From: Anthony Fernicola [mailto:anthony@bosmanlawfirm.com]
Sent: Wednesday, December 23, 2015 11:32 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing in Oneida County Supreme Court

Dear Mr. Carucci,

I'm writing in response to the advisement about mandatory electronic filing in Oneida County, effective February 1, 2016.

Our office has utilized electronic filing in the Federal system and it has served to be an effective and efficient experience. We have also used the New York State electronic filing system in other counties, including Onondaga County.

Mandatory filing is certainly and obviously welcomed but consensual e-filing should also be allowed for actions commenced prior to February 1, 2016.

Very truly yours,

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From: rzeineth@ckhlawyers.com [mailto:rzeineth@ckhlawyers.com]
Sent: Wednesday, December 23, 2015 4:34 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: E-filing

Good afternoon,

The initial concept of E-filing was well thought out and the additions to the core concept have been necessary and well executed. With one exception. The mandate for working copies and hard copies for motions that the court already have in their possession, is burdensome and triples the workload of law firms when compared with the old traditional method of motion practice. The court did what they had to do to streamline their workload and reduce their staff but they did so at the expense of others rather than creating a system where all boats would rise with the tide.
Perhaps in the future, all parts will have the technology to allow for electronic documents to be the only documents that need to be served.

One final note, the staff that NYSCEF have been nothing short stellar.
Professional, knowledgeable and courteous. A pleasure to speak to.

Thank you for your time and consideration.

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From: Denise A. Rubin [mailto:denise@rubinlawpllc.com]
Sent: Monday, December 14, 2015 10:36 AM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Comment on Mandatory E-Filing
Importance: High

Dear Sirs/Mesdames:

Please note this comment with regard to the imminent (February 2016) implementation of an administrative order rendering the use of the NYSCEF e-filing system mandatory. My comment is respectfully offered in response to the request for such comments on the Court's e-filing website. Notably, I have been a supporter of e-filing in both State and Federal Courts since the inception in each. Electronic filing offers many advantages including speed of access to information and documents; ease of filing and increased access to filing systems (and to dockets and downloading of documents from the system) around the clock. It is because **of my staunch support of increased access and technological advances that I am immensely saddened and troubled to have to file the following comment AGAINST mandatory implementation of electronic filing unless and until sufficient safeguards and back up are put into place that will prevent the situation described infra.**

For the last year, I have been embroiled on behalf of a client in an e-filing **debacle** that has resulted in my client's appeal from a forum non conveniens dismissal in Supreme Court, New York County being wrongfully dismissed as untimely. The original Order of the Supreme Court Justice was scanned into the e-filing system by a "court user" later determined by NY County Clerk Milton Tingling to be a Supreme Court clerk, *not a County Clerk employee*. Upon further investigation, (former Justice) Tingling determined that there was no apparent authority given to the Supreme Court Clerk to "enter" a Supreme Court Justice's Order. Indeed, the order was not described by NYSCEF as "entered" but had the automatic "Filed, New York County Clerk [date]" label inserted on the scanned document by the NYSCEF system. Based on that label, and notwithstanding explicit precedent defining the difference between a "filed" and an "entered" Order for appeal purposes, defendants' counsel served a defective "Notice of Entry" on December 30, 2014 ("defective" because one cannot serve Notice of Entry of an Order that *has not been entered).* Just over two weeks later, on January 16, 2015, the identical order was scanned into NYSCEF, again by a Supreme Court employee without any delegated authority given her by the County Clerk. This time, the document was described in NYSCEF docket as "RE:MOTION NO. 002, DECISION + ORDER ON MOTION **ENTERED IN THE OFFICE OF THE COUNTY CLERK ON JANUARY 16, 2015."** (Caps in original, emphasis via italics added). Defendants once again served Notice of Entry and from this apparently authoritatively entered document and Notice of Entry, we took timely noticed an appeal.

Incredibly, defendants moved to dismiss that Notice of Appeal as untimely and even more incredibly, on June 2, 2015, the Appellate Division, First Department, granted their motion, effectively saying to those familiar with the underlying facts that attorneys practicing in New York State have no right to rely on the clear language of the NYSCEF dockets.

