

## **CHEMUNG COUNTY SURROGATE'S COURT LOCAL PROTOCOLS FOR ELECTRONIC FILING**

The Administrative Judge of the Sixth Judicial District, the Surrogates of Chemung County, and the Chief Clerk of the Chemung 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 Chemung 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](http://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 all new proceedings filed in this court on or after December 22, 2021, other than proceedings involving inter vivos (living) trusts. Except in limited circumstances, all such proceedings must be commenced by filing with the court electronically through NYSCEF. All subsequent documents in such proceedings must also be e-filed.

**Hybrid Proceedings:** The NYSCEF System will allow a filer to e-file a document in a non e-filed estate in accordance with Uniform Rule §207.4-a(e)(1). Previously hard filed estate documents will not be uploaded to the NYSCEF system unless determined necessary by the court.

The party first filing electronically in a hybrid proceeding shall serve all other parties with a Notice Regarding Availability of Electronic Filing (see NYSCEF forms page).<sup>1</sup> Proof of service of such notice shall be promptly filed with the court. Attorneys who do not consent to the use of e-filing in a hybrid proceeding should file a declination of consent with the court and serve the declination on all parties. Non-participating attorneys must attach a Notice of Hard Copy Submission – E-Filed proceedings to all hard copy filings.

Hard copy submissions in an e-filed estate such as verified claims, guardian ad litem reports, etc. will be scanned and uploaded to the NYSCEF record thereby notifying all consenting filers in the case of the uploaded document(s).

**Documents Must Be E-Filed:** Unless otherwise provided in the e-filing rules, these protocols, 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 filed with the NYSCEF system.

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

**Non-Participation in E-Filing:** An attorney who certifies in good faith that he or she lacks the equipment or knowledge required 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 form with the clerk. Attorneys also may be exempted by the court for good cause shown. Unrepresented litigants are exempt from e-filing but may choose to participate (see Uniform Rule [22 NYCRR] 207.4aa[e][1]; see also CPLR 2111).

2) **E-Filing Documents in Surrogate's Court:**

**Essential Step Prior to E-Filing:** Prior to entering any information into an initial filing, a search must be conducted in the NYSCEF system on the decedent's last name, using the first initial, to determine if a file is already open. In addition, you must contact the court to ascertain whether there may be another will for the decedent on file with the court (e.g., filed for safekeeping).

**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 same county as is shown on your papers.**

The case name must be entered as follows for a *probate* proceeding or a *voluntary administration proceeding with will*:

- Initial entry must be identical to the name on the will
- If the name on the death certificate, petition or small estate affidavit is different, that becomes an "AKA"
- No punctuation or spaces should be used when entering the name or "AKA"

The case name must be entered as follows for an *administration* proceeding or a *voluntary administration proceeding without will*:

- Initial entry must be identical to the name on the death certificate
- If the name on the petition or small estate affidavit is different, that becomes an "AKA"
- No punctuation or spaces should be used when entering the name or "AKA"

**Document Quality:** Before e-filing, ensure all documents are properly scanned, i.e. order of pages, images are clear, etc., as the scanned images are the official record copy of the court. A filer may be required to re-file a document if the document quality is found to be unacceptable to the court.

**Notice of Hard Copy Submission:** Where, within the e-filing rules, an attorney or an unrepresented litigant participating in e-filing submits a document in hard copy, the document must be accompanied by a Notice of Hard Copy Submission – E-Filed Proceeding.

Attorneys who are exempt from e-filing are required to attach this form to all hard copy filings, while unrepresented litigants who choose not to participate in e-filing are not required to do so.

**Request for Surrogate's Court Action:** This court requires the Request for Surrogate's Court Action form (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 Surrogate's Court Action form.

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.

**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 unless otherwise directed by the court. The Court will accept the image as evidence of death, pursuant to Uniform Rule§207.15.

**Wills:** Scan the **original** will, but **DO NOT UNSTAPLE**. It is not necessary to e-file an attorney certified copy. File the original paper will within two (2) business days of e-filing. **A staple affidavit may be requested if a contest is anticipated or if required by the surrogate.**

**Citations:** Submit a proposed citation electronically through NYSCEF only. Once the citation is issued, the court will upload the completed version to NYSCEF. If the 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 or as directed by court order. **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 NYSCEF forms page).

**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 thereby notifying all counsel/consenting parties that the decree or order has been signed. Notification through NYSCEF does not constitute service of notice of entry of an order or decree upon any party [see Uniform Rule §207.4-a(h)]. Users who have requested a certified copy of the decree or order and have paid the appropriate fee will receive the certified copy by first class (regular) mail. The court will try to accommodate requests for a signed duplicate original decree of judicial settlement or a wrongful death compromise decree, but users must make that request in the *comments* section of NYSCEF (**see also** *Decrees, Orders and Judgments* below).

**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 NYSCEF forms page).

**Working Copies:** Chemung County Surrogate’s Court does not require working copies of e-filed documents.

- 3) **Payment:** This court accepts payment of fees by credit card online through NYSCEF or by payment made at the court (in person or by mail). There are no administrative fees to use the NYSCEF System. **Credit card payments made through NYSCEF or at the court are subject to a non-refundable credit card service fee of 2.99% of the payment amount which will be assessed at the time of payment. The court does not receive any portion of the service fee.**

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 filing of additional documents may not be permitted 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 the website. You must provide the credit card information with each filing as credit card information is not retained. Your credit card will be charged at the time of filing. Make sure your 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. The court cannot process the filing until payment is received in full and will delete the filing if payment is not made within **ten business days** after e-filing.

When requesting certificates of appointment (after letters have issued) or certifications or exemplifications, do not use the *pay at court* option as the court is unable to fulfill these requests until payment is made.

- 4) **Notifications:** Notification of defective filings will be sent out by email or made by telephone depending on the circumstances. Clerks are available for consultation during regular business hours via telephone at (607) 873-9440 or email at [6JDChmSurr@nycourts.gov](mailto:6JDChmSurr@nycourts.gov).

**Certificates and Letters:** Certificates and letters requested via NYSCEF paid for in advance by credit card will be issued and promptly provided to the requestor. Certificates and letters requested via NYSCEF using the *pay at court* option will not issue until full payment is received and processed by the court.

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

- 5) **Signatures:** Documents requiring signatures shall be considered 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).

- 6) **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 NYSCEF forms page).

If the Court grants the sealing request, the 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 NYSCEF forms page).

- 7) **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, notification via NYSCEF does not constitute service of entry of an order or decree upon any party [see Uniform Rule §207.4-a(h)].

**Delivery of Court Documents Requiring a Court Seal:** Court issued documents requiring a court seal such as letters and certificates of appointment, certifications and/or exemplifications will continue to be provided to the requestor in hard copy by the usual means (SASE, courier, USPS mailing or pick up). The preferred method of contact or return should be noted by the filer on the Request for Surrogate's Court Action form.

**Contact Information:** For assistance, filers may contact the court directly at (607) 873-9440 or [6JDChmSurr@nycourts.gov](mailto:6JDChmSurr@nycourts.gov) or may contact the E-Filing Resource Center at (646) 386-3033 or [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov).