

[The IV Annual Symposium of Journal «The Herald of Civil Procedure»:
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**NEW YORK STATE COURTS ELECTRONIC FILING
(NYSCEF)**

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NOTES:

1. Accompanying this article is an Internet presentation in Prezi format at:

<https://prezi.com/gmozmps4tf/new-york-state-courts-electronic-filing/>

2. To view a MP video illustrating how our office e-files a Petition for Letters Testamentary, please click here==>[MP4 Video](#).

3. Exhibits, Reports and Article are not part of the printed materials in Kazan University Law Review but are available at: <http://tcnylaw.com/>.

PART I:
THE WORLD OF LEGAL PAPER- COURT
FILING BEFORE E-FILING

My practice is centered around the Dutchess County (District) “Surrogate’s Court” in the State (rough equivalent of an Oblast) of New York. This is a specialized Court concerned with the affairs of deceased persons. Every one of New York’s sixty-two counties has one Surrogate Judge, except that the hugely important County composing of the island of Manhattan (New York County) has two.

The Surrogate’s Court is not one in which money damages are typically sought. Rather, Surrogate’s Courts supervise persons charged with administering decedent’s estates and trusts (known as “fiduciaries” - - from the Latin “fidus,” meaning faithful or loyal) so that they correctly carry out their duties, pay estate/trust bills, ultimately distribute assets from the funds they hold.

My work for clients often involves the probate of a decedent’s Will (where a Will is formally recognized, or “probated” by the Surrogate’s Court, and an “Executor” is appointed), the administration of estates of an intestate (not leaving Wills) decedent, where an “Administrator” is appointed, and the accounting of Executors or Administrators to show the estate beneficiaries how the fiduciaries have managed the estate’s moneys - - as supervised by the Surrogate’s Court. The

Surrogate's Court also supervises Trustees, who administer funds given to them to manage for the benefit of another person or persons, and whose activities are overseen by the Surrogate's Court.

In these matters, I initiate a Court proceeding by filing a Petition for Letters Testamentary¹ which, if initially acceptable to the Court, results in the Court's issuing a Citation² (formal notice that a hearing will be held on a specified date, in which the cited person is entitled to appear in Court, but if he does not appear, it will be assumed that the cited person does not object to the relief presented in the Petition) and after that hearing, a Decision and/or Decree Granting Probate³ where the Court approves the Will ("admits the Will to Probate") and issues court certificates to the appointed Executor evidencing the Executor's authority to act (these Certificates are called "Letters Testamentary"⁴). In the case of an Administration (without a Will) the Court appoints an Administrator and issues Certificates of "Letters of Administration"⁵.

¹ A *sample* Petition for Letters Testamentary (*as filed*) is attached as Exhibit "A."

² A *sample* Probate Citation (*as would be issued by Surrogate's Court*) is attached as Exhibit "B."

³ A *sample* Decision and Decree Granting Probate (*as would be issued by Surrogate's Court*) is attached as Exhibit "C."

⁴ A *sample* Letters Testamentary (*as would be issued by Surrogate's Court*) is attached as Exhibit "D."

⁵ A *sample* Petition for Letters of Administration (*as filed*) and Letters of Administration (*as would be issued by Surrogate's Court*) are attached as Exhibit "E."

The attached copies of specimen Petition, Citation, Decision and/or Decree Granting Probate to this outline are for probate proceedings. Official forms of them are kept on the New York State Courts website⁶ and we are required to use them, but at times, when appropriate, we can modify them to provide additional information.

