable time for clerks, court officers, secretaries, etc., to utilize their time more effectively.

It has been my experience that many represented clients and *pro se* litigants are intimidated simply by being in court. The judges in their black robes sitting high above everyone else, the court officers with their guns strapped to their sides, going through the magnetometers, etc., each can be individually intimidating but together they can be overwhelming. I have spoken to several *pro se* litigants who much prefer e-filing to in person appearances.

Lastly, I have utilized e-filing much during the pandemic. Initially, I was skeptical, as I preferred being in court. However, it is so much easier to either sit in my office or at home and to e-file documents than taking the subway to court. This saves clients' money and is much safer from a health perspective. In addition, I am quickly notified when my e-filed document(s) has been accepted. Plus, the court personnel don't have to be present in the courthouse to answer questions that I email to them.

Therefore, e-filing must be made mandatory.

Respectfully,

Douglas Henderson Jr., Esq.

Appendix H

CHIARIELLO & CHIARIELLO

ATTORNEYS AT LAW
147 GLEN STREET
GLEN COVE, NEW YORK 11542
516 801-8100
718 261-5200

January 6, 2021

VIA EMAIL - efilingcomments@nycourts.gov

Hon. Jeffrey Carucci
OFFICE OF COURT ADMINISTRATION
25 Beaver Street
New York, New York 10004

Re: Comment on Mandatory E-Filing

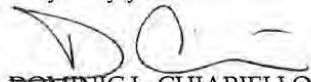
Dear Director Carucci:

I am an early proponent and adopter of electronic filing in our courts and I support the expansion of mandatory electronic filing with the current exceptions for *pro se* litigants and technologically challenged attorneys.

While I believe electronic filing *per se* is more convenient, the requirement in various courts to provide a "working copy" removes almost all of the convenience of electronic filing since essentially the same work of compiling the papers, appropriately tabbing them, and affixing a proper back, and sending them to service or having an attorney appear in court for filing still must be done. This actually makes electronic filing *an additional step* for a lawyer or law office to process papers for filing with the court. Anecdotally, lawyers resistant to electronic filing tell me it is the fact that they still have to perform the same tasks and add yet another that forms the basis for their resistance.

COVID has temporarily freed lawyers from the requirement of filing "working copies." The best reform for electronic filing in our courts, to reduce the waste of attorney time and client money, would be the permanent elimination of the requirement for filing "working copies" except in limited circumstances.

Very truly yours,



DOMINIC L. CHIARIELLO
dc@chiariello.com

DC:dc

c: Queens County Bar Association
Clifford M. Welden, Esq., President (jruiz@qcba.org)

Appendix H

From: Denise Munson Esq. <munsonlaw@verizon.net>
Sent: Wednesday, January 06, 2021 2:21 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: Denise Munson Esq. <munsonlaw@verizon.net>
Subject: Efiling comments

My concern with e-filing in the AD 4th Department is that I do not have the bookmarking technology required. There is a cost to purchase the same. As an attorney who handles primarily AFC & assigned counsel cases, this is an additional expense. Can the software be purchased by the state and licensed to counsel? That would be helpful.

Denise R. Munson, Esq.

Appendix H

Law Offices
MICHAEL A. CERVINI, P.C.
40-09 82nd STREET
ELMHURST, NY 11373
(718) 779-8910

January 6, 2021

Hon. Lawrence K. Marks, Chief Administrative Judge
John W. McConnel, Esq., UCS Executive Director
Nancy Barry; UCS Chief of Operations
Eileen D. Millett, Esq. UCS Counsel
Marc C. Bloustein, UCS First Deputy & Legislative Counsel
Hon. George J. Silver, Deputy Chief Administrative Judge

Re: New York State Courts Electronic Filing Program

Dear Sirs:

Please accept these comments per the UCS letter of December 22, 2020.

I have been a litigation attorney practicing in Queens County for over 30 years.

I am hopeful that a truly Uniform set of forms; PC(s), CC(s), etc. can be established for all NYC Counties and also Westchester, Nassau and Suffolk.

I cannot understand why each County seems to be issuing their own forms and guidelines.

I realize that some flexibility is required, but basic discovery should be Uniform.

Very truly yours,


Michael A. Cervini

Appendix H

From: Mary Beth Heiskell <MHeiskell@kileylawfirm.com>
Sent: Thursday, January 07, 2021 10:37 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: e-filing experience with Queens Surrogate

My experience with e-filing in surrogate's courts is that it would be helpful to list somewhere with the filing instructions the name of a person to whom one could contact with questions or problems. I am still seeking to receive refund of a fee I paid to Queens Surrogate's for a new index number filing when I could not file needed documents for an emergency hearing request of an already active guardianship matter when E-filing was just beginning in April, 2020. No one, to this day, can answer my questions and direct me to someone who can assist.

Thank you,

Mary Beth

Mary Beth Heiskell, Esq.
Kiley, Kiley & Kiley, PLLC
Attorneys at Law
3000 Marcus Avenue, Suite 3W07
Lake Success, NY 11042-1009
(516) 466-7900 ext. 21
(718) 224-5100
(516) 466-7903 (fax)
mheiskell@kileylawfirm.com
www.kileylawfirm.com

Appendix H

From: Josh Miller <josh@thechaseagency.com>
Sent: Friday, January 08, 2021 10:25 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: EFILING

I am very much in favor of a unified efilng system throughout the state. Physical filing of documents is cumbersome and unnecessary when the technology exists to allow such filing to be done electronically.

I would also like to see it opened up to legal support agencies such as ours. I understand the hesitation to open it to non-attorney filers, but there are many process service companies across the state that are already efilng on behalf of their clients. Allowing such companies to have their own Efilng credentials would keep a smooth system and prevent sharing of login and passwords that is currently occurring between many attorney's offices and their process serving partners.

I would also like to see all Town and Village Courts transitioned into the EFILE system. With the development of EDDS, it has shown that this is possible. The EDDS interface is not nearly as smooth as the Efile interface and I would love to see the EDDS folded into the Efile system.

Thank you,

Josh Miller

Phone: (585) 747-5402 Direct: (585) 515-0101
12 South Main St, PO Box 2, Avoca, NY 14809

ADDITIONAL OFFICE LOCATIONS

168 Water Street, Suite 4A, Binghamton, NY 13901
69 Delaware Ave, Suite 1101, Buffalo, NY 14202
16 East Main St, Suite 265, Rochester, NY 14614
224 Harrison St, Suite 218, Syracuse, NY 13202

If you have been happy with our service, please click on the closest office location and leave us a 5 star review!

Appendix H

From: Jessica Sola <jsola@bfclaws.com>
Sent: Friday, January 08, 2021 11:01 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments

Please allow sorting by the parties' last names. As a matrimonial practitioner, this would be vastly easier to quickly find my cases.

Yours,

JESSICA A. SOLA, ESQ.



**BLODNICK
FAZIO & CLARK**
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Appendix H

From: Jasmin Sutherland <jsutherland@zwickerpc.com>
Sent: Friday, January 08, 2021 11:18 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: 'jasmin.sutherland@outlook.com' <jasmin.sutherland@outlook.com>
Subject: NYSEF COMMENT

Good Morning,

I have a couple of suggestions on how to improve NYSEF filing system.

1. Allowing the reprint or an automatic email for Summons and Complaint filings.
2. Clear instructions with an attachment on refund request including if filed in wrong county or if wrong document is uploaded and the court accepts it.

Thank you for your time. These suggestion will also free up the clerk from receiving calls from Attorney's offices.



Jasmin Sutherland
Litigation Assistant
jsutherland@zwickerpc.com
1.866.348.9020 ext.70103

Zwicker & Associates, P.C.
Attorneys at Law
1225 Franklin Avenue
Suite 260
Garden City, NY 11530
1.516.299.9909 fax

A Law Firm Engaged in Debt Collection

Appendix H

From: Gismondi, Geoffrey <Gismondi@ruppbaase.com>
Sent: Friday, January 08, 2021 12:19 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: COMMENT ON ELECTRONIC FILING PROGRAM

To: Jeffrey Carucci, Dir.
OCA Division of E-Filing
25 Beaver St, Room 823
New York, New York 10004

Mr. Carucci:

The e-filing system allows people to consent to represent a party. Sometimes I am involved in cases but I do not represent a party. For example, I may be a court evaluator or guardian for a ward, rather than an attorney for a party. Another issue arises when the case is sealed from public view, such as with Article 81 guardianship matters. Specifically, I do not believe there is an option for a court evaluator to access an Article 81 case on NYSCEF. Access is restricted to parties and their attorneys. And I don't believe there is an option for a court evaluator to be recorded in the NYSCEF case file as a person who is entitled to notice of all filings. I have a similar observation for guardians. If an attorney or lay person is appointed as a guardian, there is no option to access or "sign on" to the NYSCEF case file as a necessary person.

Lastly, I suggest that the rules be expanded to allow an attorney to "Remove Consent/Representation" in a NYSCEF case if the case is resolved as to my client. Currently, the NYSCEF system allows me to be removed from the case if new counsel is substituted, or if I change firms, or if I obtain a court order. I would like the option to remove consent if I settle the case as to my client, but the case remains pending as to other parties.

Thanks for your attention to these comments.

Geff

Geoffrey Gismondi

Partner



Appendix H

From: Jeffrey_Klein Esq. <jiklaw@hotmail.com>
Sent: Friday, January 08, 2021 12:23 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing

I am very happy with this system. I use the Federal Court system as well, and this New York system is drastically easier to use.

JEFFREY I. KLEIN, Law Offices
25 Rockledge Avenue, Suite 713
White Plains, NY 10601
(914) 946-8855

Appendix H

From: Josh Friedman <JFRIEDMAN@DBLAWNY.COM>
Sent: Friday, January 08, 2021 1:13 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Attorney Comment on E-Filing

Mr. Carucci:

I offer this comment regarding e-filing in response to your request dated December 22, 2020. I am an attorney in a private law firm located in Albany, New York. My practice includes representing clients in both criminal and civil matters in a broad range of practice areas.

NYSCEF has provided wide-ranging, impactful benefits to litigants, attorneys, county clerk and court staff, and judges. Among other things, it reduces inefficiencies in the antiquated and obsolete traditional service of process provisions of the CPLR, enhances efficiency, improves security, and provides for clear, concise case and docket management.

We now live in a fully online world. Internet usage and access is effectively universal. Attorneys are required to attain basic proficiency with technology as a matter of professional responsibility. In the year 2021, our world now moves at the speed of email, not first class mail. For these reasons, I respectfully submit that e-filing should be expanded and mandated to the maximum extent possible.

Thank you for your time and attention.

Regards,



Joshua R. Friedman, Esq.

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Albany, NY 12210

T: 518.463.7784

F: 518.463.4039

jfriedman@dblawnny.com

www.dreyerboyajian.com

Appendix H

From: Stonee Yeung <Stonee@theyeunglawfirm.com>
Sent: Friday, January 08, 2021 1:13 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on electronic filing program--

Dear Jeffrey Carucci. Dir,

My experience with NYSCEF has been great for the Housing Courts. I really appreciate the Courts and judges open to the public to seek comments from users to share their experiences and opinions.

Comment #1

I would like to make a comment on ex parte Order to Show Cause. Traditionally (non-electronic cases), the proposed ex parte OSC is filed with the Clerk without informing other parties. The OSC is required to serve all parties only after it is signed by a judge. However, any proposed ex parte OSC file through NYSCEF will be seen and notified by all parties even if it is not being signed. I am just hoping NYSCEF will not inform other parties when the proposed ex parte OSC is at the filing stage, without being signed into an order.

Comment #2

The following comment is for matters in Housing Courts--

It is a good idea not to make electronic filing mandatory for the pro se litigants, especially if they are not comfortable or familiar with the system.

Traditionally (non-electronic cases), pro se tenants will go to the clerk office in Court in-person to file an Answer/Order to Show Cause to Stay execution of a warrant, the Clerk will fill out a standard form of Answer/Order to Show Cause by asking the pro se tenants questions, such as questions for process service, defenses and counterclaims.

I would suggest it may be helpful if the clerk can scan and file any Answer/Motion/Opposition to Motion/Order to Show Cause or any documents filed by pro se litigants in-person in Court to the NYSCEF system so that all attorneys and parties in the case can review the documents filed by the pro se litigants even if the pro se litigants choose to opt out for electronic filing. This would help to review all documents under the NYSCEF system no matter whether they are filed by electronic means or non-electronic in-person means. The NYSCEF system will have a complete record of all documents for all cases.

Thank you for your time and continuous effort on improving the NYSCEF system.

Best regards,
Stonee Yeung

Appendix H

From: Jon-Paul Gabriele <jpg@guccilaw.com>
Sent: Friday, January 08, 2021 2:21 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comment on NYSCEF

I suggest that in all emails from NYSCEF, there be a direct link to access the case so that you can just click it to access the whole case. Now, the only clickable link is to the specific e-filed document(s).

Thank you

--

JON-PAUL GABRIELE, ESQ.
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C: 516-528-7778

Appendix H

From: Nick Rivera <nick@servesmarter.net>
Sent: Friday, January 08, 2021 5:10 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on Electronic Filing

Hello,

We currently file hundreds of documents each week using NYSCEF. We also file hundreds of documents per week in paper form. In speaking with the clerks in various Civil, District, and City Courts, many have indicated that they are short staffed and cannot handle the document load. Since the pandemic, this has led to delays sometimes of up to a month in getting documents filed. Even before the pandemic it would be a couple of weeks in some courts. Moving these courts to NYSCEF would reduce the burden on the clerks and expedite the filing process.

Nick Rivera

Progressive Legal Support
99 W Hawthorne Ave Ste. 418
Valley Stream, NY 11580
Tel: 516-218-2050
Direct: 1-516-629-0396
Fax: 1-866-541-2848
nick@servesmarter.net

Appendix H

From: Edward Graves <attorneygraves@gmail.com>
Sent: Saturday, January 09, 2021 11:35 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Wasting Time On Shoddy System

I have spent over five hours attempting to use this horrendously constructed filing system.

The system repeatedly asserts that my PDF files, created on Adobe, are not valid PDF's.

After confirming that all drivers and my approved Firefox browser was up to date, your system continued to reject my submissions. Repeated reboots and signing back in repeatedly solved nothing. Using an alternate scanner did not help.

Moreover, your system is apparently designed for civil practice. If you are offering a system not suited for criminal law practice, why force criminal law practitioners to use it? For example, would it be so hard to create a system that refers to "defendants and appellants" rather than various civil designations?

I accept assigned criminal cases despite the low compensation because I believe justice should be available to all.

Now, I am forced to donate hours to deal with this poorly designed filing system.

It amazes me that the OCA can offer such a deficient system and COMPEL attorneys to suffer through it.

Perhaps you should have made it workable before imposing it.

--

Sincerely Yours,

Edward S. Graves, Esq.
P.O. Box 668
Indian Lake, New York
12842
Tel.: 518-598-8048
518-648-6441

Appendix H

From: Walter E Beverly III <mvpschief@yahoo.com>
Sent: Saturday, January 09, 2021 12:29 PM
To: eFiling Comments <efilingcomments@nycourts.gov>; New York State Professional Process Servers Association <admin@nyspps.org>
Subject: Comments RE eFiling

This is a program designed to "save money" and "cut down paperwork" as I understand it. The problem is I do not see any savings at all.

First, the Attorney still have to print out his copy, his client's copy and the copy for service by a process server.

Second, the fees have not been lowered to pass on these so called savings.

Third, the County Clerks still have to maintain hard copies of filings.

Please tell me; what does this accomplish?

Hope this helps,

Walter E Beverly III
Chief of Service,
Mohawk Valley Process Service
6622 Seville Drive
Rome, NY 13440
315-336-2391 Office
315-525-7397 Cell

Appendix H

From: Joel H. Rosner <jrosner@tarterkrinsky.com>
Sent: Saturday, January 09, 2021 8:32 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comment re electronic filing

Hi,

I support making e-filing mandatory throughout the state. While it requires a little bit of knowhow to accomplish, I question whether an attorney can legitimately claim lack of knowledge as an excuse without also running afoul of their ethical obligation to be competent in the use of technology.

