

**Essex County
Supreme and County**



**Joint Protocols for
New York State Courts E-Filing (NYSCEF)
Cases Filed in Supreme Court, Essex County**

I. Introduction:

The expansion of the Mandatory e-filing program in Essex County Supreme Court all civil matters will be made mandatory as of January 24th, 2018.
See Administrative Order 116-18.

All applicable Legislation, Rules and Administrative Orders can be viewed at www.nycourts.gov/efile under the “Rules and Legislation” tab on the Supreme Court login page..

The Administrative Judge of the Fourth Judicial District and the Essex County Clerk 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 Essex 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” and, in particular 22 NYCRR §202.5-bb and §202.5-b) 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) as well as the appropriate IAS Courts’ Part Rules to insure compliance with all regulatory and Court requirements. These Protocols do not supersede any statutory or regulatory provisions regarding electronic filing as those are controlling and take precedence.

- 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)

- 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 Essex 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 Essex County Clerk is and remains the vested constitutional official with respect to access, maintenance and retention, and dissemination of court records within Essex 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 can log into NYSCEF 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 under the Supreme Court Login page on the NYSCEF homepage at www.nycourts.gov/efile. An individual registered and seeking to act as filing agent must file a *Statement of Authorization for Electronic Filing* form, (also accessible on the NYSCEF Supreme Court homepage under “FORMS”) for each case in which an attorney authorizes the agent to file on the attorney’s behalf.

D. Self-Represented/Unrepresented Individuals: A Party to an action who is not represented by Counsel is **exempt from e-filing** in both consensual and mandatory programs. Such unrepresented individuals **may still consent to e-filing if they wish.** Any such party who wishes to participate in e-filing utilizing the NYSCEF system must register and may use the “Create Account” link at: under the Supreme Court login page at www.nycourts.gov/efile

If an unrepresented party chooses NOT to participate in e-filing through the NYSCEF program, they must file their pleadings in hard copy and shall be served in hard copy by any other parties involved in the action.

E. Cases Eligible for E-Filing: It will be **MANDATORY**, as of January 24th 2018, that **ALL CASE TYPES** be electronically filed (E-filed) **except** for the following:

- **CPLR Article 78 Proceedings,**
- **Election Law Proceedings,**
- **Mental Hygiene Law Matters,**
- **Matrimonial Actions,**
- **Article 70 Habeas Corpus Proceedings.**
- **Consumer Credit transactions as defined in CPLR §105(f)*,**
*(except initial filing of commencement papers by a represented party,

which is mandatory)

The cases listed above will be accepted on a **CONSENSUAL** basis and may be commenced using the NYSCEF E-Filing system:

II. No Fee Authorization Letter: Where a “No Fee Authorization Letter” is referenced, it is intended to be a written request on the letterhead of the attorney or filer that an action or particular document type will be accepted with no fee required and include the basis for the exemption.

III. Identifying E-filed Cases: Cases that are initially commenced by the electronically filing through the NYSCEF system are identified as e-filed cases by assignment of an Index Number, the (index number format is CVYY-XXXX). Upon filing of the commencement pleadings and payment of the statutory fee, the Essex 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 Essex County Clerk and the Court.

IV. Filing of Documents and Pleadings

A. Commencing an Action in NYSCEF: To commence an action, log into the NYSCEF System at www.nycourts.gov/efile choose the court in which you wish to commence your action, and then choose the type of action.

Unless otherwise stated in these Protocols, each document, including any exhibits, must be uploaded as a separate .pdf file and the correct document type must be selected under the Document Type menu.

B. Recording Consent/Representation by Responding Party:

Upon filing the first document in the case you will be required to record your consent or representation. In order to receive notifications on a case filed electronically without filing a document, you may use the “Consent/Represent” link on the NYSCEF site to indicate your representation of a party and your contact information. Please note that recording your “Consent/Representation” does not constitute a Notice of Appearance for jurisdictional purposes; it simply enters you in the case as counsel of record and entitles you to notification of any future filings or notices.

C. Responsibilities of Parties NOT participating in E-Filing:

Any non-participating party is responsible for filing all paper documents with the County Clerk or the Court. Paper documents must be presented unbound. Papers that are bound will be returned to the party or attorney. The Court will not assume the responsibility of filing any papers. A party that is not participating must serve the documents on all other parties in paper form and file an Affidavit of Service with the County Clerk and/or Court. Hard Copy (Paper Format) filings by Attorneys must always include the *Notice of Hard Copy Submission - E-filed Case* form.

