

# E-filing for Matrimonial Attorneys

By Joel R. Brandes

The New York State Courts Electronic Filing System (NYSCEF)<sup>1</sup> permits the service and filing of litigation papers with the county clerk or the court by a registered user, by electronic means (e-filing) on its website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).<sup>2</sup> The electronic filing system reduces the stress associated with many aspects of the matrimonial practice. A case can be commenced or post-commencement modification or enforcement proceedings can be filed at any hour of any day, even when the courts are closed. Motions can be made and served more expeditiously by e-filing a single set of motion papers. There is no longer a need to make multiple copies of the motion papers and go through the process of paying the filing fee, serving the motion, and filing it at the clerk's office. The motion can be e-filed at any hour, day, or night.

Court rules have been adopted by the chief administrator of the courts for mandatory and consensual e-filing.<sup>3</sup> There are also electronic filing rules for the appellate division.<sup>4</sup>

"E-filing," "electronic filing" and "electronically filing" are defined as the filing and service of documents in a civil action by electronic means<sup>5</sup> through the NYSCEF site.<sup>6</sup>

E-filing is mandatory in certain types of cases.<sup>7</sup> The CPLR excludes matrimonial actions from mandatory e-filing.<sup>8</sup> However, the rules for consensual e-filing in matrimonial actions provide that on consent, documents may be filed and served by electronic means in Supreme Court in the civil actions and counties as are authorized by order of the chief administrator of the courts and only to the extent and in the manner provided in 22 N.Y.C.R.R. 202.5-b.<sup>9</sup>

Administrative order AO 370/21, effective December 21, 2021, contains the current list of counties in which e-filing is permitted in matrimonial actions. Except as otherwise required by AO 370/21 or its Appendix B, the consensual e-filing rules in 22 N.Y.C.R.R. § 202.5-b apply.<sup>10</sup> Administrative order AO 370/21, Appendix B, contains amended Rules Governing the Consensual Electronic filing of Matrimonial Actions in the Supreme Court.

In an e-filed case, except in narrow circumstances, the county clerk and the clerk of the court will not accept paper documents from a participating e-filing party.<sup>11</sup>

## I. Matrimonial Actions

Matrimonial actions are defined in Administrative Order AO 370/21, Appendix B as those actions set forth in CPLR 105(p) and Domestic Relations Law § 236, as well as plenary actions for child support, custody or visitation, an order of protection or an application under the Child-Parent Security Act where: the action is contested and addresses issues including,

but not limited to, alimony, counsel fees, pendente lite, maintenance, custody, and visitation, child support or the equitable distribution of property or the action is uncontested; or the action is a post-judgment application that either (1) addresses an underlying matrimonial action that was commenced electronically, or (2) is electronically initiated with the purchase of a new index number.<sup>12</sup>

No papers or documents filed by electronic means in matrimonial actions are available to the public. The existing personal service requirements in the domestic relations law, Family Court Act, or civil practice law and rules are not abrogated.<sup>13</sup>

## II. Forensic Evaluations May Not Be E-Filed

Unless otherwise directed by the court, evaluations or investigations of the parties or a child by a forensic mental health professional (including notes) and reports by a probation service or child protective service in proceedings involving custody, visitation, neglect or abuse and other matters involving children may not be filed electronically.<sup>14</sup>

## III. Matrimonial Post-Judgment Applications

Service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice of electronic filing (for post-judgment matrimonial proceedings).<sup>15</sup> Proof of hard copy service must be filed by electronic means.<sup>16</sup>

## IV. Definitions

An "action" includes a special proceeding. An "e-filed action" means an action in which documents are electronically filed and served in accordance with 22 N.Y.C.R.R. 202.5-B.<sup>17</sup>

A "party" or "parties" means the party or parties to the action or counsel.<sup>18</sup>

An "authorized e-filing user" means a person who has registered to use e-filing under 22 N.Y.C.R.R. 202.5-B (C).<sup>19</sup>

"Hard copy" means information in paper form.<sup>20</sup>

## V. User ID and Password

To be able to use NYSCEF to file and serve documents, a filer must have a user ID and password.<sup>21</sup> To obtain a user ID and password, an attorney for a party or an unrepresented litigant must submit a filing user registration form, a fillable version of which is available on the NYSCEF website.<sup>22</sup> The form should be completed online, printed out and signed, and transmitted as instructed in the form. The sender will thereafter receive the user ID and password.