In fact, I would go further: I would mandate that all formal legal communications, such as discovery demands and responses, be sent via the e-filing system. I do not think those documents should be filed on the docket of a case, but there is little reason for parties to insist on received mailed hardcopies of legal communications. I cannot recall a single case that I have litigated in the past 5 years (and likely more) where the parties communicated by means other than email -- even if we also sent hardcopies -- and the past year has shown the benefits of electronic communications. All my document productions during that period have also been made in electronic form. Why should we mail a discovery demand and have to add several days of time to the response deadline to account for delays in mail service, when we can send a demand that is received immediately by the opposing side? Why spend time and money printing large sets of documents, when PDFs are free and instantly created? Establishing a system whereby attorneys can deliver documents through the e-filing system would resolve all disputes over when (or if) papers were served or received and ensure that all attorneys of record in the case get their own set of the papers. This could be accomplished with relatively few changes to the e-filing system, which is already set up to send documents to the attorneys of record -- all we really would have to do is eliminate the filing stage of the process. While this would place some administrative burden on the system, it would not otherwise take up resources because there would be no need to retain or otherwise process the documents merely being sent through the system to other attorneys.

Regards,

Joel Rosner



Joel H. Rosner | Counsel
D: 212-216-1167 | F: 646-893-5016
jrosner@tarterkrinsky.com | [Bio](#)

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[COVID-19 RESOURCE CENTER](#)

Appendix H

From: Patricia Biazzo <pbiazzo@nycourts.gov>
Sent: Monday, January 11, 2021 8:49 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments

I work in the e-file system extensively every single day of the week. I want you to know that the changes implemented a few months ago which put the index number in the right hand column furthest away from the left is unacceptable.

The most important data in my opinion is that the index number should be the closest, clearest, first piece of information in the to do list needed right after the process document column. The type of document that it is not as important as the index number in this list. Fellow co-workers have also commented on this change and it is not conducive to the way we work and move through the list.

Please consider changing the list back to having the index number and title/type of action/judge back to the center column.

Thank you for your consideration.

Patricia Biazzo

Special Term Office
Suffolk County Supreme Court
631-852-2402



Appendix H

From: Goosby, Laura <Laura.Goosby@ag.ny.gov>
Sent: Monday, January 11, 2021 11:14 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: My Comment Regarding Access to Mental Hygiene Documents

Good morning:

Thank you for this opportunity to leave a comment regarding the electronic filing program.

My only request is to have access to mental hygiene documents for service purposes.

In my office, in addition to handling sex offender cases for the Sex Offender Management Bureau, I also handle mental hygiene cases such as Assisted Outpatient Treatment/KENDRA, Court-Ordered Psychiatric Medication (COPM), Civil Commitments (MHL 9.27), Order of Conditions (MHL 330.20), and Parole Revocations. On many of the cases, I serve the orders to show cause, final orders, etc. to the opposing parties.

Although I have permission to file, I do not have permission to access the documents once the orders are signed. In fact, I have to ask the assigned attorney to log onto NYSCEF and download the documents for me.

I believe if I have permission to file, I should also be able to access the necessary documents in order to proceed with servicing the respondents.

I would be willing to fill out a special form granting me access by the attorney. The form can then be uploaded to NYSCEF while I'm filing.

I believe this is a reasonable request that can be narrowly tailored for this particular type of filing for a specific purpose.

Thank you for your consideration.

Laura L Goosby
Administrative Assistant 1
Sex Offender Management Bureau
New York State Office of the Attorney General
1 Civic Center Plaza, Suite 401 | Poughkeepsie, NY 12601
Work Tel: (845) 485-3922 | Fax: (845) 452-3303 | Work Cell: (845) 743-2825
Email: laura.goosby@ag.ny.gov

Appendix H

From: Jayme Mancini <mangojugo@gmail.com>
Sent: Monday, January 11, 2021 7:30 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Impossible system for tax payers to use

I have repeatedly submitted a request for an index number and file for action to annul a marriage. However, I keep getting my case and documents removed for reasons that do not involve legal procedures or other logical or appropriate issues. The first recommendation was to use a lawyer, however, I can't afford a lawyer and I took the time to study what is supposed to be included in the case. No, I am not a lawyer, but in the USA we are not required to hire a lawyer or legal representative. I used standard legal templates to prepare my document, and I notarized the verification. However, there is always some reason that the case keeps getting removed.

I think that the system is problematic, but I'm not sure if it is just the legal system on Long Island.

"Clerk's Comment: Captions ****must**** match ***EXACTLY*** on all documents AND what is entered into NYSCEF. For this reason, your case is being removed from the system, documents deleted and your fee will be reversed back to your credit card. You must restart your case anew, ****WITH**** all fees, and remembering to make sure your caption matches ***EXACTLY*** on all documents and the NYSCEF system. Please check ****all**** your work... pdfs, doc titles, return dates, captions, fees... ****prior**** to committing to NYSCEF."

Jayme Mancini, DO, PhD, FAWM
631-223-5167

Appendix H

From: Daniel Schneider <dschneider@fsfllp.com>
Sent: Monday, January 11, 2021 10:18 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments About NYSCEF

I am admitted in NY, MA, CA and IL as well as in Federal Court. I use eFiling systems from four states and ECF. NYSCEF far exceeds any of the others. It is much more intuitive and an easy to use interface. Though improvements might be available, based upon the alternative, I would not change a thing. I also like the fact that all NYSCEF cases are easily searchable and the documents are readily available. So, I am putting in a hearty endorsement for the system.

Many thanks.

Very truly yours,

Daniel J. Schneider
Farber Schneider Ferrari LLP
261 Madison Ave, 26th Floor
New York, New York 10016
(212) 972-7040 (o) | (212) 922-1939 (f) | (646) 531-1831 (c)
dschneider@fsfllp.com | www.fsfllp.com

Appendix H

From: David Arpino <david@arpino.legal>
Sent: Tuesday, January 12, 2021 9:56 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on Electronic Filing Program

Dear Mr. Carrucci,

Comments on the NYS Electronic Filing Program:

I support the expansion of mandatory e-filing in every county in New York State. Having the ability to e-file in some counties but not others put an administrative burden on my practice. As a result, I am a supporter of the proposal to lift the restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing program in any count and/or action. To better prepare the court for the future, the ability to e-file should be expanded to all NYC Civil Courts, City Courts outside of NYC, and the District Courts on Long Island.

DAVID ARPINO

david@arpino.legal



P: 631.724.5251 | arpinolaw.com

F: 631.724.5527 | Associate Attorney
380 Townline Road, Suite 180
Hauppauge, NY 11788

Appendix H

From: michael cervini <cervini07@yahoo.com>
Sent: Tuesday, January 12, 2021 12:27 PM
To: CC-NYEF <CC-NYEF@nycourts.gov>; nyscef <nyscef@nycourts.gov>; eFiling Comments <efilingcomments@nycourts.gov>
Subject: Various

Good day,

I hope everyone is safe and healthy!

I have filed PC requests; Consent to e-filing requests which in some cases are over 30 days old without any response.

What can I do?

Thank you.

Appendix H

From: Charles Baron <CBaron@mclaughlinstern.com>
Sent: Tuesday, January 12, 2021 1:28 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on eFiling

I have efiled two proceedings in the Bronx and apart from the following issue, the filings proceeded uneventfully.

*****PDF ISSUE*****

I scanned documents on two occasions, in August 2020 and in December 2020 using an HP 3830 printer/scanner. PDFs were created from the scan and in both instances NYCEF rejected the PDFs (this was not the case with PDFs created from an iPhone.)

The rejection notice was as follows: "The PDF cannot be added to NYCEF because it is corrupt. The file did not end with the end of file (EOF) marker as required by the PDF standard (ISO-32000 7.5.5)"

I have no clue how to deal with this. I have no clue how the pdf could be accepted by NYCEF. There is to my knowledge, no specific instructions in in the eFiling handbook as to how to mitigate this problem. There is no explanation as to why this problem occurs.

Instruction and direction to remedy this issue would be greatly appreciated..

Charles B. Baron
McLaughlin & Stern LLP

Appendix H

From: Romanelli, Chris <CRomanelli@weitzlux.com>
Sent: Tuesday, January 12, 2021 2:09 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: My experiences with NYSCEF

A very intuitive and solid system. By far the best electronic filing system I have used. Beats Pacer by miles.

It's easy to figure out, very stable, very-well staffed (when we need an index number in a rush). And I use it for a very busy tort practice and I am filing motion opps with dozens of exhibits all the time.

I give it a grade of A+.

Chris Romanelli
WEITZ & LUXENBERG, PC
700 Broadway
New York, NY
10003
(212)-558-5815

Appendix H

From: Gary Tsirelman <gtsirelman@gtmdjd.com>
Sent: Tuesday, January 12, 2021 11:11 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Please accept my comments about E-filing on behalf of the firm.

Our firm files thousands of civil court cases in Kings County. E-filing system, if done right, can save us a tremendous amount of time and decrease overhead. But the key is, if done right. Currently, it is not. The current system is unusable, awful and serves only to waste our time. If the current E-filing system is implemented without change, we will either have to hire an army of people to E-file thousands of cases and go out of business (because of the enormous overhead) or just go out of business. Moreover, the amount of errors that would be entered into the court system by an army of people is unimaginable. We are already suffering because of COVID, because everything is delayed, because our clients are not working and because legislative changes adversely affect our business. Adding this to our burden will crush us.

So how should this E-filing system work in order to save us and not waste us time? Our servers must be able to communicate with each other just like our servers communicate with clearinghouses now when, for example, one submits bills to an insurer. Our digital data gets uploaded to our unique "incoming folder" on their server and their program reads the data and places the data into their own system (in our case it would be the court's system). If they (or the court system) wants to send some data back, the data is placed in our unique "outgoing folder" and our program will read the data and place it in our software. This way people are not involved. Everything is done by computers, at the press of a button, there are no errors, and no overhead. This is an ideal system.

If you would like more information on how to do it, I would be very happy to explain it to you as I develop software for clients and attorneys. I and many of my clients use the software I developed.

Sincerely,

--

--

Gary Tsirelman, Esq.

GARY TSIRELMAN P.C.

129 Livingston St 2nd Fl

Brooklyn, NY 11201

(Tel) 718 438-1200 (ext.105)

(Fax) 718 438-8883

Appendix H

From: Dan Crespo <dan@ppservers.com>
Sent: Wednesday, January 13, 2021 10:54 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-Filing in NYC Civil Courts

Good Morning,

My company e-files in both Supreme and Civil Courts in New York City. The Supreme Court E-Filings give you access to the case, you can print anything you need from that case. Civil Court you are unable to. Why can't both Supreme and Civil have the same access? That is my suggestion.

Best Regards,
Dan Crespo

Preferred Process Servers Inc
166-06 24th Road, LL
Whitestone, NY 11357
718-362-4890

Appendix H

From: ita@itafluglaw.com <ita@itafluglaw.com>
Sent: Wednesday, January 13, 2021 11:03 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: recommendations

Hi,

These suggestions are for housing court only:

1. There should be a way to put multiple items in cart and pay 1x instead of paying \$1.05 90 separate times for postcards on multiple cases.
2. Motions should be able to be filed as 1 document without splitting up into parts (nom, aff in support, exhibits, etc..)

Thanks.

Ita R. Flug, Esq.

672 Dogwood Avenue, #311

Franklin Square, NY 11010

516-612-7034

Appendix H

From: Caroline Moran <carodave92@yahoo.com>
Sent: Wednesday, January 13, 2021 11:33 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments/survey on eFiling procedures

Hello,

Since I never pass up an opportunity to give my opinion...here are a few thoughts from my experience using the eFiling system to submit my father's estate for probate. I think this is a great idea and am extremely grateful to have this option, especially in times of covid, but I do have some suggestions, below. My entire experience has been with the Surrogate's Court of NY County, in case that matters.

Additionally, I would like to comment that I reached out for assistance numerous times via both calls and emails. Your team is extremely well-trained, well-informed, and very helpful.

Thank you for the chance to weigh in!

Caroline Moran

- Survey button does not lead anywhere!
- Email confirmation of new user account asks user to change password - there should be a link to do so - or instruction explaining that a second email is forthcoming.
- Confirmation email requests that the user send hard copy of the documents to the Court - email should also contain mailing address for the Court.
- Confirmation email should contain a timeline or a ballpark timeline so user can gauge how long the process will take - it can be very general - ie, check back in 2 weeks/1 month/3 months - otherwise there is no way to tell if your application is missing details, etc.
- To set up a new account, user is asked to create a password between 6-10 characters, in a later spot, it says that password needs to be a minimum of 10 characters. This should be uniform throughout the website and all communications. (And it appears that 10 char minimum is the correct instruction).
- I had to create multiple accounts due to errors with the password and other user-error related reasons...I'm sure this is clogging up the system. There should be a way to delete accounts from the user side. Or ideally, a way to use a single account for all interactions, but I suspect there's a security reason why that is not possible.
- Buttons with instructions (continue, log in, etc.) should be larger and colorful. They are currently tiny and blend in with the page. The survey button is a great example of good practice, it is large and colorful and stands out well.
- You might consider including a glossary of legal terminology - using links - since the site is intended for people with no legal training, it would be helpful. For example, when the form requests 'party role' that phrase could be hyperlinked to a definition of party role. (Am I the petitioner? Or is there a more appropriate choice for me? Not really sure...)
- You might consider creating sample documents, to at least give an idea of how the forms need to be completed. This sounds like a big project, but in fact, you could simply redact confidential info from existing forms that have been submitted correctly, and house them as pdfs. Obviously with a large warning that everyone's answers will be subject to personal circumstances, but to give users an idea of what the final should look like.

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From: claudette@michaelcolelaw.com <claudette@michaelcolelaw.com>
Sent: Wednesday, January 13, 2021 12:24 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Efiling System

Hello

Just some thoughts on the e-filing system.

First, I love being able file papers this way. I hope more Courts get approved for this way of filing papers.

Can the EDDS filing link be located on the main page somewhere..permanently. I have difficulty finding it. Typically I have to go to forms and click the link under the Stip/Consent description.

When converting an existing case, is there a way to list the cases I am waiting to be uploaded so I can then consent to it. As it is set up now, I have to choose through the screen menus and enter the index number. It would be quick to just have a list of my pending cases.

Is there a way to streamline the emails I receive..for example when I file a judgment for divorce..the documents are acknowledged, then a control number assigned, then a notice the case will be assigned to a judge, then it is confirmed. It's just alot of emails for one project.

As I have not been able to participate in any online how to's because they are held during my work hours, are there links I can find when I am at home. My boss would be fine with me learning how to do this during the day, but I just don't want to take the time with the volume of work we have at the office.

Thank you.

Claudette

--

Claudette M. Roese, Paralegal
LAW OFFICES OF MICHAEL W. COLE, PLLC
13349 Broadway Street
Alden, NY 14004
(716) 937-9150
(716) 937-9580 fax

Appendix H

From: Michael Pollok <michael@crimdef.com>
Sent: Wednesday, January 13, 2021 11:30 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Inconsistencies in systems

It appears that different courts use different systems to file documents. It also seems pointless to have an e-file system and then still require the same number of hardcopy documents be filed like in the Court of Appeals where we are required to file the same number of expensive hardcopy briefs after spending a great deal of time and resources converting the briefs into searchable and bookmarked PDF's:

Rule 500.2 Submission of Companion Digital Filings.

(a) The Court requires the submission of filings in digital format as companions to the required number of copies of paper filings required under sections 500.10, 500.11, 500.12, 500.14, 550.20, 500.21, 500.22, 500.23, 500.24, 500.26 and 500.27 of this Part.

I refer you to the federal ECF system which is countrywide and easier to use than the various systems we have in the state.

Very truly yours,

Michael S. Pollok, Esq.
Law Offices of Michael Pollok, PLLC
Tel. 845.758.3676
E-Fax. 845.853.1628

Dutchess County Office:
7468 S. Broadway-Suite 2
Red Hook, NY 12571

Ulster County Office:
44 Main Street-Suite 8
Kingston, NY 12401
<https://www.crimdef.com>

Appendix H

From: james bacon <baconesq@yahoo.com>
Sent: Thursday, January 14, 2021 7:29 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on e-filing

Dear Sir or Madam,

I am thrilled with the new e-filing system. Although the mandatory filing choices are sometimes limited, I have adapted. Please do not change anything. - James Bacon - admitted NYS bar 1992

Appendix H

From: David Scott Heier, Esq. <dheier@familylawyer-ny.com>
Sent: Thursday, January 14, 2021 3:28 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing

I enthusiastically endorse and support a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state — in any or all of the State's trial courts. The implementation of mandatory universal e-filing of all cases in the State should be expedited.

NOTE: No attorney should be exempt from the requirements of e-filing if lacking the equipment or knowledge to participate. This exemption should be addressed in the future. E-filing is not rocket science and the cost of equipment is inconsequential. This is no longer the era of typewriters, whiteout, and carbon paper. It is a challenge to logic and common sense that a New York lawyer is so lacking in knowledge of technology that such ignorance cannot be remedied by training and education. It is a disservice to clients and a hinderance to the courts and other attorneys.

David Scott Heier, Esq.

