



eFiling

IN THE

New York State Courts

REPORT OF THE CHIEF ADMINISTRATIVE JUDGE

TO THE

THE **GOVERNOR**, THE **CHIEF JUDGE**, AND THE **LEGISLATURE**



JUNE 2011

to: Governor Andrew D. Cuomo
Chief Judge Jonathan Lippman
Members of the Legislature

I present this report, pursuant to chapter 416 of the Laws of 2009, as amended by chapter 528 of the Laws of 2010, to describe and evaluate the State's experience with the electronic filing and service of court papers and to set forth recommendations for further legislation in this area.

The experience with electronic filing over the past twelve years, the needs and interests of attorneys and their clients, as well as of the court system, and the challenging fiscal landscape in which the justice system now operates and in which it will likely be operating in the coming years, all strongly support the need for legislation expanding e-filing in New York. It is essential today that the court system, through new ways of thinking and operating, become more efficient and effective. E-filing is an extraordinary tool, ready at hand, that will assist courts to achieve these goals.

Respectfully submitted,

Ann Pfau

CHIEF ADMINISTRATIVE JUDGE OF THE
STATE OF NEW YORK

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EXECUTIVE SUMMARY

THE CHIEF JUDGE OF THE STATE HAS PAINTED A VISION for the courts of New York in which electronic filing (“e-filing”) will be the standard method for the filing and serving of court documents. In emphasizing the central role that e-filing should play as part of a broad plan to ensure that the New York Judiciary is modern, efficient, and fiscally sound, the Chief Judge has declared that “[i]n the year 2011, this is not a pipe-dream, but rather the very least we should be doing to move the courts boldly and efficiently into the 21st century.”¹

New York’s experience with e-filing began slowly: in 1999, the first year in which e-filing was authorized, in but a few venues and a small class of cases, not a single case was filed electronically. Twelve years later, as the Legislature has gradually expanded authorization for e-filing use, almost 300,000 cases have been e-filed, and there are more than 23,000 registered users of the New York State Courts Electronic Filing System (“NYSCEF”).

Over those twelve years, e-filing has shown itself to be reliable, efficient, convenient, and secure. It allows court papers to be filed and served, virtually instantaneously, at any time and from anywhere, without the need to go to the courthouse. It allows online access to case files by counsel anywhere at any time. It also sharply reduces record storage, retrieval and reproduction costs, completely eliminates the burden and expense of serving papers on opposing parties, and minimizes the need to travel to the courthouse. The result is significant cost savings for litigants, attorneys, the courts, and County Clerks. Indeed, it is estimated that universal mandatory e-filing would reduce the cost of litigation by hundreds of millions of dollars a year, with much of this savings inuring to the businesses and the state and local governments that so often litigate in our courts. With the potential to eliminate the filing and service of hundreds of millions of pieces of paper each year, e-filing is also the key to a greener, more environmentally responsible justice system.

Recognizing these significant benefits, the organized bar, including the New York State Bar Association and the Bar Association of the City of New York, has strongly supported the expansion of e-filing in New York. A recent survey of NYSCEF users also demonstrates strong support for e-filing from those members of the bar who have used the system.

In 2011 — in the age of e-banking and the electronic submission of income tax returns, and six years after the federal courts in New York mandated e-filing of all cases, both civil and criminal — expanded e-filing in the New York State courts is indeed the “very least we should be doing to move the courts boldly and efficiently into the 21st century.” Based on the proven track record of e-filing in New York, and to afford the entire justice system the cost-savings and many other benefits of e-filing, this report calls for just that. The Judiciary urges legislation to give the Chief Administrative Judge broader authority to expand mandatory e-filing, after appropriate consultation with the bar and other interested parties, as well as, in the case of mandatory e-filing in Supreme Court, the agreement of the affected County Clerk. A copy of this legislation is attached as Appendix A.

¹ Statement of Chief Judge Jonathan Lippman on Judiciary Budget Issues, NYLJ, p. 1, March 2, 2011.

I. BACKGROUND

A. Overview of NYSCEF

NYSCEF allows attorneys and self-represented litigants to file and serve court papers instantaneously, at any time and from any place, without the need to go to the courthouse. NYSCEF also allows the viewing of the case file at any time from any place with internet access.

No special hardware, or software is required. The equipment needed for electronic filing is now standard in almost every law office in New York State. This equipment includes: a computer, software (a web browser and a PDF reader/writer such as Adobe), internet access, and a scanner.

In order to file documents, a person must obtain a user ID and password. (A user ID and password are not needed to search NYSCEF as a guest and view non-secure and non-sealed documents.) Becoming a registered user is a simple online process. A single user ID and password allows an attorney registered in New York to file in any county, court, or case type that is authorized for e-filing.

Filing papers is also easy. Documents to be filed are converted into PDF format either by software conversion or through a scanner — a simple process with which most attorneys are already familiar. The filer then signs on to NYSCEF and, after filling out the clearly designed and easily understandable screens, transmits the document to the system. For those documents that require the payment of a fee (such as a commencement document or a notice of motion), NYSCEF offers payment options such as credit and debit cards.

After the document is transmitted, email notification of receipt is automatically generated back to the filer. NYSCEF also sends other parties e-mail notifications of all new filings. These notifications, which contain a secure link to the newly filed document, constitute service of that document on those participating users. Thus, under the NYSCEF system, after the initiating papers are served, the parties are relieved of the burden of serving papers on opposing parties — NYSCEF automatically performs that function.²

The system provides several layers of security. First, NYSCEF only accepts files in PDF/A format, which, unlike word processing files, cannot be altered. Second, NYSCEF encrypts all files upon receipt. Third, the filer has the option of marking any particular document as “secure.” A “secure” marking, which does not require court approval, means that the document is not viewable over the internet by non-parties to the case. (However, non-parties may view “secure” documents via a computer located within the courthouse.) Fourth, a filer may seek a court order sealing an entire case docket or specific documents within the case.

Aside from the normal court filing fees, there is no charge to use NYSCEF.

² Even when initiating papers are filed electronically, they must be served on all parties in paper. As noted, subsequent papers are served electronically by the NYSCEF System.

B. The Experience with e-Filing In New York

1. Consensual e-filing programs

In 1999, at the request of the New York State Unified Court System (“UCS”), legislation was enacted that established a pilot program to test the utility of e-filing of court documents in certain civil cases. L. 1999, c. 367. In subsequent years, the Legislature enacted a series of amendments continuing the pilot program and expanding it in a variety of ways, both to more courts and more types of cases.³ All the while, the program continued as a consensual one, viz., even where authorized, e-filing could only be used if parties to litigation consented to that use.

After a decade of experience, with the enactment of chapter 416 in 2009, e-filing ceased to be a pilot program. The Chief Administrative Judge was empowered by chapter 416 to issue rules authorizing a program of consensual electronic filing and service of documents in cases in the Supreme Court, the Court of Claims, the Surrogate’s Court, and the New York City Civil Court. Consensual e-filing is authorized today by rule in the Supreme Court in 15 counties in commercial, tort, and tax certiorari cases; in the Supreme Court in two counties in all case types; in Surrogate’s Court in five counties; in the Court of Claims in the Albany District; and in one type of case in New York City Civil Court.⁴

Chapter 416 also, for the first time, authorized a pilot program in the use of mandatory e-filing in a very limited number of venues and classes of cases.⁵

2. Mandatory e-filing programs

Chapter 528 of the Laws of 2010 provided a modest expansion of the nascent mandatory e-filing program. While preserving authorization for its use in commercial cases in New York County and tort cases in Westchester County, it added authorization for its use, where sanctioned by rule of the Chief Administrative Judge in commercial cases in Westchester County and replaced authorization for its use in one unspecified upstate county with authorization for its use in Livingston, Monroe, Rockland and Tompkins Counties. In early 2010,⁶ the Administrative Board of the Courts authorized the Chief Administrative Judge to put all of these programs into operation and implementation of mandatory e-filing began:

- 1. New York County** On May 24, 2010, mandatory e-filing began in the New York County Supreme Court in newly-filed commercial cases.⁷

³ See L. 2002, c. 110, L. 2003, c. 261, L. 2004, c. 384, L. 2005, c. 504, L. 2007, c. 369, L. 2009, c. 416, L. 2010, c. 528.

⁴ See 22 NYCRR § 202.5-b (Supreme Court); §§206.5 and 206.5-aa (Court of Claims); §207.4-a (Surrogate’s Court); and §208.4-a (New York City Civil Court).

⁵ Mandatory e-filing, as authorized, does away with the requirement that parties consent to use of e-filing except in instances where a party is *pro se* or where an attorney demonstrates technical impediments to use of e-filing. Subject to this constraint, the Chief Administrative Judge could direct mandatory e-filing in a statutorily-defined class of commercial actions in New York County, in tort actions in Westchester County and in any class or classes of actions (excepting matrimonials, and CPLR Article 78, MHL Article 81 and Election Law proceedings) in one upstate county selected by the Chief Administrative Judge.

⁶ 22 NYCRR §202.5-bb.

⁷ This class of cases is defined in the enabling legislation (*see* L. 1999, c. 367, §6(b)(B)(1)), as amended and is generally subject to a threshold requirement of an amount in controversy of over \$100,000.

2. **Westchester County** Mandatory e-filing of commercial and tort cases was introduced in Westchester County Supreme Court in stages. It began on February 1, 2011, with cases in its Commercial Division, expanded to tort cases on March 1, 2011, and to the full gamut of authorized commercial cases on June 1, 2011.
3. **Rockland County** Mandatory e-filing began in Rockland County Supreme Court on June 1, 2011 in all case types except those expressly excluded by statute. Some commercial, tort, and tax *certiorari* cases were already filed since consensual e-filing began there on April 4, 2011.

In each of these counties, before introduction of mandatory e-filing, the Chief Administrative Judge consulted extensively with the affected County Clerk, who in each instance enthusiastically embraced e-filing.⁸ UCS staff has made adjustments to the NYSCEF software to accommodate the suggestions and particular needs of the affected County Clerks and courts. In addition, the Chief Administrative Judge consulted with bar groups in these counties regarding proposed implementation of mandatory e-filing and afforded them an opportunity to comment on those plans. No opposition was received, and indeed, the bar groups expressed strong support for e-filing.

Since May 24, 2010, when mandatory e-filing began in New York County, more than 4,500 new commercial cases have been commenced electronically. Despite this large volume, the transition to a mandatory system went smoothly for the bar, the County Clerk and the court. Mandatory e-filing in Westchester County Supreme Court has similarly enjoyed an auspicious beginning. Thus far, 464 commercial cases and 584 tort cases have been e-filed. In the brief period since inception of the consensual e-filing program in Rockland County, there have been 70 filings, a harbinger of the mandatory program that commenced on June 1.

3. Current use of the e-filing system

The experience with electronic filing and service to date has been very positive. Almost 290,000 cases have been filed electronically through the NYSCEF system, including 4,507 proceedings in four Surrogate's Courts. This is a vast improvement since 2002, when only 21 cases were e-filed. To date, more than 23,000 attorneys and others have been registered as users of the NYSCEF system.⁹ By 2002, only slightly more than 300 persons had registered.

4. Outreach and training

In the period leading up to commencement of mandatory e-filing, the County Clerks and the Supreme Courts of the three counties involved reached out to bar groups to provide information on e-filing and access to training. The NYSCEF Resource Center, the UCS statewide help center, has continued to offer, as it has long done, a weekly training course in the use of the NYSCEF program (shortly to be presented twice a week), and has also made many presentations to bar association meetings and other gatherings.¹⁰ The County Clerk and the Supreme Court in Westchester have also presented training sessions twice a week for some months, while

⁸ Mandatory e-filing has not yet been instituted in the other three counties in which the present statute authorized its use (Livingston, Monroe, and Tompkins). While the County Clerk in each of these counties is enthusiastic about e-filing, there remain technical details to be worked out before it can go forward.

⁹ By rule of the Chief Administrative Judge, only attorneys or their agents who have registered with NYSCEF may e-file. 22 NYCRR §202.5-b(c)(1).

¹⁰ Several years ago, UCS designated a very experienced member of the staff of the Supreme Court, Jeffrey Carucci, as its Statewide Coordinator for Electronic Filing. Mr. Carucci established the Resource Center using current court staff. He and his colleagues

similar training is available in Rockland County through its County Clerk and the Supreme Court. (Two hours of Continuing Legal Education credit are offered, at no cost, to attorneys who participate in the training.)

Formal training, however, is not actually necessary in order for attorneys and parties to be able to use the system effectively. The NYSCEF system is to a large degree intuitive. Furthermore, it provides explanatory material online to prospective users, and, as well, a “sandbox” system in which users can practice e-filing in a simulated environment. With but a little review and practice, most prospective users¹¹ can acquire all the knowledge they need in order to e-file efficiently and correctly. Others will not even need to do this much in order to be prepared, because the NYSCEF system resembles the Federal Electronic Case Filing (“ECF”) system, so that those who have e-filed in Federal court, where e-filing has been the standard mode of proceeding for some years now, will find that they already possess all the knowledge they need in order to be able to e-file through NYSCEF. Notwithstanding all the other resources available, should any individual user or prospective user still have a question about e-filing practice, the Resource Center is available every day during business hours to provide assistance.

5. Opt-out provision

One potential concern about an e-filing program is whether, despite its easy, intuitive design, some potential users might lack the knowledge or equipment necessary to e-file. To avoid imposing any undue burden on such persons, e-filing legislation and rules provide that attorneys and self-represented parties may “opt out” of the mandatory e-filing program through a simple, straightforward procedure. A self-represented party who wishes not to take part in mandatory e-filing need only file a form so stating in order to be released from the obligation to e-file. Any attorney who lacks the equipment or the knowledge required to e-file need only file a form certifying as much to be allowed to proceed in hard-copy form.

In fact, there have been very few instances in which parties and attorneys have felt the need to opt out. In New York County, since May 24, 2010, the opt-out provision has been used only 24 times. In Westchester County, thus far, it has only been used four times. These numbers represent less than one percent of self-represented parties or attorneys in mandatory e-filed matters.

This very limited use of the opt-out provision is unsurprising. Although the NYSCEF program represents an important innovation for the state court system, it must be viewed against the backdrop of the tremendous growth in the use of digital technology in society as a whole. There truly is underway a digital revolution (this is one case in which that word is not hyperbole), and attorneys are very active participants.

6. Security

After twelve years of use, any concerns about the security of the system itself and about the confidentiality of personal or other sensitive information filed in the system should have been allayed.

In many regards, e-filing provides a level of security for the files of the court and the County Clerk or other

(continued) from the Center have made presentations at many bar association meetings, including at least five Annual Meetings of the New York State Bar Association (“NYSBA”), as well as at other meetings of NYSBA committees and sections. Staff have worked closely with judges and court staff and County Clerks across the state. Training courses have been presented on many occasions at courts, County Clerk’s Offices, and bar associations all around the state. Training has been provided, often on multiple occasions, in Albany, Broome, Erie, Essex, Livingston, Nassau, Niagara, Onondaga, Rockland, Suffolk, Sullivan, and Westchester Counties and in New York City. Resource Center staff have also published numerous articles about the NYSCEF program.

¹¹ The NYSCEF system makes available an online program that explains visually how documents are e-filed. There is also a *User’s Manual*, illustrated with NYSCEF screens, and *FAQs* that explain how the NYSCEF system works.

court clerk that is far greater than that which exists for documents in paper form. Paper documents can easily be misplaced, damaged or destroyed by floods, fires, broken pipes, or other accidents. By contrast, documents that are housed on electronic media are far less susceptible to such dangers. Unlike papers, documents in electronic form can be copied by the e-filing system easily. In fact, the NYSCEF system is backed up, so that even if one file server somewhere were to fail, all of the data contained on it would be preserved elsewhere and be available promptly for use.

The NYSCEF system provides additional forms of security as well. The system has extensive protections against hackers and other malicious actors. Data in e-filed cases is encrypted, so as to protect it from abuse. The level of encryption used is state-of-the-art.¹²

The NYSCEF system allows filers to pay court fees electronically, similar to the way in which a person may purchase and pay for a book or other products online. The court system does not store payment data on filers.

Apart from the proven security of the NYSCEF system itself, there are robust protections in place for confidential information in documents filed in the system. First, statute provides that attorneys filing documents with the clerk of a court shall not, with narrow exceptions, reveal social security numbers.¹³ Further, the e-filing rules promulgated by the Chief Administrative Judge provide protection for the health information of individuals and other sensitive personal information. An e-filer filing a document containing such information need only note that the document should be treated as secure, which can easily be done in NYSCEF. A document in secure status is accessible online only to another attorney or other filer participating in the e-filed case although, as with any document in paper form, it is available for inspection at the courthouse or County Clerk's Office unless it has been sealed pursuant to court order.¹⁴ E-filing allows the court clerk or the County Clerk to easily seal a document or a file as directed by the court.

C. Bar Support for e-Filing

New York bar groups strongly support e-filing. The President of the New York State Bar Association (NYSBA) appointed a Task Force on e-filing, which conducted a study and issued a report in December 2006 that urged expansion of e-filing in the state courts. In March 2007, the NYSBA House of Delegates adopted a resolution on e-filing. The resolution noted that

electronic filing of court documents offers significant advantages over paper filing[,] including savings of costs and time to clients and attorneys, savings of storage costs to the court system, minimalization of misfiling of documents, access to filed documents at any time from a remote location, and uniformity of filing procedures, among other advantages¹⁵

The House of Delegates stated that attorneys who had participated in e-filing in Federal court or through

¹² The NYSCEF system is protected by 128 bit encryption, which ensures that all communications to servers are secure. Servers are on-site and are hardened according to guidelines of the National Institute of Standards and Technology. Application source code is monitored for vulnerabilities using automated static source code analysis tools. In addition, a web application firewall is used as a further layer of security, providing realtime monitoring and protection. A comprehensive infrastructure is in place to ensure that all documents are stored safely and securely. All documents are digitally marked to assure that they have not been altered. All off-site backups are encrypted according to industry standards (256 bit AES) and are housed by a SysTrust certified vendor.

¹³ GBL §399-dd(6).

¹⁴ Uniform Rule 202.5-6(d)(3)(iii).

¹⁵ Resolution of the NYSBA House of Delegates, at 1 (March 31, 2007) [hereinafter cited as the "NYSBA Resolution"].

the NYSCEF system “have by a significant majority indicated an overall positive experience”¹⁶ The House approved the recommendations of the Task Force that e-filing be expanded in New York.¹⁷

The Association of the Bar of the City of New York issued a report commenting on the work of the NYSBA Task Force. The Association also expressed support for expansion of e-filing in New York and concurred that there are “many advantages to be gained by use of the [NYSCEF] system”¹⁸ For attorneys, it pointed out, one of the principal benefits was reduction in costs to clients for the added time and disbursements occasioned by traveling to court to file papers, a benefit which “will have its greatest impact on sole practitioners who work a substantial distance from their County Clerk.”¹⁹ The Association stated that it “wholeheartedly support[s]” e-filing in the New York courts.²⁰

The NYSBA Commercial and Federal Litigation Section and the New York County Lawyers’ Association also expressed their support for expansion of e-filing in the state court system. The Section stated that “the experiences of our members with e-filing in the federal courts — and, to a lesser extent, with the [NYSCEF] system — [have] convinced us that the benefits of e-filing are real and substantial”²¹ The County Lawyers’ Association wrote that “electronic filing offers many benefits to litigants, attorneys, the courts, and the County Clerks, and to the public, and ... it should most certainly be expanded in the New York State court system. Our Association, the membership of which includes attorneys working in every form of law practice ... and litigators practicing in every area of the law, believes very strongly in the utility of electronic filing and enthusiastically supports the expansion of New York’s current electronic filing program.”²²

That the story of the e-filing project in New York State has been very positive is demonstrated in other ways. In March-April 2011, the UCS undertook a survey of users who had e-filed cases since May 24, 2010.²³ The purpose of this survey was to gather information on the experience of users with the NYSCEF system and suggestions for improvements. Overwhelmingly, the respondents expressed great satisfaction with the e-filing program: 80.3% of them reported that they were either very satisfied or satisfied with their experience with mandatory e-filing through NYSCEF;²⁴ 86.7% indicated that the convenience of the NYSCEF system was excellent or good; and 84.46% were either very satisfied or satisfied with the NYSCEF program overall. The survey also confirmed that NYSCEF is largely intuitive and similar to the Federal ECF system. Almost 60% of those who responded to the survey stated that they had learned to use it solely on their own. Many users have at some point consulted the County Clerk or court staff, including, in numerous cases, staff of the NYSCEF Resource Center. 89.52% of those replying reported that the assistance provided by staff was excellent or good.

¹⁶ NYSBA Resolution at 1.

¹⁷ NYSBA Resolution at 1-2.

¹⁸ Association of the Bar of the City of New York, Comments by the Association of the Bar of the City of New York on the Report and Recommendations of the task Force on Electronic Filing of Court Documents of the New York State Bar Association at 2 (March 5, 2008 [hereinafter cited as the “ABCNY Report”]).

¹⁹ ABCNY Report at 2.

²⁰ ABCNY Report at 4.

²¹ Commercial & Federal Litigation Section, Section Comments regarding the Report of the New York State Bar Association Task Force on E-Filing of Court Documents at 3 (March 14, 2007).

²² New York County Lawyers’ Association, Comments on the Report of the Task Force on Electronic Filing of the New York State Bar Association (Dec. 28, 2006) and Suggestions for the Expansion of Electronic Filing in the New York State Court System, at 3 (Feb. 2007).

²³ The survey was sent to 5,000 users who had commenced a case or filed a document electronically in the previous 12 to 18 months.

²⁴ Some other respondents expressed themselves as neutral on the question, leaving just 5.71% who indicated that they were dissatisfied.

These results parallel those obtained in a survey conducted in 2009, prior to initiation of mandatory e-filing in New York and Westchester Counties. It is significant that high levels of satisfaction were reported in 2011 by those who had e-filed after mandatory e-filing was introduced, just as similar levels of satisfaction had been registered two years before by those who had e-filed under a purely voluntary regime.

The views of those who responded to the UCS survey in 2011, as well as in 2009, revealed — if there was any doubt — that information technology is ubiquitous in the legal profession today. Almost all 2011 respondents or their firms use e-mail in their practice (99%) and a great many use a Blackberry or like device (73%), a desktop computer (92%), a laptop (58.81%), electronic legal research and Internet legal research (72% and 85.49%), a scanner (92%), and a cellphone (80%). Almost 72% of the respondents had participated as counsel in a case in the Federal ECF system, and about 70% of those respondents with information reported that their firm uses the ECF system weekly or monthly.

D. E-Filing In Other Courts

1. The Federal Courts

The Federal e-filing project has moved forward much more rapidly than New York's. The first prototype of the Federal e-filing system was introduced in 1995, four years before New York began its own project. Only six years later, in 2001, the roll-out of the Federal ECF system began nationally. Implementation in the U.S. District Courts commenced in 2002 and in the appellate courts in 2005.²⁵

Today, ECF is a mandatory filing system and a key component of the operations of the Federal courts. The Federal “Case Management/Electronic Case Files” project revolutionized the way in which the federal courts manage their cases and documents.²⁶ The system is now in use in all District Courts (including criminal cases) and Bankruptcy Courts nationwide, all regional Courts of Appeal, the Court of Federal Claims, the Court of International Trade, and the Judicial Panel on Multidistrict Litigation. The volume of electronic filings continues to grow. Over six million documents are e-filed *every month*, and over 500,000 attorneys use the e-filing system.²⁷

2. Other state courts

E-filing is coming of age in almost all of the state courts. It is now authorized in 41 states, and is contemplated in most of the rest. Since most of the state trial courts in the United States are administered locally, implementation of e-filing in those courts is a county-by-county process — usually accompanied by a state statute that provides authorization for pilot programs, fixes general ground rules for them, and leaves to the local courts the decision to implement an e-filing pilot. These pilot programs abound; some encompassing all civil cases, some with selected categories of civil cases. Those with selected cases generally include commercial cases, mass torts and mortgage foreclosures, and some include domestic relations, probate, family, and criminal cases.

²⁵ www.uscourts.gov/Federalcourts/CMECF/AboutCMECF.aspx.

²⁶ *Id.* The Federal courts developed the e-filing system in tandem with a revised case management system so that efficiencies generated by the former could contribute to the latter.

²⁷ “Technology” in the *Annual Report* of the Director of the Administrative Office of the United States Courts (2010), at www.uscourts.gov/Federalcourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport_2010/Technology.aspx.

In most states, e-filing has developed along a common trajectory. Typically, e-filing has begun in certain kinds of civil cases (perhaps complex matters, as in Orange County, California²⁸ or in Delaware²⁹). With the passage of time, the universe of covered case types has expanded. E-filing has expanded, for instance, to apply to probate proceedings (as in, for example, Colorado³⁰) and family and domestic relations cases (as in, for example, Vermont³¹ and Colorado³²), and to criminal matters (as in, for example, Alabama,³³ Arizona,³⁴ Florida,³⁵ Nebraska,³⁶ and Vermont³⁷). A similar trajectory characterized the growth of e-filing in the Federal system, where e-filing began in the Bankruptcy Court, expanded to the District Court (civil and criminal matters), and then to the Appellate Courts.

Significantly, of those states that have operating e-filing programs, more than one-third have mandatory filing, including our sister state of Connecticut, where all civil cases must be e-filed.³⁸ It should also be noted that Delaware, a major center for business litigation in the United States, and whose most important business court — the Court of Chancery — is a friendly competitor to New York’s Commercial Division, has mandatory e-filing.³⁹

²⁸ www.occourts.org/directory/civil/complex-civil/e-filing/.

²⁹ Delaware implemented an electronic filing system for complex cases in the Superior Court in 1991. See http://courts.delaware.gov/Superior/eLitigation/tech_efile.stm.

³⁰ www.courts.state.co.us/userfiles/File/Mandatory%20E-File%20Courts%202010.pdf.

³¹ In 2011, e-filing will be rolled out to, inter alia, the Family Divisions of the Vermont Superior Court. www.vermontjudiciary.org/masterpages/eservices-efiling.aspx.

³² www.courts.state.co.us/Administration/Program.cfm?Program=21.

³³ The Alabama Supreme Court, by order dated April 20, 2011, authorized a pilot project by which e-filing can be made in criminal cases in the district courts and the circuit courts. Administrative Policies and Procedures for Electronic Filing in the Criminal Divisions of the Alabama Unified Judicial System, at 1 (April 2011)(available at <http://efile.alacourt.gov>).

³⁴ Superior Court of Arizona, Maricopa County, Electronic Filing Guidelines (updated May 30, 2011), Sect. 4.0 (Criminal E-Filing Requirements)(available at <https://efiling.clerkofcourt.maricopa.gov/efilingguidelines>). As of May 2, 2011, all civil filings in this court must be made electronically. See www.azcourts.gov/Default.aspx?alias=www.azcourts.gov/azturbocourtinformation.

³⁵ Senate Bill 0170 (2011), passed by the Florida Senate (on April 6, 2011) and the House (on May 4, 2011) unanimously. See www.flsenate.gov/Session/Bill/2011/0170. The bill requires each state attorney and public defender to e-file court documents with the clerk of the court and receive court documents from the clerk in the same way. The legislature states that it expects that “the electronic filing and receipt of court documents will reduce costs for the office of the state attorney [and the office of the public defender], the clerk of the court, and the judiciary; will increase timeliness in the processing of cases; and will provide the judiciary and the clerk of the court with case-related information to allow for improved judicial case management.” Section 1, creating Section 27.341 (1)(a), Florida Statutes; Section 2, creating Section 27.5112 (1)(a), Florida Statutes.

³⁶ Criminal Electronic Filing (E-filing) Now Available in the Nebraska District Courts (available at www.supremecourt.ne.gov/court-information-tech/pdf/DC%20Criminal%20E-Filing%20.doc).

³⁷ During 2011, the Vermont e-filing system will be rolled out to, inter alia, the Criminal Divisions of the Superior Court. www.vermontjudiciary.org/masterpages/eservices-efiling.aspx.

³⁸ As of December 5, 2009, e-filing of all civil case types is required in Connecticut for attorneys and firms (unless excluded and subject to some exceptions). Connecticut Judicial Branch, Frequently Asked Questions About E-Filing, at 3 (available at www.jud.ct.gov/external/super/E-Services/efile/efile-faq.pdf); E-Services Procedures and Technical Standards, at 4 (March 31, 2011)(available at www.jud.ct.gov/external/super/E-Services/e-standards.pdf). In Alabama, as of April 12, 2011, all attorneys licensed to practice law there are required to register for the Alabama e-filing system. <http://efile.alacourt.gov>.

³⁹ See <http://courts.delaware.gov/efiling/index.stm>.

II. RECOMMENDATIONS FOR FURTHER LEGISLATION

THE JUDICIARY RECOMMENDS that the basic approach of chapters 416 of the Laws of 2009 and 528 of the Laws of 2010 be built upon to expand electronic filing as follows:

1. Existing authority of the Chief Administrative Judge to establish mandatory e-filing programs in civil cases in Supreme Court should be extended to permit (i) e-filing in New York City in all commercial cases (regardless of the amount of damages sought), tort cases and contract cases city-wide; and (ii) e-filing in all but CPLR Article 78, MHL Article 81, matrimonial and Election Law proceedings in Livingston, Monroe, Rockland, Tompkins, Westchester and three other counties to be named by the Chief Administrative Judge.
2. The Chief Administrative Judge should be authorized to permit or mandate e-filing in criminal cases; and, in Family Court, to establish it for the filing of petitions by institutional providers in juvenile delinquency and child protective proceedings. Also in Family Court, the Chief Administrative Judge should be empowered to implement a consensual e-filing program in all venues and all classes of cases.
3. The Chief Administrative Judge should be authorized to establish mandatory e-filing in Surrogate's Court in all venues and in all classes of cases.
4. The Chief Administrative Judge should be authorized to establish mandatory e-filing in the New York City Civil Court in no-fault cases involving compensation of medical service providers (i.e., in cases where, under present law, there now is a consensual program).
5. The existing sunset for the mandatory e-filing program — September 1, 2012 — would be eliminated and a new sunset — September 1, 2015 — would be substituted.
6. Existing restrictions on the program would all be preserved in civil cases and extended, as appropriate, to the new mandatory e-filing programs authorized for the criminal courts, Family Court, Surrogate's Court, and the New York City Civil Court. These restrictions include:
 - (i) an opt-out for lawyers asserting technical impediments and for *pro se* litigants;
 - (ii) exclusion of CPLR Article 78, MHL Article 81 and Election Law proceedings, and matrimonial cases, from the Supreme Court Civil program wherever established;
 - (iii) the existing requirement that the affected County Clerk in each county in which mandatory e-filing is to be employed in Supreme Court first give his or her sign-off and that the local bar be consulted; and
 - (iv) the Chief Administrative Judge must continue to maintain the advisory committee established by section 6(b) of chapter 416 of the Laws of 2009, as amended.

Also, consultation with the local bar and, in criminal cases, with the District Attorney, would be required before mandatory e-filing could be implemented in any of the courts to which this proposal would authorize its extension.

III. REASONS FOR RECOMMENDATIONS

ROLL-OUT OF THE MANDATORY FEDERAL ECF SYSTEM began nationally six years after the introduction of the first prototype of the system. By contrast, e-filing has been underway in New York State for 12 years. After such a prolonged gestation, it certainly is appropriate now that our State take the next step, with authorization for a broader use of mandatory e-filing as determined to be appropriate by the Chief Administrative Judge in light of realities on the ground. Our initial foray into mandatory e-filing has worked well and been well-received by the bar, and the expansion proposed in this report will bring major benefits to litigants and attorneys, the court system, County Clerks, District Attorneys and other institutional litigants in our courts, at a time when efficiency is of importance to all.

A. E-Filing Provides Significant Benefits, Including Cost Savings, to Attorneys and Their Clients

E-filing is extraordinarily convenient for attorneys and helps to conserve attorney time and reduce expenses, all of which of course inures to the benefit of clients.⁴⁰

Papers can be filed and filing fees paid at any time, whether the County Clerk's Office or the court is open or not, from almost anywhere. This gives attorneys additional time to respond to the requirements of their clients, yet meet deadlines. Attorneys in e-filed cases have access to the complete file, simultaneously by as many counsel as are working on a matter, at any time of any day of the week, and from virtually anywhere. This translates into efficiency in attorney work, as well as a savings on intra-office delivery expenses.

Service and filing (and the electronic payment of filing fees) are made through the NYSCEF system automatically with one click of the "send" button. There will be a major saving of time whenever counsel can use NYSCEF instead of delivering documents in person to the court or the County Clerk, or serving them by hand. E-filing is a vital resource for the attorney practicing in, say, Suffolk County, who has a case pending in Kings County and who otherwise would need to make a trip in person to the courthouse to deliver documents and to serve adversaries there. It is likewise a vital resource in those areas upstate where there are large distances that separate attorneys from the courthouse, the County Clerk's Office and the offices of opposing counsel.

The potential savings, in both time and money, are significant. The most substantial savings will result from the reduced need to travel to the courthouse and the complete elimination of the requirement of serving opposing counsel and filing proof of such service with the court. One study estimated that electronic filing and service would save as much as \$75 for each document, while another estimate places the savings at more than \$95 per document.⁴¹ Based on a far more conservative estimate of \$40 savings for each document, the total potential savings to both the private sector and government that would be realized from universal e-filing in New York is

⁴⁰ [T]he use of [NYSCEF] will produce cost savings for all, save time and increase the speed with which attorneys can send documents to the court and opposing counsel. The financial benefits include savings on office supplies, paper, ink, postage, and storage facilities." Report of the Commission to Examine Sole and Small Firm Practice, at 27 (2006).

⁴¹ Case File Xpress, a vendor, estimates the cost to a small firm of delivering a document of 10 pages to court as \$25.50. Case File Xpress, *A Case Study: Time is Money: e-Filing Saves Both*, at 6 (2010). The same study estimates that, counting attorney and legal assistant time, an average firm could save as much as \$75 per filing. Wiznet, another vendor, estimated the cost of filing one 15-page document and serving a copy of it on one attorney at \$13.25 to file and \$3.09, \$12 and \$20 to serve by mail, by Fed Ex and

hundreds of millions of dollars each year.⁴² These savings will benefit not just individual New Yorkers, but also our businesses, and the State and local governments that so often are parties to litigation.

