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**By Email**

Eileen D. Millett, Esq.  
Office of Court Administration  
25 Beaver Street, 11th Floor  
New York, NY 10004

**Re: Serving and Filing Notices of Entry on the New York State Courts Electronic Filing System**

Dear Ms. Millet:

We write to suggest a new feature for the New York State Courts Electronic Filing (NYSCEF) system to simplify and streamline the process for serving and filing notices of entry.

**BACKGROUND**

By way of background, as you are aware, the notice of entry is a document served by a party to an action that alerts the other parties that the county clerk has entered a judgment or order. The notice of entry appears in several sections of the CPLR, most notably in CPLR 5513(a), which governs the time to take an appeal as of right.<sup>1</sup> Under that provision, “[a]n appeal as of right must be taken within thirty days after *service by a party* upon the appellant of a copy of the judgment or order appealed from and *written notice of its entry*, except that when the appellant has served a copy of the judgment or order and *written notice of its entry*, the appeal must be taken within thirty

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<sup>1</sup> Other provisions of the CPLR in which the notice of entry appears include CPLR 306-a(b), 404(a), 405(b), 2221(d)(3), 3024(c), 3211(f), 5015(a)(1), 5513(b), 5513(d), 5519(e), and 7804(f).

days thereof.”<sup>2</sup> In short, until a party serves a judgment or order with notice of entry, the time to appeal never begins to run.<sup>3</sup>

In cases that are filed in hard copy, the notice of entry serves an important purpose: it notifies the parties that the county clerk has entered a judgment or order and starts the running of the time to appeal. Before 1997, the CPLR did not explicitly require that *a party* serve notice of entry. Accordingly, “there was much confusion and inconsistency as to who was responsible for entering an order or judgment and providing notice of its entry.”<sup>4</sup> The Second Department recently described the confusing pre-1997 state of affairs:

In some counties, judges filed the original papers with the county clerk and provided written notice of the entry so as to trigger the time to appeal. In other counties, judges filed the original papers and notified parties of their filing, but expressly directed that a further copy needed to be served in order to trigger the 30-day period. Elsewhere in the state, parties had to follow the clerk's files for orders and judgments, and unilaterally undertake the task of serving copies with notice of entry. Other judges returned original papers directly to the parties, who were responsible for both filing the orders or judgments and serving them with notice of entry.<sup>5</sup>

To stem this confusion “and to further a statewide uniformity of practice, the Office of Court Administration urged the state legislature in 1996 to clarify CPLR 5513, to provide that only ‘service’ of the notice of entry ‘by a party’ would trigger the time for an aggrieved party to take an appeal.”<sup>6</sup> The legislature obliged.<sup>7</sup>

## **ENTRY OF JUDGMENTS AND ORDERS IN E-FILED ACTIONS**

In electronically-filed actions, the NYSCEF system automatically notifies parties by email as soon as a county clerk enters a judgment or order. The electronic filing rules explicitly state, however, that this notification does “not constitute service of notice of entry by any party” and that a party must serve notice of entry.<sup>8</sup>

Given the ubiquity of electronic filing in the courts, especially in light of the increased availability of NYSCEF as a result of the COVID-19 pandemic, some of our committee members believe that NYSCEF’s notification satisfies the purpose of serving notice of entry, i.e., notifying

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<sup>2</sup> CPLR 5513(a) (emphasis added).

<sup>3</sup> By contrast, in the federal courts, the time to appeal typically begins to run as soon as the *court* enters the judgment or appealable order on the civil docket. *See* Fed. R. Civ. P. 58(c)(1)-(2); Fed. R. App. P. 4(a)(1)(A).

<sup>4</sup> *W. Rogowski Farm, LLC v. Cty. of Orange*, 171 A.D.3d 79, 87, 96 N.Y.S.3d 88, 95 (2d Dep’t 2019).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; CPLR 5513(a).

<sup>8</sup> 22 NYCRR 202.5-b(h)(2).

the parties that a judgment or order has been entered. Others, however, appreciate the control that they have over the appellate clock. We recognize that any change to CPLR 5513(a)'s requirement that a *party* (and not the court) serve notice of entry would require legislation, and we do not intend to make a legislative proposal at this time. Instead, as discussed below, we believe some functionality changes to NYSCEF would make the process of serving notices of entry simpler and more user-friendly.

## **CURRENT PROCESS FOR SERVING NOTICE OF ENTRY**

Under current process, after a county clerk enters a judgment or order, NYSCEF automatically notifies the parties of entry by email. If a party wishes to serve notice of entry, it must download the entered judgment or order from NYSCEF, draft a notice of entry cover page, attach the notice of entry cover page to the entered judgment or order as a single PDF/A, and then file the notice of entry on NYSCEF.<sup>9</sup> This process can be time-consuming and unnecessarily increases costs for clients.

## **PROPOSAL<sup>10</sup>**

To streamline the means of serving notice of entry, we propose that NYSCEF be refined to add a feature that allows a party to automatically generate a notice of entry upon request, and file and serve it in just a few clicks. Under this proposal, after an entered judgment or order is uploaded to NYSCEF, the system would supply an option to “serve notice of entry” of that document. Once clicked, the system would generate a one-page notice of entry cover sheet that would be attached to the entered judgment or order in a single PDF/A. The serving party would then have an opportunity to review the generated document before supplying final confirmation that they would like to serve and file it. The system would continue to allow the parties to draft their own notice of entry forms should they wish to do so. This proposal would not need any legislative or regulatory amendments, since a *party*, not the court, would still handle serving notice of entry. We believe this proposal should be technologically feasible, as NYSCEF already can automatically generate and preview Request for Judicial Intervention (“RJI”) forms, and similarly allows parties to fill out and upload their own RJI forms should they choose to do so.

We submit that this proposal would make litigation in New York state courts simpler and more user-friendly and would allow attorneys to focus on more important tasks. The proposal is

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<sup>9</sup> The electronic filing rules also allow attorneys to serve notice of entry by traditional means. 22 NYCRR 202.5-b(h)(2) (“In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.”).

<sup>10</sup> This proposal focuses exclusively on streamlining electronic service of notices of entry in e-filed cases—i.e., replacing, if the attorney so chooses, the current cumbersome process of downloading an electronically filed judgment, drafting a notice of entry, attaching it to the judgment as a single PDF, and then uploading the document to NYSCEF in order to serve it electronically. We are not proposing that electronic service *replace* service of a hard copy of the notice of entry in non-NYSCEF cases, which could prejudice parties of lesser means and/or those appearing pro se.

also harmonious with the goals of the Chief Judge's ongoing Excellence Initiative. We hope this proposal is useful for the Office of Court Administration.

Respectfully,

Michael P. Regan, Chair  
Council on Judicial Administration

Bart J. Eagle, Chair  
State Courts of Superior Jurisdiction Committee

John M. Lundin, Chair  
Litigation Committee

Cc: Jeffrey Carucci, Statewide Coordinator for Electronic Filing  
Christopher Gibson, Deputy Statewide Coordinator for Electronic Filing