D. Converting a Case to Electronic Filing: Cases originally commenced in hard-copy (paper) format prior to January 24, 2018 will remain as hard copy paper format. Any case commenced after this date may later be converted to NYSCEF status by delivery of an original *Stipulation and Consent to E-file* form signed by all parties (with limited exceptions) to the Office of the Essex County Clerk (and a copy to the Part Clerk if assigned to an IAS Justice). Such cases will initially bear a regular Index Number.

E. Rejection of Hard Copy Filings: In accordance with Uniform Rule §202.5-b(d), the County Clerk shall refuse to accept for filing any hard copy papers filed to an action subject to electronic filing unless hard copy filing is permitted by the Uniform Rules and the papers bear a completed *Notice of Hard Copy Submission - E-filed Case* form.

F. Payment of Fees: Payment of statutory filing fees may be made online via credit card (American Express, MasterCard or Visa) at the time of submission.

G. Confidential Personal Information: An attorney or unrepresented party filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing Social Security Numbers. **It is the sole responsibility of counsel or the unrepresented person filing to be aware of and to comply with existing laws requiring non-disclosure of confidential personal information contained in any document e-filed in NYSCEF.**

- H. Exhibits:** In the NYSCEF system, each exhibit must be uploaded as a separate .pdf file. After uploading a primary document, please choose the document type “Exhibit” and enter the appropriate number or letter and a brief description of the exhibit; each exhibit should bear a separate cover sheet clearly marked as “Exhibit A,” “Exhibit B,” etc. Where exhibits or other documents are impractical to file electronically (i.e. maps, videos, blueprints etc.) such exhibit may be filed in hard copy and must be accompanied by the *Notice of Hard Copy form* and the filer will file the *Notice of Hard Copy Exhibit form* as a placeholder.
- I. Errors in Submissions:** Submission of documents which, upon examination, require correction or addition will result in notification to the filer advising that the document has been returned for correction. Documents may be returned for correction by either the County Clerk or the Supreme Court. The filer shall make the required corrections and/or additions as indicated in the e-mail transmission sent by the County Clerk or Supreme Court through the NYSCEF site. The corrected documents may be resubmitted using the “Refile this document” link highlighted in the filer’s document list for the respective case.
- J. Technical Failures:** When filing by electronic means is hindered by a technical failure, please refer to Uniform Rules. (202.5b(i)).
- K. Discovery Materials and Correspondence:** In the absence of the Court’s permission or stipulation of the parties, no party shall file electronically any discovery 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.

L. Notice of Entry Upon issuance of an order or decision and order, court staff will upload the document to NYSCEF. This will generate an immediate e-mail notification to participating counsel and unrepresented litigants on the case, to which shall be appended a link to the document. The posting of the order or decision and order by court staff does not constitute entry thereof. The entry of such an order or decision and order shall be effectuated thereafter when the County Clerk affixes to the posted document a filing stamp. Judgments are entered as follows. Judgments that are submitted to and processed by the County Clerk (taxation of costs, etc.) and then signed by him pursuant to order of the court, on default, or by confession shall be uploaded to NYSCEF by the County Clerk, who shall add the filing stamp thereto. Judgments submitted to and signed by the assigned Justice shall be forwarded to the County Clerk for action via NYSCEF by court staff; such judgments awaiting entry shall be marked “Pending” in NYSCEF. After these judgments are processed by the County Clerk, he shall affix the filing stamp thereto. See also Section M. The filing stamp shall show and be proof of the fact of entry and the date and time thereof. Counsel monitoring the docket for entry of an order, decision and order, or judgment should look for the filed stamp as definitive proof of entry by the County Clerk. Participating counsel and unrepresented litigants should note that, at present, NYSCEF will not transmit a second email notification upon the completion of the entry process. Therefore, counsel and unrepresented litigants should verify entry by continuing to access the document via either the link in the original notification or the NYSCEF document list. When the County Clerk affixes

the filing stamp, the document so stamped shall immediately be accessible via the original notification or in NYSCEF. In the future, NYSCEF will be modified so as to generate a second e-mail notification upon the completion of the entry process. Notifications of the posting of an order/decision and order/judgment and of the completion of the entry process that are transmitted from NYSCEF do not constitute service of notice of entry by any party. Notice of entry shall be served by a party by serving a copy of the order/decision and order/ judgment and written notice of its entry in the manner set forth in Uniform Rule 202.5-b (h) (3).

