

BROOME COUNTY SURROGATE’S COURT E-FILING PROTOCOL

The Administrative Judge of the **Sixth Judicial District**, the Surrogate of Broome County, and the Chief Clerk of the Broome County Surrogate Court hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as “NYSCEF”) implemented in the **Broome County Surrogate Court** in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules 207.4a and 207.4aa and provide guidance with respect to local practice and procedures used to process filings, fees, and court calendaring. Users should also review the NYSCEF website (www.nycourts.gov/efile). These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

1) Cases Types Eligible for E-Filing:

Mandatory E-Filing: **E-filing is mandatory in Administration, Probate, Voluntary Administration, Guardianship, and other miscellaneous proceedings that are commenced in this court on or after October 21, 2020.** Except in limited circumstances, all such proceedings must be commenced by filing with the Court electronically through NYSCEF and all subsequent documents in such proceedings must be e-filed.

Hybrid Proceedings: The Court will accept proceedings/documents in **previously paper filed estates** on the understanding that the Court Clerk may need time to “upload” the file. Therefore, previously filed documents may not be immediately available in NYSCEF.

Documents Must Be E-Filed: Unless otherwise provided in the e-filing rules, this protocol, or where a special exemption is granted (e.g., Oversized Exhibits in Section 3, below) all documents to be filed with the court in a NYSCEF case must be e-filed with the NYSCEF system.

2) Non-Participation in E-Filing:

- **Exemptions from Mandatory E-Filing:** An attorney who certifies in good faith that he or she lacks the equipment or knowledge needed to e-file and has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of e-filing **in each** mandatory proceeding by filing an opt out form¹ with the Clerk. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing. (Uniform Rule § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing, but may choose to participate. (CPLR § 2111)

Unrepresented litigants in a mandatory proceeding are not required to decline consent or to attach the Notice of Hard Copy Submission – E-Filed Proceeding to any of their hard copy filings.

¹ All forms referred to in the Protocol are available on the Forms page of the NYSCEF website at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm>

3) E-Filing Documents in Surrogate's Court:

- Essential Step Prior to E-Filing: Prior to entering any information into an initial filing, you should run an inquiry on the decedent's last name, using the first initial, to determine if a NYSCEF file is already open. Due to the numbering system in Surrogate's Court, an inquiry based on the file number alone may not produce accurate results.

In addition, you must search the Court records to ascertain whether there may be another will for the decedent on file with the Court (e.g., filed for safekeeping or proceedings filed prior to NYSCEF). **The existing Court policy of charging for searches, upon written request, pursuant to SCPA 2404(13) and not accepting requests for searches by phone remains in place.**

- Initial Entering of Case Information: Any error in the initial entry of case information can significantly delay the proceeding. Additionally, such error may result in Court documents issued containing said error. **If amended documents are needed due to your data entry error you will be required to pay for new certificates of appointment.** Please double check to be sure to select the same county as is shown on your papers.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will
- If the name on the death certificate is different, that becomes an "AKA"
- If the name on the will does not match the signature, that becomes an "AKA"
- No punctuation or spaces should be used when entering the name or "AKA"

- Notice of Hard-Copy Submission: Where, within the e-filing rules, an attorney or an unrepresented litigant who is participating in e-filing submits a document in hard copy, the document must bear a Notice of Hard Copy Submission – E-Filed Proceeding (see NYSCEF Forms page). Attorneys who are exempt from e-filing are required to attach this form to all hard copy filings, while unrepresented litigants who are not participating in e-filing are not so required.

- Death Certificates: Original certified death certificates must be e-filed. They do not need to be submitted directly to the Surrogate's Court. **The Court reserves the right to request the original certified death certificate.**

- Wills: Will is required to be scanned by the e-filer; will must not be unstapled. Scan the original will, but DO NOT UNSTAPLE. **File the original paper will within two (2) business days of e-filing.**

- Citations: Submit a proposed citation electronically through NYSCEF only. The Court will complete the citation and upload the completed version to NYSCEF as quickly as possible. If your proposed citation requires amendment, you will be notified. Otherwise, an e-mail notification will be sent when the completed citation is posted to NYSCEF. After receipt of the notification, print the citation and serve it, in accordance with the SCPA. Service of the Citation must be accompanied by a Notice of Commencement of

Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site.) The affidavit of service must state both the citation and the notice was served.

- Voluntary Administrations: **Submit pre-paid envelopes addressed to all interested parties to the Court by mail or hand delivery.** The Court Clerk will print, upload the notice to NYSCEF and mail to the interested parties per SCPA 1304(4). **Certificates of appointment will not be issued** until the pre-paid envelopes addressed to interested parties are received allowing the Clerk to mail notices.

