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**REPORT BY THE MATRIMONIAL LAW COMMITTEE
IN SUPPORT OF THE OFFICE OF COURT ADMINISTRATION'S
PROPOSED LEGISLATION REGARDING
MANDATORY ELECTRONIC FILING IN MATRIMONIAL ACTIONS**

The Matrimonial Law Committee of the New York City Bar Association (the “Committee”) writes to express our support of proposed legislation regarding mandatory electronic filing in matrimonial actions [CPLR 2111(b)(2)(A), CPLR 2111(b)(2-a), and § 11 of chapter 237 of the Laws of 2015] (“the proposal”), which is a key priority of the Chief Administrative Judge and of his Matrimonial Practice Advisory and Rules Committee.¹

The proposal empowers the courts, after a notice-and-comment process, to make electronic filing of papers (known as “e-filing”) mandatory in matrimonial cases in the state’s Supreme Courts. The chief administrator and administrative board of the courts already have such power with regards to most types of cases under Section 2111 of the Civil Practice Law and Rules. The current statute, however, creates several exceptions to that power. The exceptions currently include actions for divorce and other matrimonial actions, as defined by Section 105(p). Currently, therefore, the court system cannot require the parties in a divorce action to file papers electronically unless all parties consent. The proposal will remove that exception, so that matrimonial actions are treated like all other actions.²

As matrimonial practitioners, we have seen how e-filing saves time and money for all concerned. We can ensure papers will be timely filed by, if need be, pressing a key before 11:59 p.m. on the due date, rather than by sprinting to a clerk’s office before closing time (or having a staff member do so). Our clients are spared the cost of having bulky filings sent to opposing counsel by overnight delivery or to courthouses by couriers. We can receive papers in searchable electronic format, rather than having hard copies served on us and needing to scan those copies. Although e-filing is rarely an option for matrimonial cases in New York City, we enjoy those benefits when we participate in cases in other counties of New York State and in cases that are not classified as matrimonial. Extending mandatory e-filing to matrimonial cases will be a step into the 21st Century and will benefit parties, counsel, and the court system.

We do have a few concerns about e-filing, which can be addressed as it is implemented. First, the court system must maintain the confidentiality of records in matrimonial actions, whether those records are paper or electronic. Often in matrimonial proceedings we must submit to the courts deeply personal details of our clients’ lives, and sometimes of their children’s lives.

¹ Available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciarylegislative/pdfs/2019-Matrimonial.pdf> (pg. 16).

² Even where the courts have made e-filing mandatory, pro se litigants and attorneys who lack the necessary computer hardware, Internet connection, or technical expertise to e-file are allowed to file paper copies instead. CPLR § 2111(b)(3); see also 22 NYCRR § 202.5-bb(e).

We must also routinely submit credit card numbers, Social Security Numbers, and other information that could be used for identity theft. Accordingly, Section 235 of the Domestic Relations Law renders papers filed in matrimonial actions confidential, with certain narrow exceptions. We appreciate the Unified Court System's assurance that it will continue to restrict access to e-filed documents consistent with DRL § 235.³

Second, when particular judges insist on paper "working" or "courtesy copies," counsel and parties should be protected from the risk of having motions or even whole cases dismissed due to the accidental failure to provide a courtesy copy of a paper that has been properly e-filed. The Uniform Civil Rules for the Supreme Court and the County Court currently specify that a "court may require the parties to provide working copies of documents filed electronically." 22 NYCRR § 202.5-b(d)(5). That rule should be amended to guarantee that a motion will not be dismissed for failure to provide a working copy of a paper that has been e-filed unless the court has given the filing attorney notice of the problem and five days to cure it. The Chief Administrative Judge's Advisory Committee on Civil Practice has already proposed such a rule change, and the New York City Bar Association has endorsed it.⁴

Finally, the courts should make sure that e-filing is available as continuously as possible. A few counsel have reported problems when systems are down.

We are confident that the Unified Court System can address the above implementation issues as e-filing for matrimonial actions is introduced and ultimately made mandatory in each county. Sub-paragraphs (i) and (ii) of CPLR § 2111(b)(2) require the chief administrator to consult with attorneys and others, and to solicit comments, before making e-filing mandatory in any county. The Committee looks forward to the opportunity to participate in that process and in the implementation of e-filing requirements.

Matrimonial Law Committee

Dylan S. Mitchell, Chair

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³ See the letter from Justice Jeffrey S. Sunshine, Statewide Coordinating Judge for Matrimonial Cases, to bar groups, dated October 4, 2018, *supra* note 1 at 127.

⁴ New York City Bar Comments on Proposed Amendment of Rules for Electronic Filing 22 NYCRR § 202.5-b(d)(4) Concerning Working Copies, June 1, 2017, https://s3.amazonaws.com/documents.nycbar.org/files/2017157-Comment_Letter_Working_Copies_JUDAMIN_STACOURTS_LITIGATION_6.1.17.pdf.