

Joint Protocols for New York State Courts E-Filing (NYSCEF) Cases Filed in Westchester County



I. Introduction: In implementation of the [New York State Courts E-Filing system](#) (hereinafter referred to as “the NYSCEF system”) in Westchester 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 Ninth Judicial District and the Westchester County Clerk as Clerk of the Supreme and County Courts hereby promulgate local user protocols to assist users 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 Manuals provided on-line at the NYSCEF website (www.nycourts.gov/efile) as well as any 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 thereto, do not change applicable rules or statutes with respect to civil practice as defined by the New York State Civil Practice Law and Rules (hereinafter “CPLR”), the Uniform Rules or the Commercial Division Rules (22 NYCRR 202.70). In addition, users are encouraged to be fully familiar with the [Westchester Supreme Court Differentiated Case Management Protocol](#), the [Practice Guide to the Commercial Division](#), the [Calendar Procedure for the Tax Certiorari/Condemnation Part](#) and the [IAS Part Rules](#) as they apply to the action type being filed in the NYSCEF system.

B. Official Case Record: 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 Westchester 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 Clerk of the Supreme and County Courts, the Westchester County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention and dissemination of court records within Westchester 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. All attorneys admitted to practice in New York State are automatically registered to use NYSCEF and can log into the system using their Attorney Registration Number and their Attorney Online Services account password. Attorneys who have not created an Attorney Online Services account (usually done when renewing one’s bar registration), can use the Create Account link at www.nycourts.gov/efile. An individual acting as filing agent for an attorney to a case must file a Statement of Authorization for E Filing form accessible at www.nycourts.gov/efile, whereby the attorney authorizes the agent to file on the attorney’s behalf. 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. Cases Eligible for E-Filing: In Westchester County, e-filing may be mandatory, voluntary or unavailable depending on the case type.

1. **Mandatory Electronic Filing¹:** All article 75, commercial, foreclosure, tax certiorari and tort actions as defined by the Administrative Order of the Chief Administrative Judge of the Courts, dated January 12, 2012 must be commenced and proceed electronically. Unless otherwise provided by the Uniform Rules, the County Clerk will not accept commencement documents in paper form in these cases nor will the court accept subsequent documents in

¹ Mandatory electronic filing has expanded in stages in Westchester County with Commercial Division eligible cases becoming mandatory on February 1, 2011, tort actions becoming mandatory on March 1, 2011, commercial actions becoming mandatory on June 1, 2011 and article 75, foreclosure and tax certiorari actions becoming mandatory on January 17, 2012.

such matters in paper form. If a party wishes to commence a case under seal or under an anonymous caption, the party should contact the Office of the Chief Clerk of the Court before filing any documents.

2. **Voluntary Electronic Filing:** Small Claims Assessment actions may be electronically filed on a voluntary basis in Westchester County Supreme Court.
3. **Actions Filed in Paper:** Article 78, election, matrimonial and mental hygiene, including Article 81 guardianship matters cannot be filed electronically, even on a voluntary basis. These actions must be commenced and proceed in hardcopy.
4. **Exemptions from Electronic Filing in Mandatory Actions:** An exemption from having to file and serve documents electronically may be claimed by an attorney or a party not represented by an attorney by filing the form prescribed by the Chief Administrator (www.nycourts.gov/efile). If an attorney or self-represented party is exempt from participation in e-filing in accordance with the Uniform Rules, any document filed with the court in hard copy form by that person must bear a completed [Notice of Hard Copy Submission – E-filed Case](#) indicating that the document is exempt from mandatory e-filing. Any emergency filing made in hard copy in accordance with the Uniform Rules must also bear a completed [Notice of Hard Copy Submission – E-Filed Case](#). Please note that the emergency filing procedures set forth in the Uniform Rules refer to statutory deadlines and not deadlines as set by the court. Further, under the Uniform Rules, the filer must electronically file the documents initially filed in hard copy form within three business days of the emergency filing. The originals will be discarded after the documents have been processed so failure to electronically file as required will lead to an incomplete record.

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 Westchester 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: Cases that are commenced by the filing of initial papers with the NYSCEF system are identified as e-filed cases by assignment of an index number of 50,000 or higher. Upon filing of the commencement pleadings and payment of the statutory fee, the Westchester County Clerk will assign a NYSCEF designated Index Number and the filer shall be notified via the NYSCEF system of the number assigned and filing date. Such index number must be affixed to all document submissions, filings and communications to the Westchester County Clerk and the Court.