HEIER LAW OFFICE

David Scott Heier

Attorney at Law

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(585) 412-2334

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Appendix H

From: Marybeth Bevan <mb@markagreenpc.com>
Sent: Thursday, January 14, 2021 4:08 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments

Good Afternoon:

Overall eFiling has been terrific. One suggestion on Matrimonial cases – our office is the Attorney for the Children on many matrimonial matters. Often we have to request special permission to be added to eFiling if the plaintiff and defendant have already filed their consent to efile before an Attorney for the Children has been assigned. Maybe there can be a field for an Attorney for the Children to consent on the eCourts site rather than having to ask the judge's part to add us as an efile user.

Thank you.

Marybeth M. Bevan Esq.

Marybeth M. Bevan, Esq.
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(516) 345-8080
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mb@markagreenpc.com

Appendix H

From: Robert Palmeri <rpalmeri@nycourts.gov>
Sent: Thursday, January 14, 2021 5:31 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: My comments

Greetings,

My name is Bob Palmeri and I am the Senior Court Clerk assigned to the Motions and Appeals Desk in Suffolk District Court.

When the e-filings began I took it on myself to learn both of our e-filing programs and handle all of the e-filings in the District Court Criminal Division. I can honestly say that the e-filing system is user friendly and a pleasure to work with. It pairs magnificently with UCMS! The biggest hurdle we have is getting more attorneys on board to use it. The complaint I hear most often from both lawyers and Judges is that "I need papers in my hand!". I think if someone in OCA was to reach out to all of the local Bar Associations, that might assist in even more use of the e-filing system.

The e-filing system combined with UCMS can truly take the NY into the paperless, 21st century.

Sincerely,

Robert Palmeri, Senior Court Clerk
Suffolk County District Court
Motions and Appeals Desk
631-208-5810

Appendix H

From: William J. Brennan <William.Brennan@kennedyslaw.com>
Sent: Thursday, January 14, 2021 4:37 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYSCEF User experience comment - Problem with Unwritten "Rules"

Dear Mr. Carucci:

I write in response to your request for user comments for your office's annual report on e-filing. I am an attorney and practice in federal and state courts around the country so I believe that I have some basis for comparison for the following comment.

The court clerks have too much discretion to reject NYSCEF filings because they are enforcing unwritten rules in an arbitrary fashion. Therefore the e-filing rules should be changed to require the clerks to specifically cite to a written rule in order to reject a filing.

Let me give you an example of my recent experience in the Appellate Division of the First Department. My appellate printer filed through the NYSCEF system an appellate brief that I drafted. My brief included two (2) bullet points. Both bullet points were part of a single block quotation from my opponent's brief. The clerk rejected the filing and directed me to remove those bullet points without any explanation as to why this was required, but merely said: "Reason for Returning: Remove the bullet points found on page 15 of your brief." The notice of rejection was sent at 4:56 PM, so it was impossible to seek further information that day. My opponent's brief, which contained the original bullet points, had been filed without any issues raised about bullet points.

When I called the following day, I was told that the First Department has a rule against "too many" bullet points. When I asked where this rule could be found, the clerk politely directed me to 22 NYCRR Part 1250.8(f). When I noted that Part 1250.8(f) does not mention bullets (let alone explain how many bullets are acceptable), the clerk paused briefly and then informed me that that the rule was "implied" by Part 1250.8(f). The clerk did, however, concede that because "only" two bullet points appeared in my brief, it should have been fine and that he personally would not have rejected the filing. The clerk then directed me to refile the brief without any changes. I did. My brief, however, was immediately rejected again with the following note: "Reason for Returning: See previous return for correction comment. The change was not made and the bullet points are still on page 15. This isn't considered proper formatting within the contents of your brief."

When I called the clerk's office again, I learned that the clerk who answered the phone hadn't warned the clerk who was reviewing filings that my brief should be allowed through. The phone answering clerk then shouted at the reviewing clerk to stop bouncing my brief and directed me to re-refile. This time my filing was accepted.

Needless to say, this unnecessary back and forth was frustrating for me and costly for my clients. It is also entirely inappropriate - different rules were applied to different briefs in the same case and the

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clerks could not even agree among themselves as to what the unwritten rule required for the same brief. If the Justices of the Appellate Division wish to impose new formatting rules, they should be added to Part 1250.8, which addresses the form and content of briefs. (I am aware of at least one other unwritten rule that the First Department clerks intermittently enforce.) Unwritten rules should not be permitted for obvious reasons of due process and fair notice to litigants. Written rules also create the added bonus that they can avoid loud disputes between clerks with different opinions about what an unwritten rule requires. The obvious solution is to inform the court clerks not to reject filings unless (1) a written rule has been clearly violated, and (2) they provide a written notice to the litigant in the email rejecting the filing that specifically identifies the written rule at issue.

Please feel free to contact me if you have any questions.

Best regards,

William J. Brennan
Associate
for Kennedys

Kennedys

T +1 646 625 4036

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www.kennedyslaw.com

Appendix H

From: Maureen - Basch & Keegan Injury Lawyers <mak@baschkeegan.com>
Sent: Friday, January 15, 2021 9:57 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Electronic filing

My office-BASCH&KEEGAN
307 Clinton Avenue
Kingston NY 12401
835-338-8884
We SUPPORT E-Filing.
Thank you

Sent from my iPhone

Appendix H

From: James Montgomery <jmontgomery@drdllplaw.com>
Sent: Friday, January 15, 2021 10:09 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing Comments

Dear Mr. Carucci:

I have some comments to make regarding e-filing in state court actions:

1. For me, simplicity is the key - clear and understandable fields and a user-friendly site should be always the goal, I respectfully suggest. I find the state court site much better than the federal ones, so top marks to state court there.
2. E-filing should be extended where possible to new areas: civil court, divorces, criminal actions, are obvious candidates.
3. The need to provide hard copy should be eliminated (it has been suspended because of covid19, and this should become the norm).
4. Where possible, Judges should lose the power to make individual part rules which depart from standardized rules of procedure. Uniformity of procedure makes legal practice easier, saves time and money and helps everyone involved in litigation.

I remain,

Sincerely,

James Montgomery

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Good afternoon –

In the NYSCEF Notification emails we receive, I think it would be helpful if there was a direct link to the login screen for quicker access to the docket. For example, create a link to the index number that will open the login screen, and possibly save the index number for quicker view/access to the docket of that case.

Hope that makes sense.

Thank you,



Cheri Fiordeliso
Paralegal
145 Culver Road, Suite 100
Rochester, NY 14620
P: 585.232.5300 ext. 263
F: 585.232.3528
Email: cfiordeliso@boylancode.com
Website: BoylanCode.com

Appendix H

From: James Bartosik <jamesabartosikjr@gmail.com>
Sent: Friday, January 15, 2021 9:46 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: e-filing comments

Good afternoon,

I just wanted to express some of my frustration with using the e-filing system. Some parts of it make sense in my opinion, such as serving notice of appeal number on the DA's office, but it doesn't make sense to me that assigned attorneys need to upload and file a copy of the Notice of Appeal and Assignment Letter, since it was the court that provided that information to us. We are essentially submitting that information back to the court.

Also, even when an appeal is already pending and has a case number, you must wait for approval and for the system to assign the case number. It is also frustrating that the initial case information entry can time out on your web browser, meaning that you then have to input all of the information again. It would be better if there was a save function prior to submitting the case info for system approval.

In addition, I work for a public defenders office and have many appeals through my office, but I also have a couple appeals from other counties for which I am assigned counsel privately. I do not like the use of my attorney registration as the method for filing appeals because it fails to separate the capacity for which an appeal is being filed and, to the extent that I could have someone in my office assist with e-filing documents, it would require that I provide that person with my private registration number and password.

Overall, e-filing is smart in 2021 and I'm sure it can be effective, but the current system is not very user friendly and, to me, requires too much time just to initiate e-filing on a matter that already exists and has been assigned and for which hard copies still need to be served and filed.

—
James A. Bartosik, Jr., Esq.

Appendix H

From: appellatelaw <appellatelaw@bellsouth.net>
Sent: Friday, January 15, 2021 3:28 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject:

E-filing is good. Some suggestions to maybe improve it:

* eservice should be the norm and should not require counsel's consent to receive eservice instead of mail/ and or all counsel should furnish designations indicating the email addresses they wish to be served via email.

* would it be possible to only file papers by eservice and not need to file physically as well?

* All attorneys who participate in litigation involving eservice should be required to provide their emails on the attorney registry database on nycourts.gov and or see above.

Thanks

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From: Michael Brunetto <brunetmj01@mail.buffalostate.edu>
Sent: Friday, January 15, 2021 3:56 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Re: Comments / Critique / User Experience

NY Courts,

Critique:

(1) Organize the submitted documents (simultaneously on a different tab) with the rules and regulations of all Appellate Courts in NYS.

That way, an appeal is as easy as pressing submit (or allowing access) to the desired Appellate Courts.

(2) This is 2021, there is no reason an appellant should reprint a 20,000 page record on appeal to submit to 11 judges and 5 Respondents in order to appeal a decision made in error or authorized by a Justice of the Supreme Court.

(4) NYS Courts should set forth an initiative to GO GREEN, and reduce paper waste with the above critiques.

(5) NYS Courts should allow all parties (who are joined as a party to an e-filed case) to be served papers via the e-filing system. (as invoked during the pandemic)

(6) There should no longer be a requirement to hand serve subsequent motions and papers ("courtesy copies") upon parties or justices. (as invoked during the pandemic)

(7) These critiques should be set forth by the New York State GO GREEN initiative involving the NYS Court's systems.

(8) Skype or Microsoft Teams should remain a viable option (after the pandemic) to reduce cost of a lawsuit for clients and attorneys who may be far away from the location of the Court's.

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The above will reduce carbon footprints of cars and reduce gasoline waste.

Comments/User Experience:

(1) The new e-filing system is user friendly.

(2) The new e-filing system is easy to navigate.

(3) NYS needs to GO GREEN in 2021! (please set forth an initiative to make this happen by 2023)

(3) The new e-filing system is easy to submit documents.

Respectfully,

M.B.

Appendix H

From: Justin Brusgul <brusgul.law@gmail.com>
Sent: Friday, January 15, 2021 4:50 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Appellate Division e-filing

Greetings:

I have used NYSCEF for Surrogate's Court filings for several years, without issue.

My general criticism of the AD system is the requirement of paper-filing e-filed documents: this, for the attorney, eliminates the utility of e-filing in general, and consumes more time and resources.

Surrogate's Court does not require this for most filings.

In addition, the AD rules are rarely on point, up to date, or clear.

Thank you, and stay well.

Justin C. Brusgul

Appendix H

From: Edward Graves <attorneygraves@gmail.com>
Sent: Friday, January 15, 2021 5:53 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Poorly Conceived

To Whom,

My experience with this system has been frustrating. The system contains, I think, a 60 some page manual, written in tiny print and full of cross references to itself--none of these are easily accessible from within.

I've not previously formatted searchable PDF's as are required for the simplest operation. The NYSCEF instructions as to how to do so are unintelligible.

I finally found online the material offered by the Federal 9th Circuit Court of Appeals. Their guide was simple to use.

Why could not NYSCEF provide simple guides, that don't require plowing through 60 plus pages of tiny font to do the beginning steps??? After going through your endless and meandering instructions, I could still get nowhere. PLEASE!!!, if you have not, go online and attempt to find useful information in the endless pages pretending to answer "FAQs"

I fear that you have a group of teenage computer geeks writing everything that is supposed to instruct on usage. Why must it all come across as gibberish?

I am an older attorney and feel sure that the older attorneys in OCA and on the bench would find your directions and website pages incomprehensible. But, those parties have State staff to deal with the mess. **Most other attorneys do not, except those in big money firms. So, you are once again preserving the court system for wealthy people and leaving the majority out on a limb.**

I have heard from other older colleagues that your system is the **last straw** for them. They will instead retire and take with them decades of knowledge and wisdom on what practicing law is supposed to mean, in terms of actual reverence for law and the courts. This undermines the judicial system.

By imposing on every attorney the condition that they can practice law only if they commit to become **computer secretaries** you are hollowing out the legal profession. Can you believe that this is good?

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Maybe you are thinking that you are saving money by making EVERYBODY who interacts with OCA provide the clerical labor that used to be part of your responsibility. It sounds rather like off-shoring jobs. OCA will save money at the expense of the courts fulfilling any assumed mission of providing "justice" and social cohesion.

MAYBE, you could consider that NYS needs jobs. That OCA could instead of foisting madness across the system, have a staff that attend to scanning, etc., like responsible enterprises used to?

--

Sincerely Yours,

Edward S. Graves, Esq.
P.O. Box 668
Indian Lake, New York
12842
Tel.: 518-598-8048
518-648-6441

Appendix H

I write to comment on the NYSCEF system which seems designed to disrupt the courts of New York.

I have spent some hours attempting to initiate/create a new case file. I am shocked at how difficult it is to get anywhere through your system. I am also impressed at how much money I would be required to assess clients to satisfy the time requirements of this chaotic system.

Attorney colleagues have expressed opinions ranging from rage to complete contempt at having this mess foisted on them.

It seems that the designers of this system have chosen to make EVERYONE who deals with the courts responsible for the work that previously would be done by specialist office staff--staff employed and paid by OCA.

So, you have decided to presume to expect EVERYONE who needs to file documents in New York Courts to become an expert in your complicated and arcane computer system. I assume you have computed how much money OCA will save by requiring others to do its work.

Instead of having a staff in-house who organize documents filed by litigants into digital format designed to be accessible to those needing to access them, you have decided to make EVERYONE your digital secretaries.

Is this supposed to be anything but an economic saving measure for OCA? To, instead of paying trained OCA staff to format and organize digital records, you think to off put the work onto everyone else who deals with the courts?

It is a plan that can only create chaos and be navigable only by wealthy litigants.

So, all those who cannot decipher the dozens of "How To" pages randomly linked through this system will be required to hire others to do it for them. And many who do not officially qualify as indigent, etc., will be foreclosed from the Courthouse because they cannot afford to hire experts.

The concept behind this system, that is, presuming to foist onto litigants the secretarial tasks of the OCA, is both deficient and subversive of the mission of New York State Courts.

I would not be surprised to find an enterprising attorney sue OCA on Equal Protection grounds.

Please stop this and assume your own administrative responsibilities.

Sincerely Yours,

Edward S. Graves, Esq.
P.O. Box 668
Indian Lake, New York
12842
Tel.: 518-598-8048
518-648-6441

Appendix H

From: Geoffrey Luan <geoffluan@gmail.com>
Sent: Saturday, January 16, 2021 9:58 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on NYS Courts Electronic Program

Mr. Jeffrey Carucci -- There is an urgent need to make electronic filing an option to be available to use at as many courts as possible. Thank you.



Geoffrey Luan, Esq.

LAW OFFICE OF GEOFFREY LUAN

Phone: 347-491-2154

Email: GeoffLuan@gmail.com

131-07 40th Road, Suite E26

Flushing, New York 11354

Appendix H

From: Flor Betancourt <fbetanco51@icloud.com>
Sent: Saturday, January 16, 2021 8:15 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: eFiling comments

eFiling Comments

I am an unrepresented litigant. The following are comments regarding my e-filing experience:

1. The site should post the average turnaround times for the various categories of e-filed applications.
2. The customer representatives at the Surrogates Court level are not knowledgeable regarding the eFiling system. One told me that all he can tell me is that you can file a petition in the system and not to ask him anything about the system.
3. The eFiling system is not user friendly and is very convoluted like a myriad of highways with no signs.
4. My application for a letter of limited administration is still pending since 11/21/2020 and no updated status is available in the system nor an expected status.

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From: Sanderson, Joseph <joseph.sanderson@kirkland.com>
Sent: Sunday, January 17, 2021 1:36 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-Filing Comment

I strongly support the extension of mandatory e-filing (subject to exceptions for pro se litigants) throughout the state, for all trial and appellate courts. Aside from reducing cost and time compared to paper filings, e-filing serves a critical role in allowing the public and attorneys access to court records, assisting in transparency and research.

To that end, I hope that any reform allowing OCA to make e-filing mandatory statewide for all trial courts is also accompanied by a requirement for clerks to gradually digitize court records over a reasonable time period, with the costs of such a digitization program offset by modest increases in filing fees (especially in high-value commercial disputes, where the parties can likely afford it most). Many states, including ones with highly complex court structures such as Texas, have successfully transitioned to statewide electronic filing and records digitization, with significant benefits for efficiency and transparency.

