

LAWS OF NEW YORK, 2015

CHAPTER 237

AN ACT to amend the judiciary law, the civil practice law and rules, the court of claims act, the criminal procedure law, the family court act, the New York city civil court act and the surrogate's court procedure act, in relation to use of electronic means for the commencement and filing of papers in certain actions and proceedings; and providing for the repeal of certain provisions upon expiration thereof

Became a law August 31, 2015, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (t) to read as follows:

(t) (i) (A) Not later than April first in each calendar year, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county a program has been implemented in civil cases in the supreme court, the advisory committees established pursuant to subparagraphs (ii) through (vi) of this paragraph, the organized bar including but not limited to city, state, county and women's bar associations; the office of indigent legal services; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and afford them an opportunity to submit comments with respect to such implementation for inclusion in the report and address any such comments.

Public comments shall also be sought via a prominent posting on the website of the office of court administration. All comments received from any source shall be posted for public review on the same website.

(B) The report submitted hereunder in the two thousand seventeen calendar year shall include:

(I) the evaluation specified in subparagraph (vi) of this paragraph, including the entities or individuals consulted, input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law

to any issues relating to the use of electronic means for filing by unrepresented litigants, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the origination of juvenile delinquency proceedings under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act in family court and the filing and service of papers in such pending proceedings.

(II) the evaluation specified in subparagraph (v) of this paragraph, including the entities or individuals consulted, the input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited to any issues relating to the use of electronic means for filing by unrepresented litigants, recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings.

(III) the evaluation specified in subparagraph (ii) of this paragraph, including the entities or individuals consulted, input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited to any issues relating to the use of electronic means for filing by unrepresented litigants, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the supreme court.

(IV) the evaluation specified in subparagraph (iii) of this paragraph, including the entities or individuals consulted, input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited to any issues relating to the use of electronic means for filing by unrepresented litigants, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court.

(V) the evaluation specified in subparagraph (iv) of this paragraph, including the entities or individuals consulted, input received, all issues encountered or otherwise brought to the attention of the chief administrator or his or her agents, all solutions devised to address the issues, presentment of all outstanding issues, including but not limited to any issues relating to the use of electronic means for filing by unrepresented litigants, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation in relation to the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York.

In the report, the chief administrator also shall address issues that bear upon the need for the courts, district attorneys and others to

retain papers filed with courts or served upon parties in criminal proceedings where electronic means can or have been used and make recom-

mendations for such changes in laws requiring retention of such papers as the chief administrator may deem appropriate.

(ii) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein in the supreme court. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the supreme court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator. No fewer than half of the members of this advisory committee shall be upon the recommendation of the New York state association of county clerks. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of the electronic filing program in the supreme court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(iii) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court. This committee shall consist of such number of members as the chief administrator shall designate among which there shall be chief clerks of surrogate's courts; representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional providers of legal services; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who

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are or would be affected by such electronic filing program, including unrepresented parties, city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of the electronic filing program in the surrogate's court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(iv) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; representatives of the organized bar including but not limited to city, state, county and women's bar associations; attorneys who regularly appear in actions specified in subparagraph (C) of paragraph two of subdivision (b) of section twenty-one hundred eleven of the civil practice law and rules; and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York; and any other persons as deemed appropriate by the chief administrator. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of the electronic filing program in the civil court of the city of New York; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(v) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings, as first authorized by paragraph one of subdivision (c) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued. The committee shall consist of such number of members as will enable the chief administrator to obtain input

from those who are or would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; representatives of the office of indigent legal services; not-for-profit legal service

providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community.

(vi) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the origination of juvenile delinquency proceedings under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act in family court and the filing and service of papers in such pending proceedings, as first authorized by paragraph one of subdivision (d) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-for-profit legal service providers; public defenders; representatives of the office of indigent legal services; attorneys assigned pursuant to article eighteen-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, representatives of authorized presentment and child protective agencies, other appropri-

ate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal service providers, public defenders, attorneys assigned pursuant to article eighteen-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys
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who regularly appear in proceedings that are or would be affected by such electronic filing program, and other interested members of the criminal justice community.