In every one of the last 43 years, I have physically delivered Petitions to the Court, with a Citation (or Waivers of Process; Consent to Probate⁷, in cases where the family wishes the Court to act on an expedited basis without a hearing because it has no disagreement about the proceeding) and a proposed Decree Granting Probate (some Courts do their own Decrees). Once the Court accepts the Petition and sets a date when the matter will be heard (“the return date of the Citation”), I must then serve the Citation upon the parties to whom it was directed (usually the closest living relatives of the decedent who would take if there were no Will). This can be difficult, as a resident of New York State must get personal service, by hand, of the Citation, and New York’s a big state, with distances of up to 600 kilometers within its borders). Also, persons entitled to Citation may appear by counsel, who file “Notices of

⁶ <http://www.courts.state.ny.us/forms/surrogates/index.shtml>

⁷ A *sample* Waiver of Process; Consent to Probate (*as filed*) is attached as Exhibit “F.” The Probate Citation (*as would be issued by Surrogate’s Court*) is attached as Exhibit “B.”

Appearance”⁸ indicating that counsel represents a party, and demanding that all further Court papers be served upon such counsel.

As you will see, the Court proceeding usually does not end upon my filing of initial papers in Court. The persons who are necessary parties to a proceeding must get their Citations delivered to them, and I, as counsel, must show the Court that I or my staff or another person designated by me either personally served, or mailed notices to the interested parties or their counsel. Every time this is done I must prove it was done, and proof gets made by an “Affidavit of Service”⁹ on a separate piece of paper. The Court will not move the matter along unless everyone has been properly served and written proofs of service are recorded in the Courthouse. This, of course, places a huge record keeping burden on the Courts.

Indeed, the Courts are jammed with filed papers. Dutchess County has maintained Court records of this sort since 1721 (we got our County Court late because Ulster County - - across the Hudson River from us - - kept records for both our areas, starting in 1683). So you can just imagine the sheer volume of paper

⁸ A *sample* Notice of Appearance is attached as Exhibit “G.”

⁹ A *sample* Affidavits of Service is attached as Exhibit “H.”

records accumulated over 300 years. The United States Postal Service, which 60 years ago featured urban mail delivery two times a day, is undergoing systemic breakdown. In many cases, my office only gets first class (priority) mail two or three times a week. Letters mailed to the Dutchess County Court House (it's 25 kilometers from my office to the Courthouse) are sent from my local Millbrook post office to a mail center 120 kilometers away and at times to yet another remote mail center, and then finally down to the Court House in Poughkeepsie, our county seat (main city where the Court House is located). So my proving of service of legal papers, which once could be done fairly promptly and reliably by ordinary mail, has now significantly slowed. To deal with this, I or my paralegal frequently drive from my office to the Court House to deliver the papers in person. The drive takes thirty-five minutes, but there's parking, entering the Court House and going to see the Clerk for filing the papers - - after which we would return to my office. All this is highly inefficient. I also note that in the 19th and early 20th centuries, lawyer's offices clustered around the County Court House, which was also traditionally close to the main county post office. But this is not so common now.

The burden of paper compliance is not just on the record rooms (the Court Clerk's offices) in the Court House. There is the parallel problem of what happens in our own law offices, where we have had to keep paper records of client

files, opposing counsel papers etc. In the last 10-15 years, we have scanned papers into our computer network, but it takes time to scan and this is a lot of unnecessary work. Think of paper build up in Manhattan offices and the allocated rental costs for law firms (some with 750 lawyers) having to pay Manhattan rents!

There's another way in which the world of paper isn't suitable for modern law practice. Court Houses in New York are open only between 9:00 a.m. and 5:00 p.m. with smaller courts closing for lunch.¹⁰ And sometimes the Court staff is not eager to take in papers. So Court hours have been yet another logistical hurdle we lawyers have to jump over.

If you add all these factors together, you will see that something had to be done by the turn of the 21st century to ease the burden of paper on the court system and upon the lawyers who practice in it.