Joseph Myer Sanderson

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joseph.sanderson@kirkland.com

Appendix H

From: Peter Lomtevas
Sent: Monday, January 18, 2021 6:41 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Strongly Support

It bedevils me how fort years after the first microcomputers, the nation's legal system still requires paper filings at a counter in a clerk's office. I strongly support electronic filing for the savings in client fees, the lessening of traffic congestion in the streets around the courthouse and the lower carbon footprint that efileing provides.

I also strongly support video conferencing of cases for exactly the same reasons.

Peter

www.lomtevas.com

Appendix H

From: B & B Law Office <lawoffice@fairpoint.net>
Sent: Monday, January 18, 2021 11:41 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on eFiling

These comments are for APPEAL filings only. I generally do assigned appeals—both criminal and Family Court.

- 1) There is a substantial difference between criminal and civil (Family Court) appellate work. Rarely are there more than two parties in criminal appeals. It's The People and the defendant. It would be great if eFiling could reflect that the criminal process is pretty simple procedurally.
- 2) Motions: Often, in appeals, both criminal and civil appeals (including Family Court), my entire motion—notice, affirmation and exhibits (if any)—is less than five pages. It would be very helpful if one could file a motion as one document, and not have to file a separate notice, affirmation/affidavit, and exhibits. Maybe have a page limit to allow filing as one document? Or an exhibit limit for a one document filing?

Thank you.

Alex Bloomstein

Baldwin & Bloomstein
Attorneys at Law, LLC
61 Cold Water Street
Post Office Box 248
Hillsdale, New York 12529
(518) 325-3141

Appendix H

From: Bonnie Cohen <bcgallet@gmail.com>
Sent: Monday, January 18, 2021 8:28 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Re: nyscef comments

I have tried, but unfortunately I have not had luck. As a court evaluator on MHL Art 81 cases, there does not appear to be a way for me to see the other documents filed on a case. That is why I sent my comment to NYCEF for consideration before the Jan 25th deadline.

-Bonnie Cohen-Gallet

On Mon, Jan 18, 2021 at 7:00 PM eFiling Comments <efilingcomments@nycourts.gov> wrote:

Please reach out to the NYSCEF Resource center at

NYSCEF@nycourts.gov and they can assist

From: Bonnie Cohen <bcgallet@gmail.com>
Sent: Friday, January 15, 2021 11:54 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: nyscef comments

I am an attorney, handling MHL Art 81 cases. I serve as the Court Evaluator or the Attorney for the AIP in cases in Manhattan and Queens.

As the Court Evaluator, I have great difficulty accessing the documents that have been filed since I am not considered a party to the action. In most cases, I do not have any access to the documents. The most recent example is 500646-2020.

Appendix H

PETER C. MERANI, P.C.

ATTORNEYS AT LAW

1001 Avenue of the Americas, Suite 1800
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Phone: (212) 629-9690
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Peter C. Merani

Samuel Kamara
Michael N. Zeleznock
Adam Kass

Brian Kratenstein
Adam Waknine

Nassau County Office:
1979 Marcus Avenue
Suite 210
Lake Success, N.Y. 11042
Phone: (516) 622-2270
Not For Correspondence

January 19, 2021

Re: New York State Courts Electronic Filing Programs/Comments

In response to the letter dated 12/22/2020 in regard to NYSC electronic filing programs request for observations, our office would like to bring to your attention the following concerns:

1. NYSCEF requires the firm's file number when filing but when notification is received from NYSCEF, the file number is not included in the notification. This creates an additional burden of having to now search for the file number and depending on the number of cases that are filed for the day, this could require unnecessary search time.
2. When having filing issues, it is very difficult to get a live person on the phone and this issue preceded covid.
3. The court requires that NYSCEF be emailed regarding e-filing issues. However, in most instances, the response time takes weeks.
4. Regarding EDDS you still cannot start lawsuits in civil city court by e-filing, electronic means
5. Under EDDS there is a limited amount of documents you can file.
6. Under EDDS you cannot file a judgment with the court.
7. Under EDDS the system seems to be unresponsive to calls and inquiries.
8. Our office is forced to continue to file documents manually in paper format with limitations under COVID of accessing the court. There is little directive or directions from the court regarding such legal documents as the entry of a judgment. The processes should be expanded to include all possible legal documents and the ability to receive executed documents back from the court such as signed entered judgments.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

Peter C. Merani
Peter C. Merani, Esq.

Appendix H

From: Kurt.Vellek@AllenOvery.com **Sent:** Tuesday, January 19, 2021 11:29 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: mbx404770@ecf.courtalert.com
Subject: Comments in Advance of Annual E-filing Report

We cannot say enough good things about Jeff Carucci and his staff for their steadfast support of the legal community throughout the pandemic. Even in the early days he remained accessible and informative; essential matters moved through the system and enabled us to seek judicial relief when the courthouse was virtually empty.

We have also used EDDS for some of our pro bono matters, with excellent results.

The entire E-filing staff should be highly commended for their hard work and success.

Kurt R. Vellek | Managing Clerk
Allen & Overy LLP

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Appendix H

From: Pallante, Kristi <kpallante@cohenclairlans.com>
Sent: Tuesday, January 19, 2021 11:10 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: RE: NYSCEF comments

It would also save a lot of time if there was an option to download multiple documents at once. Downloading individual files is very time consuming.

Kristi Pallante
Paralegal
Cohen Clair Lans Greifer Thorpe & Rottenstreich LLP
The Lipstick Building
885 Third Avenue, 32nd Floor
New York, New York 10022
212.326.1740 T
212.300.1111 F
kpallante@cohenclairlans.com

From: Pallante, Kristi
Sent: Tuesday, January 19, 2021 11:06 AM
To: efilingcomments@nycourts.gov
Subject: NYSCEF comments

Re: Matrimonial Packets – we have received mixed messages about what documents need to be filed as part of the Matrimonial Packets versus separately as individual files which result in various rejection notices.

It would also be helpful to preview more of the file names for documents that have been uploaded to make sure the intended file was actually the file that was opened. It currently gets truncated to the first and last few letters of a file name when viewing on the upload page.

More support and customer service in the event that something was filed in error and needs to be corrected immediately. For example, a document was uploaded by an attorney in our office to the wrong case, and it took multiple emails over several weeks to get it removed.

Thank you!

Appendix H

From: William Buckley <WBuckley@Garbarini-Scher.com>

Sent: Tuesday, January 19, 2021 10:21 AM

To: eFiling Comments <efilingcomments@nycourts.gov>

Subject: Comments on experience with e-filing

- (1) Sometimes a document is returned for re-filing, but the reasons for the return are not clear from the message I receive with it. For example, I recently was told to re-file a notice of appeal because there were "pages missing." I poured over the document and was left wondering, "What pages are missing?" It would facilitate e-filing if the persons returning documents for re-filing would identify themselves so that we can speak with them or communicate with them via e-mail.
- (2) Sometimes there is a very long wait between my filing of a document on NYSCEF and the document's status changing from "pending" to "processed." For example, on January 6 I filed a notice of appeal. Today, January 19, I am still waiting for the NYSCEF to mark it "processed" so that I can open an e-file with the Appellate Division. It would help if I knew whom to contact to find out why there is this delay.

Thank you for your attention to these comments.

William D. Buckley
Appellate Counsel
Garbarini & Scher, P.C.
432 Park Avenue South, 9th Floor

Appendix H

From: Colleen Hastie <chastie@tlsslaw.com>
Sent: Tuesday, January 19, 2021 5:24 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on Electronic Filing Program

I have worked as a defense litigation attorney for 18 years and would like to provide the following suggestions comments regarding NYSCEF.

1. It would be beneficial to be able to upload different formats of exhibits on motions. This would be especially useful for exhibits that require zooming to fully appreciate the details, such as photographs and blueprints. Converting these documents to PDF causes the image to pixilate when zooming in to better observe an area. The recent mandate against working copies prevent the parties from submitting a separate CD Rom with the images for the court to better observe the evidence. Similarly, many times parties seek to submit a digital recording (i.e. surveillance footage) to be used on motions, but it is not possible to upload this evidence in NYSCEF's current format.
2. There should be an option to post a document to multiple motion sequences so the same document doesn't have to be uploaded multiple times to attach to multiple motions.

Thank you for the opportunity to comment.

Best,

Colleen

COLLEEN E. HASTIE
PARTNER

TRAUB LIEBERMAN

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[Bio](#) | [vCard](#)

www.traublieberman.com



Appendix H

From: Robert Miletsky
Sent: Tuesday, January 19, 2021 6:21 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Cc: 'Robert Miletsky' <rjmiletsky@rjmiletsky.com>
Subject: Comments on e-filing

Hi:

This remains a user friendly system. Much, much easier to use than the Federal ECF system. A couple of comments, since you asked:

One problem is filing documents that were previously filed. For example, when we make a motion, we normally have to include a variety of documents that were previously electronically filed. However, when those earlier filed documents are filed as part of the motion, the electronic receipt for the new filing, overlaps the filing receipt for the older filing – as a result, you cannot read either. I recently filed a Motion for Summary Judgment – and obviously had to include the Summons and Complaint as an Exhibit. When I filed the Summons and Complaint as part of the motion, the filing stamp at top, overlapped the original filing stamp which showed the date the Summons and Complaint were first filed. The overlaps then became a mess and you could not read anything.

It is also extremely difficult to remove an erroneously filed document. I filed a Notice of Transfer of a case to Federal Court – but then realized I filed it in the wrong state court action. Aside from being a traumatic event, it was very difficult and time consuming to try to reverse the filing.

Thank you – hope this is useful

Robert J. Miletsky, Esq.
Contributor: Expert Commentary - Construction Law:
International Risk Management Institute, Inc. (IRMI.com)
Fmr Editor and Writer: Contractors Business Management Report

Please note our new addresses:

For Legal and Related Matters
Law Office of Robert J. Miletsky
275 Merrick Avenue, Suite B
Merrick, New York 11566
Tel. 646.256.7500

Appendix H

From: Anil Babbar <anil.babbar@mac.com>
Sent: Thursday, January 21, 2021 10:51 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: COMMENTS ON ELECTRONIC FILING PROGRAM

Dear Chief Judge:

The e-Filing system that is currently being used is an UNMITIGATED failure.

I am a lawyer and a very savvy technology user. I have used technology such as e-mail and the web before it became widespread in the general population. I am currently there CFO and General Counsel at an Artificial Intelligence company in the health care sector.

The current e-file system suffers from the following defects:

- Unintuitive interface
- Confusing options for gathering input data
- No user experience or user interface logic
- Court clerks and staff giving out conflicting and incorrect guidance (I personally experienced this on 2 occasions)

You should fire the person who implemented this platform. The standard of quality and use should be the average CITIZEN who comes to the site to engage in e-services.

Right now, only an experienced litigator / legal professional who has spent years in the court's convoluted and has spent months navigating your e-file platform has any chance of a meaningful interaction.

You have disastrously failed in providing and value to the public with your current platform. I am surprised how poorly thought out this technology solution is given that this is 2021.

Regards,

Anil

Anil Babbar

Appendix H

From: Noah Blumenthal
Sent: Thursday, January 21, 2021 9:19 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on eFiling

I have spent 20 years in the technology industry, as a programmer for most of that. I have worked for the last 7 years specifically on building software for the legal industry. Though I am not an attorney I do have an open case in the nyc court system and so have experience with both in-person and online filing.

I agree with the statement made in <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/NoticeInterestedParties.pdf> that *in person filing wastes attorney time, client money...*". As recently as 2 weeks ago, while much of the country is in lockdown and the NYC court buildings are locked, my attorney attempted to e-file some documents that were rejected and the court told her to file in person. She then sent someone to the court building - on the court's advice and at my expense - who was turned away at the door. Clearly the status quo is broken. Indeed, much of the country recently voted for president without going to a voting place in person and yet in-person filings are the norm in NYC. I cannot see a reason why in this is the case in the year 2021 when so much of our lives are digital already.

However, it is my understanding that the current e-file solution has some pain points too. For example, I understand that exhibits must be uploaded one at a time. This is also a waste of attorney time and client money. Users of modern file storage and sharing systems are used to ease of upload and the technology to support that is readily available. I cannot speak to the current upload system since I have only heard about it from my attorney and never experienced it myself. But I see no reason why there should not be a way to upload multiple files at once either by enabling multi-file-selection and/or drag&drop. Gmail and google drive do this well.

Appendix H

From: Karen C. Kraar
Sent: Thursday, January 21, 2021 11:48 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Efiling comments

Before the pandemic, counties were helpful in offering phone counseling for those not experienced in eFiling, and I believe there was also a state-wide 800# helpline. Those have both been eliminated. Mandatory eFiling has created much frustration without these services, except by email which is often not helpful. I have wasted much time over simple issues that would've taken a few minutes to resolve on the phone, and colleagues have experienced the same. Counties unfortunately have varying requirements. Please, we MUST have active help-lines!

Thank you.

Karen C. Kraar

Appendix H

From: Karen Krogman Daum
Sent: Thursday, January 21, 2021 2:45 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Notification of summons and complaint filed, before answer served

Hello.

Other e-filing jurisdictions have a function to let attorneys get notice when a summons and complaint is filed against their client but *before* an answer is served. For example, Jane Doe files a summons and complaint against ABC, LLC. The attorney signed up for notifications for ABC, LLC, and gets a notice of any new summons and complaint filed against ABC, LLC.

This would be a very helpful function on NYSCEF, as I am seeing a delay in the notice of service from the Secretary of State lately.

Thank you.
Karen

Karen J. Krogman Daum, Esq.*

kjd@benderson.com

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Appendix H

From: Tom Catalano (x298)
Sent: Thursday, January 21, 2021 6:42 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: way to remove old cases from "My Cases"

I have dozens of closed cases in My Cases, the oldest one from 2008

When filing it's bothersome to wade through all those old case to find active one I need to file in.

There must be a way to clear out old, closed cases from "My Cases"

Working from home: (917) 318-8975

Thomas A. Catalano
Partner
Lester Schwab Katz & Dwyer, LLP
100 Wall Street, New York, New York 10005
212.341.4298 (Direct)
212.964.6611 (Main)
212.267.5916 (Fax)
tcatalano@lskdnylaw.com
www.lskdnylaw.com

Appendix H

From: Yuderka Valdez
Sent: Thursday, January 21, 2021 7:37 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: eFiling @ nyscef

The experience of being able to electronically file court papers was an exciting prospect. Filing court papers was not very easy for a lay person as some of the terms used were complicated. Trying to add extra required documents such as identifications or birth certificates has been a hard process. The system does not (or I have not been able to find a way to do it) allow you to add these documents, I emailed them as attachments and received the message which I have attached to this email.

--

Respectfully,

Yuderka Valdez
LYLAK Multiservice
Authorized IRS E-file Provider
Notary Public

Appendix H

From: John A. Del Duco, III
Sent: Friday, January 22, 2021 11:35 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: NYSCEF is well formed but can be improved

NYSCEF is easy to use, and it is easy to refer to documentation already filed on the system. I believe that the NYSCEF system represents a massive improvement over serving and filing of hardcopy submissions. It can be improved in the future by upgrading the system to allow the filing of larger, non-pdf exhibits such as video and sound recordings which currently must still be submitted in hardcopy.



John A. Del Duco III, Esq.
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Bronx – Manhattan – Middletown – Monticello
Newburgh – Poughkeepsie – Spring Valley

Appendix H

From: Linda Fry
Sent: Friday, January 22, 2021 10:37 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Re-instate the Efiling Help Desk telephone number

I felt it necessary to voice concerns about the lack of help with e-filing procedures.

On three occasions in recent weeks our office sought direction and guidance with uncommon questions and we were unable to get a timely response. One response took 6 days.

One question involved an Order from the NYS Court of Appeals, one was a repeated "error" message when trying to file motion paper with 32 documents repeatedly uploaded and today trying to get access to a sealed matter in which we have previously appeared.

It would be much appreciated to get immediate help, either by telephone or timely response to an email to solve issues.

We realize the constraints involved with pandemic, but we still have legal deadlines. It would be most helpful to re-instate the help desk telephone number and have people actually available to help as they have in past.

Thank you.

Linda C. Fry
Legal Assistant

Law Office of J. Michael Hayes
Phone: 716.852.1111 Fax: 716.852.0711
69 Delaware Avenue, Suite 1111
Buffalo, New York 14202
Web: www.jmichaelhayes.com
Email: linda@jmichaelhayes.com

Appendix H

From: Richard Lavorata
Sent: Friday, January 22, 2021 11:40 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments

Overall, I think the electronic filing works very well. However, there are some issues that need to be resolved.

For example, There are virtually no drop down menu options for documents on Article 81 guardianship matters.

I needed to file a Final Accounting-which is not an Affirmation or affidavit. I had very little choice where to file it.