§ 2. The civil practice law and rules is amended by adding a new article 21-A to read as follows:

ARTICLE 21-A
FILING OF PAPERS IN THE COURTS BY FACSIMILE
TRANSMISSION AND BY ELECTRONIC MEANS

Section 2110. Definitions.

2111. Filing of papers in the trial courts by facsimile transmission and by electronic means.

2112. Filing of papers in the appellate division by electronic means.

§ 2110. Definitions. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule 2103 of this chapter.

§ 2111. Filing of papers in the trial courts by facsimile transmission and by electronic means. (a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission only in the court of claims and electronic means in the supreme court, the civil court of the city of New York, surrogate's courts and the court of claims for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized in the supreme court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

(b) 1. Except as otherwise provided in paragraph two of this subdivision, participation in this program shall be strictly voluntary, and will take place only upon consent of all parties in the action or special proceeding; except that a party's failure to consent to participation shall not bar any other party to the action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation. Commencement of an action by electronic means or by facsimile transmission shall not require the consent of any other party. No party shall be compelled, directly or indirectly, to participate in e-filing. All parties shall be notified clearly, in plain language, about their options to participate in e-filing. Where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

2. In the rules promulgated pursuant to subdivision (a) of this

section, the chief administrator may eliminate the requirement of consent to participation in this program in:

(A) one or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, election law proceedings, proceedings brought pursuant to article seventy or seventy-eight of this chapter, proceedings brought pursuant to the mental hygiene law, resi-

dential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law and proceedings related to consumer credit transactions as defined in subdivision (f) of section one hundred five of this chapter, except that the chief administrator, in accordance with this paragraph, may eliminate the requirement of consent to participate in this program insofar as it applies to the initial filing by a represented party of papers required for the commencement of residential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law and the initial filing by a represented party of papers required for the commencement of proceedings related to consumer credit transactions as defined in subdivision (f) of section one hundred five of this chapter) in supreme court in such counties as he or she shall specify, and

(B) one or more classes of cases in surrogate's court in such counties as he or she shall specify, and

(C) actions in the civil court of the city of New York brought by a provider of health care services specified in paragraph one of subsection (a) of section five thousand one hundred two of the insurance law against an insurer for failure to comply with the rules and regulations promulgated by the superintendent of financial services pursuant to subsection (b) of section five thousand one hundred eight of such law.

(i) Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent in any county until after he or she shall have consulted with members of the organized bar including but not limited to city, state, county and women's bar associations; with institutional legal service providers; with not-for-profit legal service providers; with attorneys assigned pursuant to article eighteen-B of the county law; with unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any program of electronic filing in such county that requires consent or who would be affected by a program of electronic filing in such county should the requirement of consent be eliminated; with any other persons in the county as deemed to be appropriate by the chief administrator; and with the county clerk of such county (where the affected court is the supreme court of a county outside the city of New York), and

(ii) only after affording them the opportunity to submit comments with respect thereto, considering any such comments, including but not limited to comments related to unrepresented litigants and, in the instance of any county outside the city of New York, obtaining the agreement thereto of the county clerk thereof. All such comments shall be posted for public review on the office of court administration's website.

2-a. Notwithstanding the provisions of paragraph two of this subdivision, the exclusion in such paragraph of residential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law from those classes of cases in which the chief administrator may eliminate the requirement of consent to participation in a program in the use of elec-

tronic means shall not apply to any county in which, prior to the effective date of this section, the chief administrator had eliminated the requirement of consent to participation in such a program in such foreclosure actions, specifically Erie, Essex, New York, Queens, Rockland, Suffolk and Westchester counties; and the exclusion in such paragraph of proceedings related to consumer credit transactions as defined in subdivision (f) of section one hundred five of this chapter from those class-

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es of cases in which the chief administrator may eliminate the requirement of consent to participation in a program in the use of electronic means shall not apply to any county in which, prior to the effective date of this section, the chief administrator had eliminated the requirement of consent to participation in such a program in such proceedings related to consumer credit transactions, specifically Erie, New York, Onondaga, Rockland and Westchester counties.

