



NEW YORK STATE

Unified Court System

OFFICE OF COURT ADMINISTRATION

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN BARRY, ESQ.
CHIEF OF ADMINISTRATION

JEFFREY CARUCCI
DIRECTOR, OCA DIVISION OF E-FILEING

November 15, 2021

To: Bar Associations, Legal Service Providers, Attorneys, and Other Interested Persons and Organizations

Re: New York State Courts Electronic Filing Program (NYSCEF)

As you may know, the Office of Court Administration submits a report each February 1 to the Legislature, the Governor, and the Chief Judge evaluating the State's experience with the Unified Court System's electronic filing system (NYSCEF). I write again as in past years, to invite your comments on electronic filing for inclusion in the 2022 annual.

I write as well to solicit your observations, for inclusion in the February report, on a proposed amendment to CPLR Article 21A and other relevant statutes to authorize the Chief Administrative Judge to make e-filing mandatory across the state – in any or all of the State's trial courts.

This proposal was included in last year's report, and endorsed in the *Report of The Commission to Reimagine the Future of New York's Courts*.¹ Addressing electronic filing generally, the Commission which was created June 2020 by Chief Judge Janet DiFiore, recommended that legislation be enacted to allow the Chief Administrative Judge to institute e-filing on a mandatory basis in all of the State's trial courts, and that e-filing be made mandatory and standardized statewide given that unnecessary courthouse trips present risk during the ongoing pandemic and can waste resources in ordinary times. The Commission's Report stated, "In-person filing wastes attorney time, client money, and court resources, and is especially dangerous during the global health crisis we are currently experiencing" (Report, p.9). It further stated: "By implementing mandatory, standardized e-filing throughout the state, courts can save time and money and keep everyone safe. However, the existing exceptions for pro se litigants and technologically challenged attorneys should remain." (id.).


¹The Initial Report on the Goals and Recommendations for New York State's Online Court System, Online Courts Working Group of the Commission to Reimagine the Future of New York's Courts, November 9, 2020 ("Report"), available at <http://www.nycourts.gov/whatsnew/pdf/OCWG-Report.pdf>.

Currently, the Chief Administrative Judge remains restrained from making e-filing mandatory in certain courts and case types throughout New York State. The current proposal, in tandem with the Commission's recommendation -- to lift the current restraints upon the discretion of the Chief Administrative Judge to introduce mandatory e-filing programs in any court and/or action² -- would not alter requirements of consultation with the Bar, legal services providers and other groups (as well as the need for consent of the County Clerk in affected counties outside New York City) in advance of any future expansion or affect other existing provisions in the e-filing legislation. Further, unrepresented persons in cases in which e-filing would otherwise be mandatory would continue to be exempt from e-filing unless they affirmatively choose to participate. Moreover, attorneys in such cases would continue to be able to opt out of e-filing if they lack the equipment or knowledge to participate. Finally, the proposal would not alter current requirements of confidentiality in the treatment of actions that require it.

In order that we may have the time needed to prepare the report due February 1, 2022, I ask that as a group, an individual member of a group, or any interested person and/or attorney, submit any **comments by December 22, 2021**. All comments received will be included in the Annual Report. Comments should be sent by e-mail or regular mail to either of the following addresses:

Jeffrey Carucci
Director, OCA Division of E-Filing
Office of Court Administration
25 Beaver Street, Rm. 1062
New York, New York 10004
efilingcomments@nycourts.gov

We look forward to your comments regarding NYSCEF and the immediate proposal.

Very truly yours,

Jeffrey Carucci

cc: Hon. Lawrence K. Marks, *Chief Administrative Judge*
Nancy Barry, *UCS Chief of Operations*
Justin Barry, *UCS Chief of Administration*
Eileen D. Millett, *Esq., UCS Counsel*
Marc C. Bloustein, *Esq., UCS First Deputy & Legislative Counsel*

² "After more than 20 years of successful e-filing, the responsibility for managing and expanding e-filing in the New York State courts should be left largely to the CAJ's discretion in consultation with appropriate stakeholders." *The Expansion of Electronic Filing: A Report and Recommendations of the Structural Innovations Working Group* – produced by the Structural Innovations Working Group of the Commission to Reimagine the Future of New York's Courts (January 2021, p. 12). "While those restrictions may have been useful in the earlier stages of e-filing, they no longer serve a purpose, given the extensive history of NYSCEF and the CAJ's adherence to existing safeguards. The overwhelming majority of County Clerks, practitioners and bar associations who have been surveyed on this issue have expressed the desire to permit mandatory e-filing in all case types." (id., p. 15), available at [CommitteeReport-eFiling.pdf \(nycourts.gov\)](#).