B. When converted to NYSCEF: Cases originally commenced in hard-copy form but later converted to NYSCEF status consensually and by delivery of an original, signed [Stipulation and Consent to E-file](#) (Form EF-10) to the Office of the Westchester County Clerk will be assigned a new NYSCEF Index Number of 50,000 or higher. Conversion will take place within five (5) business days or receipt of signed [Stipulation and Consent to E-file](#), and confirmation of new NYSCEF Index Number shall be communicated via e-mail to counsel as indicated on the Stipulation.

III. Filing of Papers

A. Commencing an Action: To commence an action, login to the NYSCEF System at www.nycourts.gov/efile, choose the court in which you wish to commence your action, and then choose the action type. Please be aware of the following Westchester requirements when commencing your action:

- 1. Article 75/Commercial/Tort Actions:** When commencing an Article 75, Commercial, Tort or any other NYSCEF eligible action required to be commenced by Petition, select *Petition* as the document type under the Commencement Document menu. If filing a Notice of Petition in addition to the Petition, please select *Notice of Petition* as a separate document from the Accompanying Documents menu. The *Petition* and *Notice of Petition* must be separate PDF files.
- 2. Foreclosure Actions:** When a *Notice of Pendency* (Lis Pendens) is filed at the same time a foreclosure action is commenced, it must be filed as a separate PDF file. Please select the initiating documents from the Commencement Document menu and then select *Notice of Pendency* as a separate document from the Accompanying Documents menu.
- 3. Tax Certiorari Proceedings:** When commencing a tax certiorari proceeding, the Notice of Petition and the Petition must be uploaded as one PDF file using the document type *Notice of Petition/Petition (Tax Certiorari)* in the Commencement Document menu.

B. Consenting to Electronic Filing: The procedure for obtaining consent for voluntary electronic filing is set forth in Uniform Rule [§202.5-b\(b\)\(2\)](#). In general, consent shall be obtained by stipulation or by the service of a [Notice of Availability of E-Filing](#) (Form EF-3 on the NYSCEF website) responded to by all other parties logging on to NYSCEF and electronically registering consent. By logging in at your earliest convenience to register your consent, you will be assured of promptly receiving all court notifications. Unless exempted from the e-filing requirements by the Uniform Rules, all parties must consent to e-filing in cases subject to mandatory e-filing.

C. Paper Documents Not Accepted: All documents required to be filed with the court in any e-filed case must be electronically filed unless otherwise provided by the Uniform Rules or this Protocol. Any such document that is submitted in hard copy form without a [Notice of Hard Copy Submission – E-filed Case](#) attached as a cover sheet will not be accepted by the Clerk. The documents will be returned and deemed filed when properly submitted.

D. Rejection of Hard Copy Filings: In accordance with Uniform Rule §202.5(d)(1), the County Clerk shall refuse to accept for filing hard copy papers filed in an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules and the papers bear a [Notice of Hard Copy Filing Submission – E-filed Case](#). Equipment will be available in the 9th floor courthouse library and the Office of the Westchester County Clerk for use by filers with hard copy submissions so that such papers can be electronically filed.

E. Payment of Fees: Payment for fee-bearing NYSCEF documents may be made online via credit card (American Express, MasterCard or Visa) at the time of submission. Alternatively, fee payment may be made via Automated Clearing House (ACH) Debit from a bank account provided an authorization form is on file in the Office of the Westchester County Clerk (visit the “Services” tab at www.WestchesterClerk.com for more details).

F. Filing a Document where Size, Consistency or Context Prevent E-filing: With limited exceptions as set forth in the Uniform Rules and herein, all documents to be filed with the court in a NYSCEF case shall be filed online via the NYSCEF system. However, should the size, consistency or context of a hard copy document preclude its electronic filing, the user shall electronically file a [*Notice of Hard Copy Filing – E-filed Case*](#). Any hard copy submitted pursuant to this section shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice received from the NYSCEF site confirming receipt of the [*Notice of Hard Copy Filing – E-filed Case*](#). Any party may object to such hard copy filing, and the Court, in response to such objection, may, following the hard copy filing, fashion such relief as it deems appropriate pursuant to and in furtherance of the Uniform Rules and these protocols, including, but not limited to, an Order directing the filing party to file such documents online via the NYSCEF system. When exhibits are impractical to file pursuant to 202.5-b(d)(6), an additional [*Notice of Hard Copy Exhibit Filing \(EF-18\)*](#) is required to be submitted.