There are a number of Reports, one is the Annual Guardian Report, which should be an option. Others are the Court Evaluator's Report and Initial Guardian Report.

Rich

Richard Lavorata, Jr.
Attorney at Law
101 N. Wellwood Avenue
Suite 1
Lindenhurst, NY 11757
Phone: 631-376-1301
Fax: 631-376-2347

Appendix H

From: James S. Hinman
Sent: Saturday, January 23, 2021 5:13 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Attn: Jeffrey Carucci, Director, OCA Division of E-filing - Re: New York State Courts Electronic Filing Program

Dear Mr. Carucci:

As a member of the Monroe County Bar Association, I was made aware of your letter of December 22, 2020 soliciting observations and comments with respect to "a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state - in any or all of the State's trial courts."

I am writing to express my opposition to the proposed amendment insofar as it would make electronic filing mandatory in any or all of the State's trial courts. While I understand that there are many benefits to e-filing, especially for the courts and that it does not pose a burden for the majority of my colleagues, who have technological capabilities and the ability to avail themselves of that option, there are many of us, admittedly fewer in number, for whom electronic filing poses burdens and obstacles that are detrimental to our practice and threaten our ability to continue to practice our profession..

I am a solo practitioner and have been a practicing attorney in New York State for over forty years. I moved my office to my home eight years ago and have had no assistants or staff in over twelve years. I am familiar with many who practice under similar circumstances. I practice mainly in Family Court and criminal defense but, in order to provide complete service to clients, also have occasional matters in Supreme and Surrogate's Courts. Although I attended a training seminar and thought that I would be able to acquire the necessary skills and proficiency to coexist with this process, that has not proven to be the case. I have, therefore, taken advantage of the opt-out provisions in those instances. I did, however, have an appeal, in a retained case, in which electronic filing was required and found it necessary to utilize a third party service in order to meet the filing requirements and, even with their assistance, four attempts were made before the papers were accepted. In total, the electronic filing requirements resulted in substantial additional costs to my clients - over \$1,000.00 in all, when taking into account the fee for the outside assistance and the additional time expended by me meeting the additional requirements. My clients were not wealthy individuals and have three small children - this was a burdensome requirement for them and they derived absolutely no benefit whatsoever over what would have resulted from filing in the traditional manner - appropriate copies of the briefs being filed with the Appellate Division. As a result of that experience, I am no longer willing to handle appeals. If electronic filing is made mandatory in all courts, I will most likely find it necessary to severely curtail my practice stop practicing altogether. That is not something I wish to do at this point in my life, at least not yet.

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Lest you think that I am alone in my beliefs, I assure you that I have talked with many of my colleagues who also find electronic filing to be burdensome and problematic. They, however, are disinclined to express themselves for fear of running afoul of the pressure being exerted to implement mandatory electronic filing. While I realize that electronic filing has many benefits for court staff as well as large firms, corporate clients and public agencies, and recognize it is a process that is increasing in popularity, it is not advantageous for everyone, especially citizen litigants and many solo and small firm practitioners. I have always felt that the practice of law is about serving the needs of the clients, not the courts or those who serve the courts. Quite frankly, I see absolutely no benefits that accrue to my clients from electronic filing.

I realize that electronic filing is here to stay and will most likely expand; however, I am hoping that the opting out provisions remain intact so that those small firm and solo practitioners, such as myself, who lack the capability and necessary abilities to successfully comply without added impediments, can continue to practice the profession we love and help our clients navigate the already difficult process of interacting with the courts and the justice system. The additional time and expense attendant to electronic filing for us could be much better expended in other endeavors.

Thank you for your consideration and for affording me the opportunity to express a contrary opinion. If you would like to discuss my concerns in greater detail, I would welcome the opportunity to do so at your convenience.

Very truly yours,

James S. Hinman
James S. Hinman, P.C.
Post Office Box 67160
Rochester, New York 14617
Telephone: (585) 325-6722
Cell/Text: (585) 704-9954
Fax: (585) 325-4496
jshatty@frontiernet.net

Appendix H

From: Brenda Geedy
Sent: Sunday, January 24, 2021 12:32 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: EFILING COMMENTS

Good afternoon

I would like to comment as an advocate for mandatory e-filing across the state for both Supreme Court and City Court filings.

In an effort to reduce personal contact during this COVID time, having to file an affidavit of service within 20 days of service, to a non-e-filing court, can become a challenge having to rely on the US mail system.

As far as city court EDDS filing can you clarify what the actual filing date is. Is the filing date the date the document is electronically filed, or is it the date that the clerk receives it? Sometimes it can take anywhere from 1-5 days or more to receive an acknowledgement from the clerk.

Thank you for this opportunity

Brenda Geedy
Office Manager
Smart Serve Process Serving, Inc
1320 French Rd
Depew NY 14043
716-668-2711
Brenda@SmartServeProcess.com

Appendix H

From: Derrick Moore
Sent: Monday, January 25, 2021 1:54:01 PM (UTC-05:00) Eastern Time (US & Canada)
To: eFiling Comments
Subject: E-Filing Public Comment

Good afternoon,

I would like to provide the following public comment on the Unified Court System's e-filing program: Generally, I find the NYSCEF system to be very user friendly and I encourage e-filing to be made mandatory across the state. My comment is with regards to the inability to use multiple emails when consenting in cases. As a solo practitioner,

I am Of Counsel to another firm who practices in New York, a practice that I believe is pretty common among smaller firms and solo practitioners. As Of Counsel to the other firm, I have a separate email address which I use to communicate with my clients and opposing counsel in those cases. Under the current NYSCEF system, while I can have backup or alternate accounts, I can only use one email address to consent in all of my cases, which results in my own firm always being listed as main counsel despite the fact that a different firm is actually the counsel of record. I would request that the court system consider adding the ability to switch your main email on a case by case basis to allow the right firm to be listed as counsel within the system.

Thanks very much for consideration of this comment.

Best, Derrick

Derrick F. Moore, Esq.
Moore Law
M: 315-794-4714derrick@mooreatty.com

Appendix H

From: Smith, Daniel <DSmith2@Venable.com>
Sent: Monday, January 25, 2021 2:32 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comments on Electronic Filing Program

Good Afternoon,

I just wanted to let you know about some issues that have bothered me over the past couple of years on NYSCEF. I am a paralegal with a law firm in Manhattan, and am one of the primary e-filers in my office, so I filed quite regularly – almost daily.

I filed a Motion to Dismiss back in November. I just wanted to draw attention to something that has happened a few times before over the past couple of years, but I took details and screenshots this time.

Sometimes NYSCEF does not accept PDF documents. It never gives a reason other than that it is not in the correct PDF format. Sometimes this is because of images, or scanned hand signatures, or tables within the documents, and there may be other reasons that I have not encountered, so there is a bunch of guesswork to do to figure out what is wrong with the document.

Because of this, I always test out our exhibits ahead of time to make sure I do not run into this issue. I have attached the below screenshot of the test I ran earlier tonight.

PDF Checker


Review the validation results for each document submitted.

Validation Scan Results

File Name	Message
02-04 - Katsiris Aff - Ferreira Affidavit.pdf	 Passed
02-05 - Katsiris Aff - Big Apple Facility.pdf	 Passed
02-06 - Katsiris Aff - Vantage Facility.pdf	 Passed
02-07 - Katsiris Aff - Guaranty.pdf	 Passed
02-08 - Katsiris Aff - Waiver Letter.PDF	 Passed

Check more PDF Files

All of our exhibits complied according to the NYSCEF document checker. But when I tried to upload the above batch of five exhibits, I got the following message.

**The following errors occurred...**

1. Upload files must be in a PDF format.
2. Please reload all the PDF files.

Appendix H

As you can see, it implies that at least one of the documents is not in PDF format, but in the previous screenshot, you can see that they are.

Because NYSCEF does not allow you to upload documents one at a time after a failed attempt, I could not upload them one at a time to try to catch the problematic document. I eventually had to upload five “dummy” documents, and then go into each after the fact and edit, and upload the correct document. It was when doing this that I found that Exhibit 5 was the problematic one. It contains an Excel sheet that had been printed to PDF in color, and I assume that was the problem, but I don’t know, because it did not give any details other than that there was an upload error. I printed the document to PDF again, and re-saved, and then NYSCEF was able to accept the filing.

I just wanted to flag this, as similar things have happened multiple times, and I am sure I am not the only NYSCEF user who has encountered it. I am not sure why NYSCEF has trouble accepting documents like that, but my biggest frustration is when no explanation is given as to what the actual problem with the document is.

In addition to those NYSCEF issues that I have every now and again, I ran into another issue this past week with the Queens County Surrogate’s Court. I am not sure if this is an issue with that particular court, or NYSCEF, or both.

We were joining a case as co-counsel, but could not find out how to file a Notice of Appearance. I know that in pre-pandemic times, we would file a hard copy in person, but as of last summer, everything there is to be e-filed.

I called the court to ask how to find the case, and they told me just to enter the case number on NYSCEF. When I did that, the case was not listed. I called the court again, and I asked if they could tell me if anything had been e-filed to this case before, or if this was going to be the first e-filing in a previously all-paper case. They said they could not check for me, and that I would have to check. I did check, and there is nothing to tell you who uploaded a document, or how. Everything looked like it had been paper filed, but had been scanned in by the court at a later date.

When I asked the court for further guidance on this, they said to call the NYSCEF help desk. When I asked NYSCEF for help with this, they said to call the Queens County Court. Surely someone, even if it’s not their direct responsibility, could give me some guidance, or point me to the correct person. Because it comes off that 1 – they don’t know how things work at their court/on their system, and 2 – that they hate their job and couldn’t care less, or a combination of both of those scenarios.

Here is the response I got from NYSCEF

Appendix H

RE: Surrogate's Court - Queens County



nyscef <nyscef@nycourts.gov>

To: Smith, Daniel

Retention Policy: Inbox 90 day purge (90 days)

Expires: 4/20/2021

Caution: External Email

Give Queens County a call and ask what file number the case is filed under.

I don't understand why I would call Queens County to ask for the case number when I have listed the case number in my email to NYSCEF.

Here is the response I got, six days later, from Queens County Surrogate's Court



Qnssurr-info <Qnssurr-info@nycourts.gov>

To: Smith, Daniel

Retention Policy: Inbox 90 day purge (90 days)

Expires:

Caution: External Email

Contact the help desk.

Both responses, especially that of the Surrogate's Court, just emit an energy of "I could not care less about any of this".

There are four screenshots embedded in the body of this email. If they do not come through, let me know, and I could send them as attachments.

Regards with thanks,

Daniel

Daniel Smith | Paralegal | Venable LLP

t 212.370.6213 | f 212.307.5598 | m 682.647.5107

Rockefeller Center, 1270 Avenue of the Americas, 24th Floor, New York, NY 10020

Appendix H

From: June Castellano
Sent: Monday, January 25, 2021 4:40:07 PM (UTC-05:00)Eastern Time (US & Canada)
To: eFiling Comments
Cc: Assistant
Subject: RE: Submission of e-filing comments

Good evening:

The following comments were compiled by my staff. My practice in Supreme Court is primarily matrimonial. Hence these comments address divorce actions. Thank you.

There is no single document that fully explains the e-filing process for a matrimonial case. Several different training documents along with the e-filing protocols for several counties have to be read to understand the process.

Online e-filing training is often too basic. It shows how to sign up and attach a file, but nothing beyond that. The training system could be enhanced to cover start to finish filings. When a user commences a sample case, no index number I sever assigned. Therefore a user cannot keep filing documents so as to practice uploading the needed documents for a case from start to finish. Trainers rarely show matrimonial cases. Developing a training specifically for matrimonial cases would be helpful.

The NYSCEF generated RJI 840M addendum does not include a field for a party's prior name(s). Therefore you always have to upload your own addendum in order to provide the court with a party's prior names. If you don't upload your own form, the court has to contact you for the maiden name(s).

Monroe County requires the RJI 840M addendum to be filed in all cases, not just those with children under 18. The system will not give you the option to create this document unless there are children under 18.

Chambers does not always receive notification of an uploaded judgment roll when a judge has already been assigned prior to submission of a judgment roll. As a result, court staff asked counsel to notify the judge's law clerk after uploading a judgment roll.

It would be helpful if a "what's new" feature could be added to the NYSEF home page or even sent out to NYSEF users periodically. For example, NYSEF users do not know when new document types are added to the document type drop down menu.

Many attorneys close their files and cease their representation, per their retainer agreements, once the divorce is finalized. The inability for an attorney to remove consent/representation of a party once the divorce portion of the case is finished poses a problem for practitioners. Because there is no substitution of attorney, the attorney who handled the divorce has no way to remove his or her consent that they are not the attorney of record for say the QDRO portion of the post-divorce case or subsequent post-judgment litigation.

Appendix H

GREGORY S. GENNARELLI, LLC

ATTORNEY AT LAW
1565 FRANKLIN AVENUE
MINEOLA, NEW YORK 11501
(347) 921-1950

January 25, 2021

Jeffrey Carrucci
Director, OCA Division of E-Filing
Office of Court Administration
25 Beaver Street
New York, New York 10004

Re: New York State Courts Electronic Filing Program
Proposed Automatic Sealing of All Medical Records Uploaded to
NYSECF

Dear Mr. Carrucci:

I have been a practicing personal injury and medical malpractice attorney in New York for the last 21 years.

I write in support of a modification of the current e-filing privacy rules to provide greater privacy protections for individuals and confidential medical records.

In an effort to provide greater protection to patient medical records, I propose and recommend that all medical records that are uploaded to NYSECF be sealed upon filing and only made available to attorneys representing parties to the litigation. Presently, any medical record that is uploaded to the NYSECF system is available for public view by anyone in the world with computer access.

As you know, the HIPAA Privacy Rule established national standards to protect an individuals' medical records and other personal health information. It applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. Generally, without the consent of the patient, medical records cannot be released absent Court order or Subpoena.

In the case of civil litigation, medical records are routinely released and obtained from medical providers pursuant to HIPAA authorizations. These authorizations, provided either with the consent of the party or as ordered by the Court, rightfully permit attorneys defending a lawsuit to obtain and review a patient's records in the defense of a case. However, that authorization does not, and should not, give any attorney or party receiving such records in the defense (or support)

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of a claim, carte blanche to distribute a patient/claimant's entire private medical history to anyone in the world with a computer. Unfortunately, that is exactly what the NYSECF system currently permits when documents are uploaded.

While Section 202.5(e) of the Uniform Civil Rules of the Supreme and County Courts requires that an individual's date of birth and social security number be redacted prior to any Court filing, no such requirement exists for a patient's medical records, whether related to the subject lawsuit or not.

Similarly, New York General Business Law section 399-dd*4(6) provides that "No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing..." Further, GBL § 399-dd*4(7) provides that "the court may impose a civil penalty of not more than one thousand dollars for a single violation and not more than one hundred thousand dollars for multiple violations resulting from a single act or incident."

Unfortunately, no such rule or remedy exists with respect to the privacy of a patient's private medical records or medical history. Indeed, Patient privacy rights are routinely violated in civil cases when the electronic filing of medical records in support or in opposition to motions.

While it is true that individuals who bring a claim for personal injuries or medical malpractice knowingly consent to a limited waiver of their right to privacy, related medical records and the physician patient privilege with respect to the claim, they do not agree to waive their entire medical history or privacy rights for the world to see.

Indeed, there is no need or purpose for a party's medical records (including their medical history) to be made available for public viewing or inspection by anyone with a computer. Present or future employers, neighbors, friends, family, or anyone searching for nefarious reasons, should not have unfettered and unauthorized access to a patient/claimant's medical records simply because a claim for compensation is brought. Many injuries, medical conditions, treatments are extremely private. Even though a claimant may agree to waive certain aspects of their privacy as it relates to a person they are suing, that information should not be made available to the masses.

Therefore, I propose that NYSECF adopt a new requirement mandating that all medical records uploaded to NYSECF be sealed upon filing, and only made available to attorneys representing parties to the litigation.

Thank you for your consideration, and I am happy to discuss this matter at greater length.

Very truly yours,

Gregory S. Gennarelli
Gregory S. Gennarelli

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From: Samuel E. Kramer <samkatty@bway.net>
Sent: Monday, January 25, 2021 10:09 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Suggest changes to eFiling

I consider electronic filing and the ability to access Court documents 24 hours a day, 7 days a week to be a revolutionary innovation, and all for you the good. I have been electronically filing documents since the early 1990s when it was first introduced in SDNY Bankruptcy Court, in which I have also practiced throughout my career.

The New York electronic filing system is generally excellent and user friendly. In many ways it is superior to the Federal system, although both the Federal and State systems have their good and bad points.