- M. Working Copies:** Electronically filed documents subject to review and processing by the Clerk do not require a working copy unless otherwise directed or provided for in Part Rules. Pursuant to the Uniform Rules, 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. Please consult the individual Justice’s Part Rules and/or consult with the chambers to determine whether and how working copies are to be provided. Working copies will not be printed or delivered to chambers by the Essex County Clerk or the Chief Clerk of the Courts or any of their personnel. 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
- N. Proposed Orders and Judgment to Court For Signature** When submitting a Proposed Order or Judgment to Court for Signature please include all documents that are referenced as “attached” to said order/judgment as part of the submitted proposed order/judgment scan. The court staff will then upload the signed Order or Judgment with the included “attached” documents.
- V. Motions and Petitions:** Submission of motions, including cross motions, shall comply with all relevant provisions of the CPLR, the Uniform Rules of the New York State Trial Courts (NYCRR) and Part Rules.
- A. Adjournments:** Refer to the individual Justice’s Part Rules for the proper procedure to secure an adjournment.
- B. Proposed Orders:** Proposed orders shall be submitted through the NYSCEF system and a working copy provided to the IAS Justice if Part Rules so require for signature.
- C. Decisions and Orders:** Decisions and/or Orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event and a link to the decision and/or order via the NYSCEF system to all consenting parties. This notice does not constitute service of Notice of Entry of an order by any party.
- VI. Orders to Show Cause:** Proposed Orders to Show Cause (hereinafter “OTSC”) shall comply with all relevant provisions of the CPLR, the Uniform Rules including Commercial Division

Rule (22 NYCRR 202.70) and Uniform Rule 202.7(f), and any other applicable provision of the law, regarding notice of the application to the opposing party. Scheduling of return dates is coordinated through chambers, pursuant to posted Part Rules.

Except as provided in the following paragraph, a proposed OTSC and supporting documents must be submitted by filing with the NYSCEF system. Original paper documents will not be accepted by the County Clerk unless specifically permitted by the Uniform Rules or these Protocols.

A. OTSC Concurrent with Commencing an Action: Where the action is being commenced and an Order to Show Cause (hereinafter OTSC) is submitted simultaneously with the purchase of an Index Number, a Summons and Complaint, a Petition or a Summons with Notice, and the filing of an RJI, the filer must select the document type “*Proposed Order to Show Cause Accompanying Commencement Doc(s)*” to file the proposed OTSC.

B. OTSC and Temporary Restraining Order Concurrent with Commencing an Action: Where the action is being commenced in the NYSCEF system and an Application for an OTSC with a Temporary Restraining Order (hereinafter TRO) is being made, IF THE PARTY BELIEVES THAT E-FILING THE REQUEST FOR A TRO WOULD BE PREJUDICIAL TO THEIR CASE, an Index Number must be obtained at the County Clerk’s Office and the documents (with Index Number affixed) presented to the Chief Clerk’s Office in hard (paper) copy with the “*Notice of Hard Copy Submission - E-Filed Case*” form, the appropriate affirmation affidavit (See §202(7)(F) of the Uniform Rules and §VI(C)(2) below) and payment receipt attached.

An IAS Justice will be assigned to the matter and the OTSC with TRO should be submitted to the Justice. That same hard (paper) copy of the proposed OTSC, having been signed by the Justice, will be uploaded and filed upon communication by the attorney or self-represented party to the Part Clerk that the commencement and supporting papers have been filed to NYSCEF. It shall be the obligation of counsel or the party to file all supporting papers in the NYSCEF system. The filer shall choose the option “Previously Paid” and in the notes section, indicate the receipt and index numbers.

C. OTSC in Existing Action:

1. If there is no prejudice or emergency, the proposed OTSC and supporting papers should be uploaded to NYSCEF as separate .pdf files. A paper copy of the OTSC may be required by the Justice for signature. Refer to Part Rules for such requirements.
2. Where the filer is submitting an affirmation/affidavit demonstrating significant prejudice from the giving of notice (see Uniform Rule 202.7(f)), or where a party seeks to submit documents in an emergency in accordance with the Uniform Rules, the proposed OTSC may be presented to the IAS Justice in hard (paper) copy. Payment shall first be made to the County Clerk. Completed *Notice of Hardcopy Submission - E-Filed Case* form and payment receipt must be affixed to the Proposed OTSC. The signed Order will be uploaded and filed without supporting papers to NYSCEF by the Supreme Court. Thereafter, the rest of the papers will be returned to counsel or the party and it shall be the obligation of counsel or the party to file all

supporting papers in the NYSCEF system. The filer shall choose the option “Previously Paid”, indicate the date paid, method of payment, and receipt number.