## VI. User Must Be Registered

Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.<sup>23</sup> An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter “filing agent”) may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant, may also register as an authorized e-filing user, but solely for purposes of such action. An authorized e-filing user 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. In that event, the authorized e-filing user has full responsibility for any document filed.<sup>24</sup>

## VII. Commencement of Action – Consent Not Required

A party may commence any action in the Supreme Court in any county that e-filing has been authorized by electronically filing the initiating documents with the county clerk through the NYSCEF site.<sup>25</sup>

A new case can be commenced electronically by an attorney or unrepresented litigant who has a user identification (ID) and password.

Consent is not required from any other party to commence a case, but subsequent documents in consensual cases may be e-filed by and served electronically upon, only parties who have consented.<sup>26</sup>

An attorney is not required to record consent in each consensual e-filing case in which he or she participates. To participate in e-filing in any particular consensual case, however, the attorney must record his or her consent in NYSCEF in the case file of each matter in which he/she wishes to participate.<sup>27</sup>

In a non-mandatory case, all parties or fewer than all (even only one) may participate in e-filing.

## VIII. Jurisdiction Must Be Acquired

Jurisdiction must be acquired over all defendants through service of the initiating papers as provided in the Civil Practice Law and Rules (CPLR) unless the defendants consent to accept electronic service. In addition, a Notice Regarding Availability of Electronic Filing must be served with the commencement papers in a consensual case. In a mandatory case, a Notice of Commencement of Mandatory E-Filed Case must be served with the commencement papers. These notices and the other NYSCEF forms and notices are available in the Forms section of the NYSCEF website.<sup>28</sup>

## IX. Consent of the Parties Required

While CPLR 2103 (b)(7) authorizes the service of papers

upon an attorney by electronic means, this service is only authorized where and, in the manner, authorized by the rules of the chief administrator. Unless the rules provide otherwise, the transmission must be upon the party’s written consent. No party may be compelled, directly or indirectly, to participate in consensual e-filing under the consensual system. (22 N.Y.C.R.R. 202.5-b (b)(2)(ii)).

Multiple attorneys may be listed in NYSCEF as counsel for a party. An attorney may also represent multiple parties in one case. An attorney may authorize a paralegal or other member of her staff to file a document with NYSCEF on her behalf using her user ID and password, but you would be the filer of record and responsible for the filing.<sup>29</sup> In addition, NYSCEF allows attorney service enterprises to obtain a filing agent user ID and password so that they can file documents on behalf of attorneys who do not wish to do the filing themselves. A filer of record in NYSCEF must be a member of the New York Bar, an attorney admitted pro hac vice, an unrepresented litigant, or an agent filing user in the business of filing on behalf of attorneys.<sup>30</sup>

After the commencement of an action wherein e-filing is authorized, documents may be electronically filed and served and electronic service must be made by a party or upon only by a party or parties who have consented.<sup>31</sup>

## X. Requirement of Recording Consent

After jurisdiction has been obtained, the service of documents must be made through NYSCEF among participating parties. Non-participating parties must serve and be served in hard copy form in accordance with the CPLR. To file and serve documents through NYSCEF, attorneys and unrepresented litigants must record their consent.<sup>32</sup>

A party’s failure to consent to participation in electronic filing and service does not bar any other party to the action from filing documents electronically with the county clerk and the court or serving documents upon any other party who has consented to participation.<sup>33</sup>

A party who has not consented to participation must file documents with the court and the county clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served must bear the full signatures of all signatories, and proof of such service must be filed electronically.<sup>34</sup>

No party may be compelled, directly or indirectly, to participate in e-filing pursuant to 22 N.Y.C.R.R. 202.5-b.<sup>35</sup>

## Unrepresented Litigant Is Exempt

An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with 22 N.Y.C.R.R. 202.5-b and need not respond to the notice of e-filing. He or she may file a consent to participate in e-filing

provided the clerk has first explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate.<sup>36</sup>

Where an unrepresented litigant opts to file a consent, it must be documented in the case file in a manner prescribed by the chief administrator. Where an unrepresented litigant chooses to participate in e-filing in accordance with 22 N.Y.C.R.R. 202.5-b, he or she may at any time opt out of participation by presenting the clerk of the court with a form declaring that he or she is opting out.<sup>37</sup>

### **Jurisdiction Over a Person Must Be Obtained**

Jurisdiction over a person must be obtained in accordance with the CPLR. The documents commencing an action must be served in hard copy in accordance with Article 3 of the CPLR and must contain signatures as required by Article 3.<sup>38</sup> However, they may be served by electronic means if the defendant agrees to accept electronic service.<sup>39</sup> In that case, a plaintiff may commence any action in the Supreme Court, in any county where e-filing has been authorized, by electronically filing the summons or summons and complaint, with the county clerk through the NYSCEF site.<sup>40</sup>

### **Notice of E-Filing**

A party who has commenced an action electronically must serve upon the other parties together with the initiating documents a notice of e-filing<sup>41</sup> in the form approved by the chief administrator.<sup>42</sup> Except for an unrepresented litigant, a party served with the notice must promptly record his or her consent electronically in the manner provided at the NYSCEF site or file with the court and serve on all parties of record a declination of consent.<sup>43</sup>



In a consensual case, the Rules provide that a party served with a Notice of Electronic Filing must file and serve on all other parties “either a consent or a declination of consent.” There is no specific form for a declination of consent; a letter stating that the party withholds consent will suffice. Note, however, that unrepresented parties are exempt from e-filing unless they wish to participate and are not required to respond to a notice.