G. Social Security Numbers: An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of General Business Law §399-dd(6), which will often require redaction of any social security number that appears in the original document.

H. Exhibits: In the NYSCEF system, each exhibit should be uploaded as a separate PDF file. After uploading a primary document, please choose the document type “Exhibit”, enter the appropriate number or letter, and be sure to place a check mark to the right of “Attach to main document”. Each exhibit should bear a separate cover sheet clearly marked as Exhibit A, Exhibit B, etc.

I. Errors Upon Submission: Submission of documents which, upon examination, require correction or addition will result in notification to the filer advising that there is a problem with a document. The filer shall make the required corrections and/or additions as indicated in the e-mail transmission sent by the NYSCEF site. The corrected documents may be resubmitted using the „re-file this document“ link highlighted in the document list for the respective case. Please note that in the case of multiple submissions, all related documents filed at the same time will also be returned for correction until all documents are properly submitted. In the event a document is returned for correction, the original file date will be preserved.

J. Technical Failures: When filing by electronic means is hindered by a technical failure (as set forth in Uniform Rule [§202.5-b\(h\)\(3\)\(i\)](#)), a party may file with the appropriate Clerk in hard copy. With the exception of deadlines that by law cannot be extended, 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.

K. 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.

L. Discovery Materials: In any action subject to electronic filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. Electronically filed discovery materials become available to the public in the case docket, as would any other electronically filed document, so confidential materials should be exchanged between parties outside of the NYSCEF System. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from

such materials as part of motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or part rule.

M. Notice of Entry: Pursuant to the NYSCEF Rules, the Court Clerk shall file orders electronically and such filing 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. Notice of Entry is served by a party as follows: the party shall transmit electronically to the parties to be served a notice of entry, a copy of the notification received from the court, and a copy of the order or judgment. The Notice of Entry language must be on the face page of the document and not contained in the legal backing.

N. Working Copies: Electronically 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 the NYSCEF system firmly fastened thereto as a cover page will not be accepted.

- 1. Filing Must Precede Delivery of Working Copies:** Pursuant to Uniform Rule §202.5-b, any working copy submitted shall include, as a cover page firmly fastened thereto, a copy of the Confirmation Notice generated by the NYSCEF site at the time of filing. Court staff will not screen each working copy to be sure that it 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:** Working copies must contain tabs and backs. Each document or group of documents that is separately bound must have a Confirmation Notice firmly fastened thereto as a cover page.
- 3. Working Copies Not Accepted by the County Clerk:** Working copies are not accepted by the Office of the Westchester County Clerk for forwarding to the assigned IAS Justice, nor are they received and filed as part of the case file maintained by the Westchester County Clerk in his capacity as Clerk of the Supreme and County Courts.
- 4. Printing of Working Copies:** Working hard copy documents, when required by the assigned IAS Justice or by rules of procedure, are not printed and provided by the Office of the Westchester County Clerk or the Civil Calendar Clerk's office.
- 5. Delivery of Working Copies:** All working copy documents shall be delivered to the court part of the assigned IAS Justice or [in the manner directed by the court](#). Filers must familiarize themselves with 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".
- 6. Working Copies Discarded:** The official record of a document in an electronically filed case is the document filed via the NYSCEF system. 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 the NYSCEF system, the document will not be part of the court record.

IV. Preliminary Conferences: For actions in the preliminary conference part, in lieu of making an appearance at a scheduled preliminary conference, all parties in a NYSCEF case may agree upon a discovery schedule and submit an appropriate preliminary conference form order stipulated to by all parties as a [Proposed Preliminary Conference Order](#) in the NYSCEF system at least two days prior to the conference date. The discovery schedule therein set forth must be in compliance with the disclosure guidelines for a case of the type in question as set forth in Uniform Rule 202.19. No further action by counsel is required. The signed preliminary conference order will be posted on the NYSCEF site, and counsel will be notified via the NYSCEF system. If the contents of the form submitted are not acceptable to the court, counsel will be contacted. See Uniform Rule 202.12(b).

V. Requests for Judicial Intervention (RJIs): An RJI in a NYSCEF case shall be filed via the NYSCEF system. Any attachments to an RJI, with the exception of a motion or order to show cause, shall be submitted along with the RJI as one PDF file.