B. E-Filing Is Particularly Helpful to the Solo and Small Firm Practitioner

We should not suppose that e-filing will primarily benefit large law firms, with their many staff members and technology specialists. To the contrary, e-filing is particularly helpful to the solo and small firm practitioner, whose practice requires special attentiveness to minimizing costs and keeping staffing levels lean. A leading bar group stressed the particular benefits of e-filing to the solo and small firm practitioner in leveling the playing field:

Some may hold the view that e-filing is really for large firms, not solo and small- firm practitioners. This is not true. Large firms have battalions of clerks to handle filing and service and clients who can afford the additional expenses entailed. **Thus, perhaps even more than the large firm, it may be the sole or small-firm practitioner who benefits most, economically and otherwise, from e-filing.** And, although large firms may also have experts in technology on staff, such expertise is unnecessary to use the e-filing system effectively and easily. E-filing has the great potential to “level the playing field.” We say this as an Association that numbers thousands of solo and small-firm practitioners among its members, an Association that is surely one of the Bar groups in the State most representative of that segment of the Bar.⁴³

C. E-Filing Promotes Efficiencies and Offers Significant Benefits to the Court, County Clerks, District Attorneys, County Attorneys, and Other Institutional Participants in the Justice System

Important as are the benefits of e-filing to attorneys and clients, it is of great significance that e-filing is a winning technology all around; it simultaneously brings benefits to the courts, the County Clerks, District Attorneys, County Attorneys, and the many other institutions and government agencies that are participants in our justice system — benefits that are critical in this period of fiscal difficulty.

The Chief Judge has emphasized that, in a time of austerity, with the court system having to incur major cuts in resources and staff, it is imperative that the courts seek out ways to perform their critical mission of re-

(*continued*) by hand respectively. www.ncsc.org/Topics/Technology/Electronic-Filing/Resource-Guide.aspx. The Clerk of the Cook County Circuit Court, Illinois, was quoted as follows: “Taking into account the attorney’s time to travel to the courthouse, the time to stand in line, and the printing costs (paper and equipment), including the printing costs for serving opposing counsel with subsequent pleadings, it was determined that attorneys can realize a savings as high as an estimated \$97.69 per filing, assuming a 10-page complaint filed electronically, and an estimated \$117.93 per filing for an assumed 10-page subsequent pleading filed electronically,” said Clerk [of the Court] Brown.” http://198.17315.31/newsite//GI_NEWS/newscontent/Press_Release/2009/05-12-09_Clerk_Brown_Launches_E-Filing_in_Cook_County.pdf. http://198.173.15.31/newsite//GI_NEWS/newscontent/Press_Release/2009/05-12-09_Clerk_Brown_Launches_E-Filing_in_Cook_County.pdf

⁴² These estimates are based on the electronic filing in four million cases a year, and assume, conservatively, that there are only two documents filed in each case and that there are only two parties in each case.

⁴³ New York County Lawyers Association, Comments on the Report of the Task Force on Electronic Filing of the New York State Bar Association (Dec. 28, 2006) and Suggestions for the Expansion of Electronic Filing in the New York State Court System, at 12-13 (Feb. 2007) (emphasis added).

solving disputes and rendering justice to the citizens of New York with greater efficiency and productivity than ever before. The courts must reexamine and thoroughly rethink the ways in which they conduct operations, and find innovative means of achieving greater efficiency in the processing of cases.⁴⁴ A similar challenge faces the whole of state government, but the courts in one sense are fortunate — in the search for improved efficiency, they need not go far because the necessary transformative technology is already here and available; it remains only that it be used to as great an extent as it reasonably can be. As the Federal courts have recognized (from experience), e-filing can, in time, transform the operations of the courts in a way that parallels the transformations that technology has already wrought in so many areas of business, education and society in general. When a technology is available that clearly can markedly improve the efficiency with which the courts conduct business, it would be irresponsible in these challenging times were the courts to fail to make the greatest possible use of that technology — particularly when the technology brings benefits to all it affects.

E-filing offers many opportunities for savings:

- reduced document storage and retrieval costs
- reduced data entry costs
- reduced traffic in the courthouse
- increased productivity and efficiency as a result of the ability of multiple users (e.g., judge and court attorney) to have immediate and simultaneous access to a case file at any place at any time.

In looking to e-filing as a major tool in what will be a sustained effort to enhance the efficiency of court operations, our State court system is pursuing a course that is being followed by other institutions and other court systems. For example, the Director of the Administrative Office of the United States Courts notes in his Annual Report for 2010 that the Federal e-filing system “benefits not only the Judiciary, but also the bar, public, and other governmental agencies that have gained greater access to court information. The Judiciary anticipates long-term efficiencies will be achieved as a result of CM/ECF implementation.”⁴⁵

Now, more than ever before, the New York courts should likewise take full advantage of the efficiencies and cost savings that this proven technology offers.

D. E-Filing Will Significantly Benefit the Environment

The entire legal system in New York is drowning in paper. As Green Justice, the court system’s Environmental Action Plan, explained, universal e-filing would have an enormous positive impact on the environment:

Assuming conservatively, that the average court file consists of only 25 pages, the four million new cases initiated in New York each year result in the filing of 100 million pieces of paper in the courts, with the same amount of paper being sent around the State for service on each of the opposing parties. The cost of purchasing, transporting and storing this mountain of paper burdens the courts, litigants, and the bar and exacts a substantial toll on the environment.

⁴⁴ The taxing authorities have done this in recent years, with stunning results. In 2010, almost 99 million people used the Federal *e-file* system to file their tax returns. www.irs.gov/efile/article/0,,id+118508,00.html. The New York State Department of Taxation and Finance estimated in March 2011 that seven million taxpayers would e-file their New York State tax returns in 2011. “Tips to Help New York Taxpayers Save Time and Money” (March 31, 2011), at www.tax.ny.gov/press/rel/2011/errors033111.htm.

⁴⁵ “Efforts to Contain Costs and Limit Budget Requirements,” in *Annual Report* (2010), at www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport_2010/EffortsToContainCosts.aspx.

E-filing is a means by which attorneys and litigants can continue to litigate cases with the same vigor they have used in the past, but with a reduced impact on the environment. Every document e-filed represents paper conserved and, ultimately, not discarded into landfills. E-filing also reduces the use of fuel that would otherwise be consumed in the filing, serving, and retrieving of hard-copy documents.⁴⁶

⁴⁶ The advent of photocopy machines added to the total amount of paper generated in connection with lawsuits, E-filing, in contrast, represents a second-generation technology that will minimize and almost eliminate the use of paper.

IV. COUNTY CLERK COMMENTS

PURSUANT TO CHAPTER 528 OF THE LAWS OF 2010, the Chief Administrative Judge invited the County Clerks in whose counties e-filing has been implemented to submit comments on their experience. Comments have been received from the Honorable James Culbertson, County Clerk of Livingston County; the Honorable Cheryl Dinolfo, the County Clerk of Monroe County; the Honorable Norman Goodman, County Clerk of the County of New York; the Honorable Timothy Idoni, County Clerk of the County of Westchester; the Honorable Maureen C. O'Connell, the County Clerk of Nassau County; and the Honorable Paul Piperato, County Clerk of Rockland County. These comments are annexed as Appendix B to this report.

V. CONCLUSION

THE CHIEF JUDGE HAS COMMITTED THE COURTS of New York to a future in which e-filing will become the standard method of filing and serving documents in court cases. We recognize that the most responsible way to give effect to this commitment and to achieve its vital benefits without dislocating the administration of justice in the transition period is to proceed in measured, careful fashion. That is the aim of the proposal made in this report. With the authority proposed here, the Chief Administrative Judge will be able to move ahead to explore the virtues of e-filing in a large enough and sufficiently varied sampling of selected courts and cases — courts that have the necessary technical prowess, in communities in which the local bar and area officials including County Clerks, District Attorneys, County Attorneys and others have demonstrated a strong interest in e-filing — so that, by the time this next pilot expires, in 2015, the New York experience with e-filing will be substantial, and one that can reliably serve as the basis for steps that follow to complete realization of the Chief Judge’s vision. In some courts, types of cases, and venues, e-filing may be advanced with a speed and scope not possible elsewhere.

Because of the many local factors that may affect readiness to proceed with e-filing, the general approach of our proposal is not to name specific counties in the legislation. Rather, the approach is to give this authority to the Chief Administrative Judge, who is in the best possible position to assess all of the factors in determining where and how e-filing should go forward. As under present law, so, too, under our proposal, the Chief Administrative Judge will consult with the bar and the County Clerks before taking any action in Supreme Court Civil cases and the County Clerk must agree before e-filing can proceed in his or her county. Similar consultation obligations will apply to mandatory e-filing extensions into the criminal courts, Surrogate’s Court, Family Court and the New York City Civil Court. Our proposal will allow the Chief Administrative Judge to develop e-filing and to see its benefits realized for the court system, attorneys, litigants, and taxpayers with the maximum possible effectiveness and efficiency.

After 12 years of increasing success with e-filing, it is time to move ahead with boldness. Broader use should be made of mandatory e-filing, as was done by the Federal courts, in half the time it has taken New York to reach this point. We have clearly seen the benefits and efficiencies of e-filing. With staffing in the courts much reduced, resources in short supply, and the future fiscal situation uncertain at best, it is critical that the courts right now find ways to significantly improve efficiency and productivity. If this is not done, justice will be delayed, which is to say denied, to those who are entitled to it. We owe it to the citizens of this State who seek justice in our courts, and to the attorneys who practice here. We owe it to the taxpayers, too, to achieve the greatest productivity possible with the resources they provide. It is also important to the court system of our State and to the State generally that New York, even in difficult times, remains, as it has been historically, a national leader in the administration of justice, including the use of advanced technology. E-filing constitutes an extraordinary tool that can allow the courts to achieve increased efficiency and productivity at a critical moment, while at the same time reducing costs and saving time for lawyers and litigants. We must not forgo this chance to put this technology to greater use for the benefit of all.

Dated: June, 2011

Honorable Ann Pfau
CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK

APPENDIX A:

PROPOSED LEGISLATION



eFiling

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s18 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s28 Serrano
s55 Alesi	s08 Fuschillo	s26 Krueger	s53 O'Mara	s51 Seward
s11 Avella	s59 Gallivan	s27 Kruger	s37 Oppenheimer	s09 Skelos
s40 Ball	s12 Gianaris	s24 Lanza	s21 Parker	s14 Smith
s42 Bonacic	s22 Golden	s39 Larkin	s13 Peralta	s25 Squadron
s46 Breslin	s47 Griffo	s01 LaValle	s30 Perkins	s16 Stavisky
s38 Carlucci	s60 Grisanti	s52 Libous	s61 Ranzenhofer	s35 Stewart-Cousins
s50 DeFrancisco	s06 Hannon	s45 Little	s48 Ritchie	
s32 Diaz	s36 Hassell-Thompson	s05 Marcellino	s33 Rivera	s49 Valesky
s17 Dilan		s07 Martins	s56 Robach	s57 Young
s29 Duane	s10 Huntley	s62 Maziarz	s41 Saland	s03 Zeldin
s31 Espaillet	s04 Johnson	s43 McDonald	s19 Sampson	

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CIVPR *Office of Court Adminis-
tration 52 R-1*
(Specifies courts and types of
actions in which pilot programs will
be authorized to permit use of elec-
tronic means to commence an action
or special proceeding)

Electronic service; commenc.