### **Electronic Confirmation of Service**

A defendant served with process by electronic means must, within 24 hours of service, provide the serving attorney with an electronic confirmation that the service has been effected.<sup>44</sup>

A defendant served with the notice of e-filing must promptly record his or her consent electronically on the NYSCEF site or file with the court and serve on all parties of record a declination of consent.<sup>45</sup> The consent to e-filing must state that the defendant agrees to the use of e-filing in the action and to be bound by the filing and service provisions in the consensual rules. However, the filing of a consent to e-filing does not constitute an appearance in the action under CPLR 320.<sup>46</sup>

### **Service of Papers in a NYSCEF Case**

Service in a NYSCEF case is made through NYSCEF by a participating e-filer upon other e-filers who have recorded their consent or, in a mandatory case, noted their representation for a party.<sup>47</sup>

When a document (including orders, decisions, and judgments) is filed through NYSCEF in which other attorneys have consented, the transmission of the document to NYSCEF automatically causes service to occur on the other participating attorneys. The NYSCEF system immediately transmits an email message to them at their email service address or any optional addresses reporting that a document has been received by NYSCEF and containing a link to the document. That transmission constitutes service.<sup>48</sup>

The email service address recorded at the time of registration is the email address at which the service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site. It is the responsibility of each filing user to monitor that address and promptly notify the Resource Center in the event of a change in his or her email service address.<sup>49</sup>

The electronic notification confirming that a document has been e-filed constitutes proof of service.<sup>50</sup>

Except as provided otherwise in 22 N.Y.C.R.R. 202.5-b (h) (2), the electronic transmission of the notification will constitute service of the document on the email service addresses identified therein. However, service will not be effective if the filing party learns that the notification did not reach the ad-

dress of the person to be served. Proof of service will be recorded on the NYSCEF site.<sup>51</sup>

A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically.<sup>52</sup>

## **XI. Time To Respond to an E-Served Document**

The time to respond to an e-served document is the same as when personal service is made in hard copy format.<sup>53</sup> The NYSCEF file will maintain a record of the parties that have been e-served with that document. There is no charge for this electronic service. The e-filer may also use normal hard copy service if he or she prefers. Attorneys or parties not participating in e-filing must serve and be served in the traditional way in hard copy.<sup>54</sup>

## **XII. E-filing Before Consent**

After the commencement of an e-filed action documents may be electronically filed and served, only upon a party or parties who has consented to e-filing. (22 N.Y.C.R.R. 202.5-b (b) (2)(i)). E-filing of papers does not constitute service where the e-filing occurs before the defendant has consented to e-filing.<sup>55</sup>

Where a party has not consented to e-filing he must serve and be served with documents, and file documents with the court and the county clerk, in hard copy. When an e-filing party serves a document in hard copy on a non-e-filing party, the document served must have the full signatures of all signatories, and proof of service must be filed electronically.<sup>56</sup>

## **Signing Papers**

When a registered user who is a signatory to a document files a document electronically under his ID and password it constitutes “signing” for purposes of 22 N.Y.C.R.R. Part 130.<sup>57</sup>