A. Tort, Contract and other NYSCEF-eligible Actions and Proceedings: If an RJI is accompanied by a Request for a Preliminary Conference, the filer should choose document type *RJI re: PC Request* and both documents should be uploaded as one PDF file in the NYSCEF system. In a medical malpractice action, if an RJI is accompanied by a Notice of Medical Malpractice, the filer should choose document type *RJI re: Notice of Medical Malpractice* and both documents should be uploaded as one PDF file in the NYSCEF system.

B. Commercial Division Assignments: In the case of an RJI seeking assignment to the Commercial Division, the filer must submit, as required by the standards for assignment of cases to the Commercial Division (Uniform Rule 202.70 (d)(2)), the [Commercial Division Request for Judicial Intervention Addendum](#) and ensure that all pleadings have been electronically filed. The RJI and addendum should be uploaded as one PDF file in the NYSCEF system.

C. Tax Certiorari Proceedings: In the case of an RJI accompanying a petition to commence a Tax Certiorari proceeding, neither document is forwarded to the court for calendaring purposes. Said filings shall remain with the Westchester County Clerk and entered into the casebook as required by CPLR §9702(2). The filing of commencement pleadings institutes pre-calendaring activities as prescribed by the Uniform Rule 202.59.

D. Residential Foreclosure Actions: The plaintiff is required to file proof of service of the summons and complaint with NYSCEF and, at the same time, file an RJI with foreclosure addendum. For actions commenced after October 20, 2010, plaintiff must file an Affirmation of Accuracy (Res. Mort. Foreclosure) with the RJI. Depending on the information provided in the RJI, the court may schedule a mandatory settlement conference pursuant to CPLR §3408 and Uniform Rule §202.12-a. No motions or ex parte applications may accompany the RJI if the matter is subject to a mandatory settlement conference pursuant to CPLR §3408.

VI. Motions: Motion submission, including cross motions, shall comply with all relevant provisions of the CPLR, the Rules of the Court, the Commercial Division Rules (22 NYCRR 202.70), [the Practice Guide to the Commercial Division](#), [the Differentiated Case Management Protocol](#) and [part rules](#).

A. General: A motion on notice or a notice of petition in a NYSCEF case shall be filed through the NYSCEF system 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 and opposition and reply papers must be submitted via the NYSCEF system.

1. **Tort, Contract and other NYSCEF-eligible Actions and Proceedings:** A party seeking to make a discovery motion shall do so in accordance with the [Differentiated Case Management Protocol](#) and via the NYSCEF system by initially filing a *Request for Pre-Motion Conference (Compliance Part)* via the NYSCEF system. When filing this document type, the filer must select *Non-Motion Documents* and then *Documents not related to a motion/petition/OSC* for this selection to appear in the Document Type drop down. As substantive motions do not require a pre-motion conference, they may be filed via the NYSCEF system and will be referred to an IAS Justice. Notification will be forwarded through the NYSCEF system upon the assignment of an IAS Justice or a Part. Please review the [Differentiated Case Management Protocol](#) and [IAS part rules](#) for additional information about motion practice.
2. **Commercial Division:** Pursuant to the Commercial Division Rules (22 NYCRR 202.70) and the [Practice Guide to the Commercial Division](#), no motion shall be made, except as allowed by Rule 24 of the Commercial Division Rules, without a pre-motion conference with the court. Pre-motion conference requests shall be made via telephone to chambers at (914)824-5419 rather than via the NYSCEF system. All motions for summary judgment shall be made via the NYSCEF System and shall be accompanied by the document type *Statement of Material Facts* pursuant to Rule 19-a of the Commercial Division Rules. No reply papers are permitted where the motion is brought by Order to Show Cause unless previously authorized by the Court. Use the “Special Instructions” field in the NYSCEF system to reference court authorization of reply papers.
3. **Residential Foreclosure Actions:** The plaintiff may apply ex parte for the appointment of a referee to compute and for a judgment of foreclosure and sale if no defendant served an answer to the complaint. The plaintiff must move on notice for summary judgment and the appointment of a referee to compute and for a judgment of foreclosure and sale if a defendant served an answer and did not waive further notice. Whether submitted ex parte or on notice, applications for the appointment of a referee to compute must include a proposed order of reference submitted as NYSCEF document type *Proposed Order*. Whether submitted ex parte or on notice, applications for a judgment of foreclosure and sale must include a proposed judgment submitted as NYSCEF document type *Judgment to Court*. In cases where mandatory settlement conferences are required pursuant to CPR §3408, said submissions can only be made after the case has been released from the settlement conference part.

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

1. **Tort, Contract and other NYSCEF-eligible Actions and Proceedings:** When filing a discovery motion, which shall be made by Order to Show Cause in the NYSCEF system, enter a Monday return date. Utilize the “Special Instructions” field to reference the *Briefing Schedule* in accordance with which the motion is being made. Oral argument will be heard and appearances are required. Substantive motions shall be made returnable and heard in the IAS parts in accordance with the [part rules](#). Please refer to [part rules](#) to determine whether an

appearance is required and utilize the “Special Instructions” field in the NYSCEF system to incorporate appropriate instructions

2. **Commercial Division:** When filing your motion in the NYSCEF system, enter a Friday return date. Motions made returnable at any other time, absent prior permission of the Court, will be adjourned by the Part Clerk to the next available Friday. Motions are submitted without appearances unless otherwise directed by the Court.
3. **Tax Certiorari/Condemnation Part:** When filing a motion in the NYSCEF system, enter a Wednesday return date. No appearance is required unless notified by the Clerk.

C. Adjournments: Motions that have been electronically filed may be adjourned only if an adjournment complies with any directives of the assigned Justice or relevant [part rules](#). If an attorney wishes to submit a stipulation regarding an adjournment to be “so ordered”, such stipulation should be filed via the NYSCEF system and the appropriate fee paid. 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.

1. **Tort, Contract and other NYSCEF-eligible Actions and Proceedings:** A party seeking an adjournment shall do so in accordance with the [Differentiated Case Management Protocol](#) and applicable [part rules](#) and via the NYSCEF system by choosing the following NYSCEF document type: *Request for Adjournment of Motion*.
2. **Commercial Division:** Adjournments are governed by Rule 16(c) of the Commercial Division Rules and the [court’s practice guide](#). In addition, pursuant to the [court’s practice guide](#), requests for adjournment of matters appearing on the Friday calendar should be made no later than 3 p.m. on Thursday. Requests for adjournments should be on consent and, if approved by the Court, confirmed by a signed stipulation by all counsel. Such stipulation must be filed via the NYSCEF system and designated as a *Stipulation to Adjourn Motion*.
3. **Tax Certiorari/Condemnation Part:** A party seeking an adjournment shall do so in accordance with [part rules](#) and via the NYSCEF system by choosing the following NYSCEF document type: *Request for Adjournment of Motion*.

D. Exhibits: Please see Section III (H) above regarding the submission of exhibits.

E. Working Copies: Please see Section III (N) 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. Affidavits of Service are required in an e-filed case only when documents have been served in hard copy or pursuant to the directive of the court.

G. Decisions: Decisions and/or orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event via the NYSCEF system 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 (M) for more information regarding Notice of Entry).

VII. Orders to Show Cause: Proposed Orders to Show Cause (hereinafter “OTSC”) shall comply with all relevant provisions of the CPLR, the Uniform Rules, Commercial Division Rule 20 (22 NYCRR 202.70), Uniform Rule 202.7(f) and the [Differentiated Case Management Protocol](#) regarding notice of the application to the opposing party. Those OTSCs in which interim relief is sought require prior notice in accordance with the aforementioned rules. Counsel must contact chambers to set up a time to be heard as to the interim relief requested.

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 the NYSCEF system. If the Proposed Order to Show Cause is being submitted simultaneously with the purchase of an Index Number, the filer must select *Proposed Order to Show Cause- NO FEE* as their document type, as the \$45.00 fee is waived. Original documents will not be accepted by the County Clerk, unless specifically permitted by the Uniform rules or these protocols.

B. Hard Copy Submission: If a party seeking a TRO submits an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Uniform Rule 202.7(f) and Commercial Division Rule 20) or if a party seeks to submit documents in an emergency in a mandatory e-filed case in accordance with the Uniform Rules, the proposed OTSC and supporting documents may be presented to the Calendar Clerk’s Office (9th floor) in hard copy form. The papers must have affixed thereto a completed *Notice of Hard Copy Submission – E-Filed Case*. A proposed OTSC and supporting documents that must be presented to a Justice outside of normal court hours shall be presented in hard copy. Documents submitted in hard copy form must thereafter be filed via the NYSCEF system pursuant to the Uniform Rules.

