

Tompkins County Supreme and County Courts E-filing Protocols

I. INTRODUCTION

In implementation of the New York State Courts electronic filing (e-filing) system (hereinafter referred to as “NYSCEF”) in Tompkins County Supreme Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (hereinafter “Uniform Rules”) §202.5-b and §202.5-bb, the Administrative Judge of the Sixth Judicial District and the Tompkins County Clerk, as Clerk of the Supreme and County Courts, hereby promulgate local user protocols to assist in implementing NYSCEF in practice and provide guidance with respect to local practice and procedures used to process filings, fees and court calendaring. In addition, it is suggested that users consult the [User Manual](#) provided on-line at NYSCEF website (www.nycourts.gov/efile) as well as applicable part rules.

A. EFFECT OF JOINT PROTOCOLS

The NYSCEF system does not change the rules applicable to civil litigation. As such, the protocols promulgated herein, as well as any additions or amendments thereof, do no change applicable rules or statutes with respect to civil practice as defined by the New York State Civil Practice Law and Rules (hereinafter “CPLR”). In addition, users are encouraged to be fully familiar with the Part Rules for each Judge as they apply to the action type being filed in the NYSCEF system.

B. OFFICIAL CASE RECORDS

The official case record for any action or proceeding, and the filing or entry of documents therefore, shall be the records maintained by the Office of the Tompkins County Clerk via its electronic database, online images and hard copy filings as per the constitutional authority vested as the Clerk of the Supreme and County Courts. In addition, as the Clerk of the Supreme and County Courts, the Tompkins County Clerk is and remains the vested constitutional official with respect to access, maintenance, retention and dissemination of court records within Tompkins County.

C. GETTING STARTED

Prior to utilizing the NYSCEF system, an attorney, party or filing agent must register to become an authorized user of the NYSCEF site at www.nycourts.gov/efile. A firm acting as filing agent for an attorney or party to the case must file a form accessible at www.nycourts.gov/efile, whereby the attorney or party authorizes the agent to file on the attorney’s behalf. Only one such form shall be filed in each NYSCEF case. Any NYSCEF user shall immediately contact the [NYSCEF Resource Center](#) if they have reason to believe their user identification or password may have been compromised, and may request a new user identification or password.

D. MANDATORY/CONSENSUAL E-FILING

Tompkins County has both a mandatory and consensual e-filing program. All case types, except for those specifically excluded below MUST be commenced by filing with the County Clerk electronically through NYSCEF and all subsequent documents in such case must be e-filed, however any of those cases listed below *may* be e-filed on a consensual basis.

Tompkins County cases which are excluded from mandatory e-filing but are authorized on a consensual basis are:

- CPLR Article 70 [habeas corpus] proceedings
- CPLR Article 78 proceedings
- Election Law proceedings
- Matrimonial actions
- Mental Hygiene Law matters
- Consumer Credit Transactions as defined in CPLR 105(f)*
- Residential Foreclosure actions as defined in RPAPL §1304*

**except initial filings of commencement papers by represented party, which is mandatory*

1. UNREPRESENTED LITIGANTS

Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing. For information on how to participate in e-filing, unrepresented litigants should visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants are also encouraged to visit www.nycourthelp.gov or contact the Help Center. An unrepresented litigant who consents to e-filing may cease participation at any time by filing the [“Notice of Intent to Cease E-Filing”](#). However, the other participating parties shall continue to e-file their documents in the case.

2. ATTORNEY OPT-OUT

An attorney who certifies in good faith that they lack the equipment or knowledge needed to e-file and have no staff member or employee under their direction who has such knowledge and equipment may opt out of participation in e-filing in a mandatory case by filing form [“Notice of Opt-Out from Participation in Action Subject to Mandatory Electronic Filing”](#) with the County Clerk. Pursuant to the E-Filing Rules, non-participating counsel shall submit to the County Clerk the original hard copy documents in normal format together with a form [“Notice of Hard Copy Submission – E-Filed Cases”](#).

3. ADDITIONAL CONSIDERATION FOR PAPER SUBMISSIONS

Though an unrepresented party and/or opted-out attorney in the action may be filing in paper, the action will still proceed in NYSCEF. As such, these paper filings must note that the image copies of documents filed in hard copy are public records available for public inspection. It is the responsibility of the filer to ensure that the hard copy documents comply with the New York law governing exclusion of social security numbers and confidential personal information in documents filed with a state court (see General Business Law §399-ddd[6]) and redaction rule (Uniform Rule 202.5 [e]). Further, although NYSCEF will generate a notification to the participating parties as a result of the court uploading a non-participant’s document to complete the record, any attorney that has opted out, or any non-participating unrepresented litigant must also serve the documents on the opposition in paper format and file an Affidavit of Service with the County Clerk.