AN ACT

to amend chapter 367 of the laws of
1999, amending the civil practice
law and rules and the judiciary law
relating to authorization of pilot
programs permitting use of facsimile
transmission or electronic means to
commence an action or special
proceeding, in relation to specify-
ing courts and actions in which
pilot programs will be authorized to

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a107 Crouch	a095 Jaffee	a038 Miller, M.	a012 Saladino
a092 Abinanti	a014 Curran	a057 Jeffries	a052 Millman	a113 Sayward
a105 Amedore	a063 Cusick	a135 Johns	a103 Molinaro	a029 Scarborough
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a016 Schimel
a035 Aubry	a034 DenDekker	a099 Katz	a132 Morelle	a140 Schimminger
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a039 Moya	a145 Schroeder
a040 Barron	a114 Duprey	a065 Kellner	a003 Murray	a064 Silver
a082 Benedetto	a004 Englebright	a100 Kirwan	a037 Nolan	a036 Simotas
a073 Bing	a071 Farrell	a129 Kolb	a128 Oaks	a146 Smardz
a122 Blankenbush	a123 Finch	a025 Lancman	a069 O'Donnell	a093 Spano
a055 Boyland	a007 Fitzpatrick	a091 Latimer	a051 Ortiz	a079 Stevenson
a008 Boyle	a137 Friend	a013 Lavine	a136 Palmesano	a011 Sweeney
a026 Braunstein	a143 Gabryszak	a050 Lentol	a088 Paulin	a110 Tedisco
a044 Brennan	a090 Galef	a125 Lifton	a141 Peoples-Stokes	a115 Tenney
a131 Bronson	a133 Gantt	a072 Linares		a002 Thiele
a046 Brook-Krasny	a077 Gibson	a127 Lopez, P.	a058 Perry	a061 Titone
a147 Burling	a149 Giglio	a053 Lopez, V.	a087 Pretlow	a031 Titus
a117 Butler	a066 Glick	a001 Losquadro	a021 Ra	a062 Tobacco
a101 Cahill	a150 Goodell	a126 Lupardo	a097 Rabbitt	a041 Weinstein
a096 Calhoun	a075 Gottfried	a111 Magee	a009 Raia	a020 Weisenberg
a043 Camara	a005 Graf	a120 Magnarelli	a006 Ramos	a024 Weprin
a106 Canestrari	a098 Gunther	a059 Maisel	a134 Reilich	a070 Wright
a089 Castelli	a130 Hanna	a060 Malliotakis	a109 Reilly	a094 Zebrowski
a086 Castro	a139 Hawley	a030 Markey	a078 Rivera, J.	a023
a138 Ceretto	a148 Hayes	a019 McDonough	a080 Rivera, N.	a027
a033 Clark	a083 Heastie	a104 McEneny	a076 Rivera, P.	a054
a047 Colton	a028 Hevesi	a017 McKevitt	a119 Roberts	a116
a010 Conte	a048 Hikinid	a108 McLaughlin	a056 Robinson	
a032 Cook	a018 Hooper	a022 Meng	a068 Rodriguez	
a142 Corwin	a144 Hoyt	a121 Miller, D.	a067 Rosenthal	
a085 Crespo	a042 Jacobs	a102 Miller, J.	a118 Russell	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

permit use of electronic means to commence an action or proceeding; and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to the establishment of advisory committees to implement laws to effect service of papers by electronic means; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first unnumbered paragraph and clauses (i), (iv), (v),
2 (xi) and (xii) of subparagraph 1, and subparagraphs 2 and 3 of paragraph
3 (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999,
4 amending the civil practice law and rules and the judiciary law relating
5 to authorization of pilot programs permitting use of facsimile trans-
6 mission or electronic means to commence an action or special proceeding,
7 the first unnumbered paragraph of subparagraph 1, subparagraph 3 as
8 amended by chapter 528 of the laws of 2010 and clauses (i), (iv), (v),
9 (xi) and (xii) of subparagraph 1 and subparagraph 2 as amended by chap-
10 ter 416 of the laws of 2009, are amended and a new clause (xiii) is
11 added to subparagraph 1 to read as follows:

12 The supreme court [of] in counties within the city of New York [and
13 Westchester counties] in the following classes of cases [provided that
14 the amount in controversy (exclusive of punitive damages, interest,
15 costs, disbursements and counsel fees claimed) is over \$100,000]:

16 (i) Breach of contract [(regardless of amount in controversy)] or
17 fiduciary duty, fraud, misrepresentation, business tort (including but
18 not limited to actions involving claims of unfair competition), or stat-
19 utory and/or common law violation where the breach or violation is
20 alleged to arise out of business dealings (including but not limited to
21 sales of assets or securities; corporate restructuring; partnership,
22 shareholder, joint venture, and other business agreements; trade
23 secrets; restrictive covenants; and employment agreements not including
24 claims that principally involve alleged discriminatory practices);

25 (iv) Shareholder derivative actions[, without consideration of the
26 monetary threshold];

27 (v) Commercial class actions[, without consideration of the monetary
28 threshold];

1 (xi) Dissolution of corporations, partnerships, limited liability
2 companies, limited liability partnerships and joint ventures[, without
3 consideration of the monetary threshold]; [and]

4 (xii) Applications to stay or compel arbitration and affirm or disaf-
5 firm arbitration awards and related injunctive relief pursuant to arti-
6 cle 75 of the civil practice law and rules involving any of the forego-
7 ing enumerated commercial issues[, without consideration of the monetary
8 threshold]; and

9 (xiii) Breach of contract cases other than those specified in clause
10 (i) of this subparagraph.

11 2. Tort cases in supreme court in [Westchester county] counties within
12 the city of New York, and

13 3. One or more classes of cases (excluding matrimonial actions as
14 defined by the civil practice law and rules, election law proceedings,
15 proceedings brought pursuant to article 78 of the civil practice law and
16 rules, and proceedings brought pursuant to the mental hygiene law) in
17 supreme court in Livingston, Monroe, Rockland [and], Tompkins and West-
18 chester counties, and up to three additional counties[.] outside the
19 city of New York as the chief administrator shall specify, and

20 § 2. Paragraph (B) of subdivision (b) of section 6 of chapter 367 of
21 the laws of 1999, amending the civil practice law and rules and the
22 judiciary law relating to authorization of pilot programs permitting use
23 of facsimile transmission or electronic means to commence an action or
24 special proceeding, is amended by adding two new subparagraphs 4 and 5
25 to read as follows:

26 4. One or more classes of cases in surrogate's court in such counties
27 as the chief administrator shall specify, and

1 5. Actions in the civil court of the city of New York brought by a
2 provider of health care services specified in paragraph (1) of
3 subsection (a) of section 5102 of the insurance law against an insurer
4 for failure to comply with rules and regulations promulgated by the
5 superintendent of insurance pursuant to subsection (b) of section 5108
6 of such law.

7 § 3. The closing paragraph of paragraph (B) of subdivision (b) of
8 section 6 of chapter 367 of the laws of 1999, amending the civil prac-
9 tice law and rules and the judiciary law relating to authorization of
10 pilot programs permitting use of facsimile transmission or electronic
11 means to commence an action or special proceeding, as amended by chapter
12 528 of the laws of 2010, is amended to read as follows:

13 Notwithstanding the foregoing, the chief administrator may not elimi-
14 nate the requirement of consent until after he or she shall have
15 consulted with members of the organized bar and with the county clerk in
16 any county in which such elimination shall apply (where the affected
17 court is the supreme court of a county outside the city of New York),
18 have afforded them the opportunity to submit comments with respect ther-
19 eto, have considered any such comments and, in the instance of the coun-
20 ties specified in subparagraph three of this paragraph, have obtained
21 the agreement thereto of the respective county clerks thereof.

22 § 4. Chapter 367 of the laws of 1999, amending the civil practice law
23 and rules and the judiciary law relating to authorization of pilot
24 programs permitting use of facsimile transmission or electronic means to
25 commence an action or special proceeding, is amended by adding two new
26 sections 6-a and 6-b to read as follows:

27 § 6-a. (a) Notwithstanding any other provision of law, the chief
28 administrator of the courts, with the approval of the administrative

1 board of the courts, may promulgate rules authorizing a program in the
2 use of electronic means in any court or courts of the unified court
3 system other than a justice court for: (i) the filing with a court of an
4 accusatory instrument for the purpose of commencing a criminal action,
5 as required by section 100.05 of the criminal procedure law, and (ii)
6 the filing and service of papers in pending criminal actions and
7 proceedings.

8 (b) Except as otherwise provided in this subdivision, participation in
9 this program shall be strictly voluntary and will take place only upon
10 consent of all parties in the criminal action or proceeding; provided,
11 however, the filing of an accusatory instrument with the court for the
12 purpose of commencing a criminal action by electronic means shall not
13 require the consent of any other party. The chief administrator may
14 eliminate the requirement of consent to participation in this program
15 provided he or she first has consulted with members of the organized bar
16 in any county in which such elimination shall apply and with the
17 district attorney of such county; has afforded them the opportunity to
18 submit comments with respect thereto; and has considered any such
19 comments.

20 (c) Where the chief administrator eliminates the requirement of
21 consent as provided in subdivision (b) of this section, he or she shall
22 afford counsel and unrepresented parties the opportunity to opt out of
23 the program, via presentation of a prescribed form to be filed with the
24 court where the criminal action is pending. Said form, which shall not
25 be part of the case record, shall permit an attorney or unrepresented
26 party to opt out of participation in the program under any of the
27 following circumstances, in which event, he or she will not be compelled
28 to participate:

1 (i) Where the attorney certifies in good faith that he or she lacks
2 the computer hardware and/or connection to the internet and/or scanner
3 or other device by which documents may be converted to an electronic
4 format; or

5 (ii) Where the attorney certifies in good faith that he or she lacks
6 the requisite knowledge in the operation of such computers and/or scan-
7 ners necessary to participate. For the purposes of this paragraph, the
8 knowledge of any employee of an attorney, or any employee of the attor-
9 ney's law firm, office or business who is subject to such attorney's
10 direction, shall be imputed to the attorney; or

11 (iii) Where a party is not represented by counsel, he or she chooses
12 not to participate in the program.

13 Notwithstanding the foregoing, a court may exempt any attorney from
14 being required to participate in the program upon application for such
15 exemption, showing good cause therefor.

16 (d) For purposes of this section, "electronic means" shall be as
17 defined in subdivision (f) of rule 2103 of the civil practice law and
18 rules.

19 § 6-b. (a) Notwithstanding any other provision of law, the chief
20 administrator of the courts, with the approval of the administrative
21 board of the courts, may promulgate rules authorizing a program in the
22 use of electronic means in the family court for: (i) the origination of
23 proceedings in such court, and (ii) the filing and service of papers in
24 pending proceedings.

25 (b) (A) Except as otherwise provided in paragraph (B) of this subdivi-
26 sion, participation in this program shall be strictly voluntary and will
27 take place only upon consent of all parties in the proceeding; except
28 that a party's failure to consent to participation shall not bar any

1 other party to the proceeding from filing and serving papers by elec-
2 tronic means upon the court or any other party to such proceeding who
3 has consented to participation. Filing of a petition with the court by
4 electronic means for the purpose of originating a proceeding shall not
5 require the consent of any other party.

6 (B) In the rules promulgated pursuant to subdivision (a) of this
7 section, the chief administrator may eliminate the requirement of
8 consent to participation in this program for:

9 1. the filing with the court of a petition originating a juvenile
10 delinquency proceeding under article three of the family court act by a
11 presentment agency, as defined in section 301.2 of such act;

12 2. the filing with the court of a petition originating a proceeding to
13 determine abuse or neglect pursuant to article ten of the family court
14 act by a child protective agency, as defined in section one thousand
15 twelve of such act; and

16 3. the filing and service of papers in proceedings specified in
17 subparagraphs 1 and 2 of this paragraph where, pursuant to such subpara-
18 graphs, such proceedings were originated in the court by electronic
19 filing.

20 Notwithstanding the foregoing, the chief administrator may not elimi-
21 nate the requirement of consent until he or she shall have consulted
22 with members of the organized bar in any county in which such elimi-
23 nation shall apply and, with each authorized presentment agency and
24 child protective agency of such county, have afforded them the opportu-
25 nity to submit comments with respect thereto, and have considered any
26 such comments.