C. Review: Absent unusual practical difficulties, a proposed OTSC and supporting documents that have been filed with NYSCEF will be reviewed through the NYSCEF system by the Court. If there are problems with the documents, the submitting attorney will be promptly contacted by e-mail or telephone.

D. 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.

E. Hard Copy Service: In cases in which hard copy service is made of documents that were submitted in hard copy form pursuant to paragraph VII(B) and where no party is served electronically, the filing attorney or party shall, not later than two days after service, electronically file the OTSC and the supporting papers, together with proof of hard copy service.

F. Declination: If the Justice declines to sign the OTSC, the Clerk will electronically file the declined order. 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 two days after the filing by the Clerk.

G. Exhibits: Please see Section III (H) above regarding the submission of exhibits.

H. Other: Any OTSC not filed in accordance with the Uniform Rules and [part rules](#) will not be addressed by the part. The proposed OTSC must be filed as a separate document and not attached to supporting documents.

VIII. 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. If concerns exist with respect to confidential information in the request to the Court, the submitting party could submit the request as a secure document via the NYSCEF website or deliver their application in hard copy with the [Notice of Hard Copy Submission – E-filed Case](#) form affixed.

A. Secure Documents: Documents may be designated as “Secure” by the filer without an order of the court. The effect of such designation is that the document may be viewed in the NYSCEF system only by counsel and self-represented parties to the case who have consented to NYSCEF and by the court and the County Clerk. The electronic file, however, remains open for public inspection at the Office of the Westchester County Clerk at designated computer terminals.

B. Application for a Sealing Order: If a party wishes to file and maintain papers under seal and no sealing order has been issued in the case, the party 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 the NYSCEF system, it will be open to the public until a sealing order is served upon the County Clerk by counsel in hard copy. If this creates concern for the parties about the release of confidential information while the application is pending, they may wish to consider filing the motion/stipulation as a “secure” document (See Section VIII(A) above). Alternatively, the parties may make a motion or submit a stipulation without filing it to the NYSCEF system until the court rules on the 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 computer disk or cd-rom 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 disk or cd-rom containing the documents in PDF format. Each such disk or cd-rom shall bear a label containing the name of the case, the index number, and the name and e-mail address of the attorney(s) submitting it.

C. Sealing Existing NYSCEF Document: If the court issues an order directing the sealing of an existing NYSCEF file or a document or documents already filed via the NYSCEF system, the applicant shall file with the NYSCEF system a [Notification for Sealing in Electronically Filed Case](#), 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 prevent access to these documents to parties other than those specifically authorized by the sealing order.

D. Previously Sealed Documents in Converted Cases: If a case that was previously sealed pursuant to court order is converted to NYSCEF status, attorneys for the parties to the action or proceeding shall notify the Westchester County Clerk as Clerk of the Supreme and County Courts of the sealing status by hard copy service of the original sealing order within two (2) business days of execution of Stipulation and Consent to e-file or Court Order to convert file.

E. Identifying Sealed Documents: Further, 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 or permitting the sealing of same.

IX. Note of Issue

A. Tort and Commercial Actions: No Note of Issue may be filed via the NYSCEF system without a trial readiness order or a so-ordered trial readiness stipulation. Alternatively, in lieu of an appearance, the parties may submit via the NYSCEF system document type: [Trial Readiness Stipulation](#) pursuant to the Differentiated Case Management Protocol and a trial readiness order shall be issued and uploaded to the NYSCEF system.

B. Commercial Division: No Note of Issue may be filed via the NYSCEF system without a trial readiness conference at which a trial readiness order will be issued and uploaded to the NYSCEF system.

C. Tax Certiorari Proceedings: The filing of a Note of Issue in Tax Certiorari proceedings shall not occur via the NYSCEF system 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 as 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 to such proceedings.

X. Consolidation or 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.

XI. Judgments

A. General Procedures: In order to expedite entry, filers are advised to submit proposed judgments through the NYSCEF system as single transactions, 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 §5017. If the entry of a judgment is based upon a decision and order or stipulation of settlement, the submission must also contain a copy of the same pursuant to 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 Clerk as required by CPLR §5018(c)(1). Failure to include the addresses will result in the document being returned to the filer for correction.
- 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 the NYSCEF system.
- 3. Notification of Entry:** Once the judgment is entered, notification will be sent via the NYSCEF system to the submitting party. Entry consists of both entry as defined by CPLR §5016(a) and 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 serve notice of entry on all parties, if required.

