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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 Association Comments on Proposed Rules for Electronic Filing in the Appellate Division

Dear Mr. McConnell:

We write on behalf of the New York City Bar Association to comment on the Proposed Rules for Electronic Filing in the Appellate Division of the Supreme Court. We strongly support the expansion of electronic filing to the Appellate Division and offer the following comments aimed at improving the Proposed Rules.

First, under paragraph E(2)(iii), e-filed documents “shall . . . comply with additional formatting requirements set forth in attachment A.” However, the Request for Public Comment on the Proposed Rules does not include the “attachment A.” Thank you for responding to our inquiry on this question. We understand that no form of attachment A is currently available; and that, if ever promulgated, attachment A would likely differ across the Departments of the Appellate Division. We also understand that the document closest to what might become attachment A is the set of technical specifications used by the First Department for electronically-submitted documents. At this juncture, however, we do not know what requirements may be contained in each Department’s attachment A when the rules are promulgated.

Though the current First Department specifications for electronically-submitted documents are innocuous enough, we respectfully request that the Proposed Rules not be enacted

until the final form of attachment A is circulated for comment and is fully vetted. Moreover, we believe that the e-filing requirements should not vary from Department to Department. Variation would only engender confusion and inefficiencies and create unnecessary expense and complications. As with electronic filing in the Supreme Court throughout all 62 counties of this State, the e-filing requirements for all Departments in the Appellate Division should be uniform. To allow each Department to set different standards and protocols or to alter the specifics of “attachment A” or any other portion of the Proposed Rules would be inconsistent with the purpose of having unified rules.

Second, paragraph F(1)(b), concerning filing of hard copy documents, currently reads:

Filers shall delay the filing of hard copies of documents required under subsection (G)(3) until the clerk has reviewed and approved the electronic version of the document. Where hard copies of documents are not filed following such approval, the filing shall be deemed incomplete.

This language lacks clarity concerning how an e-filer will know whether the clerk has reviewed and approved the electronic version of a document, and how much time the filer thereafter has to file hard copies. We propose these additions (in bold and underlined) to clarify paragraph F(1)(b):

Filers shall delay the filing of hard copies of documents required under subsection (G)(3) until the clerk has reviewed and approved the electronic version of the document **and notified the filer by e-mail that the electronic version of the document has been approved. The filer shall file the hard copies within two business days of being notified of the clerk’s approval.** Where hard copies of documents are not filed following such approval, the filing shall be deemed incomplete.

Third, the Proposed Rules should incorporate language similar to that in the rules governing e-filing in the Supreme Court in respect of filing by agents or other authorized persons and should specifically permit appellate printers to act as authorized filing agents. We recommend adding this language to paragraph C.5 of the Proposed Rules:

(e) An authorized e-filer may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filer shall retain full responsibility for any document filed.

(f) Documents may be electronically filed by a filing agent if that filing agent is registered as an authorized user of the NYSCEF site. Such filing agent shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief

Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel. Appellate printers may act as filing agents for counsel in an action.

See generally 22 NYCRR 202.5-b(c)(2)(i); 22 NYCRR 202.5-b(c)(4); 22 NYCRR202.5-b(d)(1). This proposed language will keep e-filing practices in the Appellate Division consistent with those in Supreme Court, and will also permit appellate printers, already widely used by many counsel to produce and file both electronic and paper documents in the Appellate Division, to attend to electronic filing. Attached is a proposed form statement of authorization for a filing agent before the Appellate Division.

We hope you will find these comments helpful and would be pleased to discuss them or assist in any other way we can.

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

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, _____ DEPARTMENT**

**STATEMENT OF AUTHORIZATION FOR
ELECTRONIC FILING
(Single Attorney Authorizing Individual Filing Agent)**

I, _____, Esq., (Attorney Registration No. _____) am an authorized user of the New York State Courts Electronic Filing System ("NYSCEF") (User ID _____). I hereby authorize _____ ("the filing agent") to utilize his/her NYSCEF filing agent ID to file documents on my behalf and at my direction in any e-filed matter in which I am counsel of record through the NYSCEF system, as provided in Section _____ of the Rules for Electronic Filing in the Appellate Division of the Supreme Court.

This authorization extends to any consensual matter in which I have previously consented to e-filing, to any mandatory matter in which I have recorded my representation, and to any matter in which I may authorize the filing agent to record my consent or representation in the NYSCEF system.

This authorization extends to any and all documents I generate and submit to the filing agent for filing in any such matter. This authorization, posted once on the NYSCEF website as to each matter in which I am counsel of record, shall be deemed to accompany any document filed in that matter by the filing agent.

This authorization also extends to matters of payment, which the filing agent may make either by debiting an account the filing agent maintains with the County Clerk of any authorized e-filing county or by debiting an account I maintain with the County Clerk of any authorized e-filing county, or by making payment directly and seeking pre-payment or reimbursement from me for those fees as agreed between the filing agent and me.

This authorization regarding this filing agent shall continue until I revoke it in writing on a prescribed form delivered to the E-Filing Resource Center.

Dated: _____

Signature

City, State and Zip Code

Print Name

Phone

Firm/Department

E-Mail Address

Street Address

(6/6/13)