4. CONVERSION TO E-FILE

Cases previously filed in hard copy will continue in hard copy. Tompkins County will not be converting previously filed hard copy cases to electronic filed cases.

II. IDENTIFYING E-FILED CASES

E-Filed cases must be readily identifiable and marked as such. Whenever counsel presents papers to the Office of the Tompkins County Clerk or the Court Clerk in a NYSCEF matter, counsel should alert the Clerk that the case is a NYSCEF matter. Further:

A. WHEN COMMENCED VIA NYSCEF

All e-filed cases index numbers will start with an “EF” in front of the actual index number (for example EF2016-0001). Upon filing of the commencement pleadings and payment of the statutory fee, the Tompkins County Clerk as Clerk of the Supreme and County Courts will assign a NYSCEF designated index number and notify the filer via the NYSCEF system of the number assigned and filing date. Such index number must be affixed to all documents submissions, filings and communications to the Tompkins County Clerk as Clerk of the Supreme and County Courts and the Court.

III. FILING OF PAPERS

A. PAYMENT OF FEES

Payment for fee-bearing NYSCEF documents shall be made online via credit card (Mastercard, Visa, or American Express) at the time of submission.

1. EFFECT OF PAYMENT

Pursuant to CPLR §304 and the court rules, a document is not filed until the fee has been tendered.

B. FILING A DOCUMENT WHERE SIZE, CONSISTENCY OR CONTEXT PREVENTS E-FILING

Where the size, consistency or context of a hard copy document preclude its e-filing, the user shall e-file a form [“Notice of Hard Copy Exhibit Filing”](#) and, if filing the document in hard copy, attach a copy of the [Notice of Hard Copy Submission Form](#).

C. SOCIAL SECURITY NUMBERS

An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of CPLR and all applicable Laws and Rules, which will often require redaction of any social security number that appears in the original document.

D. EXHIBITS

In the NYSCEF system, each exhibit should be uploaded as a separate PDF file. After uploading a primary document, please choose document type “Exhibit”; enter the appropriate number or letter. Each exhibit needs a short description added in the ADDITIONAL DOCUMENT INFORMATION field.

E. ERRORS UPON SUBMISSION

Submission of documents which, upon examination, require correction or addition will result in a notification to the filer advising that there is a problem with the document. The filer shall make the required corrections and/or additions and transmit the corrected document by logging in with the filers account and using the re-file link on the document list for that case.

F. TECHNICAL FAILURES

When filing electronically is hindered by a technical failure (as set forth in Uniform Rule §202.5[i]), a party may file with the Clerk’s Office in hard copy. With the exception of deadlines that by law cannot be extended (for example a statute of limitations or the deadline for filing a notice of appeal), the time for filing of any document that is delayed due to technical failure of the NYSCEF system shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court.

G. CORRESPONDENCE

Correspondence, only as expressly permitted by part rules, must be filed and transmitted to other parties via the NYSCEF system. No duplicate copies of the correspondence shall be provided to the court by either fax or mail

H. DISCOVERY MATERIALS

In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the e-filing of discovery responses and discovery materials to the degree and upon terms and conditions set form in the stipulation. In the absence of such stipulation, no party shall e-file any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of the motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or part rule.

I. NOTICE OF ENTRY

Pursuant to NYSCEF Rules, the Court Clerk shall upload orders electronically. Such orders will be approved by the Tompkins County Clerk’s Office and shall constitute entry of the order. The NYSCEF system will provide notification that the order has been entered. Such notice does not constitute service of notice of entry by any party.

J. WORKING COPIES

E-Filed documents subject to review and processing by the Civil Calendar Clerk’s office do not require a working copy unless otherwise directed or provided for in part rules. Any working copy without a Confirmation Notice generated by NYSCEF firmly fastened thereto as a cover page will not be accepted.

1. FILING MUST PRECEDE DELIVERY OF WORKING COPIES

Pursuant to Uniform Rules §202.5-b, any working copy submitted shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice received from NYSCEF. Court staff will not screen each working copy to be sure that is an accurate reflection of the document filed via NYSCEF. Should counsel fail to file a document with NYSCEF, that document will not be part of the County Clerk’s file.