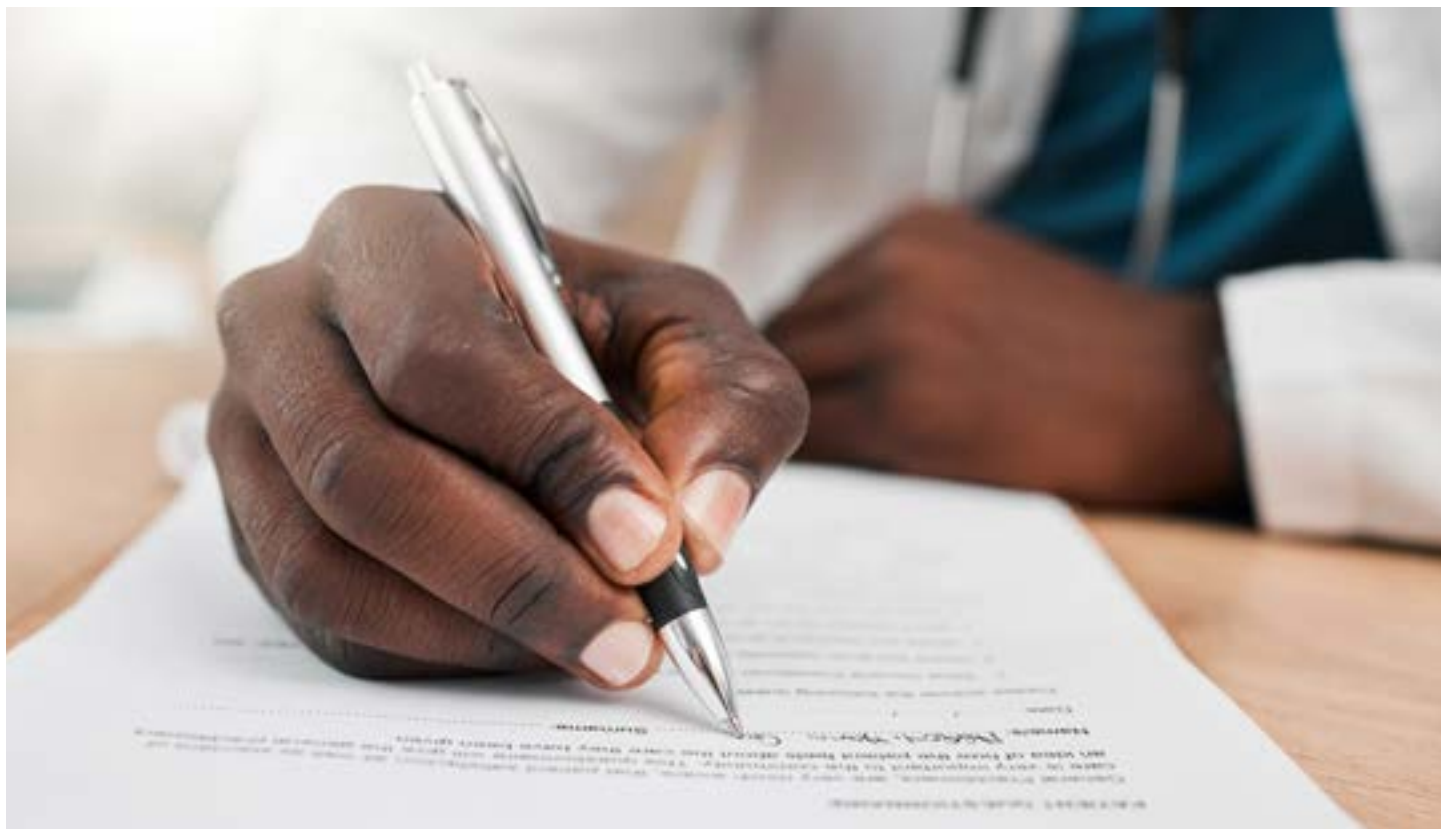
An electronically filed document will be considered to have been signed by and be binding upon, the person identified as a signatory if it bears the physical signature of the person and is scanned into an electronic format that reproduces the signature, or the signatory has electronically affixed the digital image of his or her signature to the document, or it is electronically filed under the User ID and password of that person, or it otherwise bears the electronic signature of the signatory in a format conforming to the standards and requirements established by the chief administrator.<sup>58</sup>

A document will be considered to have been signed by an attorney or party in compliance with 22 N.Y.C.R.R. 130-1.1-a<sup>59</sup> if it has been signed by the attorney or party as provided in 22 N.Y.C.R.R. 202.5-b (e)(1) and it bears the signatory’s name.<sup>60</sup>

A judge, party, or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a Certification of Signature for the document in the form prescribed by the chief administrator.<sup>61</sup>

## **E-Mail Service Address**

An attorney registering with NYSCEF must provide it with an email service address at which the service of papers (referred to as interlocutory documents) may be made on a



party through notification transmitted by the NYSCEF site. All users are responsible to monitor their registered email address and promptly notify the resource center in the event of a change of a service address.<sup>62</sup>

### XIII. Service Of Interlocutory Papers By E-Filing

An e-filing party causes the service of interlocutory papers, such as a motion, to be made upon another party participating in e-filing by filing the document electronically. When it receives an interlocutory document, the NYSCEF site automatically transmits an electronic notification to all email service addresses in the action. Each party receiving the notification is responsible for accessing the NYSCEF site to obtain a copy of the document.<sup>63</sup> Transmission of this notification constitutes service of the document. An affidavit of service does not need to be filed. However, service will not be effective if the filing party learns that the transmission did not reach the email address of any person to be served.<sup>64</sup>

