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**By Email**

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Re: Request for Public Comment on Proposed Rules for Electronic Filing in New York City Civil Court

Dear Mr. McConnell and Ms. Millett:

Thank you for the opportunity to comment on the proposed amendment to 22 NYCRR § 208.4-a, which would permit e-filing in a broader range of cases in the Civil Courts. For reasons rooted in court efficiency and positive environmental impacts, the City Bar welcomes the wider implementation of e-filing. Here, we write to present a few concerns and recommendations regarding the implementation of e-filing in New York City Civil and Housing Courts, including the need for further discussions in order to ensure that implementation does not have unintended consequences for low-income and often unrepresented litigants in the high-volume courts. These comments are based on the general propositions that unrepresented litigants are more common in Civil and Housing Courts than in Supreme Court and that, by its nature, e-filing can create greater opportunities for mischief and abuse.

First, we are concerned about unrepresented defendants unknowingly waiving their right to be personally served with the initial pleadings. E-filing should not be a substitute for personal service and e-filing of documents under the proposal should exclude initial pleadings. Although we do not think this is the intent of the proposal, we believe clarification is needed in order to avoid potential abuse and the unintended waiver of rights. We recommend that 22 NYCRR § 208.4-a(c)(1) explicitly provide that unrepresented defendants cannot waive their right to be served with initial papers in accordance with the New York Civil Practice Law and Rules. We do not

want wider implementation of e-filing to enable parties to file cases *en masse* and to attempt to circumvent service of process rules. With respect to Housing Court actions, we recommend that personal jurisdiction requirements remain in place for the Notice of Petition and Petition. We need to ensure that e-filing does not become a means for parties to engage in mass filings and obtain defaults.

Second, we have specific concerns regarding privacy issues in Civil and Housing Courts. Based on our experience representing clients in these courts - whether they be tenants at risk of being “blacklisted” for asserting rights or victims of domestic violence who find themselves in a consumer debt action not of their making – we are concerned that once cases are e-filed, litigants’ addresses may be made public and easily accessed online. There needs to be a means by which a party can easily and quickly seek redaction of their personal addresses. One way to accomplish this is by including language in the e-filing rules that specifies actions that a court could take *sua sponte* or that a party could take on their own to remove an address in a court file from public view. E-files should be sealable upon application, and have a sunset provision so that they are not accessible in perpetuity.

Third, since many users of the high-volume courts are unrepresented litigants, including low-income litigants who may not have access to a computer, we anticipate that many of these individuals would need to use their smart phones to access the courts’ e-filing system and download e-filed documents. We therefore recommend that OCA create a user-friendly mobile app that enables users to access the e-filing system with their smart phones. We further recommend that the opt-in e-filing form provide language that warns users about data usage and the implications of downloading large documents to a smart phone. All parties, particularly pro se parties, will need to be fully educated about the system and their ability to opt in. They should not be pressured to take part in e-filing.

Fourth, we recommend that OCA make the opt-in form available in multiple languages.

Finally, 22 NYCRR § 208.4-a(d)(1) should be mandatory. All clerks and their designees should be required to scan and e-file documents that were filed in hard-copy form. Court staff, litigants, and attorneys should be confident that all court files are complete and accessible on the e-filing system.

Thank you considering these concerns and recommendations. We are happy to continue this important discussion with OCA and those who are considering how best to implement e-filing in New York City Civil and Housing Courts.

Respectfully submitted,

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Committee

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