2. FORMAT OF WORKING COPIES

Confirmation Notice must be attached to the front of the document. Working copies must contain tabs, no backs. Each document or group of documents that is separately bound must have a **CONFIRMATION NOTICE** as the first page.

3. **WORKING COPIES NOT ACCEPTED BY THE COUNTY CLERK OR SUPREME COURT CLERK.**

Working copies are not accepted by the Tompkins County Clerk's Office or the Supreme Court Clerk's Office for forwarding to the assigned Justice, nor are they received and filed as part of the case file maintained by the Tompkins County Clerk in their capacity as Clerk of the Supreme and County Courts. They must be mailed directly to chambers.

4. **PRINTING OF WORKING COPIES**

Working hard copy documents, when required by the assigned Justice or by rules of procedure, are not printed or provided by the Office of the Tompkins County Clerk or the Civil Calendar Clerk's Office.

5. **DELIVERY OF WORKING COPIES**

All working copy documents shall be delivered to Chambers. The Tompkins County Clerk's Office and the Supreme Court Clerk's Office will not forward working copies to Chambers. Filers must familiarize themselves with the part rules to determine whether working copies are permitted. Working copies submitted by mail or overnight delivery must be conspicuously marked on the outside of the package – "WORKING COPY". All working copies must be submitted with the NYSCEF confirmation notice firmly attached thereto.

6. **WORKING COPIES DISCARDED**

The official record of a document in an e-filed case is the document filed via NYSCEF. Working copies are intended only for use by the Justice. The court will discard all working copies after the Justice has finished with them. Thus, in the event that counsel fails to file a document via NYSCEF, the document will not be part of the court record.

IV. REQUESTS FOR JUDICIAL INTERVENTION (RJI'S)

An RJI in a NYSCEF case shall be e-filed via NYSCEF.

V. MOTIONS

Motion submission, including cross motions, shall comply with all relevant provisions of the CPLR, the Rules of the Court.

A. **GENERAL**

A motion on notice or notice of petition in a NYSCEF case shall be filed through NYSCEF and, except regarding a notice of petition commencing a Tax Certiorari Action, must be accompanied by a Request for Judicial Intervention if the motion is being filed upon commencement or if the matter has not yet been assigned to an IAS Justice. In addition, cross motions, opposition and reply papers must be submitted via NYSCEF.

B. **CALENDARING OF MOTION**

After a motion or notice of petition is filed with NYSCEF, the fee accepted by the County Clerk and the submission reviewed by court staff, the matter will be placed on the appropriate calendar.

C. **ADJOURNMENTS**

Motions that have been electronically filed may be adjourned only if an adjournment complied with any directives of the assigned Justice or relevant part rules. If an attorney wished to submit a stipulation regarding an adjournment to be "so ordered", such stipulation should be filed via NYSCEF. Attorneys should not assume a request for an adjournment submitted by stipulation has been granted until and unless the Court approves and so-orders the same.

D. **EXHIBITS**

Please see section III(D) Exhibits above regarding exhibits.

E. **WORKING COPIES**

Please see Section III(J) above regarding working copies.

F. AFFIDAVITS OF SERVICE

All affidavits of service must be filed with the NYSCEF system in compliance with statutory requirements or pursuant to the directive of the court.

G. DECISIONS

Decisions and/or Orders issued will be scanned by Chambers staff into NYSCEF, which will immediately transmit notice of the event via NYSCEF to all parties and a link to the decision and/or order. In the case of orders, this notice does not constitute service of notice of entry by any party (See Section III (I) for more information regarding Notice of Entry).

VI. **ORDERS TO SHOW CAUSE**

Proposed Order to Show Cause (hereinafter “OTSC”) shall comply with all relevant provisions of the CPLR and the Uniform Rules.

A. GENERAL

Except as provided in the following paragraph, a proposed OTSC and supporting documents in a NYSCEF case must be submitted by filing with NYSCEF. Original documents will not be accepted by the County Clerk.

B. WORKING COPIES

Counsel should consult relevant part rules to determine whether a working copy of the proposed OTSC and the supporting documents must be submitted.

C. HARD COPY SERVICE

In cases in which hard copy service is made of documents that were submitted in hard copy pursuant to paragraph III(B) and where no party is served electronically, the filing attorney or party shall, not later than three days after service, e-file the OTSC and the supporting papers, together with proof of hard copy service.