PART II: **ELECTRONIC FILING COMES TO NEW YORK**

In 1999, at the request of the Unified Court System of New York State, legislation was enacted under creating a “pilot program” to test the usefulness of

¹⁰ The Court House in Dutchess County require petitions with a filing fee be filed before 4:00 p.m. On the last day of the month, the deadline is 2:00 p.m. as the court prepares for their monthly account reconciliation.

electronic court filing. After a decade of experience, e-filing ceased to be a pilot program and new laws were passed giving the Chief Administrative Judge of New York State the power to issue rules authorizing a formal program of consensual electronic filing and service of documents in the Supreme Court (the local district court having jurisdiction over ordinary civil cases), the Court of Claims (where lawsuits are heard against New York State) and the Surrogate's Court. For the first time, the State judicial authorities began to require the use of e-filing in certain counties for certain types of actions or proceedings. Pursuant to this, cases have been filed on a mandatory basis since May, 2010 beginning with commercial cases in the New York County Supreme Court.

After a slow start - - not surprising for a innovative and technologically advanced program in a historically conservative profession - - the pace of e-filing more or less exploded after 2009, with more than a million cases having been e-filed with the New York system by 2015. (At the same time, while these numbers appear formidable, there are millions of court matters - - especially criminal ones - - which are still going forward strictly on paper.)

The implementation of e-filing has required the engagement and building of a staff under the supervision of the Unified Court Systems State Wide Coordinator of electronic filing. Statewide staff develops plans and time schedules for the expansion

of e-filing of new court venues where the Chief Administrative Judge has authorized e-filings. When a venue is identified for “consensual” (e-filing allowed though not required - - but if you start a proceeding electronically, you have to complete it electronically) or “mandatory” (e-filing required), the state coordinator and staff can then work closely with the relevant county staff. I note that while Surrogate’s Court records are kept on file by the Surrogate’s Court Clerk in each county’s Surrogate’s Court, the “file room” for other civil courts in a county is, for the most part, the Office of the relevant County Clerk, who also keeps records of Deeds, Mortgages and other important records.

A vital principal underlies the e-filing program, namely that it must take place through a single platform, known as the NYSCEF (New York State Court Electronic Filing) system. Under this, the serving and retrieval of court documents should not vary depending on the location of the court and the county in question. The 2015 report on e-filing quite properly indicates:

“were this principal not in place, e-filing would be a vast Tower of Babel. Attorneys would be plagued by the need to learn different systems and procedures depending on if they are filing in say, Supreme Court or the Surrogate’s Court, or whether they are doing so upstate (in the counties north of New York City) or downstate (New York City and surrounding counties). If a single platform were not in

place, the variations would make for chaos, rendering e-filing impossibly burdensome and inefficient for the Bar and the Courts, dealing a fatal blow to the entire program.”

Before e-filing is introduced to a new Court or County, the NYSCEF Resource Center provides training to lawyers and court personnel in the Court venues affected.

As part of this, I attended on January 4, 2017, a training session for the *consensual* e-filing to be undertaken in the Dutchess County Surrogate’s Court on January 18, 2017.¹¹ NYSCEF Resource Center also regularly offers an on-line training course. The e-file authorities contend that formal training:

“often proves to not be necessary for attorneys and parties to be able to use the NYSCEF system effectively. The system is to a large degree intuitive. Furthermore, it provides explanatory material online (through “HELP” and “WHAT’S THIS” links and a video following the filing process) to be prospective users. And, in addition, to the “live” or real NYSCEF system, the platform makes available an exact replica for unlimited practice and training.”

Despite the foregoing assurances, not all Courts have quickly or easily adjusted to e-filing in New York State, if only because of a shortage of Court resources and

¹¹ The training materials provided by the NYSCEF Resource Center can be found at <https://iappscontent.courts.state.ny.us/NYSCEF/live/training.htm>.

training sessions and time needed for people to learn the new system. It is hard to give up the system described above in Part I of which Court personnel have been familiar for more than 300 years and replace it with a new relatively paperless system. In Part III, I will discuss assessments of how e-filing has been implemented, and the reaction of lawyers and local Courts to e-filing. I'll then proceed to Part IV, which is my own law firm's experience with e-filing.

