



NEW YORK  
CITY BAR

**STATE COURTS OF SUPERIOR  
JURISDICTION COMMITTEE**

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ADRIENNE B. KOCH  
**CHAIR**  
605 THIRD AVENUE  
NEW YORK, NY 10158  
PHONE: (212) 716-3225  
FAX: (212) 716-3349  
AKOCH@KATSKYKORINS.COM

**COUNCIL ON JUDICIAL  
ADMINISTRATION**

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HON. CAROLYN DEMAREST  
**CHAIR**  
CED79P@GMAIL.COM

**LITIGATION COMMITTEE**

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BARBARA SENIAWSKI  
**CHAIR**  
1460 BROADWAY  
FLOOR 4  
NEW YORK, NY 10036  
PHONE: (212) 595-4536  
FAX: (917) 591-4692  
BARBARA@SENIAWSKILAW.COM

June 1, 2017

*By Email*

John W. McConnell, Esq.  
Counsel  
Office of Court Administration  
25 Beaver Street, 11th Floor  
New York, NY 10004

**Re: New York City Bar Comments on Proposed Amendment of Rules for Electronic Filing 22 NYCRR § 202.5-b(d)(4)) Concerning Working Copies**

Dear Mr. McConnell:

The New York City Bar Association (the “City Bar”) appreciates the opportunity to provide comments on the proposal of the Advisory Committee on Civil Practice (the “Committee”) to amend 22 NYCRR § 202.5-b(d)(4) to require notice and a five-day cure period for movants who fail to submit working copies as required by the court.

A litigant’s failure to submit working copies as required may result from honest misunderstanding of a trial court part’s practices, general unfamiliarity with the practice of submitting working copies, inadvertence, or logistical difficulties. Reasonable measures to help litigants avoid the expense and delay associated with refileing a motion or seeking alternative avenues of relief promote efficiency and fairness and comport with the Civil Practice Law and Rules.<sup>1</sup> Therefore, the City Bar supports an amendment of 22 NYCRR § 202.5-b(d)(4) to provide the “safe harbor” proposed by the Committee.

To better achieve the ends sought by the Committee, the City Bar proposes minor changes in the wording of the proposed amendment. The changes indicated at the end of this

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<sup>1</sup> See CPLR § 104 (“The civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding.”), § 2001 (“At any stage of an action . . . the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just . . .”).

memorandum are intended to address two concerns. First, if the proposed amendment were adopted as written, confusion might arise in reading the final sentence of the rule, which provides that, where the court has required the parties to provide working copies of documents filed electronically, each working copy shall be affixed with a copy of the relevant e-filing confirmation notice. The addition of the proposed new language at the end of the second-last sentence may give the mistaken impression that the words “such event” in the final sentence refer to a movant’s failure to provide working copies and the court’s subsequent notice to correct the failure, rather than simply to the court’s “requir[ing] the parties to provide working copies of documents filed electronically.” In other words, it may no longer be clear that affixing the confirmation notice is required whenever a court requires working copies; the amended rule might be read as indicating that affixing the confirmation notice is necessary only when the movant is correcting a previous failure to submit working copies. The suggested change to the final sentence of the rule is intended to address this issue.

Second, some sentences in the current rule address the scanning and e-filing of documents that were filed “in hard copy.” The proposed new language refers to a failure to provide “hard copies” of prior papers filed electronically. Replacing the words “hard copies” with “working copies” in the proposed new language would help avoid any misimpression that e-filed documents must also be *filed* in hard copy.

22 NYCRR 202.5-b(d)(4)

(4) Official record; maintenance of files; working copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those document in hard copy form. All documents maintained by the County Clerk as the official electronic record shall also be filed in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically; provided, however, that the court shall not dismiss a motion for failure to provide ~~hard-working~~ copies of prior papers filed electronically unless it first gives notice of the failure to the filing party and allows five days from the date of such notice for the filing party to correct the failure. ~~In such event~~ To the extent that the court requires working copies, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.

Very truly yours,

Hon. Carolyn E. Demarest (Ret.)  
Chair, Council on Judicial Administration

Adrienne B. Koch  
Chair, Committee on State Courts of  
Superior Jurisdiction

Barbara Seniawski  
Chair, Committee on Litigation