D. DECLINATION

If the proposed OTSC and supporting documents were filed with the court in hard copy form, the filing attorney or party shall file the supporting documents with NYSCEF no later than three days after the filing by the clerk.

E. EXHIBITS

Please see section III(D) Exhibits above regarding exhibits.

F. OTHER

Any OTSC not filed in accordance with the Uniform Rules and part rules will not be addressed by the part.

VII. **SEALED DOCUMENTS AND SECURE DOCUMENTS**

In order to seal a document in a NYSCEF case, a party must proceed in accordance with Part 216 of the Uniform Rules for the Trial Courts.

A. APPLICATION FOR A SEALING ORDER

If a party wished to file and maintain papers under seal and no sealing order has been issued in the case, the part must, either by motion or on submission to the court of a stipulation, obtain a court order directing the County Clerk to seal the file. The court will conduct a Part 216 analysis in deciding whether to issue such an order. **If the motion/stipulation is filed via NYSCEF, it will be open to the public until a sealing order is served upon the County Clerk.** Alternatively, the parties may make a motion or submit a stipulation without filing it in NYSCEF until the court rules on sealing issue. Any such motion or stipulation submitted in hard copy form must bear a [“Notice of Hard Copy Submission – E-filed Case”](#) and must be accompanied by a CD or other acceptable electronic storage device containing the filings in PDF format. Any opposition or reply papers shall likewise be submitted in hard copy form with such Notice, and be accompanied by a CD containing the documents in PDF format. Each such CD shall bear a label containing the name of the case, the index number, and the name and e-mail address of the submitting attorney.

B. SEALING EXISTING NYSCEF DOCUMENTS

If the court issues an order directing the sealing of an existing NYSCEF file or a document(s) already filed via NYSCEF, the applicant shall file with NYSCEF form [“Notification for Sealing”](#) along with a copy of the order as required by CPLR §8019(c). The County Clerk will seal the file or document(s) in question as

directed by the court. In addition, service should include a reference, if applicable to any hard copy filings that may exist for the sealed case in question. Upon receipt of the notification, the Clerk shall seal the documents in question and implement a secure action code to prevent access to these documents except by the parties to the action and the court.

C. IDENTIFYING SEALED DOCUMENTS

Submission of documents sealed via court order or by operation of law shall be clearly labeled as SEALED on the title page of the document submitted and, wherein applicable, be accompanied by a copy of the court order directing and permitting the sealing of same.

VIII. NOTE OF ISSUE

A. TORT ACTIONS

All discovery must be completed and the Note of Issue and Certificate of Readiness must be filed with NYSCEF. Parties will then be prepared for a pretrial conference at which time counsel must be prepared to discuss settlement at the conference.

B. TAX CERTIORARI PROCEEDINGS

The filing of a Note of Issue in a Tax Certiorari proceeding shall not occur via NYSCEF unless all disclosure proceedings, except as hereinafter set forth, have been completed. Any statement of income and expenses in such proceedings, as provided for pursuant to Uniform Rule §202.59 (22 NYCRR 202.59) must be served upon the respondent prior to filing of the Note of Issue. Upon service of said Note of Issue in such proceedings, the respondent may request an audit similarly provided for in Uniform Rule §202.59. Prior to any trial of said proceedings, the Court may also require the exchange of pre-trial memoranda and/or trial property appraisals by the parties of such proceedings.

IX. CONSOLIDATION OF JOINT TRIAL

Consolidation or joint trial of proceedings shall be at the discretion of the court. In the case of consolidation of tax certiorari proceedings, all pleadings containing multiple index numbers for multiple tax years shall be entered into the Clerk of the Court's casebook bearing the first year NYSCEF index number assigned unless directed otherwise by the court.

X. JUDGMENT

A. GENERAL PROCEDURES

Judgment should be e-filed through NYSCEF as a single transaction and not combined with any other unrelated filings or transactions.

1. SUBMISSION

A party seeking the entry of a judgment must submit a Bill of Costs, Interest Calculation, any necessary supporting information or a judgment roll as defined by CPLR §5016(c) or CPLR §3215(i) respectively. The statement for judgment must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Tompkins County Clerk as required by CPLR §5018(c)(1).

2. EXAMINATION

The Judgment Clerk will examine the submission for entry. If the submission is deficient, the deficiencies will be communicated to the submitter via the NYSCEF system. Once corrected, the judgment should be resubmitted via NYSCEF by logging in with the filers account and using the re-file link on the document list for that case.