27 (c) Where the chief administrator eliminates the requirement of
28 consent as provided in subdivision (b) of this section, he or she shall

1 afford counsel and unrepresented parties the opportunity to opt out of
2 the program, via presentation of a prescribed form to be filed with the
3 clerk of the court where the proceeding is pending. Said form, which
4 shall not be part of the case record, shall permit an attorney or unrep-
5 resented party to opt out of participation in the program under any of
6 the following circumstances, in which event, he or she will not be
7 compelled to participate:

8 (A) Where the attorney certifies in good faith that he or she lacks
9 the computer hardware and/or connection to the internet and/or scanner
10 or other device by which documents may be converted to an electronic
11 format; or

12 (B) Where the attorney certifies in good faith that he or she lacks
13 the requisite knowledge in the operation of such computers and/or scan-
14 ners necessary to participate. For the purposes of this paragraph, the
15 knowledge of any employee of an attorney, or any employee of the attor-
16 ney's law firm, office or business who is subject to such attorney's
17 direction, shall be imputed to the attorney; or

18 (C) Where a party is not represented by counsel, he or she chooses not
19 to participate in the program.

20 Notwithstanding the foregoing, a court may exempt any attorney from
21 being required to participate in the program upon application for such
22 exemption showing good cause therefor.

23 (d) For purposes of this section, "electronic means" shall be as
24 defined in subdivision (f) of rule 2103 of the civil practice law and
25 rules.

26 § 5. Section 6 of chapter 416 of the laws of 2009 amending the civil
27 practice law and rules relating to service of papers by electronic

1 means, as amended by chapter 528 of the laws of 2010, is amended to read
2 as follows:

3 § 6. (a) Not later than April first in each calendar year, commencing
4 in the year 2011, the chief administrator of the courts shall submit to
5 the legislature, the governor and the chief judge of the state a report
6 evaluating the state's experience with [the program] programs in the use
7 of electronic means for the commencement of [civil] actions and
8 proceedings and the service of papers therein as authorized by [this
9 act] law and containing such recommendations for further legislation as
10 he or she shall deem appropriate, including, in particular, legislation
11 to enable broader use of [the program] such programs without the
12 requirement of consent to participation [in the counties specified in
13 subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of section 6
14 of chapter 367 of the laws of 1999, amending the civil practice law and
15 rules and the judiciary law, relating to the authorization of pilot
16 programs permitting the use of facsimile transmission or electronic
17 means to commence an action or special proceeding, as amended, and in
18 counties not now specified in subparagraph 3 of such paragraph (B)]. In
19 the preparation of such report, the chief administrator shall consult
20 with each county clerk in whose county [the] a program has been imple-
21 mented in civil cases in the supreme court, afford him or her an oppor-
22 tunity to submit comments with respect to such implementation for inclu-
23 sion in the report and consider any such comments.

24 (b) 1. The chief administrator of the courts shall create an advisory
25 committee to consult with him or her in the implementation of [this act]
26 laws affecting the programs in the use of electronic means for the
27 commencement of civil actions and proceedings and the service of papers
28 therein in the supreme court. This committee shall consist of such

1 number of members as the chief administrator shall designate, no fewer
2 than half to be upon the recommendation of the New York State Associ-
3 ation of County Clerks.

4 2. The chief administrator shall create such other advisory committees
5 as he or she shall deem necessary to consult with him or her in the
6 implementation of laws affecting the programs in the use of electronic
7 means for the commencement of actions and proceedings and the service of
8 papers therein in courts other than the supreme court.

9 § 6. Section 7 of chapter 416 of the laws of 2009 amending the civil
10 practice law and rules relating to service of papers by electronic means
11 is amended to read as follows:

12 § 7. This act shall take effect on September 1, 2009; provided, howev-
13 er, that no rule adopted pursuant to paragraph (B) of subdivision (b) of
14 section 6 of chapter 367 of the laws of 1999, as added by section two of
15 this act, shall take effect until at least one hundred eighty days have
16 elapsed after such effective date, and provided that such paragraph (B)
17 shall expire and be deemed repealed September 1, [2012] 2015.

18 § 7. This act shall take effect immediately; provided, however, that
19 sections 6-a and 6-b of chapter 367 of the laws of 1999, as added by
20 section four of this act shall expire and be deemed repealed September
21 1, 2015; provided further that the amendments to paragraph (B) of subdi-
22 vision (b) of section 6 of chapter 367 of the laws of 1999 made by
23 sections one and three of this act shall not affect the repeal of such
24 provisions and shall expire and be deemed repealed therewith.

APPENDIX B:

**COMMENTS FROM COUNTY
CLERKS**



eFiling



**LIVINGSTON COUNTY
OFFICE OF COUNTY CLERK**

Livingston County Government Center
6 Court Street, Room 201
Geneseo, New York 14454

(585) 243-7010
Fax (585) 243-7928

James Culbertson

County Clerk

Mary F. Strickland
Deputy County Clerk

April 15, 2011

Hon. Michael V. Coccoma
Deputy Chief Administrative Judge
Office of Court Administration
4 ESP, Suite 2001
Albany, NY 12223-1450

Dear Judge Coccoma,

The County continues to be in the development stages for system development. Our vendor Record Fusion was purchased by Property Info which is the company that currently is developing Monroe County's eFile system.

Our development, with some slight modifications, will be impacted by the development timeline of Monroe County's system. We continue to project that we will initiate a pilot program with a selected law firm to eFile foreclosures by mid summer 2011.

As you are aware, Livingston County will be using its County portal to accept eFilings of civil actions. We continue to wait for final specifications from the Courts on the return path so that we can share all eFile actions with the OCA. That specification information is not within Livingston County's control and as such remains an impediment to our projected pilot start date.

Livingston County requests that this report be included in the OCA report to the NYS Legislature.

Sincerely,

James Culbertson
Livingston County Clerk

Cc: Hon. Craig Doran
Cc: Hon. Matthew A. Rosenbaum



Office of the County Clerk

Monroe County, New York

Cheryl Dinolfo

County Clerk

April 15, 2011

Honorable Michael V. Coccoma
Deputy Chief Administrative Judge
Office of Court Administration
4 Empire State Plaza, Suite 2001
Albany, NY 12223-1450

Dear Judge Coccoma,

As requested by the New York State Legislature and agreed upon by the Office of Court Administration, please accept and include Monroe County's attached report, in its entirety, in the Office of Court Administration's report to the Legislature.

Respectfully,

A handwritten signature in black ink that reads "Cheryl Dinolfo". The signature is written in a cursive, flowing style.

Cheryl Dinolfo
Monroe County Clerk

cc: Honorable Jonathan Lippman
Honorable Anne Pfau
Honorable Craig Doran
Honorable Matthew Rosenbaum
Honorable Dean G. Skelos
Honorable Sheldon Silver
Honorable Helene E. Weinstein

Monroe County E-Filing Report – April 15, 2011
Cheryl Dinolfo
Monroe County Clerk

As a County selected by the Office of Court Administration and approved by the New York State Legislature to commence e-filing, this serves as our report regarding the current status of e-filing in Monroe County. Monroe County is recognized as a leader with respect to technology and the Monroe County Clerk's on-line office is one of the largest and most robust in New York State, offering public records without charge. The records maintained in our office include court records as well as land records. In addition, our on-line system provides redaction tools to protect the public's personal information.

The Monroe County Clerk's Office offers state-of-the-art technology and is fully capable of providing e-filing of court records as well as e-recording of land records if allowed by statute. The Monroe County Clerk's Office has a contract with PropertyInfo for our comprehensive software system which provides the technological functionality for our office for filing, maintenance and support of all records, both court and land. PropertyInfo is well-recognized as a leader in software development and support for on-line records. We recognize the great value of providing increased on-line services to our customers and we are most anxious to expand our services to include e-filing of court records and e-recording of land records, both of which our system has been capable of providing for quite some time.

E-filing in Monroe County will occur through the Monroe County website. The Office of Court Administration has agreed that e-filing through the County Clerks' system is allowable.

After the document has been filed through the Monroe County site, the attorney or filer will be immediately notified of the filing with the Monroe County Clerk. The Court will then be provided a copy of the e-filed document. Our e-filing system mirrors the manner in which commencement proceedings in paper form are handled. Documents that are available to the public will be accessible immediately, thus providing greater access to public documents.

Locally, Monroe County has an E-filing Committee comprised of members of the Judiciary and attorneys who are supportive of e-filing through Monroe County. We have demonstrated our system to the Committee and have incorporated their comments and suggestions.

We have also provided the Office of Court Administration with many demonstrations and information as to how the Monroe County system works. We are hopeful that OCA will approve the Monroe County e-filing system at the end of April as we are set to commence e-filing of Commercial cases as of June 1, 2011. Thereafter, the e-filed case types will be expanded. Monroe County has continually requested standards and protocols from OCA throughout the last year. It would appear that the Office of Court Administration has been involved in a number of competing projects. However, we are pleased that the standards appear to have been set by OCA so that we can move forward without further impediment. The purpose of the e-filing statute enacted by the Legislature has been fulfilled by Monroe County and we await approval to implement e-filing through the Monroe County website.

Not only is Monroe County ready to implement e-filing, the Monroe County Clerk's Office will provide e-filing training for the Judiciary, attorneys and the public and will continue to ensure that those using the Monroe County Clerk's Office will be provided efficient customer service and support.

As you may know, many County Clerks have been very interested in the e-filing pilot. I believe that if Monroe County is allowed to commence e-filing through the Monroe County website, that other County Clerks will explore e-filing in their counties using a similar system that is compatible with the County Clerk's constitutionally mandated role. In fact, we have demonstrated our system to County Clerks throughout New York State and many vendors can provide this same technology.

In these fiscally challenging times, the technology used by the Monroe County Clerk's Office provides comprehensive, cost-effective software, maintenance and support to operate all aspects of the Clerk's Office which is beneficial to the taxpayers of Monroe County while achieving the goals of efficiency, accessibility and compliance with the law.

Thank you for the opportunity to provide Monroe County's e-filing report to your Honorable Body.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cheryl Dinolfo". The signature is written in a cursive, flowing style.

Cheryl Dinolfo
Monroe County Clerk

STATEMENT OF THE COUNTY CLERK OF THE COUNTY OF NEW YORK
PURSUANT TO CH. 528 OF THE LAWS OF 2010

The Honorable Norman Goodman, County Clerk of the County of New York, submits this statement to the Legislature, the Governor, and the Chief Judge of the State of New York pursuant to Chapter 528 of the Laws of 2010:

1. The Honorable Ann T. Pfau, Chief Administrative Judge of the State of New York, has consulted with me as provided in Chapter 528 and has invited me to submit comments about implementation of electronic filing in the County of New York for inclusion in a report that Judge Pfau will submit pursuant to that legislation. I am grateful for the opportunity afforded me to submit such comments. I hope that these comments will prove useful to the Legislature, the Governor, and the Chief Judge.

2. Before I offer my thoughts about implementation of electronic filing in New York County, I should provide some context for these observations. The Office of the County Clerk of the County of New York has striven diligently and energetically to make a contribution to the development of electronic filing in New York State. When electronic filing was first authorized in New York, there were only two counties in which e-filing was permitted and New York County was one of them. The New York County Clerk's Office was the first such office in New York State actually to make e-filing part of its operations. Since then, more cases have been e-filed in New York County than anywhere else. New York County was among the first group of counties in which tort cases were e-filed. And New York County was the first county in which mandatory e-filing was implemented as provided in Chapter 416 of the Laws of 2009, as amended by Chapter 528 of the Laws of 2010. Thus, we bring to these comments a wealth of experience with e-filing.

3. The revolution in information technology that we have witnessed around the world in the last 15 years or so has radically altered business, education, commerce, medicine and our personal lives. Information technology offers the potential for transformative improvements and efficiencies in the courts as well.

4. Our experience with e-filing in the Office of the County Clerk of New York County confirms my faith in this technology. It is my opinion, based upon my years of dealing with the technology, that benefits have been, are being, and will continue to be realized and that those benefits are considerable.

5. The most important benefits of e-filing flow to litigants and attorneys - - increased convenience, reduced filing and service expenses, lower storage costs, greater access to the court record, better communications between counsel and court, and many other things.

6. These benefits are broadened when e-filing is mandatory. With mandatory e-filing, attorneys who may not have focused attention upon the utility of e-filing in State court cases come to see just how helpful e-filing is to the Bar and their clients. Our experience has been that once attorneys use the New York State Courts Electronic Filing System, they like it.

7. The e-filing procedures contain measures to ensure that no self-represented litigant and

no attorney will be adversely affected by e-filing because of lack of equipment or knowledge. It is interesting to note that it has not been necessary for these measures to be invoked in other than a tiny number of instances. The recent e-filing legislation and the relevant rules provide that self-represented parties and attorneys may opt out of e-filing that is otherwise mandatory. Self-represented parties may choose not to participate and attorneys may opt out when they certify that they lack the knowledge or the equipment needed to e-file. Just under 3,000 commercial cases have been commenced by e-filing since New York County went mandatory in this type of case on May 24, 2010. Of all the thousands of litigants and attorneys in those cases, only 22 invoked this procedure.

8. Of particular interest to me, e-filing has brought many benefits to the County Clerk's Office. Our dealings with the Bar have been made more efficient, as have our interactions with the court, its Judges and staff. Before e-filing arrived, the County Clerk in New York County had to contend with tens of thousands of filings in tens of thousands of cases each year, a tidal wave of paper that had to be placed in files, moved about, safeguarded, delivered to Judges for judicial action or to court clerks for processing, returned to the County Clerk, made available for public inspection, and stored. A case file in any given case might travel about the court many, many times. E-filing has made all of this simpler, more orderly, and more efficient. It has also eliminated the risk of losing documents due to the huge volume of papers filed. A file that might be a foot or two thick in paper need not be stored on shelves in the courthouse or a warehouse; that amount of material can be housed now on a minuscule piece of an electronic medium.

9. Electronic filing means a savings of labor for the County Clerk's Office. For instance, when filing fees are paid via credit or bank card on-line, the time and energy of clerks are preserved for other tasks in hard copy cases or for addressing the needs of the public in other areas of County Clerk responsibility. Since documents that have been e-filed are already in electronic form, they represent a savings of labor that would otherwise be expended in moving physical files about and in microfilming hard copies for archival purposes after the case is over. Because a Judge or a staff attorney has immediate access to a case file at any time from anywhere, he or she can work on the file at night or on the weekend. If the work is being done in the Judge's Chambers, the County Clerk does not have to deliver the file there whenever it is needed and retrieve it and replace it on the shelves when the work is concluded. Another example is this: each year about 12,000 tax certiorari proceedings are commenced in New York County Supreme Court. Among other things, e-filing has freed my staff from having to create 12,000 hard-copy file jackets in those proceedings, to process and file in those jackets 12,000 pleadings, and so on.

10. As e-filing becomes more common, the efficiencies that it brings to my office will increase. One area in which we can make notable savings in the future will be storage costs. My courthouse storage space is very limited due to the age and configuration of our facilities. My staff must move some files offsite and older files to warehouse space, and this involves too a regular migration of files back and forth. The expense of such offsite space is considerable. We should, I believe, be able to save substantial sums every year as e-filing grows and decreases the need for space in which to house physical files.

11. Of course, implementation of e-filing in New York County has involved work and

presented some challenges. This is to be expected with a new project, especially since e-filing at present is taking place in only part of the court's inventory. It is a challenge to operate a hard-copy system and an e-filing system simultaneously. I look forward eagerly to a continual increase in e-filed cases in our court so that this duality can be reduced and, before long, ended. The challenges posed by e-filing itself are not, in my opinion, inordinately difficult. They have to be addressed and worked through, and they have been and continue to be in New York County. As attorneys and County Clerk and court staff grow more familiar with the e-filing system, the challenges diminish in number and significance. I expect that that will continue to be the case in the future.

12. A key element to successful implementation of e-filing is a close partnership between the Office of the County Clerk and the court, and close cooperation among the County Clerk, the court, and the e-filing staff of the Unified Court System. An excellent partnership between County Clerk and court has always existed in New York County and that has been and remains the case in regard to e-filing.

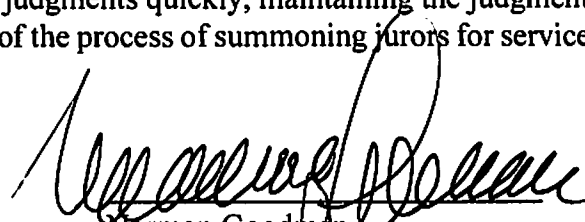
13. In the implementation of e-filing in New York County, the Unified Court System has been extremely cooperative and helpful. I take this opportunity to express my thanks to Mr. Jeffrey Carucci, the Statewide Coordinator for Electronic Filing, and his staff for the exemplary way in which the Court System has worked with my office in this process. The Court System has been attentive to the needs of my office, listened to the occasional concern that my Office has had, and responded positively and productively to our suggestions for improvements. Mr. Carucci and his colleagues have exhibited the energy and determination required to make a project of this scale move forward and have worked with my office with all of the responsiveness and intensity one could hope for. Mr. Carucci and his staff are also exceptionally knowledgeable about the e-filing program. Our relationship with Mr. Carucci and his staff has been excellent and highly productive.

14. I conclude this statement with a suggestion for improvement in the e-filing program. In my view, it would be helpful to this County Clerk's Office, the court, and the litigants and attorneys who practice here if the pace of implementation of e-filing could be accelerated. It has, I believe, been taking us too long in the state courts to move into the modern age. The local Federal courts left us behind years ago in regard to e-filing. When the benefits are as great as they are in this instance, when those benefits extend to all participants - - litigants, attorneys, the court, and the County Clerk - - and given that the technology we need is in place and in use now, we should, in my view, move forward more aggressively toward the goal of making the court system of this state the most efficient it can be. This is particularly true today, in a time of fiscal difficulty, when the County Clerk and the court in Supreme Court cases need to do more with less and do it better. My recommendation therefore would be that mandatory e-filing be expanded quickly to more courts, venues and case types, wherever the courts and the relevant County Clerks are ready to move ahead.

15. Having said this, I recognize that challenges will remain. For some time to come, there will be hard copy cases proceeding at the same time that e-filed ones are, as is the case now. The County Clerk will have to process e-filed documents, but also handle and safeguard hard-copy filings too. For some time into the future, there will be need to handle, safeguard and prepare for archival treatment documents that were previously filed as hard copies. And, to the extent that e-filing allows my office to save time and reduce costs, there will be need, in my view, to devote effort to other

tasks that the County Clerk of New York County is obliged to carry out. I would hope that we will be able to bring increased energy and attention in the future to such things as processing notarizations, authentications, business records, land records, and the like, receiving RJIs and commencement documents and entering orders and judgments quickly, maintaining the judgment docket and lien section, and dealing with all aspects of the process of summoning jurors for service in this County.

Dated: New York, New York
April 15, 2011



Norman Goodman
County Clerk
County of New York



WESTCHESTER COUNTY CLERK

Timothy C. Idoni
County Clerk

March 30, 2011

Honorable Ann Pfau
Chief Administrative Judge
New York State Office of Court Administration
25 Beaver Street
New York, New York 10004

RE: Comments on the New York State Courts Electronic Filing System (NYSCEF)

Dear Judge Pfau:

I wish to thank you for the opportunity to provide input from our experience with the NYSCEF system here in Westchester County. I attach a report from Assistant to the County Clerk Eileen Songer McCarthy, my e-filing project manager. Eileen works every day to promote the system, document issues that arise, train local attorneys and support our e-filing customers.

I have thoroughly reviewed the report and agree with the findings. We are happy to be working with your system, understand its tremendous advantages and are willing to do our share to make it even better. We have been very honest in our assessment even as to the parts that need improvement.

It is our hope that you will be able to provide the resources necessary, especially in the areas of technology and customer service, to attract many of the State's County Clerks to actively participate in e-filing. We believe in it and are willing to work with you to that end. In this age of cutbacks, a reasonable amount of investment in the system will pay huge fiscal benefits in very short time.

Should you or your staff have any questions, please feel free to contact me at (914)995-3081 or tci2@westchestergov.com.

Sincerely,

Timothy C. Idoni
Westchester County Clerk



Timothy C. Idoni
Westchester County Clerk

To: Timothy C. Idoni, *Westchester County Clerk*
From: Eileen Songer McCarthy, *Assistant to the County Clerk*
Re: Judge Pfau's Request for Comments on the NYSCEF Mandatory Program
Date: March 23, 2011

The Office of the Westchester County Clerk has been given the opportunity to comment on our experience with mandatory electronic filing through the New York State Courts Electronic Filing ("NYSCEF") System. This memo is provided in response to your request for a current assessment of the NYSCEF project.

Background

Westchester launched electronic filing of tax certiorari petitions on a consensual basis in April of 2008, but because the municipal defendants in tax certiorari cases refused to consent to e-filing, utilization of NYSCEF was sluggish. In 2009, state legislation provided that the electronic filing of tort actions would become mandatory in Westchester County and we began actively working with the Ninth Judicial District and Office of Court Administration staff to insure a smooth transition to mandatory e-filing in Westchester County. In June of 2010, we began accepting electronically filed Commercial Division eligible cases on a consensual basis. On January 19, 2011, we began accepting all commercial and tort actions on a consensual basis. On February 1, 2011, electronic filing of Commercial Division eligible cases became mandatory. On March 1, 2011, electronic filing of tort actions became mandatory and Small Claims Assessment Review actions were added as a consensual case type. On June 1, 2011 the electronic filing of all commercial actions, including breach of contract and foreclosure actions will become mandatory.

Volume

Between January 1st and March 21, 2011, exactly three hundred commercial, tax certiorari or tort actions have been commenced via the NYSCEF System. In addition, since March 1, 2011, over one hundred Small Claims Assessment Review petitions were filed via NYSCEF.

Training and Promotion

Westchester County is proud of the training effort supporting the launch of mandatory e-filing. To date, over seven hundred individuals have taken a NYSCEF Continuing Legal Education class conducted here in Westchester. In addition to holding NYSCEF training classes near our White Plains office every Tuesday at 9 am and every Thursday at 3 pm, we have travelled to large law offices to conduct these training sessions. In addition, classes have been sponsored by the Westchester County Bar Association, the Westchester Women's Bar Association, the Mount Vernon Bar Association, the White Plains Bar Association, the Yonkers Bar Association, the Yorktown Bar Association and the Columbian Lawyers. We are scheduled to teach classes for the Northern Westchester Bar Association and the New Rochelle Bar Association in the coming weeks.

Our Team

We currently have three employees working almost full time on this project. I provide overall project management, Dave Harper from the Department of Information Technology provides technical project management and Jeannine Muratore, an Assistant Deputy County Clerk in our Legal Division oversees all operational aspects of the NYSCEF implementation including staff and customer training and support. We also have three additional employees who are working part time on this project. They are Deputy County Clerk John J. Allen who is our lead trainer, Rosia Blackwell Lawrence who oversees registration and administration for all of our training classes and Assistant Deputy County Clerk Cathy Cannon who assists with our onsite training classes. We have received a tremendous amount of support from Chief Court Attorney Diane Lundin and Chief Clerk Nancy Barry who have assisted us with training, filling in for our trainers when we have been short-staffed.

The Office of the Westchester County Clerk's Assessment:

Based upon our experience with the NYSCEF team over the last year and a half and our experience with the "new" NYSCEF System since January 19th, I offer our project team's thoughts on both the strengths of the NYSCEF System as well as the challenges we believe the project faces:

Strengths:

NYSCEF Provides Tremendous Convenience for Our Customers: Customers have the option of filing a document with our office any hour of the day and any day of the week. Currently customers who visit our office to file must travel to downtown White Plains, in some cases paying to park, enter the courthouse, proceed through security and travel up to the third floor where our Legal Division is located. Alternatively customers mail documents to our office, experiencing both a mailing cost and a delay in filing while the documents are travelling to our office via overnight or regular mail. By using the NYSCEF System, the customer eliminates the time and costs associated with getting paper filings to our office. There is no doubt this is both efficient and cost-effective for our customers.

