

## SURROGATE'S COURT E-FILING PROTOCOL

The Administrative Judge of the Sixth Judicial District, the Surrogate of Delaware County, and the Chief Clerk of the Delaware 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 Delaware 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 Things, 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 **Administrations, Probates, Guardianships and related matters thereto, including Small Estate (Voluntary Administration) Proceedings.** 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 be e-filed, unless an exception is granted (i.e. hard copy submission accompanied by a Hard-Copy Submission form - NYSCEF Form SC-11).
- **Consensual E-Filing:** Attorneys E-filing in a consensual proceeding may commenced by filing with the Court electronically through NYSCEF and, except in limited circumstances, all subsequent documents filed by participating parties must be e-filed.

### **Exemptions:**

An attorney who certifies in good faith that they lack the equipment or knowledge needed to e-file and has no staff person under their direction who has such knowledge or needed equipment, may opt out of e-filing in a mandatory case by filing an Opt-out form with the Clerk (NYSCEF Form SCM-2). Attorneys may also be exempt by the Court for good cause shown. Per Uniform Rule 207.4-aa(e)(1), an unrepresented litigant, proposed intervenor or other non-party seeking relief from the Court, who is unrepresented, is exempt from having to file and serve document electronically.

- 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 **UCMS**.
- 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 filed with the NYSCEF system.

## **2) Non-Participation in E-Filing:**

- Notice of Opt-Out from Participation in Action Subject to Mandatory Electronic filing: Attorneys who do not wish to e-file in a mandatory proceeding must serve and file with the clerk's office when an attorney is opting out of mandatory e-filing pursuant to Court Rules 202.5-bb. The non-participating attorney must attach a Notice of Hard Copy Submission Form (see NYSCEF forms page) to all hard copy filings.
- Declination of Consent (Consensual Cases): Attorneys who do not consent to e-filing in a consensual proceeding should file a declination of consent with the court and serve the declination on all parties. Non-participating attorneys in a consensual proceeding must attach a Notice of Hard Copy Submission- E-Filed Proceeding (see NYSCEF forms page) to all hard copy filings.
- 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.

## **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 file is already open. In addition, you must ascertain whether there is another will for the decedent on file with the Court (e.g., filed for safekeeping). **The existing Court policy of charging for searches and not accepting search requests by phone remains in place.**

- 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:

- 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”
- Request for Surrogate’s Court Action: 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 only a Request for Surrogate’s Court Action Non-Proceeding Relief (p.2 of the Request form).
  - Death Certificates: Original death certificates need not be submitted directly to the Surrogate’s Court. They can be e-filed. **The Court reserves the right to request originals.**
  - Wills: Will is required to be scanned by the 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. The Citation should be served with a Notice Regarding Availability of Electronic Filing, as the case may be. (See Forms page on NYSCEF site.)
  - 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 certified copy of the decree or order and have paid the appropriate fee via NYSCEF will receive the certified copy 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. Working copies do not become part of the official record and will be destroyed by chambers at the disposition of the case.

#### **4) Payment:**

**Fees may be paid by VISA or MASTER CARD via NYSCEF or at the court by charge card, firm check or bank/certified check.** 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 Court will not allow the filing of additional documents if the filer owes an outstanding fee in that proceeding. If paying 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 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. **(607) 376-5405, or email [delawaresurrogatecourt@nycourts.gov](mailto:delawaresurrogatecourt@nycourts.gov).**

- **Return of Requested Documents:** You are *required* to provide a pre-paid self-addressed envelope. If a self-addressed stamped envelope is not provided, the clerk will call or email the attorney to let them know that the documents are ready for pickup or mailing once a pre-paid self-addressed envelope is received.
- **Certificates and Letters:** Upon request made via NYSCEF, the court will mail out Certificates and Letters. Users must request and pay for certificates in advance.
- **GeneralCorrespondence:** All general correspondence, adjournment requests and conference requests maybe 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 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. The notification does not constitute service of notice of filing upon any party (see, Uniform Rule § 207.4-a[h]). **The method of contact/return should be noted on the Request for Surrogate’s Court Action form.**