3. Where the chief administrator eliminates the requirement of consent as provided in paragraph two of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the action is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

(A) where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or

(B) where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this subparagraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding any other provision of this subdivision, where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request after said party has been presented with sufficient information in plain language concerning the program; and a party not represented by counsel who has chosen to participate in the program shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

(c) For purposes of this section, "the filing and service of papers in pending actions and proceedings" shall include the filing and service of a notice of appeal pursuant to section fifty-five hundred fifteen of this chapter.

§ 2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section twenty-one hundred eleven of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a

motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in pending actions and proceedings. Provided however, the appellate division may not eliminate the requirement of consent to participation in appeals in such a program involving matrimonial actions as defined by this chapter, election law proceedings, proceedings brought pursuant to article seventy or seventy-eight of this chapter, proceedings brought pursuant to the mental hygiene law, resi-

dential foreclosure actions involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law and proceedings related to consumer credit transactions as defined in subdivision (f) of section one hundred five of this chapter; and such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in subparagraph (A) or (B) of paragraph three of subdivision (b) of section twenty-one hundred eleven of this article to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform.

§ 3. The court of claims act is amended by adding a new section 11-b to read as follows:

§ 11-b. Use of facsimile transmission and electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may authorize a program in the voluntary use of facsimile transmission and electronic means in the court as provided in article twenty-one-A of the civil practice law and rules.

2. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 4. Section 10.40 of the criminal procedure law, as added by chapter 47 of the laws of 1984, is amended to read as follows:

§ 10.40 Chief administrator to prescribe forms and to authorize use of electronic filing.

1. The chief administrator of the courts shall have the power to adopt, amend and rescind forms for the efficient and just administration of this chapter. A failure by any party to submit papers in compliance with forms authorized by this section shall not be grounds for that reason alone for denial or granting of any motion.

2. (a) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means

("e-filing") in the supreme court and in the county court for (i) the filing with a court of an accusatory instrument for the purpose of commencement of a criminal action or proceeding in a superior court, as provided by articles one hundred ninety-five and two hundred of this chapter, and (ii) the filing and service of papers in pending criminal actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized in the supreme court or county court of such county, afford him or her the

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opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

(b) (i) Except as otherwise provided in this paragraph, participation in this program shall be strictly voluntary and will take place only upon consent of all parties in the criminal action or proceeding; except that a party's failure to consent to participation shall not bar any other party to the action from filing and serving papers by electronic means upon the court or any other party to such action or proceeding who has consented to participation. Filing an accusatory instrument by electronic means with the court for the purpose of commencement of a criminal action or proceeding shall not require the consent of any other party; provided, however, that upon such filing any person who is the subject of such accusatory instrument and any attorney for such person shall be permitted to immediately review and obtain copies of such instrument if such person or attorney would have been authorized by law to review or copy such instrument if it had been filed with the court in paper form.

No party shall be compelled, directly or indirectly, to participate in e-filing. All parties shall be notified clearly, in plain language, about their options to participate in e-filing. Where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(ii) The chief administrator may eliminate the requirement of consent to participation in this program in supreme and county courts of not more than six counties provided he or she may not eliminate such requirement for a court without the consent of the district attorney, the consent of the criminal defense bar as defined in subdivision three of this section and the consent of the county clerk of the county in which such court presides.

Notwithstanding the foregoing provisions of this subparagraph, the chief administrator shall not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons and organizations, or their representative or representatives, who regularly appear in criminal actions or proceedings in the superior court of such county with reasonable notice and opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee specified in subparagraph (v) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law.

(c) Where the chief administrator eliminates the requirement of

consent as provided in subparagraph (ii) of paragraph (b) of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the court where the criminal action is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

(i) Where the attorney certifies in good faith that he or she lacks appropriate computer hardware and/or connection to the internet and/or

scanner or other device by which documents may be converted to an electronic format; or

(ii) Where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this subparagraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding the foregoing provisions of this paragraph: (A) where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program; (B) a party not represented by counsel who has chosen to participate in the program shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and (C) a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

(d) (i) Nothing in this section shall affect or change any existing laws governing the sealing and confidentiality of court records in criminal proceedings or access to court records by the parties to such proceedings, nor shall this section be construed to compel a party to file a sealed document by electronic means.