PART III: ASSESSMENT OF E-FILING IN NEW YORK

Chief Administrative Judge of New York A. Gail Prudenti issued a favorable Report on the State's e-filing program in her "*Report to the Legislature, the Governor and the Chief Judge of the State of New York on the Electronic Filing Program of the New York State Courts*" dated March, 2015.¹²

In her Report, Judge Prudenti stated "it was high time to move ahead with boldness," and that "broader use should be made of mandatory e-filing." This must have been a sign that she wished to see e-filing in the Criminal Courts of the State and

¹² The full report can be found at:

<https://webcache.googleusercontent.com/search?q=cache:sbv2Mz5AM8gJ:https://www.nycourts.gov/publications/pdfs/EFile-Report-Assembled3.17.15.pdf+&cd=1&hl=en&ct=clnk&gl=us>

the Family Courts. (In both of these huge and troubled court systems, there is not now e-filing). Judge Prudenti's Report also contained a review of e-filing in the Federal Courts (which occurred far faster and more thoroughly than in New York State, perhaps because U.S. Courts are better funded, and less regulated by the legislature, than are Courts in the State of New York, which are rather tightly controlled by the Legislature (State Assembly and Senate) both financially and politically. The subtext underlying to the Judge's Report is that New York's Legislature - - has too much control over the financing and operating of the state's court.

After Judge Prudenti's 2015 Report, there followed a second Report, "*The Electronic Filing Program of the New York Courts*" by the new Chief Administrative Judge, Lawrence K. Marks, dated June 1, 2016.¹³

Judge Marks, as did his predecessor, described the benefits of e-filing in New York:

"The benefits of e-filing are significant and far-reaching. For counsel, it greatly simplifies and reduces the cost of the filing and service of documents. It also is very convenient as it makes the case file accessible online to all counsel of record at any time and from anywhere. In addition, e-filing sharply reduces record storage and retrieval costs,

¹³ The full report can be found at:

[https://webcache.googleusercontent.com/search?q=cache:lfe7yXR8KKUJ:https://www.nycourts.gov/rules/efiling/PDF/16 E-file Report.pdf+&cd=2&hl=en&ct=clnk&gl=us](https://webcache.googleusercontent.com/search?q=cache:lfe7yXR8KKUJ:https://www.nycourts.gov/rules/efiling/PDF/16+E-file+Report.pdf+&cd=2&hl=en&ct=clnk&gl=us)

eliminates the burden and expense of serving hard-copy papers on opposing parties and minimizes the need to travel to the courthouse.

“For courts and public officials, e-filing likewise has demonstrated many benefits. It has increased productivity and reduced costs for both the courts and the County Clerks. It has enhanced the efficiency and effectiveness with which judges can manage and administer their inventories, providing them and their law clerks with easy access to case files even on the weekends or at night from home. In our 2015 report, we provided estimates of the cost savings and improvements in productivity that e-filing has brought.

“In addition to all of these benefits, e-filing contributes to a greener, more environmentally responsible system of justice, by sharply reducing both the vast amount of paper consumed by the litigation process and the need to travel to serve and file papers.”

Attached to both Judge Prudenti’s and Judge Marks’ Reports are many letters -
- almost all complimentary - - on the e-filing system in New York. The most frequent requests appear to be that:

- The e-filing system be expanded and made mandatory in all of New York’s Courts;

- E-filing, while excellent for lawyers and the Court personnel, is hard on non-lawyers who are representing themselves; and
- The required practice in many Courts for attorney to provide printed (paper) “working copies” to the Court (despite the existence of e-filing) be reduced or eliminated.

Why there are so many letters in favor of e-filing, but at the same time the real lack of universal e-filing in our courts in New York? I think that there is a reason for this apparent inconsistency: The Courts and practicing lawyers want e-filing, but the Courts do not have the resources, nor the legal profession the power, to force the State Legislature to come up with the money that will fully implement and fund e-filing (especially a program of mandatory e-filing).

New York’s so-called “Unified Court System” is the product of custom, and centuries of (State) Constitutional practice (the Judiciary Article of the New York State Constitution covers fully one-third of the massive document, and covers in detail seemingly minor matters such as the staffing of particular Courts. The State Court budget exceeds \$2 billion, and a budget this size is necessarily the subject of politics. We have 11 separate trial courts, some set-up dozens, if not hundreds of years ago (for good reasons then, but have they outlived their usefulness as separate courts?) Each

has separate judges and often overlapping jurisdictions. But all these Courts are part of the political process, and members of the Legislative and Executive (the Governor's office) - - and the judges themselves - - like to play with the court system. Our Judges are nearly all elected, and one of the things many rising young lawyers want to be is a New York Supreme Court Judge or Surrogate Judge (salary nearly \$200,000 plus most generous vacation, sick leave, and retirement pension benefits). While the State's court system could be greatly streamlined, and committees have studied and made recommendations on this matter for many years, little or nothing is getting done. Again, I am not attributing sinister or cynical motions to the parties: what we have here is the practical realities of politics, unfortunately played out on an epic scale, because the Legislature and the Governor appear to like the current highly balkanized and politicized system too much to change it.¹⁴

Just as this report was being submitted, the New York State Bar Association, which has 75,000 lawyer-members, came out in favor of a Constitutional Convention for the purpose of revising the New York State Constitution. A principal reason for

¹⁴ The full article can be found at:

"The Judiciary Article of the New York State Constitution—Opportunities to Restructure and Modernize the New York Courts", approved by the House of Delegates on January 27, 2017.
www.nysba.org/judiciaryreport2017

doing so was the wish on the part of attorneys to revise the State Constitution to consolidate the New York court system, so that it would be truly unified and made more efficient.¹⁵

PART IV:
OUR FIRM'S EXPERIENCE WITH E-FILING

In my law office, my colleagues and I must do e-filings in Supreme Court (basic trial Court in our county) as well as the Surrogate's Court.

A. SUPREME COURT E-FILINGS

Susan Corman, the legal assistant who handles e-filing in Supreme Court for the attorney responsible for Richard Cantor, our senior lawyer handling Commercial Law, Real Estate Conveyancing, Zoning, Planning and Land Use law (and litigation concerning these area.) Mrs. Corman has been using the NYSCEF since December, 2015 and offers this input about consensual filing in the Supreme Court:

¹⁵ See <http://www.nysba.org/nyconstitution/>

NOTE: The voters of New York State overwhelmingly rejected this Constitutional Convention in November, 2017. The principal reason for its defeat was the opposition of labor unions for state workers who feared a rollback of government pensions and collective bargaining rights.

“If you are commencing a lawsuit in New York Supreme Court and want to take advantage of electronic filing one must be careful to follow Uniform Rule 202.5-b. Under the rule filing and service of papers by electronic means cannot be made by a party, nor can electronic service be made upon a party unless that party has consented to use of the system for the case in question. A written notice must be served on each party to the lawsuit and each party should indicate whether or not he or she consents to electronic case filing and service through the New York State Courts Electronic Case Filing System (“NYSCEF”). Electronic case filing offers significant benefits for attorneys and litigants as it permits documents to be filed with the county clerk and the court and served between or among consenting parties. The documents can be posted online 24/7, 7 days a week. There is no fee to use the NYSCEF system whether for filing, service, or to consult the docket in the case. There is no fee to print documents from the docket. The normal filing fees required for all civil litigation matters must be paid however and this can be done electronically by credit or debit card.

If you are receiving the Notice detailing the availability of electronic case filing in New York Supreme Court it means that the plaintiffs and/or the plaintiffs attorney consent to e-filing and that he or she intends to use the New York State Courts Electronic Filing. Within 10 days after service of the Notice, the party served can consent to e-filing by filing with the court and serving on all parties of record a consent to e-filing, or if the party or attorney of record is an authorized e-filing user they can file the consent electronically in the manner provided at the NYSCEF site. If one of the parties, or fewer than all of the parties consent then the consenting parties can use

NYSECF by and between those parties and everyone else can file and serve their documents through the Civil Practice Law & Rules.