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).

1. **Entry of Default Judgments Based on Stipulation:** A party seeking the entry of a default judgment by the Clerk pursuant to a stipulation that has been previously filed with the Clerk shall choose the following NYSCEF document type: *Clerk Default Judgment (Proposed)*. A copy of the previously filed stipulation shall be affixed to the proposed judgment as one PDF file. If the stipulation in which the judgment is based on has not yet been filed or is being filed simultaneously with the judgment, the filer shall choose from *Stipulation of Settlement* or *Stipulation of Discontinuance* and pay the required \$35.00 fee. The filer shall choose the following NYSCEF document type: *Judgment to County Clerk-Proposed* and attach the proposed judgment as a separate PDF file. There is no fee to enter said judgment.
2. **Entry of Judgment Based on Decision and Order:** If the entry of the judgment is conditioned upon a previously signed decision and order, the filer shall choose the following NYSCEF document type: *Judgment to County Clerk- Proposed* and a copy of the previously filed decision and order shall be affixed to the proposed judgment as one PDF file. There is no fee to enter said judgment.

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. Upon signature by the court, a copy will be forwarded to the County Clerk by the court for taxation and interest calculation and the entered judgment will be uploaded by the clerk into the NYSCEF site. Notification of such entry will be transmitted by the NYSCEF System to the filer pursuant to Uniform Rule 202.5-b(h)3, and such notice shall not constitute service of notice of entry. Individual court part rules regarding the submission of judgments must be complied with in addition to statutory requirements and protocols.

D. Judgments on Notice/Judgments with Notice of Settlement:

1. **Judgment to be Signed by the Court:** Judgments submitted on notice to the court should comply with specific direction as provided in the order directing same, or be in compliance with Uniform Rule 202.48. A party submitting a judgment on notice to the Court shall choose the following NYSCEF document type: *Notice of Settlement w/Proposed Jdgmt/Counter Jdgmt* and a working copy of the submission should only be submitted if provided for in part rules.
2. **Judgment Entered by the Clerk:** A party submitting a judgment on notice to the Clerk as specifically directed by court order via the NYSCEF system should choose the following document type: *Judgment – To Court (Proposed)*. The judgment on notice

must be submitted five (5) days prior to the settlement date, and must include all necessary supporting pleadings to allow entry. Notice of settlement, affidavit of service and proposed judgment shall all be submitted as one PDF file.

3. **Objections:** Opposing counsel may object to the taxation of costs and disbursements by submitting the document type [Objections to Taxation/Notice of Re Taxation](#) in the NYSCEF system.
4. **Entry:** Upon entry by the Judgment Clerk, notification of entry shall be communicated via the NYSCEF system to the filer, and the in cases of objections, to objecting counsel. Notification of entry shall not constitute service of notice of entry to or for any party.

E. Taxation Review: A party submitting an application to the County Clerk to review taxation of costs without notice pursuant to CPLR §8403 via the NYSCEF system shall submit document type [Objections to Taxation/Notice of Re Taxation](#) within the statutory time provided. Determination of review will be communicated to both filer and opposing counsel via the NYSCEF system by the Judgment Clerk.

F. 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 the NYSCEF system shall choose the document types *Confession of Judgment (Affidavit of Defendant)* and *Confession of Judgment* for the statement as two separate pdf files. 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 Westchester County action. The statement for judgment must be submitted simultaneously with the affidavit, and judgment entered immediately thereupon the filing of the affidavit.
2. **Venue:** Venue is properly based in Westchester 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 the NYSCEF system to the filer upon entry. 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 serve notice of entry on all parties.

G. Docketing Judgments in Tax Certiorari Proceedings: In Tax Certiorari proceedings, judgments shall be docketed only in the Declaratory Judgment program as promulgated by the Westchester County Clerk to satisfy compliance with CPLR §9705(5) when said judgments do not contain provision for costs and disbursements. If judgments do contain provision for costs and disbursements, the judgments will be additionally docketed in the Monetary Judgment program as promulgated by the Westchester County Clerk to satisfy compliance with CPLR §5018. In both instances, judgments will be docketed bearing the first year NYSCEF case number assigned unless directed otherwise by the Court.

