

**Ontario County Surrogate's Court
E-FILING PROTOCOL
NYS Courts Electronic Filing (NYSCEF)**

The Administrative Judge of the 7th Judicial District, Ontario County Surrogate and the Chief Clerk of the Ontario County Surrogate's Court hereby promulgate local user protocols to assist users in practice of the New York State Courts E-Filing System (hereinafter referred to as "NYSCEF") implemented in the Ontario 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. Counsel and court-users are charged with the knowledge of them.

Case Types Eligible for E-Filing:

Ontario County Surrogate's Court is a MANDATORY e-filing court. All Administrations, Probates, and related matters thereto, including Small Estate Proceedings, are required to be e-filed. Except in limited circumstances, all such proceedings must be commenced by filing with the court electronically through the NYSCEF system.

All subsequent documents in such proceedings must also be e-filed.

Guardianships and Lifetime Trust matters may be e-filed, although not mandatory.

Exemptions from Mandatory E-Filing: An attorney who certifies in good faith, that he or she lacks the equipment or knowledge needed to e-file and has no staff member or employee under his or her direction who has such knowledge and equipment may opt out of e-filing in each mandatory

proceeding by filing an opt out form¹ with the Clerk. Attorneys also may be exempted by the court for good cause shown. Proposed intervenors (non-attorneys) and unrepresented non-parties are exempt from e-filing. (Uniform Rule § 207.4-aa(e)(1)). Unrepresented litigants are exempt from e-filing but may choose to participate. (CPLR § 2111)

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

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.

E-Filing Documents in Surrogate’s Court:

Creating New Estate Records & Subsequent Filings:

*****Essential Step Prior to E-Filing:** Prior to entering any information into an initial filing, you should run an inquiry on the decedent’s last name, using the first initial, to determine if a file is already open. Due to the numbering system in Surrogate’s Court, an inquiry based on the file number alone may not produce accurate results. In addition, you must search the Court’s records to ascertain whether there may be another will for the decedent on file with the Court (e.g., filed for safekeeping).

- 1. Initial Entering of Case Information:** Any error in the initial entry of case information can significantly delay the proceeding. Please double check to be sure to select the correct county you’re intending to file in.

The case name must be entered as follows:

- Initial entry must be identical to the signature on the will;

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>

- 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”

This court requires the” **Request for Surrogate’s Court Action**” (see NYSCEF Forms page) as the first document uploaded with each filing. This is to be filed as a stand-alone document. Do not scan any other documents with the Request.

For subsequent filings, do not re-use the original Request form. Prepare a new form for each filing with the appropriate information entered. If requesting court certified documents or Certificates of Appointment, use a Request for Surrogate’s Court Action Non-Proceeding Relief (p.2 of the Request form). Do **not** submit a blank Request for Surrogate’s Court Action form.

2. **Wills**: The ORIGINAL Will is required to be scanned by the e-filer. It is acceptable to unstaple for this purpose, without the need of a staple-hole affidavit. Once the original is scanned and the proceeding is e-filed, the Original, hard-copy must be submitted to the court **within 2 business days**. *If the Will is self-proving, the Affidavits of Attesting Witnesses should be scanned together with the Will. After Death Witness Affidavits should be scanned separate from the Will. Wills and Codicils should be e-filed separately. Do not e-file an attorney certified copy of the Will or Codicil, as this is not required.*

Note: Should there be any concern with the un-stapling of the original will, then the filer may simply submit the Original will is hard-copy with a notation on their Request for Surrogates Court Action as to the no scanned image. Upon receipt, the court will upload the Original Will image to the NYSCEF record.

3. **Death Certificates**: The certified copy of the original death certificate should be e-filed (front and back). No hard copy submission of the death certificate is required in Ontario County. The court will accept the image as evidence of death, pursuant to 22NYCRR 207.15.

4. **Request for Surrogates Court Action:** Request for Surrogates Court Action form (SC-2) must be the first document uploaded with each filing. This is to be filed as stand alone document, and should reflect specific information as to the filing at hand. If requesting court-certified documents or Certificates of Appointment, use the NON PROCEEDING Relief form (page 2), and note any specific needs (i.e. certified copy of the Will). Prepare a new form for each and every filing, with appropriate information entered.
5. **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 307. Service of the Citation should be accompanied by a Notice of Commencement of Proceeding Subject to Mandatory Electronic Filing or a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site.)
6. **Decrees and Orders:** E-file proposed Decrees and Orders through NYSCEF only. Once the decree or order is signed, the court will upload the signed version to NYSCEF and notify all consenting parties that the decree or order has been signed and posted. Users who have requested a certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy by regular mail.
7. **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.)
8. **Working Copies:** Ontario County *may* require working copies on a case-by-case basis. You will be advised by the Clerk if a working copy is necessary or required.

If working copies are requested, the filer must attach proof that the document has been e-filed (e.g., the thank you page or the e-mail

notification) to the back of all working copies submitted to the court. Working copies must be exact hard copy duplicates of the e-filed documents. They do not become part of the official record and will be destroyed by chambers at the disposition of the case.

9. **Payment:** This court accepts payment of fees required by the SCPA by credit card (VISA & MASTERCARD) payments made via NYSCEF or by payments made at the court. There is no fee to use the NYSCEF System, however effective and commencing, April 1, 2021, the Unified Court System will assess a service fee of 2.99% of the payment amount to account for the credit card service fee(s) assessed. The court does not receive any portion of the service fee.

Filing 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. This court will not allow the filing of any 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 considered “Filed” until payment is received.

Note: Review of a filing by the court may result in a modification of the fees initially anticipated or charged in connection with the transaction. In the event of any modification, the court will contact the filing user as to the proper amount needed and request an additional fee. The NYSCEF system will not allow the filing of additional documents by the filer if there is an outstanding fee requested. Additional payment can be made via NYSCEF by

accessing the Main Menu and selecting “Submit Additional Payment”.

Notification of defective filings will be sent out via e-mail with the Subject of the e-mail being: “Sticky Note(s)- Corrections Needed”.

10. Certificates and Letters: Upon request made via NYSCEF, the court will mail out Certificates and Letters. (See #16 for additional information.)

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

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

In the event of a hard-filing to an e-filed estate (i.e. Verified Claim, GAL Report, etc.) Court staff will scan and upload the hard filed documents to the NYSCEF record, and all consented filer in the case will received notification of the uploaded document(s).

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

13. 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).

14. 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.

15. 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.)

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

Court issued Letters and Certificates of Appointment will be provided in hard copy to the filer via the usual means (SASE, USPS).

The Request for Surrogate Court Action form should be used to communicate how the filer would like these items returned to them (i.e. SASE, messenger, lobby pick-up, etc.)

**The E-Filing Resource Center can be reached at:
646-386-3033 or;
nyscef@nycourts.gov**