My overall experience with the e-filing system has been good. I have been using this system since December of 2015. My only complaint with the system is that if you make a mistake with the PDFs and you do not realize it until the end (when you are about to efile your documents are dropped off - or does not load to the e-file system), you have to start over. This is the only drawback with the system. I also find the “Help Desk” very helpful if you should have any questions regarding the filing of documents.”

B. SURROGATE’S COURT E-FILINGS

We were notified in late 2016 that Dutchess County (my home office county) was on the list of counties to begin e-filing of Surrogate’s Court petitions (only Probate, Administration and Small Estates) . My paralegal, Natalie S. Jackson and I attended the training session on January 4, 2017 with wide-eyed optimism, as we both like to learn new things. The process, however, has not gone as smoothly or quickly as we had hoped.¹⁶

¹⁶ While e-filing for Surrogate’s Court using a system similar to Supreme Court, my paralegal, Mrs. Jackson and I are still in the learning stage and it will take us a few more practice (or live) sessions to become as comfortable and experienced as Mrs. Corman, who handles the e-filings in Supreme Court.

Mrs. Jackson offers the following report:

“In the past, once we obtained the necessary signatures and notary on the Petition (and accompanying documents), executed the few related instruments as the attorneys for the estate, we would then assemble the original Petition along with original death certificate and original Last Will and Testament (with Affidavit of Attesting Witnesses), pick up a check for the filing fee from our bookkeeper, and then head to court to file the Petition. The Surrogate’s Court Clerk would provide a cursory review of the petition and documents. If anything was amiss, the court clerk (or the Chief Clerk, if he/she is available) would give immediate feedback and return the Petition and related documents for correction. At times, we were able to make on-the-spot corrections on the papers, initial the changes and hand the documents back to the court clerk. If a detailed explanation were needed, the attorney would be able to file an Affirmation Amending the Petition. This would enable to action to continue to move forward.

With the move to e-filing, the only steps that remain the same are obtaining the necessary signatures and notary on the Petition (and accompanying documents) execution of the few documents as the attorneys for the estate and obtaining the filing fee from our bookkeeper. Now, in addition to these steps, we must scan ALL documents (which we have done for internal office purposes as a practice for a number of years) as separate PDF files. This means one PDF file for each instrument that makes up the entire Probate Petition packet, including but not limited to the following:

- *Request for Surrogate’s Court Action*

- *Probate Petition* (up to the Combined Verification, Oath and Designation instrument);
- *Combined Verification, Oath and Designation*;
- *Waiver of Process; Consent to Probate* (if more than one is executed, all must be scanned as one PDF document);
- *Probate Citation* (if an interested party did not execute a Waiver of Process; Consent to Probate instrument; or the New York State Attorney General or New York State of Department of Taxation and Finance, if applicable);
- *Notice of Probate* (notice to person or charity that they will receive a legacy under the Will; notice to person(s) nominated a successor executors, trustees and/or guardians);
- *Affidavit of Comparison* (that the copy of the Will offered for probate is the same in all respects as the original Will);
- *Attorney's Certification in Proceeding* (that forms and all supporting documents prepared by the attorneys office are the same as the court's official forms and that the substantive text has not been altered);
and
- *Certification Rule 130* (that the proceeding is not frivolous)

Separately, we would have already scanned the death certificate and the Last Will and Testament.

Converting all documents to a PDF is crucial. NYSCEF does not accept word processing (.docx, .docs, .rft or .wpd) documents. One missing document can lead the court to reject the entire filing or at the very least delay the processing of the Petition.

