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Jeffrey Carucci, Director
OCA Division of E-filing
Office of Court Administration
25 Beaver Street, 9th Floor
New York, New York 10004

Via e-mail to efilingcomments@nycourts.gov

Re: Efiling comments

Dear Mr. Carucci:

This letter is submitted in response to your October 28 request for comments and observations on New York's electronic filing system (NYCEF) and proposed amendments to CPLR Article 21-A that would expand the current use of e-filing in New York's Courts. Thank you for the opportunity to share our thoughts with you.

The Empire Justice Center is a statewide, not for profit legal services organization with offices in Central Islip (Long Island), Albany, Rochester, and Westchester County. We represent low-income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including public benefits, health, domestic violence, foreclosure prevention, civil rights, LGBTQ issues and landlord-tenant matters. We also provide support and training to legal services and other community-based organizations, undertake policy research and analysis, and engage in legislative and administrative advocacy. Many of our attorneys use the NYCEF filing system and find it cost effective, convenient, and environmentally friendly. We also appreciate the ability to browse and access filed documents.

We have two comments for your consideration. First, we want to underscore the critical nature of the Office of Court Administration's commitment to exempt pro

se litigants from the e-filing rules. This section includes special attention to pro se litigants in foreclosure proceedings who are represented only in the settlement conference phase. Our second comment concerns the filing procedure in NYCEF in cases where the plaintiff wishes to seek that papers be sealed or redacted. Our comments are based on our experience with low income individuals and the issues that they face.

1. Pro se litigants:

Your October 28 letter states that under the proposed amendments, “unrepresented persons would continue to be exempt from e-filing unless they affirmatively choose to participate.” Further, page 14 of the 2021 Report referenced in your letter <https://www.nycourts.gov/LegacyPDFS/publications/pdfs/CommitteeReport-eFiling.pdf> states that “Self-represented litigants will continue to be automatically exempt from mandatory e-filing...service of paper copies of documents on any self-represented litigants will continue to be required.”

It is critical that any expansion of e-filing maintain this exception. Our clients are often respondents, do not have internet or have limited or intermittent access to the internet, and often do not understand or have access to email. Outside of New York City, many tenant respondents in eviction proceedings do not have counsel, so we are reluctant to support the expansion of mandatory e-filing in the lower courts at this time.

Regarding foreclosure cases, the Office of Court Administration has allowed legal counsel to represent homeowners in a limited capacity, for the settlement conference portion of a lawsuit only. If legal representation ends following the settlement conference part, there is a form in foreclosure cases submitted to the court to indicate that counsel is no longer representing the homeowner. Should the chief judge mandate e-filing in foreclosure cases, if such form is filed indicating that a defendant is no longer represented by counsel and becomes a pro se litigant, the e-filing requirement should be extinguished for that defendant (unless they opt in). It should be clear that the rule governing pro se litigants applies even if the case was originally under the e-filing mandate.

2. Process in NYCEF for sealed or redacted documents must be revised

Page 14 of the 2021 report notes that if e-filing was expanded to matrimonial actions, access to the court file would be “automatically limited to litigants, authorized court staff and counsel of record who consented to service.” On page

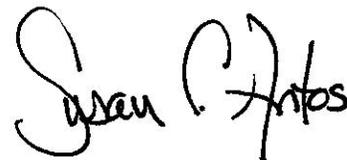
15, the report goes on to say that *“Documents are also routinely filed in non-matrimonial matter which are sealed or confidential. The same procedures would be applied to e-filed papers in all such actions, permitting access only to those authorized.”*

Our concern is that those “same procedures” in non-matrimonial matters make litigants vulnerable in cases where counsel may wish to seek the sealing or redaction of documents that contain sensitive or confidential information. Until a court directs that a matter be sealed, documents that are efiled are at risk of being made public due to the existence of websites, programs and applications that pull publicly available information and distribute it. Once this information has been captured and made public, it cannot be protected, even where a court subsequently orders sealing or redaction. We recommend that the Office of Court Administration consider how to control this information so as not to put efilers at risk. One option could be the inclusion of a checkbox or a form that asks for temporary sealing until the case can be reviewed by a judge.

The Empire Justice Center frequently represents transgender petitioners seeking name changes. While most of these cases are sealed to protect a petitioner’s privacy once reviewed by a judge pursuant to New York Civil Rights Law § 64-a, review in these cases can take between two weeks to four months. This delay allows for sensitive information to be revealed in the manner described as above, including birth certificates required to be included in name change cases, and renders subsequent sealing largely meaningless. We welcome further discussion on this issue.

Thank you for the opportunity to comment, and please do not hesitate to contact the undersigned should you have additional questions or concerns.

Very truly yours,

A handwritten signature in black ink that reads "Susan C. Antos". The signature is written in a cursive, flowing style.

Susan C. Antos
Senior Attorney
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