

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, section 202.5-b of the Uniform Rules for the Supreme and County Courts, relating to electronic filing in the Supreme Court, to read as follows:

§202.5-b. Electronic Filing in Supreme Court.

(a) Application.

(1) There is hereby established a pilot program in which documents may be filed and served by electronic means in civil actions in Supreme Court. Documents may be filed or served by such means only to the extent and in the manner authorized in this section and only in the following actions: (i) tax certiorari actions (including small claims actions under Title 1-A of Article 7 of the Real Property Tax Law) and tort and commercial actions in the Supreme Court in Albany, Bronx, Essex, Kings, Livingston, Monroe, Nassau, New York, Niagara, Onondaga, Queens, Richmond, Suffolk, Sullivan and Westchester Counties; and (ii) actions in Supreme Court in Broome County and Erie County of any type designated by the appropriate Administrative Judge.

(2) For purposes of these rules:

(i) “electronic means” shall mean any method of transmission of information between computers or other machines, other than facsimile

machines, designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

(ii) the “e-filing Internet site” shall mean the website located at www.nycourts.gov/efile;

(iii) “e-filing”, “electronic filing” and “electronically filing” shall mean the filing and service of documents in a civil action by electronic means through the e-filing Internet site;

(iv) an “authorized e-filing user” shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an “action” shall include a special proceeding;

(vi) “hard copy” shall mean information set forth in paper form; and

(vii) “party” or “parties” shall mean the party or parties to an action or counsel thereto.

(b) E-Filing in Actions in Supreme Court.

(1) Commencing an action by electronic means. A party may commence any action specified in paragraph (1) of subdivision (a) of this section by electronically filing the initiating documents with the County Clerk.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. After commencement of an action

specified in paragraph (1) of subdivision (a) of this section, documents may be electronically filed and served, but only if and when all parties have consented thereto or, if fewer than all parties have so consented, only by and between consenting parties with the permission of the court.

(ii) Consent to e-filing; how obtained. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. Consent may be obtained by stipulation or a party who seeks to use e-filing in a pending action may serve upon all other parties to the action a notice regarding use of e-filing in a form approved by the Chief Administrator of the Courts. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. A party served with such a notice may consent to e-filing in the action not later than ten days after receipt of such service, either by filing with the court and serving on all parties of record a consent to e-filing or if such party or the attorney of record therefor is an authorized e-filing user, by filing the consent electronically in the manner provided at the e-filing Internet site; provided, however, the court, in its discretion, may permit a consent to e-filing at any time thereafter. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Filing and service after consent to e-filing in an action. Once an action is made subject to e-filing, all documents filed and served by consenting parties shall be served and filed in accordance with this section.

(iv) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice. Where a court orders discontinuation of e-filing in an action, the court may direct the clerk to convert into hard copy those documents comprising the case file which had been received electronically.

(c) Authorized E-Filing Users, Passwords and Other Information.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York, or a person seeking to use e-filing as an authorized agent on behalf of attorneys of record in an action or actions (hereinafter "filing agent") may

register as an authorized e-filing user of the e-filing Internet site. An attorney admitted *pro hac vice* in an action, a party to an action subject to e-filing who is not represented by an attorney, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business by the jurisdiction in which the business is operated (hereinafter “small claims assessment review filing agent”) may also register as an authorized e-filing user, but solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.

(ii) How to register. Registration shall be on a form prescribed by the Chief Administrator, which shall require such information as he or she shall specify. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the appropriate clerk immediately of any change in the information provided on his or her registration form.

(3) Identification and password. Upon registration, an authorized e-filing user shall be issued a confidential User Identification Designation (“User ID”) and a password by the Unified Court System (“UCS”). An authorized e-filing user shall

maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the appropriate clerk. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) In any action subject to e-filing, all documents required to be filed with the court by a party that has consented to such e-filing shall be filed electronically, except as provided herein. Each document to be filed electronically by a filing agent (other than one employed by a governmental entity) shall be accompanied by a statement of authorization from counsel of record in a form approved by the Chief Administrator.

(2) Payment of fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide, in payment of the fee: (i) such credit or debit card information as shall be required at the e-filing Internet site to permit a card to be charged or debited by the County Clerk; or (ii) the form or information required by the County Clerk to permit him or her to debit

an account maintained with the County Clerk by an attorney or law firm appearing for a party to the case; or (iii) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter in person at the office of the County Clerk.

(3) Filing and receipt of documents; confirmation; secure information.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the e-filing Internet site. Documents are deemed filed on the date on which their electronic transmission is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document will not be deemed filed until transmission of the information or form or information as required in (i) or (ii), respectively, of paragraph (2) of this subdivision is recorded at the e-filing Internet site; or, if no such transmission is recorded, until payment is physically presented to the County Clerk.