Now, once, the documents have been assembled and scanned, instead of racing out to the courthouse, we can sit down at the computer to e-file the probate petition.¹⁷

After we e-file the Petition, some courts will send you an email confirming receipt of the documents.¹⁸ This does not mean that the Petition has been accepted for filing. On the contrary, the documents still have to be downloaded from the NYSCEF's mainframe and then uploaded to the appropriate county's Surrogate's Court. Then, the file marked for filing...wait, not so fast! The Court still needs an original death certificate, original Last Will and Testament and a filing fee check (if you chose not to pay the filing fee online with a credit card. My personal preference is to by via attorney check. Our bookkeeper immediately provides our office client billing assistant with a copy of the disbursement check. This means I do not have to perform monthly credit card reconciliations. Besides, my "presence" in Surrogate's Court is of paramount importance to having the court act on the Petition.) We have *two days* to get an original death certificate, original Last Will and Testament and a filing fee check to Surrogate's Court. If not marked received within two days, the Court can close the file and you have to start over - - from the beginning.

Once the documents (e-filed and personally delivered) are received, the Court will review the file and advise if any further documents are still needed. Unlike filing in person, this is not immediate; this takes a few days. If anything is amiss, the Court rejects the Petition and, again, unlike the in-person filing of paper described above,

¹⁷ Please click here to see a video clip of the e-filing of a probate petition.

¹⁸ A copy of an email confirmation from Westchester County Surrogate's Court is attached as Exhibit "I."

the lawyer cannot fix it with an Affirmation Amending Petition. We must start over, and this may require the client to sign a new Petition.¹⁹

When the documents have been accepted for filing, we will receive an email from the Surrogate's Court confirming this fact.²⁰

While the move to e-filing means less physical paperwork delivered to the court, it does not mean less paperwork for the attorney's office. Once the file number has been received, the attorney's office must complete additional Surrogate's Court e-filing forms, with up to five being mandatory (as needed) to be mailed to appropriate parties.²¹

Now, after providing the above condensed overview, let me tell you about my office's first experience with e-filing - - which did not go very well. And this was with a relatively simple probate petition.

The testator died in February, 2017. The probate petition was executed by the nominated executor. The testator's children executed Waivers of Process; Consent to Probate instruments. The lawyer executed the necessary accompanying Certification and other papers. We scanned all the executed documents and filed the Petition using NYSCEF. The petition was filed in May, 2017.

¹⁹ So far, the my local court has not been so strict with this part of the process. We have been allowed to come to court with the original document with the initialed changes. But we have been advised that this will cease at some point.

²⁰ A copy of an email confirmation from Dutchess County Surrogate's Court is attached as Exhibit "J."

²¹ The list Surrogate's Court E-Filing Forms are attached as Exhibit "K." The list of Surrogate's Court Mandatory E-filing Forms are attached as Exhibit "L."

And then I waited...and waited...and waited. As the paralegal, I telephoned the Court to obtain a status report. The court clerk could not find the file. I loaded the file using the NYSCEF system. Again, we waited. This sparked another telephone call for a status report. The court clerk advised me that a notarized Attorney's Certification in Proceeding was needed. This was never the case in the past, but maybe this was a new procedure. I had the attorney execute another Attorney's Certification in Proceeding instrument which I notarized. I scanned the document and uploaded it to the NYSCEF system. Later, I received another call from the Court advising the instrument did not need to be notarized and to upload the first instrument (the non-notarized instrument). This time, however, I could not find the electronic file.

I called the clerk court to report that I could not find the e-file on the NYSCEF system - - not by last name or using the court file number. The court clerk tried to find the file and was just as unsuccessful as I was. A few minutes later, the court clerk advised me that, in error, instead of deleting the one file, the entire electronic file was deleted. I re-loaded the electronic file a second time.

After much delay, the court issued a Decision and Decree Admitting the Will to Probate in July, 2017.

By contrast, I recently filed the paper version of an Administration Petition with the Court, a basic simple petition. The Petition was personally filed in court on a Friday afternoon. Four business days later, I received a telephone call advising that the Decision and Decree Granting Administration had been issued.

This addresses my secondary issue about electronic filing - - it takes too long to get a Decision and Decree from the Court. The old-fashioned paper method, with a trip the Court House to file documents, is, at least so far, much faster than e-filing. The initial issue which was concerning the rejection of documents was mentioned previously.