A party may utilize other methods of service of papers permitted by CPLR 2103(b)(1) to (6).<sup>65</sup> If one of the other methods is used, proof of that service must be filed electronically.<sup>66</sup>

### XIV. Prior E-Filed Papers Need Not Be Included in Motion Papers

CPLR 2214(c) provides that a party in an e-filed action may rely on e-filed papers and need not include those papers in its motion papers, “but may refer to them, giving the docket numbers on the e-filing system.” However, the docket numbers on the e-filing system must be provided. Where the docket numbers on the e-filing system of the papers in question were not provided in the prior motion papers filed in the action the prior motion for similar relief was not part of the record submitted to the Supreme Court.<sup>67</sup>

### Notice of Entry of Order or Judgment

In an action subject to e-filing, the county clerk files the orders and judgments electronically and enters them.<sup>68</sup> The clerk’s filing stamp is proof of the entry and the date and time of entry.<sup>69</sup>

When an order or judgment is entered, the NYSCEF site will transmit a notification of the receipt of the entry to the email addresses of the parties. ***This transmission of the receipt of the entry does not constitute service of notice of entry by any party. A party must serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry.***<sup>70</sup> However, a party may serve an order or judgment and written notice of its entry electronically by filing them with the NYSCEF site that will cause transmission by the site of notification of the receipt of the documents, which will constitute service by the filer.<sup>71</sup>

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 hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of the receipt of those documents will not constitute additional service of the notice of entry on the parties to whom the notification is sent.<sup>72</sup>

### XV. Conversion to E-Filing

A non-mandatory case that was commenced by the filing of documents in hard copy form may be converted to e-filing by stipulation of the parties or by the service of a Notice Regarding Availability of Electronic Filing and the consent of some or all parties.<sup>73</sup>

Where procedurally permitted, upon court direction, an application by a party to the court, or a stipulation among the parties, a pending action may be converted to electronic form. Such direction, application, or stipulation must be served on all parties to the action and filed with proof of service. The county clerk may require the parties to furnish previously filed hard copy documents in electronic form.<sup>74</sup> A matrimonial action that was commenced in hard copy form may be converted to a NYSCEF case by filing a Form EF-10 Stipulation and Consent to e-filing via the Electronic Document Delivery System.<sup>75</sup>

### XVI. No Electronic Filing of Discovery Materials

In any action subject to e-filing, parties, and non-parties producing materials in response to discovery demands may enter into a stipulation, which must be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of a stipulation, no party may file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings, or other filings with the court.<sup>76</sup>

### XVII. Technical Failures of NYSCEF

The NYSCEF site will be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. Notice of all technical failures will be provided on the site.<sup>77</sup>

When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site will be extended for one day for each day on which failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy under this paragraph, each such document must include the notice required by 22 N.Y.C.R.R. 202.5-b (d) (1),

and the filer must file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.<sup>78</sup>

### **XVIII. Taking an Appeal by E-Filing**

Taking an appeal consists of serving and filing the notice of appeal on the adverse party<sup>79</sup> within 30 days after service of the order or judgment sought to be appealed with notice of entry,<sup>80</sup> and then perfecting the appeal.<sup>81</sup> Once an appeal is “taken” it must be “perfected.” Generally, unless otherwise provided by statute, rule, or court order, an appeal is perfected by filing the original record or appendix, five copies thereof, an original and five copies of a brief, all exhibits, and proof of service of the record and brief, and paying the filing fee of \$315.<sup>82</sup>

If a party to appeal has appeared by an attorney, service of the notice of appeal must be upon the attorney<sup>83</sup> by any method specified in CPLR 2103 (b) paragraphs (1), (2), (4), (5), or (6).<sup>84</sup> CPLR 2103(b) provides that papers to be served upon a party in a pending action must be served upon the party’s attorney.

The notice of appeal is filed with the clerk of the court in which the action was commenced. There is a filing fee of \$65.00. Unless the court directs otherwise, counsel for the appellant must file with the clerk of the court of original instance and serve on all parties, together with the notice of appeal and the order or judgment appealed from, an initial informational statement on a form approved by the court and in such number as the court may direct.<sup>85</sup>

In the Second Department, the appellant must file the original plus one copy, and serve one copy, of the papers referred to in 22 N.Y.C.R.R. 1250.3(a).<sup>86</sup> The Fourth Department does not require the filing of an initial informational statement pursuant to 22 N.Y.C.R.R. 1250.3 (a).<sup>87</sup>

### **XIX. Removal of Consent or Representation**

A consent to e-filing states that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in 22 N.Y.C.R.R. 202.5-b.<sup>88</sup>