VII. Secure Documents and Documents with Confidential Information:

An attorney or self-represented party filing a document via the NYSCEF system must comply with the requirements of 22 NYCRR 202.5(e) regarding the redaction of Confidential Personal Information and General Business Law §399-ddd(6) concerning the filing of documents containing social security numbers. It is the sole responsibility of counsel or self-represented person filing to be aware of and to comply with existing laws requiring non-disclosure of confidential personal information contained in any document e-filed in NYSCEF.

VIII. Sealed Documents:

A. Application for a Sealing Order: Requests to seal a document or file shall comply with all relevant provisions of the CPLR, the Uniform Rules, and any other applicable provision of the law. To seal a document or file in a NYSCEF case, a party/counsel must apply to the Court for a “sealing” order pursuant to Uniform Rule 216.1 directing the County Clerk to seal the document or case file. The Court DOES NOT accept Stipulations of Confidentiality.

1. Sealing document(s) previously filed in NYSCEF:

To seal a document that was previously e-filed or an entire case file in a pending e-filed case, a party or counsel must apply for a sealing order. Application may be made through the NYSCEF system and, upon issuance of an Order directing the sealing of an existing e-filed document or case file, the Part Clerk shall upload and file the signed Order. Counsel/party must file the *Notification for Sealing* form to effectuate the order. The County Clerk shall seal the document(s) or the file identified in the sealing Order as directed by the court. No further action by counsel is required.

3. Sealing Document(s) Not Yet filed in Existing NYSCEF case:

a. Where a party/counsel seeks to obtain an order in an existing case for a document or documents not yet filed, application may be made through the NYSCEF system.

-If the motion/application is filed with the NYSCEF system, the motion and any accompanying documents will be open to public view until a sealing order is issued. A NOTICE OF HARD COPY EXHIBIT should be uploaded to refer to the documents for which counsel is seeking sealing.

-If the court issues an order directing the sealing of a document that has not yet been e-filed, the Court will upload the order to NYSCEF, giving notice to the filer that the order for sealing is granted.

Upon notification that the order for sealing is granted, counsel should provide the document(s) covered by the sealing order to the County Clerk/Court so that the documents may be uploaded in the NYSCEF system and appropriately sealed.

-When the court decides the RECORDS ARE NOT GOING TO BE SEALED, all documents presented in connection with the sealing application that have not yet been e-filed must be e-filed within three business days after the order denying the Sealing Order has been uploaded.

IX. Judgments

A. General Procedures for Money Judgments: Filers must submit proposed judgments through the NYSCEF system as single documents and not combined with any other unrelated filings or documents. The filer may choose from document types:

- *Judgment - to County Clerk (Proposed)*
- *Judgment - to Court (Proposed), or*
- *Clerk Default Judgment (Proposed),*

The Filer may file a statement for judgment, prior to the filing of an RJJ, as either document type:

- *Judgment - to County Clerk (Proposed) or*
- *Clerk Default Judgment (Proposed). What does this mean?*

An additional *Bill of Costs* may be required.

1. **Submission:** A party seeking the entry of a money judgment must submit papers in compliance with statutory requirements including, but not limited to, submission of a document type *Bill of Costs* with attorney affirmation, if applicable, including interest calculation, proof of additional mailing. The NYSCEF system will ask the filer to select any supporting documents to be included in the judgment roll.

The Proposed Judgment or Bill of Costs must contain the addresses of the debtor(s) and creditor(s) in order to be docketed by the Clerk and failure to include the addresses will result in the document being returned to the filer for correction.

2. **Notification of Entry:** Once the judgment is entered, notification will be sent via the NYSCEF system to all consenting parties. “Entry” by the Clerk constitutes entry as defined by CPLR §5016(a). Such notification via the NYSCEF system shall not constitute service of Notice of Entry, but only notification that the judgment has been entered. It shall be the responsibility of the party to serve the Notice of Entry, which may be done in the NYSCEF system or in hard copy (202.5(b)(h)(3)). Any parties not participating in e-filing must be served in hard copy accordingly.

B. Entry of Default Judgments: A party seeking the entry of a default money judgment **by the Clerk** shall choose the following document type *Clerk Default Judgment (Proposed)*. The statutory filing fee required and a statement for judgment and *Bill of Costs* may be submitted as the document type *Clerk Default Judgment (Proposed)* as one .pdf file. In the case of Consumer Credit Card Transactions, the County Clerk will complete the Administrative Review Transmittal Sheet: CPLR 3215(a) for Default Judgments for Credit Card Debt. The County Clerk will prepare the Additional Notice and mail it out. The County Clerk will complete an Affidavit of Mailing and file the affidavit in the case along with the signed Default Judgement.

