

New York Commercial Division Round-Up

News & Updates on Cases Decided in the Commercial Division of the New York State Supreme Court

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[Electronic Filing Is Now Mandatory When Commencing An Action In The Commercial Division](#)

By *[Sean J. Kirby](#)*

On May 24, 2010, the Commercial Division of the Supreme Court of the State of New York, New York County instituted mandatory electronic filing for actions filed in the Commercial Division. As a result, this rule change most Commercial Division matters must now be commenced, and all subsequent filings must be filed, through the court's electronic case filing website located at www.nycourts.gov/efile (the "NYSECF website").

THE IMPLEMENTING ORDER

By order dated April 26, 2010, the Chief Administrative Judge of the Courts amended section 202.5-bb of the Uniform Rules for the Supreme and County Courts ("Uniform Rules"), relating to electronic filing of actions in the Supreme Court. Section 202.5-bb now provides, in relevant part, that all documents filed in the Commercial Division in New York County must be filed electronically. See Uniform Rules § 202.5-bb(a)(1). Section 202.5-bb goes on to provide that all actions commenced in the Commercial Division in New York County must also be commenced electronically. See Uniform Rules § 202.5-bb(b)(1).

However, despite the mandatory nature of the commencement rule, there are emergency exceptions where parties may commence an action by filing hard copies of the initiating documents with the court, including: (i) instances where the statute of limitations will expire on the day the documents are filed or on the following business day; and (ii) situations where the attorney is unable to file electronically due to technical problems with his or her computer or internet connection. See Uniform Rules § 202.5-bb(b)(2). However, if an attorney does have to file hard copies with the court, the documents must be electronically filed within three days after filing the hard copies. See id.

PRACTICAL TIPS

In practice, commencing an action electronically is relatively simple. First, if you do not already have one, you must obtain a user account. This can be accomplished by filling out the user registration form under the forms tab on the NYSECF website. Second, once you have your password, and have logged into the NYSECF website, you then must follow the system prompts until you locate the option to "[f]ile to start a new action or proceeding." Third, upon choosing to file to start a new action, you will then select the court in which you are filing, the type of document being filed, i.e. a summons and complaint, and then you will be prompted to upload a copy of that document to the website. Fourth, once the document has been uploaded and submitted to the Court, you will be asked to pay for the index number. Payment can be accomplished electronically by credit card or by check at the clerk's office. If you are paying by check, be sure to print out the confirmation page and bring it with you to the clerk's office, as you are no longer required to fill out the index number purchase form. Finally, after your document is filed and your index number is purchased, you can proceed with serving the initiating documents.

It is important to note that even though the commencement of actions in the Commercial Division must now be done electronically, service of the initiating documents must still be accomplished in accordance with Article 3 of the Civil Practice Law and Rules, as service may be accomplished electronically only where the party being served consents to such service. See Uniform Rules § 202.5-bb(b)(3). In addition, for cases commenced electronically, the party serving the initiating documents must also serve, along with a copy of the initiating documents, the "Notice of Commencement of Action Subject to Mandatory Electronic Filing." This form can be found on the NYSECF website.

Given the foregoing, attorneys must and should take heed of this mandatory requirement, so as to be prepared to commence all Commercial Division matters electronically.

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