NEW YORK STATE

Unified Court System

OFFICE OF COURT ADMINISTRATION

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December 22, 2020

To: Bar Associations, Legal Service Providers, Attorneys and Other Interested Parties

Re: New York State Courts Electronic Filing Program

As you may know, the Office of Court Administration submits a report each February 1 to the Legislature, the Governor, and the Chief Judge evaluating the State's experience with the Unified Court System's electronic filing system. I write to invite your comments on electronic filing for inclusion in that annual report in 2021.

I write as well to solicit your observations, for inclusion in the February report, on a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Judge and Chief Administrative Judge to make e-filing mandatory across the state – in any or all of the State's trial courts.

This recommendation was endorsed in a recent report of The Commission to Reimagine the Future of New York's Courts, created last June by Chief Judge Janet Difiore and charged with, inter alia, examining the use by the UCS of technology and online platforms, and making recommendations to improve the delivery and quality of justice services, facilitate access to justice, and better equip the UCS to keep pace with society's rapid evolving changes and challenges.[1] Addressing electronic filing generally, the Commission reported: "In-person filing wastes attorney time, client money, and court resources, and is especially dangerous during the global health crisis we are currently experiencing." (Report, p.9) It further stated: "By implementing mandatory, standardized e-fling throughout the state, courts can save time and money and keep everyone safe. However, the existing exceptions for pro se litigants and technologically challenged attorneys should remain." (id.)

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[1] Initial Report on the Goals and Recommendations for New York State's Online Court System, Online Courts Working Group of the Commission to Reimagine the Future of New York's Courts, November 9, 2020 ("Report"), available at http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf.

Currently, the Chief Administrative Judge is restrained from making e-filing mandatory throughout New York State. The Commission's proposal -- to lift the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in any court and/or action -- would not alter requirements of consultation with the Bar, legal services providers and other groups (as well as the need for consent of the County Clerk in affected counties outside New York City in Supreme Court matters) in advance of any future expansion or affect other existing provisions in the e-filing legislation. Further, unrepresented persons in cases in which e-filing would otherwise be mandatory would continue to be exempt from e-filing unless they affirmatively choose to participate. Moreover, attorneys in such cases would continue to be able to opt out of e-filing if they lack the equipment or knowledge to participate. Finally, the proposal would not alter current requirements of confidentiality in the treatment of actions that require it.
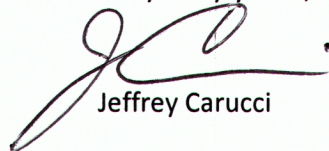
In order that we may have the time needed to prepare the report, I ask that you as a group or any of your individual members submit any comments by January 25, 2021. All comments received will be included in the Annual Report. Comments should be sent by e-mail or regular mail to either of the following addresses:

> Jeffrey Carucci. Dir.
> Statewide Coordinator for
> Electronic Filing
> Office of Court Administration
> 25 Beaver Street
> New York, New York 10004
>
> efilingcomments@nycourts.gov

We look forward to your comments on this program and proposal.

Very truly yours,

Jeffrey Carucci

cc: Hon. Lawrence K. Marks, Chief Administrative Judge
        John W. McConnell, Esq., UCS Executive Director
        Nancy Barry; UCS Chief of Operations
        Eileen D. Millett, Esq., UCS Counsel
        Marc C. Bloustein, UCS First Deputy & Legislative Counsel