1. **Entry of Judgment Based on Stipulation of Settlement:** A party seeking the entry of a money judgment by the County Clerk pursuant to a Stipulation of Settlement or Release shall choose the following document type *Judgment to County Clerk (Proposed)*. If the Stipulation of Settlement on which the judgment is based has not yet been filed or is being filed simultaneously with the judgment, the filer shall choose the following NYSCEF document type: *Stipulation of Settlement* and pay the required fee. If the Release on which the judgment is based has not yet been filed, the original or a copy must be filed.

2. **Entry of Judgment Based on Decision and/or Order:** If the entry of the judgment is based upon a previously signed decision and/or order, the filer shall choose the following document type *Judgment - to County Clerk (Proposed)*. There is no fee to enter said judgment. See also Paragraph C, below.

C. **Judgment Signed by the Court:** A party seeking the entry of a money judgment signed by the Court shall choose the following document type *Judgment - To Court (Proposed)*. The Part Clerk will upload the signed document as *Judgement Signed by Court to County Clerk* to NYSCEF. The County Clerk will upload the Judgment when reviewed and processed. Notification of entry will be transmitted by the NYSCEF System to all consenting parties.

In the event no *Bill of Costs* is submitted, the filer must affirmatively indicate his/her intent that a Money Judgment be docketed in the public records of the County Clerk as a result of the Order and pursuant to CPLR §5018(a) by uploading document type *Notice to County Clerk CPLR 8019(C)*. A copy of the order directing the County Clerk to enter a money judgment must be included as part of the attached .pdf file.

D. **Judgment of Foreclosure.** A party seeking the entry of a Judgment of Foreclosure should upload document types *Oath* (of Referee) and document type *Bill of Costs as separate .pdf documents* for approval by the County Clerk.

E. **Confession of Judgment:** A party seeking the entry of judgment by confession via the NYSCEF system shall choose the document types: *Confession of Judgment (Affidavit of Defendant)* as the Commencement Document and *Judgment by Confession (Proposed)* for submission of the judgment. A statutory fee for the assignment of an Index Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

F. **Foreign Judgment:** A party seeking entry of a foreign judgment shall choose the document type *Foreign Judgment [5402]* as the Commencement Document and document type *Judgment to County Clerk - (Proposed)* for submission with the *Bill of Costs*, and document type *Affidavit* for submission of the Affidavit pursuant to CPLR Article 54. A statutory fee for assignment of an Index Number is required. Failure to include the addresses of both the debtor(s) and creditor(s) will result in the document being returned to the filer for correction.

X. **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 document type *Stipulation of Discontinuance (Post or Pre RJI)* or *Notice of Discontinuance*

(*Post* or *Pre RJI*), if applicable, as a separate document under the Accompanying Documents menu. If also cancelling the Notice of Pendency/*Lis Pendens*, select document type *Cancellation of Notice of Pendency/Lis Pendens* as a second document under the Accompanying Documents menu. The Affidavit required by CPLR §6514 must be attached to the document type *Cancellation of Notice of Pendency/Lis Pendens* as one .pdf document, if applicable.

XI. Notice of Appeal: A Notice of Appeal shall be filed in NYSCEF and the appropriate fee paid. The Notice shall be filed in conformity with all pertinent statutory and regulatory requirements.

XII. Consumer Credit Card Transactions: Actions commenced pursuant to 22 NYCRR 202.27-a must be filed under the appropriate case type, depending on the status of the Creditor. Choices include: “Consumer Credit (Card) Transaction Original Creditor,” “Consumer Credit (Card) Transaction Debt Buyer,” or “Consumer Credit (Card) Transaction Secondary Debt Buyer”. The appropriate document choice is required in order to obtain access to specific document types required by the Rule. See Administrative Orders dated September 15, 2014 (AO/185/14) and December 23, 2014 (AO/337/14 and AO/338/14), Rules 202.27-a and -b, and forms at <http://www.nycourts.gov/rules/ccr/>.

XIII. Other:

A. Support: Any attorney or self-represented litigant who requires assistance in a NYSCEF case is encouraged to contact the Chief Clerk’s office at (518) 873-3370 with questions about individual Local Practice or contact the E-filing Resource Center at 646-386-3033 with any questions about the NYSCEF System. In addition, a computer and scanner will be made available in the Essex County Clerks Office for the use of individuals who may need to file documents in a NYSCEF case.