The entry of judgment normally terminates the attorney-client relationship. However, until an attorney of record is discharged in the mode prescribed by law, the attorney is authorized to act for all purposes incidental to the entry and enforcement of the judgment, and as to adverse parties, his authority continues unabated.<sup>89</sup> Until that time the attorney may serve a notice of appeal upon an adverse party.<sup>90</sup> Where the notice of appeal is served upon a party’s attorney after the attorney is discharged, but before his discharge in the mode prescribed by law, the service of the notice of appeal upon the attorney is sufficient to fulfill the statutory requirements of service.<sup>91</sup>

A client may also retain a new attorney who was not the attorney of record during the trial to serve a notice of appeal and prosecute an appeal without obtaining an order of substitution.<sup>92</sup>

Where the notice of appeal is served upon a party’s attorney after the attorney is discharged, but before his discharge in the mode prescribed by law, the service of the notice of appeal upon the attorney is sufficient to fulfill the statutory requirements of service. In *Siegel v. Obes*,<sup>93</sup> the Appellate Division held that service upon the appellant’s attorney of record after the time that the appellant allegedly discharged him, but before his discharge in the mode prescribed by law, was adequate to fulfill the requirements of CPLR 2103(b).<sup>94</sup>

There are different ways that attorney-client relationships can be ended besides the termination of the action. The client can discharge the attorney, which can be done at any time with or without cause. The attorney and client can execute a Consent to Change Attorney or execute a stipulation of substitution, which is then filed with the court in accordance with CPLR 321(b). Alternatively, the attorney may move, to be relieved as counsel by court order. A discharge of an attorney by the client is immediate. From the standpoint of adverse parties, counsel’s authority as an attorney of record in a civil action continues unabated until the withdrawal, substitution, or discharge is formalized in a manner provided by CPLR 321.

A problem we have observed with NYSCEF is that the discharge of an attorney according to law does not remove his consent to be served and representation in NYSCEF. An attorney discharged in one of these ways must log in to NYSCEF and remove his or her consent. There are only three options under “reason for removal.” Under the first or second option, a consent to change attorney or an order of the court removing the attorney must already be e-filed in the case. Under the third option, the attorney will be permitted to remove consent only if there is another attorney recorded as representing that party in NYSCEF.<sup>95</sup> There is no option for removal upon the entry of judgment or discharge by the client in a matrimonial action. In matrimonial actions, the court has continuing jurisdiction to enforce or modify its judgment.<sup>96</sup> It appears that where an attorney has been discharged by his client or removed in one of these ways, he may be served with a notice of appeal or initiating papers in post-judgment proceedings by e-filing if he has not removed his consent from NYSCEF. The consent the attorney filed remains active in NYSCEF as a consenting party until removed from the system by the consenting attorney or court order.<sup>97</sup>

### **XX. Conclusion**

Consensual e-filing makes the practice of matrimonial law less stressful. Several sets of motion papers no longer need to be copied, stapled together with the exhibits, and served personally or by one of the methods in CPLR 2103. Numerous

copies of documents no longer are made. An order to show cause for pendente lite relief no longer needs to be taken to the court for signature, conformed, and served personally or by an alternative method, once it is granted. Service of pleadings and papers may be made from your computer, any hour of any day or night by simply filing the document.