- Decrees and Orders: E-file proposed decrees and orders through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF, which notifies all consenting parties that the decree or order has been signed and posted. Users who have requested a certificate of appointment, or certified copy of the decree or order, and have paid the appropriate fee via NYSCEF, as well as have provided self addressed, pre-paid postage envelope will receive their documents by regular mail.

- Stipulations: Stipulations submitted for purposes of being “so ordered” by the Court shall be electronically filed.

- Oversized Exhibits: If an exhibit or attachment is unsuited for electronic filing (e.g., a large map or a videotape), it shall be submitted to the court and served on the other parties in hard copy. Attach a Notice of Hard Copy Submission – E-Filed Proceeding. In addition, a Notice of Hard Copy Exhibit must be completed and electronically filed. (See Forms page on the NYSCEF site.)

- Working Copies: The court may require submission of hard copies of e-filed documents, also known as working copies. The filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail notification) to the back of all working copies submitted to the court. Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed by chambers at the disposition of the case.

4) Payment:

This court accepts payment of fees required by the SCPA by credit card payments made via NYSCEF or by payments made at the court by credit card, firm check, or bank/certified check. VISA and MASTER CARD are accepted. There are no fees to use the NYSCEF System. Fees are calculated in accordance with SCPA §2402 based on the documents filed with NYSCEF and the representation of the filing user regarding the size of the estate. Review by the Court may result in a modification of the fees initially anticipated or charged in connection with this transaction. In the event of any such modification, the Court will contact the filing user by e-mail with the proper amount and request an additional fee, if applicable. The courts will not allow the filing of additional documents by the filer if the filer owes an outstanding fee in that proceeding. If choosing to pay by credit card at time of filing on NYSCEF website, enter credit card information directly on website. You must insert the credit card information with each filing; your

credit card will be charged at the time of filing. Make sure credit limit is large enough to cover anticipated filings.

If choosing to pay at the court, be aware that documents are not “filed” until payment is received. The court cannot process the filing until payment is received in full and will delete the filing if payment is not **made within 2 business days after e-filing**.

5) Notifications:

Notification of defective filings will be sent out by e-mail or by telephone, depending on the circumstances. Clerks/staff are available for consultation during regular business hours at **(607) 240-5789, or email individual staff or our general email at Broome-Surrogate@nycourts.gov**.

- Return of Requested Documents: **The Court requires pre-paid self-addressed envelopes** for any documents you desire returned. If self-addressed stamped envelopes are not provided, the court will place the documents into the attorney pick-up bin located in our office.

- Certificates Of Appointment: Upon request made via NYSCEF, the court will mail out Certificates. Users must request and pay for certificates in advance, as well as provide pre-paid self-addressed envelopes. Absent self-addressed, pre-paid envelopes, the certificates will be placed into the attorney pick-up bin located in our office.

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

6) Signatures:

Documents requiring signatures shall be considered to be signed under the circumstances outlined in Uniform Rule §207.4-a(f). When e-filing a document bearing an actual signature, the e-filer is responsible for maintaining the original, executed document pursuant to Uniform Rule 207.4-a(f)(2).

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

- Applying for a Sealing Order: A party who wishes to file a document under seal must file a hard copy of the document, along with the “Notice of Hard Copy Submission” with the Surrogate’s Court. Unless the document is being filed ex parte, the filing party shall serve all parties with hard copies of the document, along with the “Notice of Hard Copy Submission” form, in the traditional manner. (See Forms page on the NYSCEF site.)

If the Court grants the sealing request, the Surrogate Clerk will then file the documents in the appropriate manner, as directed. If the application is denied, an order will be issued that directs the party to file the document electronically.

- In Camera Documents: Documents submitted to the Court for in camera review should be delivered to the Court in a sealed envelope conspicuously marked “FOR IN CAMERA REVIEW BY THE COURT” with a Notice of Hard Copy Submission form attached. (See Forms page on the NYSCEF web site.)

8) Decrees, Orders, and Judgments:

Decrees, orders, and judgments will be signed in hard copy by the Surrogate and forwarded to the Clerk for filing and scanning into the NYSCEF system, which will then transmit notification to all parties. However, the notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]).

9) Technical Support

If you have any questions regarding how to e-file or need technical assistance, please contact the NYSCEF Resources Center by email at nyscef@nycourt.gov, Use #surrogate in the subject line.