NYSCEF Is Easy to Learn and Use: The “new” NYSCEF System launched on January 19, 2011 is a user friendly application with clean graphics and clear instructions. Users now find page specific help screens which guide them step-by-step through the filing process. In addition, users can move back and forth among various filing screens with a tremendous amount of flexibility which did not exist in the “old” NYSCEF.

NYSCEF Saves Taxpayer Dollars: Allowing our customers to use the NYSCEF system is cost effective. While an initial investment in NYSCEF is required for counties even if they choose to proceed using the NYSCEF customer module, significant annual cost savings can be quickly realized. Clerks no longer need to data enter case captions, action types and document types as customers are doing that in NYSCEF. Clerks no longer need to input payment information for customers who pay by credit card in NYSCEF. As filings enter the office as scanned images, the cost of scanning and reviewing scanned images for quality is eliminated. As filings are electronically routed into electronic dockets, the cost of having a clerk place the paper filing in the proper file jacket is eliminated and, paper file jackets do not need to be purchased for e-filed cases. While there is a cost to maintaining a database of images which require permanent retention, the cost associated with storing physical files (approximately \$7.50 per cubic foot of records in Westchester) is eliminated.

The E-Filing Resource Center Staff Is Committed to Success: The small but committed staff at the E-Filing Resource Center has done a tremendous job supporting our staff and our customers as we transition to E-Filing in Westchester County. Our staff has found the E-Filing Resource Center staff in general, and Jeff Carucci and Chris Gibson in particular, committed to the success of NYSCEF in Westchester. Both Jeff and Chris have been willing to learn about the specific needs and requirements in Westchester and have approached our various modification requests with an open mind and positive attitude.

NYSCEF Is a Successful Green Initiative: The Office of the Westchester County Clerk receives approximately four million pieces of paper each year and our goal has always been to try to go green one piece of paper at a time. While the NYSCEF process is not paperless, the amount of paper required by the process is greatly reduced. In addition, the need to travel to our White Plains office is eliminated. Alternatively, if filings had been mailed, the paper and travel involved in transporting these filings to our office is eliminated. As our office will never ask for paper in a NYSCEF case, we have been able to make the process within the County Clerk’s Office entirely paperless.

Challenges:

While the NYSCEF System boasts significant strengths, both the system and the project still suffer from some significant challenges. They are as follows:

The Technical Resources Provided to the NYSCEF Project Are Inadequate: While the technical project team has dedicated programmers, a larger team is needed to provide the level of development, programming, testing and trouble-shooting required by a project of this magnitude. The result has been a modification list that grows and grows with very few modification requests having been addressed

since the “new” NYSCEF launched on January 19, 2011. The team appears to us to be spending much of their time fixing immediate issues and therefore unable to address the larger defects that continue to exist in the system. And we fear with additional counties coming aboard (Livingston, Monroe, Rockland and Tompkins) the list will continue to grow.

The NYSCEF Project Deserves A Dedicated Project Manager with Strong Communication Skills: Lack of a NYSCEF project manager to oversee the launch of mandatory e-filing in Westchester has had a negative impact on the project. At the beginning of this project, we pushed for a formal project schedule. One was developed early on, updated once, and then never seen again. One impact of failing to develop and adhere to a formal project schedule was that the mandatory launch date slipped a number of times from July 2010 to October 2010 and ultimately into 2011. And having worked on this project for over a year now, our team still cannot identify one person who accepts responsibility for all tasks whether legal, general or technical, and keeps us updated.

The NYSCEF System Must Offer Mature Payment Options for our Customers: The “new” NYSCEF does not offer flexible payment options that have come to be expected by customers conducting business online. Specifically, the NYSCEF System does not accept American Express, desired by many of our local attorneys (although we are told this will be available in mid-May). Nor does the system provide for the processing of an electronic check or the facilitation of an ACH transaction. In this day and age, customers expect a more robust set of payment options when transacting business online. And when you mandate the use of an online system, more concern should be paid to providing flexible payment options.

E-Filing Resource Center Staffing Must Increase to Support Increased Demand: The dedication of the Resource Center staff was cited as a strength; however it is extremely clear that the staffing at the E-filing Resource Center is insufficient given the demands associated with implementing mandatory e-filing in counties throughout New York State. While the staff is extremely dedicated, often working evenings and weekends to keep up with requests, there are too few people charged with too many tasks. At a minimum, additional staffing is needed to coordinate meetings, disseminate reports and provide overall administrative support to the mandatory e-filing program. In addition, the staff should include a technical staffer who is immediately available to trouble shoot technical issues or implement technical fixes. It would be great if there were a specific Resource Center liaison for Westchester County (or the Ninth Judicial District) so that our county would have a “go to” person other than the Statewide Coordinator. And as call volume will likely become greater in the coming months, the center needs to be poised to handle increased call volume.

The NYSCEF Module For County Clerks Needs To Be Improved: The module which our clerks use to process the NYSCEF filings is certainly usable. However, the module could be reorganized to improve efficiency. We would recommend that the Office of Court Administration conduct focus groups with various counties to determine how to provide a more flexible and efficient system for the clerks. In Westchester County we have seen days where the filings came in slowly throughout the day.

But we have also already seen days where forty or fifty commencements were filed in an hour or two. In the latter case, the reorganization of the clerk module could help us improve efficiency.

The Office of Court Administration Should Encourage Judges and Court Staff to Embrace E-Filing as a Green Initiative: Our training staff reports that the issue that invites the most negative reaction from attorneys is the requirement that attorneys must provide working copies to almost every judge in Westchester County. Attorneys, who are now being required to print motion papers from their adversaries when they want a hard copy, are questioning why the court is not required to do the same. Our trainers stay positive and indicate they hope as we all transition to e-filing that fewer and fewer judges will require working copies. And because the use of the NYSCEF System is mandatory, we do feel that mandate brings with it an obligation to preserve the conveniences that NYSCEF does offer such as no need to deliver papers to the clerk or court. We hope that an effort will be made by the Office of Court Administration to discourage the requirement of working copies at least in mandatory case types.

The Future

We believe strongly that NYSCEF has a bright future and we want nothing more than to be the county where e-filing is working. But the status quo will not get us there. The Office of Court Administration needs to make a firm commitment to support counties in which e-filing is mandatory and that commitment needs to come in the form of increased funding for technical staff and a dedicated project manager. We pledge to work with any expanded team put in place and will continue to be a resource to counties who wish to come on board, as we have done with Rockland and Tompkins counties.

Thank you for providing our project team with the opportunity to share our thoughts on the NYSCEF project as you consider your report to Judge Pfau.

MAUREEN O'CONNELL
County Clerk



OFFICE OF THE COUNTY CLERK

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April 13, 2011

Honorable Ann Pfau
Chief Administrative Judge
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, New York 10004

Dear Judge Pfau:

Please allow this correspondence to serve as a reply to your request of March 9th to Holly Tanner, President of the New York State Association of County Clerks, seeking comments from county clerks to discuss their experience with the NYSEF e-filing program.

As you know, Nassau has served as a pilot county for the NYSCEF program, but more notably, we have had the unique opportunity to work with NYSCEF Director Jeff Carucci and his staff as well as Jaroslaw Stefaniak from the State's Department of Technology for the purpose of electronic filing of Small Claims Assessment Review petitions (SCARs). E-filing of SCARs launched in 2009, and the achievement of this outstanding program was evident in SCAR petitions filed electronically through NYSCEF totaling 24,284 out of 35,798 filings. In 2010, a total of 36,645 were filed electronically out of 48,994 petitions.

Mr. Carucci conducted conferences with court staff, county departments, and members of the SCARs bar with a view toward making enhancements, reviewing specifications, and describing programmatic changes necessary to participate. As a result of this shared vision, there has been extremely positive feedback, which is indicative of the unquestionable support this initiative has enjoyed. The SCAR e-filing program continues to generate a significant amount of goodwill among the SCAR filing industry, a direct result of the tireless efforts of Jeffrey Carucci.

I also wanted to take this opportunity to thank you for continuing to dedicate the resources necessary to make this program better every year. This has been a collaborative effort, and I am appreciative of your commitment to enhance the system, streamline filing requirements, and be responsive to the needs of practitioners, while reducing paper consumption. I hope the relationship that developed between Nassau County and NYSCEF may serve as a model throughout the state.

Thank you again for your support and our deep gratitude goes out to Messrs. Carucci, Ashley, Stefaniak and staff.

Very truly yours,

MAUREEN O'CONNELL
Nassau County Clerk

cc. Ronald Younkings, Esq.
Chief of Operations
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, New York 10004

Honorable Anthony Marano
Administrative Judge
100 Supreme Court Drive
Mineola, New York 11501

Jeffrey Carucci
Director, E-Filing
New York State Unified Court System
60 Centre Street
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PAUL PIPERATO
County Clerk

Deputy County Clerks
DONNA GORMAN SILBERMAN
JAMIE MARAIA GRAHAM
JOHN O'CONNELL

April 22, 2011

Hon. Michael V. Coccoma
Deputy Chief Administrative Judge
State of New York Unified Court System
Empire State Plaza
4 ESP, Suite 2001
Albany, New York 12223

Dear Judge Coccoma:

As the County Clerk of an "e-filing test county", it is my pleasure to update you on our progress. We began optional filing on April 4, 2011, with mandatory filing slated to begin on May 16, 2011. The project has been implemented as a collaborative effort between my office, Mr. Carucci of the Office of Court Administration (OCA) and Mr. Hussey, Chief Clerk of the Rockland County Courts. Jeffrey Carucci and John Hussey have been extremely cooperative and supportive throughout this process. Their expertise and guidance has been instrumental in achieving our common goal of successful integration of E-filing. We have experienced some minor problems, as expected, and would like to also commend Westchester County Clerk personnel for helping to solve many of the setbacks we have faced.

To date, we have successfully accomplished the following:

- Amendment of our database/fee system to accommodate e-filing
- Training of staff in acceptance of documents
- Attorney/Paralegal orientation and training through Rockland County Bar Association-sponsored workshops
- Numerous email reminders to Attorneys leading up to mandatory e-filing date
- Successful e-filing of 20+ cases
- Scheduling of future training classes

My fellow County Clerks and I take our responsibility of accepting, recording and maintaining court records very seriously. In fact, it is our constitutional duty and one that we have proudly and efficiently accomplished for many years. We are the front line and the face of OCA, and people look to us to provide answers. E-filing and

E-recording are the future of records management, and our offices must adapt to a new way of business. However, we can never take the personal touch away from the services we provide.

While there are some concerns among my colleagues concerning E-filing, I believe the *County Clerks/OCA Memo of Understanding* leaves the option open of going through OCA or building individual County Clerk portals. I believe this option should be strongly supported by OCA. While OCA is presently committed to E-filing throughout New York State, there is a general concern that they will not provide adequate resources to continue with this project in the future. I certainly hope that this concern is unfounded.

Westchester and New York counties have chosen to go through OCA, and there were many factors that were considered before I chose to follow suit in Rockland County. In addition to the above-mentioned concern about resources, the benefits of uniformity and economics were also highly considered. Thus, I have gladly and fully cooperated with OCA to reach our common goal. I trust that they will provide the same level of available resources, support and guidance to other County Clerks that I have been afforded throughout this process. In my constitutional role as County Clerk and Clerk to the Supreme and County Court, I look forward to continue working with OCA to realize a successful integration of E-filing throughout New York State.

Sincerely,



PAUL PIPERATO
Rockland County Clerk

PP/dv

cc: Hon. Alan D. Scheinkman



NEW YORK STATE UNIFIED COURT SYSTEM