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## Endnotes

1. 22 N.Y.C.R.R. 202.5-b (a)(2)(ii).
2. 22 N.Y.C.R.R. 202.5-b (a)(2)(ii).
3. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/Rule202.5b.pdf> (Last accessed April 29, 2023).
4. See 22 N.Y.C.R.R. Part 1245 at <https://www.nycourts.gov/courts/ad2/pdf/efilingrules.pdf>.
5. 22 N.Y.C.R.R. 202.5-b (a)(2)(ii).
6. 22 N.Y.C.R.R. 202.5-b (a)(2)(iii).
7. See Administrative order AO 370/21.
8. CPLR 2111(b)(2)(A).
9. 22 N.Y.C.R.R. 202.5-b (a)(1).
10. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.372.21.pdf> (Last accessed April 29, 2023).
11. See 22 N.Y.C.R.R. 202.5 (d)(v).
12. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.372.21.pdf>.
13. See AO/372/21 – December 22, 2021, Appendix B, Effective December 22, 2021, <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.372.21.pdf>.
14. See AO/372/21 – December 22, 2021, Appendix B, Effective December 22, 2021.
15. The form for a post-judgment matrimonial action is at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.of.availability.pj.matrimonial.pdf> (Last accessed April 29, 2023).
16. See AO/372/21, December 22, 2021, Appendix B, Effective December 22, 2021.
17. 22 N.Y.C.R.R. 202.5-b (a)(2)(v).
18. 22 N.Y.C.R.R. 202.5-b (a)(2)(viii); (See AO/372/21 – December 22, 2021, Appendix B, Effective December 22, 2021 <https://iappscontent.courts.state.ny.us/NYSCEF/live/legislation/AO.372.21.pdf>).
19. 22 N.Y.C.R.R. 202.5-b (a)(2)(iv).
20. 22 N.Y.C.R.R. 202.5-b (2)(a) (vi).
21. 22 N.Y.C.R.R. 202.5-b (c).
22. The e-filing forms are available for download at <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm> (Last accessed April 29, 2023).
23. 22 N.Y.C.R.R. 202.5-b (c).
24. 22 N.Y.C.R.R. 202.5-b (c).
25. 22 N.Y.C.R.R. 202.5-b (b)(1).
26. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General> (Last accessed April 29, 2023).
27. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General>.
28. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General>.
29. <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/authorization.single.attorney.agent.pdf>.
30. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General>.
31. 22 N.Y.C.R.R. 202.5-b (b)(2)(i).
32. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General>.
33. 22 N.Y.C.R.R. 202.5-b (b)(2)(i).
34. 22 N.Y.C.R.R. 202.5-b (b)(2)(i).
35. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
36. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
37. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
38. (22 N.Y.C.R.R. 202.5-b (f)(1).
39. (22 N.Y.C.R.R. 202.5-b (f)(1).
40. (22 N.Y.C.R.R. 202.5-b (b)(1).
41. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
42. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.of.availability.pdf> (Last accessed April 29, 2023).
43. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
44. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
45. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms.htm> (Last accessed April 29, 2023).
46. 22 N.Y.C.R.R. 202.5-b (b)(2)(ii).
47. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm>, The Filing Process, FAQ 15 (Last accessed April 29, 2023)).
48. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm>, The Filing Process, FAQ 15 (Last accessed April 29, 2023)).
49. 22 N.Y.C.R.R. 202.5-b(f)(2)(i).
50. In *Ruth v. Elderwood* at Amherst, 175 N.Y.S.3d 811, 2022 N.Y. Slip Op. 05637 (4th Dep’t 2022) the Appellate Division, noting that 22 N.Y.C.R.R. 1000.7 provides that [a] all records and appendices must contain the notice of appeal with proof of service and filing, rejecting the argument that the appeal should be dismissed because proof of service of the notice of appeal was not included in the record. It held that dismissal of the appeal was not warranted because, contrary to the defendants’ contention, the absence of such proof of service “does not ‘render[ ] meaningful appellate review