(ii) Confirmation. No later than the close of business on the business day following the electronic filing of a document, a confirmation notice shall be transmitted electronically by the e-filing Internet site to the person filing such document. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and

shall cause that number to be transmitted to the person filing such documents as part of the confirmation notice. If payment is submitted in person after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.

(iii) Secure information. When electronically filing a document, the person filing such document shall indicate whether it contains any of the following: individually identifiable health information, a social security number, a credit card number, a bank account number, an individual's date of birth, an individual's home address, a minor child's name, or trade secrets. If such person indicates that any of this information is contained in the document, access to it on the e-filing Internet site may be restricted to consenting parties to the action, the County Clerk and the court. The document will, however, be available for public inspection at the office of the County Clerk unless sealed by the court.

(4) Official record; courtesy copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the clerk. The court may require the parties to provide courtesy hard copies of documents filed electronically. Unless the court directs otherwise, each such copy shall bear a conspicuous notice on the first page that the document has been electronically filed.

(5) Orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in hard copy to the court. Unless the Chief Administrator authorizes use of electronic signatures, orders and judgments signed by a judge shall be signed in hard copy, and shall be converted into electronic form by the appropriate clerk. The County Clerk may sign judgments in hard copy, or may affix a digital image of his or her signature to judgments in electronic form.

(6) Exhibits in hard copy. Notwithstanding any other provision of this section, the clerk may permit a party to file in hard copy an exhibit which it is impractical or inconvenient to file electronically.

(e) Signatures.

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in hard copy form (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed) and the electronic record of the document bears the word "Signed" typed on the signature line; or

(v) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130. A document shall be considered to have been signed by an attorney or party in compliance with section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR §130-1.1-a) if it has been signed by such attorney or party as provided in paragraph (1) of this subdivision and it bears the signatory's name, address and telephone number.

(3) Certification of Signature. A party or attorney may add his or her signature to a stipulation or other filed document by signing and filing a Certification of Signature for such document in a form prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or in tax certiorari cases, pursuant to the Real Property Tax Law, or by electronic means if the party served agrees to accept such service. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(2) Service of interlocutory documents.

(i) E-mail address for service. Each party in an action subject to electronic filing that has consented thereto shall identify on an appropriate form an e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the e-filing Internet site (hereinafter the “e-mail service address”). Each attorney of record and each self-represented party shall promptly notify the appropriate clerk in the event he or she changes his or her e-mail service address.

(ii) How service is made. Where parties have consented to e-filing, upon the receipt of an interlocutory document by the e-filing Internet site, the site shall automatically transmit electronic notification to all e-mail service addresses. Such notification shall provide the title of the document received, the date received, and the names of those appearing on the list of e-mail service addresses to whom that notification is being sent. Each party receiving the notification

shall be responsible for accessing the e-filing Internet site to obtain a copy of the document received. The electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein, except that such service will not be effective if the filing party learns that it did not reach the address of the person to be served. Proof of such service will be recorded on the e-filing Internet site. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of service shall be filed electronically.

(g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding use of e-filing specified in paragraph (2)(ii) of subdivision (b) of this section, to which response shall be made as set forth in that paragraph. A proposed intervenor or other non-party who seeks relief from the court in an action subject to e-filing, if consenting to e-filing, shall promptly file and serve a consent to e-filing. If an added party or intervenor does not so consent, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.

(h) Entry of Orders and Judgments and Notice of Entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically, which shall constitute entry of the order or judgment. The date of

entry shall be the date on which transmission of the order or judgment is recorded at the e-filing Internet site. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk a request for entry of judgment. Upon entry of an order or judgment, the County Clerk, his or her designee, or the e-filing Internet site shall transmit to the e-mail service addresses a notification of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the notification received from the County Clerk, his or her designee or the e-filing Internet site, a copy of the order or judgment, and an express statement that the transmittal constitutes notice of entry. Service may be made through the e-filing Internet site, or by any other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of service shall be filed electronically.

(i) Technical Failures. The appropriate clerk shall deem the e-filing Internet site to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. The clerk shall provide notice of all such technical failures on the site. When filing by electronic means is hindered by a technical failure, 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 paper that is delayed due to technical failure of the site shall be

extended for one day for each day on which such failure occurs, unless otherwise ordered by the court.

(j) Electronic Filing of 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 electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. 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.

(k) Copyright, Confidentiality, And Other Proprietary Rights.

(1) Submissions pursuant to e-filing procedures shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to e-filing, any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. Unless otherwise permitted by the court, a motion for such an order shall be filed not less than ten days before the materials to which the motion pertains are due to be produced or filed with the court.

Chief Administrative Judge of the Courts

Dated:

AO/ /08