H. Subsequent Judgment or Order: When a previously entered judgment is affected by a subsequent order or judgment, the Clerk will make the appropriate notation to the docket entry as required by CPLR §5019(b).

- 1. New or Amended Judgments:** In instances wherein the change to an entered judgment is the result of a new or amended judgment, the notation will be made simultaneously with the entry of the new or amended judgment, and notification of same will be transmitted via the NYSCEF system to the submitting party.
- 2. Order:** In instances wherein the change to an entered judgment is the result of an order, notation of the docket will not be made until proper notice is given to the County Clerk pursuant to CPLR §8019(c). A party seeking the modification of a judgment by order shall choose document type [*CPLR 8019\(c\) Notification to Amend Docket*](#) which must include as part of the attached PDF file a copy of the order directing the Clerk to note the docket.

XII. Discontinuing Foreclosure Actions and Cancelling Notices of Pendency/Lis Pendens: Discontinuances of Action and Cancellations of Notices of Pendency/Lis Pendens cannot be combined into one document and must be uploaded as two separate documents. Select *Stipulation of Discontinuance* (or *Notice of Discontinuance* if applicable) as a separate document under the Accompanying Documents menu. If also cancelling the Notice of Pendency/Lis Pendens, select *Cancellation of Notice of Pendency/Lis Pendens* as a second document under the Accompanying Documents menu.

XIII. Notice of Appeal and Appeal Papers: A Notice of Appeal shall be filed online in a NYSCEF case and the fee paid as set forth above. The Notice of Appeal will not be considered filed until the payment of the fee has been accepted by the Westchester County Clerk. The Notice shall be filed in conformity with existing rules, and shall contain the Request for Appellate Division Intervention (RADI) form as required by the Appellate Division, the Notice of Appeal, as well as a copy of the Decision/Order appealed from as one PDF file. Failure to include the necessary components will result in the document being returned for correction. Proof of hard copy service must be filed via NYSCEF. At present, the Appellate Division does not handle appeals in NYSCEF cases by electronic means. As such, the appellant shall be responsible for conversion of electronic submissions to hard copy. The Office of the Westchester County Clerk will not provide hardcopies 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 the NYSCEF system. An Amended Notice of Appeal may be filed via NYSCEF in order to correct a clerical defect. The procedure follows that of the original Notice of Appeal, and the filer shall select the NYSCEF document type *Amended Notice of Appeal*. There is no fee required. Failure to include the necessary components will result in the document being returned for correction.

XIV. Subpoena(s): A party wishing to serve a Subpoena Duces Tecum on the Office of the Westchester County Clerk shall select the NYSCEF document type *Subpoena Duces Tecum to County Clerk* and pay the required twenty dollar (\$20) filing fee. The document shall clearly state the index number and caption of the case to be subpoenaed, as well as clearly state the Court or location the file will be subpoenaed to. At least five (5) days' notice is requested to allow the Clerk to comply with said subpoena.

XV. Other:

A. Effect of Communication from the Office of the Westchester County Clerk: Any and all e-mail notifications from the Westchester County Clerk 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 in a ministerial capacity.

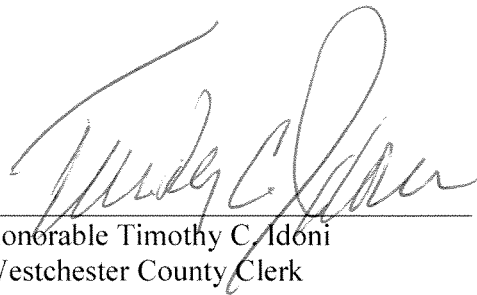
B. Appearances: Electronically filed documents subject to review and processing by the Calendar Clerk's Office do not require an appearance by counsel unless otherwise directed or provided for in local rules of practice.

C. Support: Any attorney who requires assistance in a NYSCEF case is encouraged to contact the part with questions about individual part rules or to contact the E-filing Resource Center at 646-386-3033 with any questions about the NYSCEF system. In addition, a computer and scanner is available in the 9th floor courthouse law library and in the public area of the Legal Division of the Office of the Westchester County Clerk for the use of attorneys who may need assistance in making filings in a NYSCEF case.

Dated: January 17, 2012



Honorable Alan D. Scheinkman
Administrative Judge, 9th Judicial District



Honorable Timothy C. Adoni
Westchester County Clerk