- impossible.” Defendants did not deny being served with the e-filed notice of appeal simultaneously with the electronic filing of that document and it disregarded the technical, nonprejudicial omission from the record of the proof of service and took judicial notice of the electronic notification sent to defendants confirming that plaintiff had e-filed the notice of appeal, which constitutes proof of service (see 22 N.Y.C.R.R. 202.5-b [f] [2] [ii]; 1245.7 [b]).
51. 22 N.Y.C.R.R. 202.5-b(f)(2)(ii).
  52. 22 N.Y.C.R.R. 202.5-b(f)(2)(ii).
  53. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm>, The Filing Process, FAQ 16 (Last accessed April 29, 2023)).
  54. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm>, The Filing Process, FAQ 15 (Last accessed April 29, 2023)).
  55. *Rickerson v. Porsch*, 63 Misc. 3d 1204(A), 114 N.Y.S.3d 184 (Sup Ct. 2019).
  56. 22 N.Y.C.R.R. 202.5-b (b)(2)(i).
  57. 22 N.Y.C.R.R. 202.5-(b) (e). (See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm>, The Filing Process, FAQ 18.) (Last accessed April 29, 2023)).
  58. 22 N.Y.C.R.R. 202.5-b (e)(1).
  59. 22 N.Y.C.R.R. 130-1.1-a.
  60. 22 N.Y.C.R.R. 202.5-b (e)(2).
  61. 22 N.Y.C.R.R. 202.5-b (e)(2). See <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/civilNewYorkCity/certification.of.signature.pdf>.
  62. 22 N.Y.C.R.R. 202.5-b (f)(2)(i).
  63. 22 N.Y.C.R.R. 202.5-b (f)(1)(ii).
  64. 22 N.Y.C.R.R. 202.5-b(f)(2)(ii).
  65. See CPLR 2103 (b)(7).
  66. 22 N.Y.C.R.R. 202.5-b (f)(1).
  67. *Reardon v. Macy's*, 191 A.D.3d 712, 141 N.Y.S.3d 100, 102 (2d Dep't 2021); See also *Eastern Funding LLC v. San Jose 63 Corp.*, 172 A.D. 3d 818, 98 N.Y.S.3d 444, 445 (2d Dep't, 2019) (The failure to “giv[e] the docket numbers on the e-filing system” corresponding to a previously e-filed affidavit of service, resulted result in the document not be considered by the court.).
  68. 22 N.Y.C.R.R. 202.5-b (h)(1).
  69. 22 N.Y.C.R.R. 202.5-b (h)(1).
  70. 22 N.Y.C.R.R. 202.5-b (h)(2).
  71. 22 N.Y.C.R.R. 202.5-b (h)(2).
  72. 22 N.Y.C.R.R. 202.5-b (h)(2).
  73. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm#General>.
  74. 22 N.Y.C.R.R. 202.5-b (b)(2)(iv).
  75. See <https://iapps.courts.state.ny.us/nyscef/SpecialDocumentTransferHome?id=41> (Last accessed April 29, 2023)).
  76. 22 N.Y.C.R.R. 202.5-b (j).
  77. 22 N.Y.C.R.R. 202.5-b (i).
  78. 22 N.Y.C.R.R. 202.5-b (i).
  79. CPLR 5515. 1..An appeal shall be taken by serving on the adverse party a notice of appeal and filing it in the office where the judgment or order of the court of original instance is entered except that where an order granting permission to appeal is made, the appeal is taken when such order is entered. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken.
  80. CPLR 5513.
  81. For a comprehensive discussion of “taking” an appeal by e-filing see the article in my New York Law Journal “Law and the Family” column titled “Taking an appeal in an Efiled Matrimonial action,” NYLJ, May 8, 2023, P.3, Col.1.
  82. 22 N.Y.C.R.R. 1250.9 (a); 22 N.Y.C.R.R. 1250.17 (a)(1).
  83. CPLR 2103(b) provides, in part:(b) Upon an attorney. Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party’s attorney.
  84. CPLR 2103(c).
  85. Joint Practice Rules of the Appellate Divison, 22 N.Y.C.R.R. 1250.3 (a).
  86. 22 N.Y.C.R.R. 670.3 (a) (1).
  87. 22 N.Y.C.R.R. 1000.3 (a) (1).
  88. 22 N.Y.C.R.R. 202.5-b(2)(ii).
  89. *Hendry v. Hilton*, 283 A.D. 168, 127 N.Y.S.2d 454 (2d Dep’t 1953); *Moustakas v. Bouloukos* 112 A.D.2d 981, 492 N.Y.S.2d 793. (2d Dep’t 1985).
  90. *Hendry v. Hilton, supra*.
  91. In *Stancage v. Stancage*, 173 A.D.2d 1081, 570 N.Y.S.2d 418 (3d Dep’t 1991) the Appellate Divison held that although the defendant claimed that service upon defendant’s counsel of record was after the time that they were discharged as counsel, there was no evidence in the record to show that the discharge was done in the method prescribed by law; therefore, such service was adequate to fulfill the statutory requirements of service.  
In *Siegel v. Obes*, 112 A.D.2d 930, 492 N.Y.S.2d 447 (2d Dep’t 1985) the Appellate Division held that service upon appellant’s attorney of record subsequent to the time that the appellant allegedly discharged him, but prior to his discharge in the mode prescribed by law, was adequate to fulfill the requirements of CPLR 2103(b).  
In *Hendry v. Hilton*, 283 A.D. 168, 127 N.Y.S.2d 454 (2d Dep’t 1953) the Appellate Division held that the service of the copy of the judgment with notice of entry upon their original attorney on July 10, 1953, was valid. Until an attorney of record is discharged in the mode prescribed by law, Rules Civil Practice, rule 56, that is, by order of the court or by stipulation signed by the attorney and the client, the attorney is authorized to act for all purposes incidental to the entry and enforcement of the judgment; as to the adverse parties, his authority continues unabated. Of course, for the purpose of prosecuting an appeal from the judgment the client is free to retain another attorney without the necessity of any formal substitution.
  92. *Vitale v. La Cour*, 92 A.D.2d 892, 459 N.Y.S.2d 881(2d Dep’t 1983); *Gradl v. Saulpaugh*, 268 A.D. 787, 49 N.Y.S.2d 51 (2 Dep’t 1944).
  93. 112 A.D.2d 930, 931, 492 N.Y.S.2d 447 (2d Dep’t 1985).
  94. See also *Stancage v. Stancage*, 173 A.D.2d 1081, 570 N.Y.S.2d 418 (3d Dep’t 1991).
  95. See <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/RemoveConsentInstructions.pdf> (Last accessed April 23, 2023).
  96. *Haskell by Alberts v. Haskell*, 6 N.Y.2d 79, 188 N.Y.S.2d 475 (1959).
  97. *Id.*