Despite our limited experience with electronic filing, we remain optimistic that NYSCEF is making strides to improve our local Surrogate's Court filing. The most recent Probate Petition we submitted using NYSCEF was promptly processed. I loaded the Petition (and accompanying documents) to the e-file server on July 26, 2017. The Court issued a Decision and Decree Admitting the Will to Probate on August 10, 2017.”

Mrs. Jackson and I stress that the staff of our local Dutchess County Surrogate's Court has specialized expertise and is extremely helpful and courteous to us. The greater level of problems encountered in Surrogate's Court (as discussed by Mrs. Jackson) compared to Supreme Court (as discussed by Mrs. Corman) is probably attributable to the fact that a Surrogate's Court petition contains many required statutory elements which must be checked by Surrogate's Court Staff. After all, we are asking a judge to do sign a binding Decree, and the Court staff has to protect the judge by making sure everything is correct. Papers filed in Supreme Court actions don't undergo this level of scrutiny by Court staff -- because opposing counsel can object.

As we see it, the difficulties we point out are a matter of the Court's (and lawyers') getting used to the NYSCEF system while the Court staff have to cope with a huge case load.

Even the Courts that use mandatory e-filings can't often manage. Mrs. Jackson reports, as follows:

“While Dutchess County improves its processing of e-file Petitions, I note that another local County may not be so fortunate. This neighboring county, unlike Dutchess, is a ***mandatory e-filing Court***. I office submitted a Petition for Letters of Administration on July 25, 2017 and as of today's date, September 17, 2017, we have received neither a Decision and Decree Granting Administration from the Court, nor a rejection of the petition. To date, all we have received is a confirmation of the filing.”

Based on the inconsistency of the e-filing system, we now are determining (at least one consensual jurisdiction) which petitions we should file in person using paper vs. which petitions we can e-file, based on the timing needs of the executor. The main factor is how quickly the executor needs to be appointed and get the estate administration moving (i.e., pending sale of a property, continuing a business, payment of obligations such as debts and taxes or to liquidate assets to protect asset values and/or to raise capital quickly for payment of administrative expenses). If the need is pressing, we will continue to bring the Petition to Court - -

in person. If not, we will to use the NYSCEF system - - as one day we expect it will be the only way to operate. So, we must get used to the process now and trust that NYSECF will continue to improve.

EXHIBITS, REPORTS AND ARTICLES

Exhibits

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	<i>Sample Petition for Letters Testamentary (as filed)</i>
B	<i>Sample Probate Citation (as would be issued by Surrogate's Court)</i>
C	<i>Sample Decision and Decree Granting Probate (as would be issued by Surrogate's Court)</i>
D	<i>Sample Letters Testamentary (as would be issued by Surrogate's Court)</i>
E	<i>Sample Petition for Letters of Administration (as filed) and Letters of Administration (as would be issued by Surrogate's Court)</i>
F	<i>Sample Waiver of Process; Consent to Probate (as filed)</i>
G	<i>Sample Notice of Appearance</i>
H	<i>Sample Affidavits of Service</i> <ul style="list-style-type: none">• <i>Via personal service on a New York State resident</i>• <i>Via certified mail, return receipt request on a non-New York State resident</i>
I	<i>An email confirmation from Westchester County Surrogate's Court</i>
J	<i>An email confirmation from Dutchess County Surrogate's Court</i>
K	<i>Surrogate's Court E-filing Forms</i>
L	<i>Surrogate's Court Mandatory E-filing Forms</i>

Reports

“Report to the Legislature, the Governor and the Chief Judge of the State of New York on the Electronic Filing Program of the New York State Courts”, dated March, 2015

“The Electronic Filing Program of the New York Courts”, dated June 1, 2016.

Article

“The Judiciary Article of the New York State Constitution—Opportunities to Restructure and Modernize the New York Courts”, approved by the House of Delegates on January 27, 2017.