3. NOTIFICATION OF ENTRY

Once the judgment is entered, notification will be sent via NYSCEF. Entry consists of both entry as defined by CPLR §5016(a) and any recordation of any required statutory fee. Such notification shall not constitute service of Notice of Entry, but instead only notification of entry of the judgment. It shall be the responsibility of the submitting party to service Notice of Entry on all parties.

B. ENTRY OF DEFAULT JUDGMENTS

A party seeking the entry of a default judgment by the Clerk pursuant to CPLR §3215 shall choose the following NYSCEF document type: *Clerk Default Judgment (Proposed)*. If the Bill of Costs is not included on the judgment itself, the filer must choose the *Bill of Costs* document type and file it as a separate

document. The filing fee is forty-five dollars (\$45) unless entry is predicated upon a not heretofore filed Stipulation of Settlement, in which case the fee is thirty-five dollars (\$35). If the entry of the judgment is conditioned upon a previously filed Stipulation or a Decision and Order, in which case no fee is due.

C. JUDGMENT SIGNED BY THE COURT:

As prescribed by Uniform Rule §202.5-b(d)5, a party seeking the entry of a judgment signed by the court shall choose the following NYSCEF document type: *Judgment – To Court (proposed)*. The judgment shall comply with statutory requirements and all necessary supporting pleadings must be filed as separate documents. A working copy of the submission should only be provided to the assigned Justice if indicated in part rules. Individual court part rules regarding the submission of judgments must be complied with in addition to statutory requirement and protocols.

D. CONFESSION OF JUDGMENT

Entry of judgment by confession shall adhere to statutory requirements of CPLR §3218.

1. SUBMISSION

A party seeking the entry of judgment by confession via NYSCEF shall choose the document types *Confession of Judgment (Affidavit of Defendant)* and *Confession of Judgment* for the statement. A statutory fee of two hundred and ten dollars (\$210) for the assignment of an Index Number is required, unless the affidavit is executed in conjunction with a pre-existing Tompkins County action. The statement for judgment must be submitted simultaneously with the affidavit, the judgment entered immediately thereupon the filing of the affidavit.

2. VENUE

Venue is properly based in Tompkins County upon either the residence of the confessor at the time of execution of the affidavit, or upon express authorization as contained in the affidavit.

3. ENTRY

Notification will be communicated via NYSCEF to the filer upon entry. Such notification shall not constitute service of Notice of Entry, but instead only notification of entry of judgment. It shall be the responsibility of the submitting party to serve Notice of Entry on all parties.

XI. NOTICE OF APPEAL AND APPEAL PAPERS

A Notice of Appeal shall be filed via NYSCEF and the fee paid. The Notice of Appeal will not be considered filed until the payment of the fee has been accepted by the Tompkins County Clerk's Office. The Notice shall be filed in conformity with existing rules, and shall contain the Request for Appellate Division Intervention form as required by the Appellate Division. The other parties to the case may be served via NYSCEF in the manner described above. Proof of hard copy service must be filed via NYSCEF. At present, the Appellate Division does not handle appeals in NYSCEF by electronic means. As such, the appellant shall be responsible for the conversion of e-filed submissions to hard copy. The Tompkins County Clerk's Office will not provide hard copies of filed documents to constitute the record. Upon disposition of the appeal, the party that prevails on appeal must upload a copy of the appellate decision in NYSCEF.

XII. OTHER

A. EFFECT OF COMMUNICATION FROM THE TOMPKINS COUNTY CLERK'S OFFICE

Any and all notification from the Tompkins County Clerk's Office as Clerk of the Supreme and County Courts shall not be construed or considered to be service of notice of entry for purposes of commencement of the statutory time to appeal, or otherwise. Such communications from the Clerk shall constitute and serve only as notification of receipt or entry of ministerial capacity.

B. NOTICE TO THE COUNTY CLERK:

If an order in a NYSCEF case requires that the Tompkins County Clerk take action, the party who filed the order must file a [Notice to the County Clerk – CPLR§8019\(c\)](#).

C. NOTICE TO COUNTY CLERK TO AMENDMENT TO CAPTION

If the caption in an NYSCEF case needs to be amended, the party requesting the amendment must file a [Notice to County Clerk Amendment to Caption](#).

D. SUPPORT

If you have questions pertaining to the NYSCEF system or NYSCEF procedures, please contact [E-Filing Resource Center](#) at 646-386-3033.

A computer and scanner will be available in the Tompkins County Clerk's Office located at 320 N Tioga St, Ithaca, NY 14850 basement level.

February 13, 2018