Inquiry with the Supreme Court's records room at 60 Centre Street revealed that with the advent of electronic filing, "hard copies" of orders are no longer maintained; hence it was impossible to find documentary proof that one order was duly entered with some indicia of the County Clerk's imprimatur versus the other. (Formerly, hard copies of entered orders bore a hand-stamp indicating the document had been filed by the County Clerk, with the date - hence the troubling confusion with the Electronic Filing System **automatically** entering such a label on scanned documents). **The same label, notably, would be automatically entered by NYSCEF on stipulations, motion papers, correspondence to the court, i.e., documents that were substantively not Orders, entered or otherwise.**

My next inquiry was with Justice Tingling, in his capacity as New York County Clerk. I asked for some confirmation from his office as to whether the December 24, 2014 scanned Order or the January 16, 2015 scanned order was actually the "entered" order pursuant to the County Clerk's mandate under Court Rules (22 N.Y.C.R.R. §202.5-b(h)(l)). After his investigation of the matter, Justice Tingling advised me that **NEITHER of the two scanned orders** was duly entered **as NEITHER** document had been entered by the County Clerk's office or with apparent or actual authority delegated by the County Clerk. TO BE CLEAR: the County Clerk has acknowledged that my client's time to appeal **never even started to run, much less expired** - to this very day almost a year later. He has consistently declined, however, to state that fact or the findings of his investigation for the record or in writing, assuring me that if informed of the foregoing in a motion for

To be absolutely clear: even if the second Order, that bearing the description in NYSCEF as "entered in the office of the County Clerk on January 16, 2015" was not entered with the County Clerk's authority, a practitioner utilizing NYSCEF for filing and service of documents, particularly court orders, entry of court orders and notices of entry, MUST MUST MUST be able to rely on the NYSCEF system to determine the proper dates and timing for subsequent actions. Here, the timing of a Notice of Appeal is a jurisdictional deadline-our Notice of Appeal was timely; but even in the event it had not been timely filed, the fact that it was filed pursuant to the NYSCEF notification that the January 16, 2015 scanned order was "RE: MOTION NO. 002, DECISION + ORDER ON MOTION **ENTERED IN THE OFFICE OF THE COUNTY CLERK ON JANUARY 16, 2015,"** if questionable, should have been decided in favor of the appellant as a matter **of** minimal justice.

I advised the Appellate Division, First Department of all of the foregoing in a motion for reargument and renewal filed on/about July 20, 2015. **The motion was detailed, heavily supported by documentary proof, and was denied after six months without citation to a single fact that would enlighten the reader to the nature of the ongoing problems engendered by the NYSCEF system.** I should add here that Justice Tingling enacted some remedial changes to the filing system designed to prevent future occurrences such as outlined here. I do not know if those remedial interventions in the NYSCEF system have been effective, however.

As best I can discern, neither the implementation of the NYSCEF system, nor mandatory implementation of the system that is now anticipated, was ever intended to dispense with the CPLR or the basic requirements for County Clerk entry of Supreme Court orders in order to make them effective. PLAINLY, moreover, the practitioner can NOT rely on the information provided by NYSCEF to determine such matters as which Order is properly entered and the time when such entry occurred, as the Appellate Division has now effectively said in two orders on my client's case without ever stating a single informative fact.

Given all of the foregoing, I cannot strongly enough oppose the mandatory implementation of this obviously defective system. If court and State/County personnel responsible for the smooth implementation and monitoring of the NYSCEF system refuse to address - indeed, refuse to even acknowledge for the record - such errors as described supra, the NYSCEF system IS NOT ripe for mandatory implementation. It is inevitable that errors and injustices will be caused by such system glitches; moreover, such glitches will occur when any new system of this level of complexity is rolled out. The Bar's and the public's confidence in the system, however, cannot be expected when problems are brought to the Court's and the Court administration's attention only to have them swept under the rug at the public's (and individual litigant's) expense.

If you are interested in viewing the underlying documentation and motions referenced in this email, I invite you to contact me. I will immediately provide PDF files for all.

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From: Heritage Abstract [mailto:heritageabstract@gmail.com]
Sent: Monday, January 11, 2016 12:10 PM
To: eFiling Comments <efilingcomments@nycourts.gov>
Subject: Oneida County

To Whom It May Concern:

The deputy Oneida County Clerks (County, not Supreme Court) are advising people that efiling foreclosure actions will be mandatory and that attorneys will have to "opt out" of efiling.

In reading your memorandum dated Nov. 19, 2015,1 am not of the same opinion.

Please advise. Also please advise if each County Clerk can decide for their own county, or whether you are trying to create uniformity among county clerks.

Frances Blazer, Esq.