(ii) Notwithstanding any other provision of this section, no paper or document that is filed by electronic means in a criminal proceeding in supreme court or county court shall be available for public inspection on-line. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action; and, provided further, that this paragraph shall not prohibit the chief administrator, in the exercise of his or her discretion, from posting papers or documents that have not been sealed pursuant to law on a public website maintained by the unified court system where: (A) the website is not the website established by the rules promulgated pursuant to paragraph (a) of this subdivision, and (B) to do so would be in the public interest. For purposes of this subparagraph, the chief administrator, in determining whether posting papers or documents on a public website is in the public interest, shall, at a minimum, take into account for each posting the following factors: (A) the type of case involved; (B) whether such posting would cause harm to any person, including especially a minor or crime victim; (C) whether such posting would include lewd or scandalous

matters; and (D) the possibility that such papers or documents may ultimately be sealed.

(iii) Nothing in this section shall affect or change existing laws governing service of process, nor shall this section be construed to abrogate existing personal service requirements as set forth in the criminal procedure law.

3. For purposes of this section, the following terms shall have the following meanings:

(a) "Consent of the criminal defense bar" shall mean that consent has been obtained from all provider offices and/or organizations in the

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county that represented twenty-five percent or more of the persons represented by public defense providers pursuant to section seven hundred twenty-two of the county law, as shown in the most recent annual reports filed pursuant to subdivision one of section seven hundred twenty-two-f of the county law. Such consent, when given, must be expressed in a written document that is provided by a person who is authorized to consent on behalf of the relevant public defender organization, agency or office; and

(b) "Electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules; and

(c) The "filing and service of papers in pending criminal actions and proceedings" shall include the filing and service of a notice of appeal pursuant to section 460.10 of this chapter.

§ 5. The criminal procedure law is amended by adding a new section 460.90 to read as follows:

§ 460.90 Filing of papers on appeal to the appellate division by electronic means.

Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certification specified in subparagraph (i) or (ii) of paragraph (c) of subdivision two of section 10.40 of this chapter to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including district attorneys; representatives of the office of indigent legal services; not-for-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; interested members of the criminal justice community; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform. For purposes of this section, "electronic means" shall be as defined in

subdivision (f) of rule twenty-one hundred three of such law and rules.

§ 6. Section 214 of the family court act, as amended by chapter 751 of the laws of 1989, is amended to read as follows:

§ 214. [State] Chief administrator to prescribe forms; electronic filing in family court. (a) The [state] chief administrator of the courts shall promulgate a uniform, statewide petition for adoption and may prescribe such other forms as may be proper for the efficient and just administration of this act, including forms for petitions, summons, warrants, subpoenas, undertakings, and orders authorized by this act.

(b) (i) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may

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promulgate rules authorizing a program in the use of electronic means ("e-filing") in the family court for: (1) the origination of proceedings in such court, and (2) the filing and service of papers in pending proceedings.

(ii) (1) Except as otherwise provided in this paragraph, participation in this program shall be strictly voluntary and will take place only upon consent of all parties in the proceeding; except that failure of a party or other person who is entitled to notice of the proceedings to consent to participation shall not bar any other party from filing and serving papers by electronic means upon the court or any other party or person entitled to receive notice of such proceeding who has consented to participation. Filing a petition with the court by electronic means for the purpose of originating a proceeding shall not require the consent of any other party; provided, however, that upon such filing, a party to such proceeding and any attorney for such person shall be permitted to immediately review and obtain copies of such documents and papers if such person or attorney would have been authorized by law to review or obtain copies of such documents and papers if they had been filed with the court in paper form.