I think that the New York State Supreme Court electronic filing system would benefit from these three simple additions:

1. Do not limit the number of ancillary documents to 4 or 5 items. In other words, when I file an affidavit with exhibits, I can only file 4 or 5 (I forget which) exhibits at a time. After the 4th or 5th document I have to essentially re-start the filing process and include case information again. This requirement repeats itself over and over until all my exhibits are filed. If I have a big case with many exhibits, this can be a confusing, time consuming and, as far as I can tell, unnecessary exercise. I should be able to append an endless number of exhibits to an affidavit.
2. Create a separate button for exhibits, rather than requiring using the drop-down menu every time. Again, this will be less confusing and will expedite the filing of exhibits.
3. Create a facility to create Exhibit Tabs. Many times, attorneys do not have time to scan an Exhibit "___" page onto the front of exhibits, particularly long exhibits, or when working with an older scanner. It would be useful to have the ability to have CEF create the cover sheet for an exhibit, much as CEF can create an RJL.
4. Add "Verification" to the list of documents that can be filed. Right now, if I have I want to include a Verification in my filing, as in a pleading or interrogatory, I have to file the Verification as an "Exhibit", which is inaccurate and also confusing.

As I said, the State Supreme Court system is generally good, but the above suggestions should be welcome by most of the Bar.

Thank you, and sorry for the late hour.

- Samuel E. Kramer

Samuel E. Kramer,
Attorney at Law
225 Broadway - Suite 3020
New York, New York 10007
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From: Cathy Fazio <loudustbuster@yahoo.com>
Sent: Tuesday, January 26, 2021 2:04 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: e-filing issues for NYSCEF Unrepresented Litigants

Dear Mr. Carucci,

Let me preface my comments with some background information on myself so you do not think that the issues that were encountered using the NYSCEF site are coming from a computer illiterate person. I was a Production Manager for a global advertising agency for 25 years before I retired. After retirement I then went to back to work at a local law firm building their internal server file structure, case management system and created forms for the law firm to utilize because the NYS Court System was on the cusp of beginning to utilize PDFs for e-filing.

I am sure your funds are limited but as we all know you buy cheap you get cheap. If your funds are limited they are best spent in the layout, coding and functionality phase. If the base structure is good you can always build on it going forward as opposed to reinventing it every single time.

Here are some suggestions:

1. Have a good idea of what you would like to see done.
2. Hire a good web engineer/developer to reconstruct your site.
3. You should have a good wireframe before committing to a build
4. Beta test the site across the board with your end users: court staff, lawyers and unrepresented litigants (which you can cull from people that responded to your request for comments)
5. Ensure the site works across all platforms before it goes live.
6. Make your training/video tutorials on how to e-file shorter or in snippets (i.e. how to generate a username/password; how to select the right court; how to upload a file) There should also be different tutorials for lawyers and unrepresented litigants if what you require them to do to e-file is different.
7. Stop requiring unrepresented litigants to generate a new user name and password per case (i.e. if I had three different matters in three different courts I should be able to log in and see all my matters in one place).
8. Stop requiring unrepresented litigants to have a document notarized to obtain user name in order to e-file. You should be able to create your own user name and if its already in use your system should state that its unavailable and try again with a different combination

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9. Passwords should have the option to be visible if you choose
10. Have staff for help desk support in a that can respond in 48-72 business hours to an inquiry.
11. Roll out e-filing for all the NY State Courts

After using the NYSCEF site in October 2020 and January 2021 to assist my spouse in e-filing Petition for Administration and supporting documents Pro Se for the Queens Surrogate's Court I found the NYSCEF site and support is extremely deficient for the end user. Below are some of the issues encountered:

I spent well over 4 hours today trying to upload the executed requested documents via the NYSCEF site today but their wasn't a hyperlink for the file number 2020-XXXX/A. However there was a hyperlink for file number 2020-XXXX and when I selected the hyperlink the NYSCEF site promptly generated a error message stating that I would have to create a new user name to file additional documents in my existing case. The NYSCEF site now requires a notarized document sent to NYSCEF before they generate a new user name for you do not have an attorney.

In addition, the Queens Surrogate's Court is not listed on the NYSCEF site's list of Surrogate's Courts that you can upload file to and if you don't select a court you cannot advance to the next screen. The NYSCEF site does have a hyperlink directing you to the Queens Surrogate's Court landing page to find out how to upload a file to your court since it's not on their list but there is no information nor hyperlink there.

The only assistance for NYSCEF is via email and considering I have yet to receive a reply from NYSCEF to in response to my email for assistance I sent to them on October 28, 2020 (when I filed the the Petition for Administration) I highly doubt I can get assistance with filing the additional documents the court has requested in a timely manner.

I hope this helps you going forward.

Cathy Fazio

516-205-9124

loudustbuster@yahoo.com

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From: Keith Ahlers <kahlers@curanahlers.com>
Sent: Thursday, January 28, 2021 11:14 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: eFiling comments

Greatest thing ever. Same with e-conferencing. What we help the environment alone is immeasurable!

Keep it up.

Keith J. Ahlers
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White Plains, NY 10601
Phn 914-428-3313
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January 31, 2021

Via email to efilingcomments@nycourts.gov

ATTN: Jeffrey Carucci, Director of Statewide Coordinator for Electronic Filing
Office of Court Administration (“OCA”)

RE: OCA Request for Comments (dated Dec. 22, 2020)

Dear Mr. Carucci:

I am an attorney representing indigent clients in the Bronx. The people I serve are low-income [~100% of the Federal Poverty Line (\$26,200 annually for a family of 4)] and most are seniors, disabled, and/or BIPOC. They are the “digital divide,”¹ the “unsophisticated” consumer, the pro se litigant to whom –our Rules of Professional Conduct suggest– we owe a special duty of care. *E.g.* 22 NYCRR 1200.0 R. 4.3 (Comm. 2); R. 2.4(b); *see also* R. 6.1 (Comms. 1, 2B, 3, 9); R. 1.4(b) (Comm. 5, 6). To that end, this Comment reflects the concerns of those in the digital divide, particularly low-income, pro se litigants: the undue pressure to E-File, the resources needed to diminish the digital divide, and the importance of possible procedural safeguards.

1. The 2019 E-Filing Rule resulted in clerks and court attorneys putting increased pressure onto pro se litigants to “Opt In” to E-Filing. That pressure has resulted in litigants enrolling without a true understanding of how to use the E-Filing system² or what their “choice” means for their case, e.g. that all notices will now be sent to them via email (including filed papers, court appearances). Thus, opting in does not mean the litigant gave “informed consent” or made a “voluntary” choice, legally speaking. R. R. 1.0(j); *See also* above cited rules.

2. To be fair and equitable, OCA can provide more internet and technology at courthouses to minimize the “digital divide.” In a financial emergency –common now due to the pandemic– my clients are likely to lose access to technology (e.g. prioritizing a hospital bill over their phone bill). Even with no pressing emergency, they must divert funds needed for necessities like food, shelter and PPE to instead pay to print papers or access the internet. Pre-pandemic, free, reliable, publicly accessible internet, computers, printers, and scanners (together “technology”) were limited. Now, during the pandemic, those places that provided such access (e.g. libraries, senior centers) are closed. OCA can minimize these disadvantages and increase access to the digital courts, by increasing internet and technology at courthouses.

3. OCA should and can plan for contingencies, as the pandemic and digital divide continue. Given the above, it is reasonably foreseeable that low-income, pro se litigants who have opted into E-Filing (voluntarily or not) will miss an important communication or lose access to their E-File at some point– and the more complex the case, the more likely the mistake. OCA can act now to prevent that harm *before* it occurs (e.g. not allowing e-service on pro se litigants). Further, OCA can act now to mitigate that harm *after* it occurs (e.g. no access to internet or technology on a deadline can be a sufficiently reasonable excuse to vacate a default).

Thank you for your service and please feel free to contact me.

Respectfully,
Hazel R. Caldwell, Esq.

¹ *See generally* Anderson & Kumar, *Digital Divide Persists Even as Lower-Income Americans Make Gains In Tech Adoption*, FactTank (May 7, 2019), www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption; Costa, *Technology Gap Between the Rich and Poor is Deepening US Inequality* (May 4, 2017), www.businessinsider.com/technology-gap-deepening-us-inequality-2017-5.

² The current court websites are confusing to attorneys and especially pro se litigants. The *2019 Report* by the Commission to Reimagine the Future of NY Courts referred to the “system” of court websites and E-Filing as “disjointed and decentralized” and a single “redesigned and centralized” website. *Report*, at 8 (Nov. 9, 2020).

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John Warner
205 East 82nd Street, New York, NY 10028

February 1, 2021

Jeffrey Carucci, Dr.
NYS Courts E-Filing Division
Office of Court Administration
25 Beaver Street, Room 823
New York, NY 10007

Re: 2020 Request for Comments on New York State Court System Electronic Filing ("NYSCEF")

Dear Mr. Carucci,

I write as one very familiar with the history of electronic filing in the Unified Court System ("UCS") since, as you know, I served for many years as Chief Clerk and Executive Officer of the Supreme Court, Civil Term, New York County, having retired from UCS in August 2019. On January 17th, 2020 I submitted comments to you in anticipation of what would be the February 13th, 2020 Report of the Chief Administrative Judge to the Legislature, the Governor, and the Chief Judge of the State of New York on Electronic Filing. Those 2020 comments of mine are to be found in Appendix G, p. 236 of the February 13th, 2020 Report. I believe the comments below amplify those I made last year on this subject and now, after the Covid pandemic, I am even more convinced than I was a year ago of the need to rapidly expand NYSCEF to all action types in all UCS courts.

I applaud all the progress made to-date in expanding NYSCEF which is such a truly transformative, critically important program. I am familiar with past annual Reports of the Chief Administrative Judge to the Legislature, the Governor, and the Chief Judge of the State of New York on Electronic Filing. Those excellent reports set forth in detail the history of electronic filing in our New York State courts. It is an admirable history in so many ways, but the pace of NYSCEF's expansion in terms of action types in which e-filing is mandated and the number of courts in which NYSCEF exists has been disappointing. As I remarked in my comments on this subject last year, our financial institutions abandoned ledger books many decades ago adopting technological advances which are ubiquitous today in most successful enterprises. The United States Federal Courts started Public Access to Court Electronic Records ("PACER") in 1988 and PACER was made available through the Internet in 2001. I understand that the New York State Court System is the most complex court system in the country, and efforts over decades to simplify this system have languished. So, I do not underestimate the challenges - especially with the limited resources at your and the UCS E-Filing Resource Center's disposal - in expanding NYSCEF to all the State's trial and appellate courts, but that goal should be an absolute priority.

As we know, NYSCEF was first introduced in 1999 in two counties of New York State, New York County and Monroe County, then on a consensual basis only and only in Commercial Division

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John Warner
205 East 82nd Street, New York, NY 10028

action types. In 1999 New York County organized a modest (in size) team to advance e-filing and that team, led from the start by yourself, persevered and evolved into the UCS E-filing Resource Center. From those very early days NYSCEF has expanded significantly especially in Supreme Courts and Surrogate's Courts across the entire State. Well over two million actions and proceedings have now been e-filed. In many Supreme Courts e-filing is now mandatory in most action types, but as you know best there is so much more to be done, especially in expanding mandatory e-filing to all action types and introducing NYSCEF in so many other courts beyond the Supreme and Surrogate's courts and the e-filing pilot programs now in progress in the Civil Court of the City of New York and in the New York City Housing Court. Of course, self-represented litigants always need to "opt-in" to NYSCEF, so there is no risk of such litigant's being disadvantaged by this proposal. Further, attorneys who lack the knowledge or equipment to e-file need only file a certificate so stating to be relieved entirely of that obligation. The filing of such a certificate is sufficient in and of itself to relieve an attorney of the obligation to e-file, and no authority is called upon to review the adequacy or accuracy of such a certificate.

In your December 22nd, 2020 memorandum to Bar Associations, etc., you invite general comments on electronic filing for inclusion in the February 2021 Annual Report and you also solicit observations, for inclusion in that Report, on a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and the Chief Administrative Judge to make e-filing mandatory across the state in any or all of the State's trial courts.

Stating the obvious, the Covid pandemic has changed everything!! Chief Judge Janet DiFiore regularly extolls the transformation of so much of UCS into a "virtual court system." That transformation would not have been possible were it not for NYSCEF and the Electronic Document Delivery System ("EDDS"), the latter developed in recent months. As you understand best, EDDS is only a stopgap measure in the absence of further, very significant expansion of NYSCEF, ideally to be made mandatory in all action types in all trial courts.

All of us look forward to what will hopefully be the containment of Covid through the ministrations of vaccines and other measures, but many operational changes introduced in the last eight months in the courts and beyond to cope with the virus will certainly endure. An article in "The New Yorker" of February 1st, 2021: "Annals of Architecture, Office Space. The post-pandemic future of open-plan work," by John Seabrook, provides much insight into the transformations in progress all around us in all manner of "work," and I would include work in our courts. Digitization, despite the palpable perils of "social media," is and will remain the "coin of the realm," and especially given the dated architecture of so many of our courthouses, county clerk's offices, etc. Storing and transporting vast quantities of paper is no longer feasible. And, immediate access whenever and wherever needed to digitized information is now essential.

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John Werner
205 East 82nd Street, New York, NY 10028

As again you know best, technological advances, including the expansion of NYSCEF, are integral to improving the efficiency and effectiveness of our courts. Mandatory NYSCEF needs to be integrated with updated case management systems to enhance the utility and advantages of both. Certainly, we are aware of the serious fiscal constraints now confronting our courts and all our public institutions. Serious monetary savings are to be had through the expansion of NYSCEF, savings for the courts, the county clerk's offices, and the "consumers" of the services of both. Many such saving have already been realized through NYSCEF as it exists today by virtue of no longer needing to store and transport vast quantities of "paper." Service through NYSCEF itself offers vast efficiencies. And, we know that wherever possible, pleadings, etc., in actions and proceedings still being filed in "hard copy" are being scanned/digitized by County Clerk's offices and courts and are now being maintained in digitized form. This is just one more reason to expand NYSCEF, as here suggested, in order to avoid the great burden which exists today in so many instances of having to scan vast quantities of hard copy filed documents.

Finally, I know, as do you, that the E-filing Resource Center and the UCS Department of Technology require a serious infusion of qualified staff if the much-needed expansion of NYSCEF is to proceed apace. Although I know I digress, UCS support staff should also be as technologically adroit as might be possible. New York State and beyond has a vast talent pool suited for modern, 21st century offices, but there is reason to believe that UCS is "selling itself short" in availing itself of that technologically adroit talent pool. That is a discussion for another time and place especially since we know UCS now has a "hard hiring freeze." Because of that hiring freeze and the inability to hire from beyond the Court System, I recommend redeployment of some qualified court staff, to the extent such staff qualified can be found, to the E-Filing Resource Center and as representatives/extensions of the E-Filing Resource Center in Judicial Districts throughout the State so that NYSCEF might be afforded the staffing needs it requires and deserves. This is a thorny problem I know, but again since I believe that so much of the future success of the Court System depends on NYSCEF, I believe that NYSCEF should receive all the support it is possible to muster.

Thank you for your consideration.

Very truly yours,
John F. Werner

Appendix I

Summary and Discussion of
Principal Comments Received

This appendix responds to comments received in connection with the 2020 Annual Report.

Comments addressed by subject in the main body of the Report are not again addressed here, nor, of course, do we make any observations in response to comments in praise of NYSCEF, e-filing, and the legislative proposal.

Some of the comments submitted consist of (along with some plaudits for NYSCEF (e.g., “Love the e-filing system and generally it works great,” “Overall, I think the electronic filing works very well”)) suggestions for technical modifications to the NYSCEF application. For example, one commentator makes a suggestion that in the notification e-mails received from NYSCEF there be a link to the log-in screen as this will allow for quicker access to the docket.¹ Another suggests that when a person accesses a completed filing for a motion,² there should be an option to open at the same time all documents associated with that motion. The UCS e-filing staff are very appreciative of all of these suggestions. The Director of E-Filing will be responding directly to the commentators in these instances. With suggestions that are narrow and highly technical in nature it is unnecessary to prolong this Appendix addressing them in detail. E-filing staff will consider whether each such suggested change is worth making and, if so, when to make it in light of other demands upon the time of the staff and the programmers of the Division of Technology.

We turn now to other comments and suggestions contained in the submissions received in response to UCS’s solicitations. We discuss below various particulars. It is important, however, to make an observation that applies generally to the comments and suggestions: however meritorious they may be, these present no basis for opposing the Judiciary’s proposed legislation. There may be reasons to put rules in place or features or restrictions in NYSCEF about, for example, how to access files in Housing Court. If so, UCS should modify the NYSCEF application or issue a rule after appropriate consultation with the court, the bar, interested groups, etc. This is the efficient way to ensure that e-filing works as well as it can for everyone. Constraints engraved in statute are not the best procedures by which to address issues of the sort discussed here.

A. Suggestions About Appeals, the Trial-Court Record and Confidentiality

A number of suggestions have to do with electronic filing on appeal.³ This is not surprising inasmuch as e-filing on appeal is a recent phenomenon; pilot programs in e-filing in the Appellate Divisions were introduced only in 2018 and some expansions in eligible case types have occurred more recently

still. A commentator believes, for example, that the clerks in the Appellate Division have too much discretion to reject NYSCEF filings in the purported enforcement of unwritten rules.⁴ Another writer asserts that appellants should not be required to reprint a record on appeal and submit it to judges and respondents. UCS e-filing staff will be reviewing all of these suggestions that concern the NYSCEF application (as opposed to a practice or requirement of the Appellate Divisions) and

1. Message of Cheri Fiordeliso, Jan. 15, 2021.

2. Message of Elizabeth Eilender, Esq., Jan. 5, 2021

3. *E.g.*, Message of AppellateLaw, Jan. 15, 2021; Message of Alex Bloomstein, Esq., Jan. 18, 2021; Message of Mitchell Dranow, Esq., Jan. 4, 2021; Message of Lisa Miller, Esq., Jan. 2, 2021.

4. Message of William J. Brennan, Esq., Jan. 14, 2021

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examining their utility and practicality. We will then bring the suggestions to the attention of staff at the Appellate Divisions. The staffs will then work closely together to determine what, if any, suggestions can and should be implemented.

Some commentators submitted suggestions regarding the record on appeal.⁵ These writers report that there are practices in the trial courts in criminal cases that cause delays on appeal. For example, papers generated in the trial court are, these writers state, often absent from the trial-court record, the record on appeal in cases heard on the original record. Hearing and trial exhibits are normally not included in the record. Transcripts are often not provided. When a case is assigned to counsel for the appeal, the attorney must go back to fill in these gaps in the record, which can be quite time-consuming, the writers state. It is suggested that the OCA CRIMS record sheet, which lists all court appearances in criminal cases, should be filed with NYSCEF; transcripts should be produced electronically and uploaded to NYSCEF; all papers generated in the trial court, such as e-mail communications regarding requests to charge and jury notes, should be uploaded to NYSCEF; and a copy of each exhibit should be made part of the record and filed with NYSCEF. In short, there should be rules and procedures, the writers urge, that will ensure that documents generated by the processing of the case in the trial court make it into the record so that the trial-court record is complete, rendering it unnecessary for appellate counsel to assemble the record after the fact and avoiding the delays that now flow from this process.

Further, it is urged that the e-filing system in these cases must have the capacity to handle sensitive, non-public documents with the required confidentiality.⁶

USC e-filing staff will be working with the staff of the trial courts and the Advisory Committee on E-Filing in Criminal Cases to address these questions. Work has already been done to produce a list of standard trial-court documents in these cases and to consider what kind of screens will be needed to accommodate the e-filing of these documents. Work is underway on a pilot project that would permit the transmission of transcripts in criminal matters to the Appellate Division by court reporters through NYSCEF. Further work with the staff of the trial court will be required to ensure that all documents can be handled properly and placed in the file once NYSCEF is in operation in the court. One of the capabilities of NYSCEF is that it readily allows for the inclusion in the electronic record of whatever of significance is produced and needed in the processing of a case in a trial court.

We noted in the main body of the Report for this year that NYSCEF has the capability to provide robust confidentiality wherever the law requires that such treatment be accorded to documents. E-filing staff are aware that current law regarding e-filing in criminal cases provides that it shall not change any existing laws governing the sealing and confidentiality of court records in criminal proceedings and the proposed legislation accompanying this Report does not alter this provision.⁷ Accordingly, e-filing staff are considering how best to implement e-filing in criminal cases with a confidentiality function available for use as needed.

B. Modifications for the Unrepresented Litigants

Some commentators suggest that modifications should be made to NYSCEF so as to make things simpler for unrepresented litigants who choose to participate in e-filing.⁸ In 2021, we hope to be

5. Letter of Robert S. Dean, Esq., Attorney-in-Charge, Center for Appellate Litigation, Member of the Advisory Committee on Criminal E-Filing, Jan. 1, 2021; Memorandum, Appellate Courts Committee, New York County Lawyers Association, Jan. 25, 2021. A letter on this subject was also sent to the Chief Administrative Judge and the Presiding Justices of the Appellate Divisions, First and Second Department, by three committees of the New York City Bar Association, March 5, 2020.

6. Letter of Robert S. Dean, Esq.

7. Criminal Procedure Law 10.40 (2) (d) (i), to be retained but relettered as (2) (e) (i) by the proposed legislation.

8. *E.g.*, Message of Marty Borrás, Jan. 2, 2021.

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able to examine how we might integrate NYSCEF with existing “Do It Yourself” capabilities. Another of our goals is to review and revise as may be appropriate the website we have in place to provide information to unrepresented litigants. And we will be examining suggestions as to improvements that can be made to the NYSCEF application to address the needs of the unrepresented. Of course, the availability of resources will have an impact on these efforts.

E-filing staff are aware of the imperative to do what is possible to bridge the “digital divide” between those who are technologically able and those who, due to low-income status, lack of proficiency with English, or other causes, are not. In 2021, the staff will continue to look for ways that NYSCEF can play a useful role here. At present, for example, we are working with a community group in Westchester County in a pilot program that aims to bridge this divide by establishing a network of fully-equipped, remote-access sites in houses of worship. More efforts of this sort may be possible.

We address some other comments regarding the unrepresented hereafter.

C. E-Filing in Guardianship Case

Some commentators discuss making NYSCEF available to court examiners and court evaluators in Guardianship cases.⁹ Such third persons are not “parties” to the case and are not seeking to become parties and thus cannot avail themselves of the party-based functionality normally applicable in NYSCEF. Such persons are, though, obvious candidates for some mechanism for access to the case file so that they can review relevant papers and file documents with the court through NYSCEF. E-filing staff have already developed and put into

operation a functionality that will permit such third-person access and participation in e-filing in these cases. This functionality will also be available to guardians for children in matrimonial cases.

D. Closed Cases

Some commentators suggest that the “My Cases” listing in NYSCEF be modified so that users can delete closed cases therefrom.¹⁰ This is a suggestion worthy of investigation. We note that the “My Cases” area currently offers a number of options by which the attorney can narrow a search. The staff will review current options and consider whether it is possible to modify or add options that will prove useful to users.

E. Resource Center “Help Line”

Some writers assert the need for assistance to NYSCEF users by phone.¹¹ We are acutely aware of the importance of having effective “help desk” services and for years, as noted in the main body of the Report, we have made such services available from 8 AM to 6 PM every business day. Our standard services have been impaired recently for one reason only, and that of course is Covid-19. When in-person staffing levels were reduced and working remotely was allowed, handling public inquiries by telephone was no longer practical. Since March 2020, the Resource Center staff have been answering hundreds of e-mails daily. The staff are currently responding to all e-mails within 24 hours. We are working on a plan that will, we hope, restore our regular phone service in the near future even if the pandemic persists.¹²

9. *E.g.*, Message of Edward Virshup, Jan. 4, 2021; Message of Jeffrey Gismondi, Esq., Jan. 8, 2021; Message of Bonnie Cohen-Gallet, Esq., Jan. 15, 2021.

10. *E.g.*, Message of Thomas A. Catalano, Esq., Jan. 21, 2021; Message of Elizabeth Eilender, Esq., Jan. 5, 2021; Message of Joseph Faraldo, Dec. 31, 2020; Message of Irwin Weinstein, Esq., Jan. 4, 2021.

11. *E.g.*, Message of Karen C. Kraar, Jan. 21, 2021.

12. One commentator this year writes that he “cannot say enough good things about [Statewide E-Filing Director] Jeff Carucci and his staff for their steadfast support of the legal community throughout the pandemic....The entire E-filing staff should be highly commended for their hard work and success.” Message of Kurt R. Vellek, Esq., Jan. 19, 2021.

F. Appeals – Cases Assigned in NYSCEF

A Chief of the Appeals Bureau of a District Attorney's office points out that every case in the Appellate Division is put in her name in NYSCEF until an appellant files a brief, at which point she is able to assign an assistant to handle the appeal. She must then go into NYSCEF and remove her name from the case. She suggests that cases should be assignable initially to an office or bureau.¹³

NYSCEF is structured so that an individual attorney is recorded as representing a particular party and an e-mail address is recorded as being associated with that attorney. This assures that the attorney who appears for a party will receive all filings on the case. This methodology does not readily accommodate the recording of an office as appearing for a party in a case. The e-filing staff will look into the suggestion made, although the work that would be required to program a different mechanism for offices would probably be significant.

G. Working Copies

One commentator writes that he supports the expansion of mandatory e-filing and is an early proponent and adopter of e-filing. He urges that there should be a permanent elimination of any requirement by a judge for working copies in hard-copy format.¹⁴ Others have raised this issue too,¹⁵ including in previous years.

We note that a similar criticism could at least in the past have been made with respect to cases pending before some Federal District Judges.

In previous Annual Reports, we indicated that UCS is aware of this issue and is very sensitive to it. We recognize that NYSCEF will be most efficient for practitioners and unrepresented persons who have chosen to e-file if working copies are not required. UCS is dedicated to promoting efficiency for practitioners, the unrepresented, and all litigants and NYSCEF has been crafted with this goal in mind. Prior to the pandemic, UCS had, therefore, been making efforts to encourage courts and judges across the state not to require the regular submission of working copies. Signs of progress were observable. For example, in last year's report we noted that in the Supreme Court, Civil Branch, New York County, 27 Justices operated what were there called "Paperless Parts." In these Parts, working copies were not to be submitted unless the Justice made a specific request therefor in a particular case for good reason, as might occur if e-filed exhibits are difficult to read due to the impaired quality of the original. Furthermore, in Monroe County Supreme Court, 20 out of 26 Justices did not then require working copies.

By way of further examples, in the following counties, the number of Justices listed did not require working copies as of last year's report: Albany - - eight of 15; Clinton - - three of four; Jefferson - - one of one; Oneida - - three of five; Steuben - - one of two; Tompkins - - three of six; Warren - - one of four; and Westchester - - 10 of 36.

The pandemic made the need for avoidance of working copies much more acute. Accordingly, in November 2020, the Chief Administrative Judge issued an Administrative Order that provided that the court shall not request working copies of documents filed electronically.¹⁶

13. Message of Leah R. Mervine, Esq., Jan. 22, 2021.

14. Letter of Dominic L. Chiariello, Esq., Jan. 6, 2021.

15. Message of James Montgomery, Jan. 15, 2021; Message of Justin C. Brusgul, Esq., Jan. 15, 2021; Message of Andrew Miller, Esq., Jan. 4, 2021; Message of Michael Pollok, Esq., Jan. 13, 2021.

16. Administrative Order AO/267/20, Nov. 6, 2020. One attorney states that it appears that different courts use different systems to file documents. Message of Michael Pollok, Esq., Jan. 13, 2021. The Court of Appeals, to which he refers, does not use NYSCEF, but apart from that, NYSCEF is the sole and universal e-filing system, at the trial-court level and on appeal, except that the Electronic Document Delivery System (EDDS) can be used during the pandemic to transmit documents where NYSCEF is not yet available.

H. Comments by Some Unrepresented Litigants And A Few Attorneys

One unrepresented litigant suggests that the NYSCEF site should post average turnaround times for e-filed applications.¹⁷ This is not practical. The amount of time it takes for a court to act upon an application depends upon the nature of the application, the court and type of case in question, where the application is filed and the caseload there, and the judge. It would be unduly burdensome, especially today and in the days to come when courts are and will remain understaffed due to the pandemic and its consequences, for staff to attempt to make an average calculation of the time taken to act upon each of a very large number of different types of documents in the many different courts across the state. The time of the staff should be devoted to other things that can have a larger impact. Further, in the case of some applications, there may be interim actions that are taken with regard to an application, such as the scheduling of argument on a motion.

An unrepresented litigant complains of having had problems filing documents.¹⁸ If such a litigant is not able to resolve or understand a difficulty, he or she can send an e-mail at any hour to the Resource Center, which will do its best to respond. This is its purpose.

Some unrepresented litigants find the NYSCEF application complex¹⁹ despite our efforts through the dedicated website for the unrepresented to explain e-filing and notwithstanding that we make training available online that is open to the unrepresented, provide other training tools, and have the Resource Center help desk available. Whether these commentators attempted to avail themselves of these resources is unclear. Beyond

that, to some degree this reaction is a product of the fact that litigation is a complicated process in general. Nevertheless, we are, as mentioned earlier, interested in attempting to integrate NYSCEF with the Court System's existing "Do-It-Yourself" efforts and are taking steps to simplify our unrepresented site, and will be striving to take other steps to make things more clear for the unrepresented. And, as we have said, no unrepresented litigant can be forced into using NYSCEF, but must choose to participate.

A process server complains that he does not detect savings from e-filing.²⁰ He notes that attorneys must still print out a copy for the client and one for the process server. He also asserts that County Clerks must still maintain hard copies of filings. The writer, however, fails to take account of the savings that attorneys reap from the fact that interlocutory documents are automatically served electronically, so that filing automatically causes service. NYSCEF saves money and time for attorneys and gives them convenient access to the full case file at any time.

In addition, the County Clerk is not obliged to maintain hard-copy files. The County Clerk can rely upon the files transmitted to NYSCEF, and can scan into digital format documents filed in hard-copy format by unrepresented persons or attorneys who have filed a certificate to opt out of e-filing.

An attorney complains about having had difficulty e-filing in a court.²¹ It does not appear that he made any effort to contact the court or the Resource Center for assistance, nor can we discern whether he made use of our training resources. Further, he states that he can do simple e-mailing of motions, letters, etc., but he implies that he is challenged beyond that. He indicates that he is a senior attorney. He may be in a position to take advantage of the exclusion for attorneys who lack the knowledge or equipment needed to e-file.

17. Message of Flor Betancourt, Jan. 16, 2021

18. Message of Jayme Mancini, Jan. 11, 2021.

19. *Id.*; Message of Ms. Floresaponte, Dec. 4, 2020; Message of Yuderka Valdez, Jan. 21, 2021.

20. Message of Walter E. Beverly III, Jan. 9, 2021.

21. Message of Joel M. Proyect, Esq., Dec. 29, 2020.

I. Submissions of Two Commentators

One commentator criticizes the NYSCEF system.²² This commentator states that he is a technologically adroit attorney. It appears, however, that he is not a litigator and thus likely does not have a comprehensive understanding of litigation practice in New York's courts. His opinions about the intuitive nature of the NYSCEF application should be viewed in that context. The opinions of the bar in general are radically different from those of this commentator, as is evident, for example, from the comments excerpted in Section III of the many body of the Report.

Another commentator criticizes e-filing as it may come to be employed in Civil Court in New York City.²³ (At present, e-filing exists in Housing Court and in Civil Court only in removed CPLR 325 (d) cases). He believes that the system in that court would be inefficient and have adverse consequences for his practice.

The writer states that his firm files thousands of cases in Civil Court in one county in the City. Rather than NYSCEF, he would prefer to use a mechanism for electronic filing that he believes will promote efficiency. He must, however, be filing cases currently in hard-copy form in that court and doing so obviously has to be significantly less efficient than NYSCEF can be.

The writer describes a mechanism for e-filing that he wishes to see that apparently involves the bulk filing of data rather than the filing of individual PDF documents that generally occurs in NYSCEF currently. The e-filing staff are familiar with bulk filing. Procedures along these lines are used at present to process SCAR cases, thousands of which are filed annually on Long Island, and tax certiorari cases in New York City. Similar procedures are used between NYSCEF and various County Clerks' offices. Many County Clerks across the state have retained vendors and NYSCEF works with their individual systems to exchange data. So, the e-filing staff have the ability to provide for bulk

filing in NYSCEF as an option where appropriate. The staff will consider whether such filing makes sense for Civil Court cases.

J. Comments from One Attorney

One attorney submitted comments strongly critical of NYSCEF.²⁴ Views along the lines of his have been expressed by a tiny minority of the attorneys who have used NYSCEF over the years and last year, again as shown in the excerpts in Section III of the main body of this Report.

The writer describes difficulties he encountered when trying to file PDF documents. There are naturally certain requirements for the filing of documents with the system. These requirements are explained in a page that is accessible via a link on the home page of the NYSCEF site. Further, it appears that the attorney was filing documents in a criminal case or cases in an Appellate Division. The Appellate Divisions have also issued procedures for the filing of documents.²⁵

It does not appear from the attorney's messages that he sought to contact the court in question or the NYSCEF Resource Center when he encountered difficulty in uploading PDF files. The Resource Center regularly helps to address problems that filers may encounter when uploading documents and provides solutions to them. We urge the bar to contact the Center in the event that any difficulty arises in any kind of e-filed case. It is also unclear whether the attorney took one of the on-line training courses offered by the Resource Center that explain in two hours how NYSCEF works, with an award of CLE credit at no charge for those who take the course.

Further, criminal e-filing in the Appellate Divisions is quite recent and NYSCEF and the Appellate Divisions are reviewing procedures and the instructions that the courts issue to see if enhancements or modifications are needed in the light of experience

22. Message of Anil Babbar, Esq., Jan. 21, 2021.

23. Message of Gary Tsirelman, Esq., Jan. 12, 2021.

24. Messages of Edward S. Graves, Esq., Jan. 9, 13 and 15.

25. Electronic Filing Rules, 22 NYCRR § 1245.4, Attachment A, Formatting Requirements for Documents Electronically Filed.

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to date. It is naturally to be expected that there will be a learning curve for attorneys who are e-filing in a new case type in a new court.

The attorney complains that the system was designed for civil practice. That is not the case. It is clear from an examination of the appellate system that it is designed precisely to accommodate appeals, including criminal appeals. Parties are referred to as appellants and respondents, for example, which is obviously necessary. The staff have noted, however, that at least one civil reference appears in the "Case Detail" section of the site and will be correcting this error. This error has no impact upon the ability of any filer to file documents efficiently in a criminal case on appeal in the NYSCEF system.

The filer suggests that simpler system guides and FAQs should be used in the system. The e-filing staff will be examining whether improvements can be made in this area.

The attorney describes himself as an older practitioner and states his view that others similarly situated will have difficulty. But, as we have noted before, attorneys who lack the knowledge and equipment needed to e-file may opt out of e-filing simply by filing and serving a certificate. If he and others fall into this category, they can easily find a remedy.

Finally, the growth of e-filing in New York has been careful and deliberate. No one can fairly claim that the pace of implementation has been too fast. Attorneys in New York have had many years to acclimate themselves gradually to the arrival of digital technology in the state courts of New York, technology which has been in universal use in the Federal courts in the state for years.

K. Comments Regarding Housing Court

One attorney submits comments that are critical of aspects of electronic filing in Housing Court.²⁶

The writer complains about EDDS and the process of converting documents to e-filing on the ground that they are time-consuming. EDDS was designed as a temporary mechanism to deliver documents from point A to point B during the Covid emergency. It is not a permanent system. As such, it does not have all the functionalities, features, and conveniences of NYSCEF, and should not be expected to have them. Creating a full-featured system could have been achieved only with a great deal more construction work than was possible at a time when it was important to get a system in place to assist those otherwise required to deal with hard-copy documents in the middle of a grave health emergency.

The writer also criticizes a number of aspects of e-filing, finding that the system is burdensome and time-consuming. Some of the aspects of NYSCEF that are criticized were not the result of decisions of the programmer or the e-filing staff.

The writer states that the attorney must do the filing personally, which is not the fact; many attorneys have a paralegal or other staff person upload documents. The attorney can handle the credit card transaction personally if necessary. The writer complains about the requirement to enter party names and property addresses. This requirement is in NYSCEF in Housing Court, not because of a design preference of the programmer, but because the court requires the information; the information is used by the court to transmit a postcard when that option is selected by the user, this being a procedure that has been of long standing in the court.

The writer complains about how related documents are uploaded, such as a petition and notice of petition or all the documents on a motion. The writer believes that it would be preferable if such related documents could be uploaded all together at the same time. How documents are uploaded is a choice of the court. The e-filing staff will bring to the attention of the court the concern expressed. Bookmarking is a functionality that can be of assistance here, allowing for a single upload

26. Message of Stern and Stern, Esqs., Dec. 31, 2021.

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but providing a way that individual exhibits on a motion, for instance, can be located efficiently by the judge when working on a case.

As the writer notes, there is no default position with regard to confidential content in documents, the consequence of which is that the user must check a box connected with each document indicating that it is not confidential. The writer would prefer to see a system change whereby as a default each document is labeled non-confidential and the user must check a box to mark that a document is confidential. Since most documents are not confidential, there is a basis for the writer's preference. The court, however, made a different choice, and no doubt it did so because it wished to have every attorney focus on the confidentiality issue at the time of filing each document, it being the case that some documents are filed with the court without proper redaction having been done as required by rule. The e-filing staff have brought this criticism to the attention of the court and we expect that a change will be made.

The writer complains that there is no mechanism to store credit card information, which therefore must be re-entered. The reason for this is to protect the security of the credit card information. There are, however, personal settings on a computer that can allow the user to cause fields to be auto-filled. The writer can avail himself of this functionality to save time.

The writer complains that there are delays in issuing the index number. This is not a function of NYSCEF, but of the work of the court itself, where, in this age of Covid, there are delays.

The writer criticizes NYSCEF because there is said to be no way to find cases easily. NYSCEF in fact offers means by which an attorney can search for and sort his or her cases under the "My Cases" tab. Searching by firm does not exist because, as we discussed in Section F above, NYSCEF needs to work by basing appearances in cases on an individual attorney with an associated e-mail address. E-filing staff

will, however, look into whether a modification in this regard can be made.

The attorney complains that there is no one a user can contact to ask a question or to correct a misfiling, such as may occur if a document that does not belong to a case is inadvertently uploaded to it by the user. A contact number for the court is provided, as is one for the Resource Center. The Resource Center does not have authority to make deletions in the office record of a case in a particular court because of a misfiling to that case file, but can direct an attorney who is having difficulty with such an error to the court for correction. Of course, the ability to respond with ideal efficiency has temporarily been adversely affected by the public health crisis.

L. Some Comments Regarding the Unrepresented

One commentator expresses concerns about unrepresented litigants.²⁷ She worries about some of these litigants who might, she fears, be induced into signing up for e-filing although they will not be able to use it well, and she also worries about those unrepresented persons who do not have sufficient access to digital technology.

She indicates that unrepresented litigants may be subjected to pressure to e-file. She provides, however, no descriptions of specific instances with which she is familiar, nor any statistics that might indicate how widespread this phenomenon is thought to be. The central e-mail box we have set up to receive information or complaints regarding problems with e-filing by unrepresented persons received no messages in 2020 despite the fact that we notified 177 legal services groups of its existence and function. She refers to the "2019 E-Filing Rule" as having created an incentive for clerks to apply such pressure. We are unaware of what rule the writer has in mind. We believe that there is no rule that would result in clerks being inclined to apply pressure. To the contrary, existing legislation directs that the unrepresented are to be informed by the clerk in plain language what their options

27. Letter of Hazel R. Caldwell, Esq., Jan. 31, 2021.

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are with regard to e-filing prior to their making a decision about whether to e-file or not. The clerk is required to inquire whether the unrepresented person wishes to participate. No such person “shall be compelled, directly or indirectly, to participate in e-filing.”²⁸ The unrepresented party shall participate only upon his or her request. Provisions to these effects would be continued under the legislation proposed this year by the Judiciary.²⁹

We note in the main body of this Report other aspects of law and practice designed by the Court System to ensure that the unrepresented who do not wish to take part in e-filing do not do so. One of these is the Notice of Electronic Filing, which the plaintiff or petitioner must serve upon the defendant/respondent in hard copy format. This document informs the unrepresented person that he or she will serve and be served in hard copy format in the case, unless he or she chooses to participate in e-filing. The unrepresented person is thus put on notice at the very outset of the case that there is a digital system for the electronic filing of documents, that he or she will not be part of it, but that he or she can take part by making a choice to that effect.

In addition to e-filing by the unrepresented, the writer is concerned about “the digital divide.” She states that digital technology was available to the indigent at libraries, senior centers, and the like, but that the pandemic closed these places. She suggests that the Court System should make internet access and technology available at courthouses. As the Notice of Electronic Filing states, unrepresented persons who wish to participate in e-filing must have access to a computer and a scanner or similar device for conversion of documents, a connection to the internet, and an e-mail address. Without a computer, the person cannot write and upload documents, unless he or she does so by typewriter and then seeks to scan the hard-copy document. A smartphone is not an adequate substitute for a computer because it does not permit the ready creation and uploading of documents to NYSCEF, nor does it allow for the same degree of ease in the

reading of court papers served electronically by an adversary as does a computer.

But even if a person wishes to come to the courthouse to scan hard-copy documents, more than a scanner and access to the internet are needed for e-filing. In order to be able to e-file a document to a case, the person must register with the Court System and obtain a User ID, which must be recorded in the NYSCEF system. Furthermore, the person must have and record in the case file in NYSCEF the person’s e-mail address, which is personal to that person and is necessary so that the person can be served with documents through NYSCEF by other parties. A scanner at the courthouse cannot obviate the need for the person to have registered, obtained an ID, and recorded his or her appearance in the NYSCEF file, and have a recorded e-mail address. One cannot take part in e-filing unless one has the ability to be served with documents electronically. The filer must also have a credit card since filing fees must be paid through NYSCEF. It is because of these facts that the hard-copy Notice of Electronic Filing informs the defendant/respondent as it does.

Furthermore, if the litigant only has a smartphone and wishes to come to the courthouse to scan hard-copy documents, he or she might wish to consider whether it is not better to cause service of those documents in hard-copy form by mail and receive service in hard-copy by mail, particularly during the pandemic.

The writer states that it is foreseeable that the indigent unrepresented person may lose access to e-filing or miss important communications sent by e-mail. As to the former, if the litigant loses access to e-filing because of, say, loss of an internet account or an account with a time limit, he or she can opt out of e-filing simply by filing and serving a notice so stating; the choice to e-file is not irrevocable. As to the latter, the person should understand that as service is made electronically, he or she must pay attention to the e-mail account. Such accounts post notifications when new messages arrive so the user need only glance at the phone on a regular basis

28. CPLR 2111 (b) (1).

29. See Section 3 of the proposed legislation, proposed new paragraph 2 of Section 2111 (b).

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to detect such messages. But if the person has any doubt about his or her ability to do so regularly, he or she should not sign up for e-filing.

The writer recommends that since e-filing might be lost or a communication missed, UCS should forbid e-service on unrepresented litigants. NYSCEF does not, however, have the ability to allow individual litigants - - some of them but not all, that is, the unrepresented only - - to use e-filing for the purpose of filing documents with the court, but bar those same persons from being served electronically. Those who participate in e-filing also serve documents through NYSCEF using e-mail addresses. NYSCEF is not structured so that some documents would be e-served but others not depending upon whether the recipient is unrepresented or not. Further, some unrepresented litigants will certainly be technologically adroit and happy to receive documents electronically. NYSCEF cannot distinguish between unrepresented litigants who fall into that category and those who do not and therefore hypothetically should not receive e-service. The answer is for indigent unrepresented litigants who may have concerns on these counts not to sign up for e-filing in the first place.

On the digital divide, see Section B above.

M. Comment About Sensitive Information And Consent to E-File

One commentator recommends that the NYSCEF site enable litigants to flag confidential personal information that has been improperly e-filed without redactions, thereby causing the information to be rendered unavailable to public view until a motion to seal can be made. Litigants should also, it is suggested, be allowed to e-file sensitive documents in a temporary restricted status for a period sufficient to allow a TRO to be obtained. The latter functionality already exists, but it allows for a restrictive period of five days

and the writer recommends that that period be extended.³⁰

The commentator suggests that those who seek access to Housing Court files should be required first to create an account with name and address. Access should be allowed only if a court employee can verify that the person's identification is matched to an account, unless the person is an attorney using an attorney registration number. Implementing these requirements will, the commentator states, help to discourage inappropriate uses of information in Housing Court files.

The commentator recommends that Housing Court records should be preserved on the NYSCEF site only for a time and that e-filed records of the court should only be accessible via terminals in the courthouse after a certain amount of time has passed following the conclusion of a case.

The commentator suggests that a rule be issued that requires attorneys to upload all documents that have been filed at the time a case is converted to e-filing.

This commentator, who is particularly concerned about cases in Housing Court, also suggests that before an unrepresented litigant can consent to e-filing, the presiding judge must explain on the record what that consent entails.

E-filing staff will examine these suggestions. With regard to the last suggestion, the staff will need to consider whether it is practical (e.g., when in the life of a case the first court appearance will occur and how that timing might affect e-filing).

N. Consumer Debt Cases

One commentator, who represents defendants in consumer debt cases, writes that "[t]he majority of attorneys who use e-filing find it much more convenient than having to file and serve hard copies of papers"³¹ The situation of the unrepresented is different. The writer expresses concern that expansion of e-filing will make it faster and cheaper

30. Letter of Cristina Quiñones-Betancourt, Esq., Mobilization for Justice, Inc., Jan. 25, 2021

31. Letter of Mary McCune, Esq., Manhattan Legal Services, Feb. 1, 2021, p. 2.

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for plaintiffs to file court cases and obtain default judgments against unrepresented defendants.³²

The writer states that debt collection law firms, which at times, she asserts, file cases without a legal basis and without having conducted a review sufficient to verify that the debt is valid, often file many actions each year, although they may have a modest number of attorneys on staff. E-filing allows for an even greater number of cases, it is stated, which will reduce the amount of attorney involvement in each additional case.

While e-filing permits the plaintiff to file a case with the court electronically, the plaintiff must still produce pleadings in hard-copy format and serve them on the defendant, as has always been done. The plaintiff might likewise file a motion for default and summary judgment with the court by filing with NYSCEF, but must still produce a copy of the motion papers in hard-copy format and serve them on the defendant as the CPLR requires unless the defendant has by this point decided to participate in e-filing for the case. Requirements for hard-copy service seem to reduce the concern raised.

The writer notes that many unrepresented defendants in this kind of case lack digital technology beyond perhaps a smartphone.³³ The Notice of Electronic Filing that must be served with the commencement papers in hard-copy format states, as we have noted, that an unrepresented person who wishes to e-file must have access to a computer, a scanner, an internet connection, and an e-mail address for receipt of documents in the case. Many such defendants are not in a good position to e-file, because, for example, they have limited understanding of legal terminology, may have challenges with English, or do not understand well how digital technology works. Some, the writer asserts, feel pressure to sign up for e-filing, although, as noted earlier, the law currently seeks to prevent any such pressure from arising, and the legislative proposal would continue to do so. The hard-copy Notice of Electronic Filing, the website

for unrepresented, and the like seek to provide clear notice to the unrepresented of the requirements for e-filing.

The writer urges the Court System to take steps to make e-filing available for all before expanding it. The writer recommends that the Court System provide training to the unrepresented and additional access to public computers where the unrepresented litigants live, among other things. UCS does provide on-line training, which is accessible to all, and is hopeful of being able to review and revise its website for the unrepresented and to increase the availability of forms in languages other than English in 2021. As discussed earlier, e-filing staff are also open to working with community groups to make digital technology more broadly available.

The writer understands that once an unrepresented person has been assigned e-filing status in a case, that status cannot be changed. This is not true. CPLR 2111 (b) (3) (B) provides that an unrepresented party who has chosen to participate in e-filing may revoke that choice for any reason by the very simple means of presenting a form. See NYSCEF Form EF-6, Notice of Intent to Cease E-Filing, which an unrepresented person can file and mail to the other parties at any time. The Judiciary's legislative proposal would not change this provision.

E-filing staff will continue to study the position of unrepresented litigants and seek for ways to improve the rules applicable to them to ensure both that the unrepresented litigant who wishes to do so can e-file conveniently and safely and that no such litigant is disadvantaged by inadvertently signing up to e-file though lacking the equipment or knowledge needed to do so.

32. *Id.*

33. *Id.* at pp. 3-4.

O. Redaction, Confidentiality, and Access Control

One writer suggests that NYSCEF should clarify its policies regarding redaction, confidentiality and access control.³⁴ The writer presents 16 items that he suggests be considered for inclusion in disclosures and FAQs. The e-filing staff will review these recommendations and consider their possible inclusion in NYSCEF.

CONCLUSION

For the reasons presented here, it is clear that the comments addressed in this Appendix provide no basis for rejection of the Judiciary's legislative proposal to expand e-filing further by broadening the authority of the Chief Administrative Judge in all types of cases and courts. E-filing staff will examine suggestions that may be beneficial to determine whether and how NYSCEF may be modified to accommodate them.

34. Letter of Prof. Charles Altman, Jan. 24, 2021.

NYCOURTS.GOV