No party shall be compelled, directly or indirectly, to participate in e-filing. All parties shall be notified clearly, in plain language, about their options to participate in e-filing. Where a party is not represented by counsel, the clerk shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(2) In the rules promulgated pursuant to paragraph (i) of this subdivision, the chief administrator may eliminate the requirement of consent to participation in this program in family courts of not more than six counties for:

(A) the filing with the court of a petition originating a juvenile delinquency proceeding under article three of this act by a presentment agency as defined in section 301.2 of such act;

(B) the filing with the court of a petition originating in a proceeding to determine abuse or neglect pursuant to article ten of this act by a child protective agency, as defined in section one thousand twelve of such act; and

(C) the filing and service of papers in proceedings specified in clauses (A) and (B) of this subparagraph where, pursuant to such clauses, such proceedings were originated in the court by electronic filing.

Notwithstanding the foregoing, the chief administrator shall not elim-

inate the requirement of consent to participation without the consent of each authorized presentment agency, child protective agency of an affected county, the family court bar providing representation to parents, and the family court bar providing representation to children (as represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization, and president of the local bar association as applicable) in any county in which such elimination shall apply.

Notwithstanding the foregoing, the chief administrator may not eliminate the requirement of consent to participation in a county hereunder until he or she shall have provided all persons or organizations, or their representative or representatives, who regularly appear in

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proceedings in the family court of such county, in which proceedings the requirement of consent is to be eliminated, with reasonable notice and an opportunity to submit comments with respect thereto and shall have given due consideration to all such comments, nor until he or she shall have consulted with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law.

(c) Where the chief administrator eliminates the requirement of consent as provided in subparagraph two of paragraph (ii) of subdivision (b) of this section, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

(i) Where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) Where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding the foregoing provisions of this paragraph: (A) where a party or a person entitled to notice of the proceedings is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however, the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program; (B) a party who is not represented by counsel who has chosen to participate in the program shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and (C) a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

(d) For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

(e) Notwithstanding any provision of this chapter, no paper or document that is filed by electronic means in a proceeding in family court shall be available for public inspection on-line. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action.

(f) Nothing in this section shall affect or change any existing laws governing the sealing and confidentiality of court records in family court proceedings or access to court records by the parties to such proceedings, nor shall this section be construed to compel a party to file a sealed document by electronic means.

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(g) Nothing in this section shall affect or change existing laws governing service of process, nor shall this section be construed to abrogate existing personal service requirements as set forth in this act and the civil practice law and rules.

§ 7. The family court act is amended by adding a new section 1122 to read as follows:

§ 1122. Filing of papers on appeal to the appellate division by electronic means. Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in paragraph (i) or (ii) of subdivision (c) of section two hundred fourteen of this chapter to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform.

§ 8. The New York city civil court act is amended by adding a new section 2103-a to read as follows:

§ 2103-a. Use of electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in the civil court of the city of New York as provided in article twenty-one-A of the civil practice law and rules.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 9. The surrogate's court procedure act is amended by adding a new section 107 to read as follows:

§ 107. Use of electronic filing authorized

1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in the surrogate's court as provided in article twenty-one-A of the civil practice law and rules.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§ 10. (a) Where rules authorizing a program in the use of electronic means for any purpose and in any court were promulgated by the chief administrator of the courts pursuant to law on or before August 31, CHAP. 237

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2015, and such rules were in effect on such date, such rules shall remain in effect unless modified or abrogated by the chief administrator pursuant to law as provided in this act.

(b) Notwithstanding the provisions of any other law, no party or his or her counsel shall be charged a fee for viewing information filed by electronic means, or for downloading or printing such information through the use of such party's or counsel's own equipment. The chief administrator of the courts shall ensure that sufficient computer terminals and staff are available at the courthouse of each court participating in the program in the use of electronic means, to enable parties and their counsel to access information, subject to the provisions of article 21-A of the civil practice law and rules, section 10.40 of the criminal procedure law and subdivision (b) of section 214 of the family court act, and laws governing the sealing and confidentiality of court records, filed by electronic means at such courthouse in a prompt and convenient manner.

§ 11. This act shall take effect immediately; provided that sections four, five, six and seven of this act shall expire and be deemed repealed September 1, 2019; and provided that paragraph 2-a of subdivision (b) of section 2111 of the civil practice law and rules, as added by section two of this act, shall expire and be deemed repealed September 1, 2017.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly
