

FBEM USER'S MANUAL

Part I

I. Introduction to Filing by Electronic Means ("FBEM")

The New York State Office of Court Administration has initiated a pilot program for the electronic filing of court papers in certain types of civil actions. The purpose of this User's Manual is to provide technical and other information to proposed Users of this new system.

Users will include [Filing Users](#), who will have the ability to actually file documents onto the court's Internet site, and [Public Users](#), who will not be permitted to file documents, but who will be able to view all documents accepted for filing on the system.

The Filing by Electronic Means ("FBEM") system is not intended to change most of the normal rules applicable to civil litigation that are contained in New York's Civil Practice Laws and Rules. There are, however, some differences in filing procedures that are reflected in the regulations that have been adopted by the Chief Administrator for the FBEM system. These regulations are contained in 18 NYCRR Part 202.5-b.

II. The Pilot Program

Filing by Electronic Means is a pilot program with filings allowed only in the Counties of New York, Monroe and Westchester. In Westchester County, only tax certiorari cases will be handled. These cases challenge property owners' tax assessments. In Monroe and New York Counties, commercial cases may be filed by electronic means.

III. Filing With The Clerk

Cases may be started by an electronic filing, by transmitting the commencement papers to the appropriate County Clerk, together with the information allowing for the payment of the index number fee. Papers that have been filed will appear on the [Electronic Docket](#) for the case. Subsequent to initiating filing with the county clerk, if a Participating Judge is assigned, all parties consent, and the judge orders that the case is appropriate for FBEM, interlocutory filings may be made on the court's Internet site, where they will be accessible to the Supreme Court Clerk, counsel and the [Public Users](#). All filed documents will be maintained on the court's Internet site. Documents that are filed on the court's Internet site will be the official papers for all purposes in the court proceeding.

IV. Initial Service of Process

It should be noted that after a case is initiated on the FBEM system, service of process on opposing parties usually will proceed in the normal paper form, in accordance with Article 3 of the CPLR, unless a different procedure is arranged in advance by consent. Where consent is arranged in advance, the served party is required to confirm receipt of service within 24 hours in accordance with FBEM regulations. This is the result of the requirements of the legislation that permitted the FBEM experiment (Chapter 361 of the Laws of 1999). The Legislature required that participation in an electronic filing case be strictly voluntary. If the party served with process does not consent that the case be a FBEM case, it will go forward as a paper file Supreme Court case. In this event, the Clerk will print the commencement documents and open the usual paper index number file.

V. Consent To FBEM

As noted above, FBEM is a strictly voluntary program, and all the parties are required to consent as a precondition to the for FBEM case going forward. The consent must be filed on the Court's Internet site, before interlocutory filings will be permitted. Each consent also must be executed in writing and maintained by the

consenting party.

VI. Internet Access To The FBEM System

Access to the FBEM system is obtained through links from the Office of Court Administration's homepage, at www.courts.state.ny.us. Further links from succeeding pages will allow a Filing User or [Public User](#) to access the [Electronic Docket](#). By clicking on the document name depicted on the Electronic Docket, the actual document will be viewable by the User on their own computer screen, and may be printed or transmitted to others. However, the User must have the [Adobe Acrobat Reader Software](#) installed, in order to read the document on the FBEM system as discussed below.

VII. File Format For the FBEM System

Documents filed on the FBEM system will only be accepted if they are created in the [Portable Document Format](#) ("PDF"), which is a format created through software licensed by Adobe Systems Incorporated. The Adobe software is widely available, and the Adobe Acrobat Reader, which permits the reading (but not writing) of PDF files, is available as a free download from the Adobe Systems homepage (www.adobe.com/products/acrobat/readermain.html).

VIII. Participating Judges

It is anticipated that some judges will agree to participate in the FBEM system, and that some will not. If a non-Participating Judge is assigned, the case documents will be printed by the clerk, and the case will proceed thereafter as a paper filed case. Also, even a Participating Judge may determine that a particular case is not suitable for electronic filing. Therefore, prior to a case proceeding as an electronic filing case, an order from the Participating Judge designating the case as an FBEM case will be needed, in addition to the consent of all parties.

IX. Filing Orders

[Dispositive Orders](#) must be submitted to the clerk in hardcopy form after the judge signs it. The judge may print a proposed order filed by the party from the [Electronic Docket](#), but the signature must be in ink. The clerk will then scan the order into a PDF file and file it on the [Electronic Docket](#). [Non-Dispositive Orders](#), such as scheduling orders or the order designating the case as an FBEM case, may be entered through the Participating Judge's use of his or her User's Identification and Password.

X. Electronic Filings after the Action is Commenced

Once a case has been designated as an FBEM case, all filings within that case will proceed in electronic form. After a party transmits a document to the court's Internet site and it has been reviewed by the clerk for filing, it will appear on the [Electronic Docket](#). An [E-mail Filing Notification](#) message then will automatically be generated by the FBEM system, notifying all [Filing Users](#) for that case of the filing event. The Filing User who filed the document must then forward the Electronic Filing Notification to the other parties in the case for the purpose of effecting service of the document. In the alternative, a Filing User may use normal CPLR service of paper documents, if desired.

Although the FBEM system will notify all registered [Filing Users](#) for the affected case when an electronic document has been filed, the service of the document itself is a separate act. Service must be performed by the Filing User attorney or *pro se* party who filed the paper. Affidavits of service also must be filed, and they, as with all other papers, will be filed as PDF documents on the FBEM system.

XI. The List of Papers Filed("LPF") Also Known as the Electronic Docket

This is the index where all filed documents for a case are listed. Each listing is linked to the actual document.

XII. Registering as a Filing User

For security reasons, persons who wish to become [Filing Users](#) must appear with proper identification at the Supreme Court Clerk's office, and fill out and sign a paper form that will be transmitted to the Office of Court Administration for processing. This written request to be registered as a Filing User will result in the issuance by e-mail of a Filing [User Identification](#) Name and Password.

Thereafter, all documents filed by such a Filing User must use that Filing [User Identification](#) Name and Password. A Filing User who receives information indicating that a [User Identification](#) or Password is compromised must promptly notify the Office of Court Administration's security unit at 125 Jordan Road, Troy, New York 12180 and request a new Filing [User Identification](#) or Password. The Filing User is responsible for all documents filed under that Filing User's Name and any Password associated with that name.

A Filing User who is an attorney need only register as a Filing User once. Thereafter, that Filing User can consent on behalf of any party that attorney represents, to allow a case to become an FBEM case. There is no need for an attorney to re-register as a Filing User for each case, nor is there a need to obtain a new Password.

However, [pro se](#) parties are not permitted to be [Filing Users](#) except for the case in which they are a party. They also must register as a Filing User at the Supreme Court Clerk's office in order to obtain a [User Identification](#) and Password. A [pro se](#) party will be restricted by the FBEM systems to filing documents on the case and index number in which they are a party. [Pro se](#) Filing Users cannot file legally in any other case.

XIII. Converting Papers into the Format Required for Electronic Filing

As noted above, the electronic filing system uses the PDF file format. Any person wishing to be able to read PDF files can obtain the Acrobat Reader software free of charge by downloading it from the Adobe Systems' homepage. A link to this page is contained on the homepage for the Office of Court Administration. A Filing User who wishes to convert documents into a PDF file format for transmittal to the FBEM system must have the additional capability of creating PDF files. This, in most cases, will require the purchase of additional software. The [Adobe Acrobat software](#) is available for purchase through most software retailers. Also, in some of the newer versions of popular word processing programs, there is an ability to convert documents directly into the PDF format.

For most word processing software programs, the conversion to a PDF document is accomplished by the User "printing" the document as a PDF file. In other words, instead of sending the finished document to the printer, the software allows the PDF conversion as a separate printer option. This process allows for the creation of a new PDF file on the Filing User's computer.

It is not possible to describe in this User's Manual the precise steps by which word processing or the Acrobat software allows for the creation of the PDF file. However, the result of this conversion process is the storage of a file at a location on either the hard drive or the floppy disk drive for the User's computer. Once converted into a PDF file, the file itself can be transmitted to the court for filing through the FBEM system, while the Filing User is logged on. At the time of filing, the FBEM software allows the User to "browse" their own disk drives to select the proper file for transmission.

XIV. Scanning or Directly Creating PDF Files

Documents can be converted directly from a word processing program into a PDF file or, for documents which are only available in hardcopy form, such as exhibits, those documents can be converted into a PDF document by use of a scanner. However, it is significantly more time consuming, and it creates a significantly larger file, when documents are converted into a PDF file by scanning. This is because scanning the document will create a PDF image of the document, while documents created from word processing software are coded more efficiently, and result in smaller files. This is an important issue for uploading files to the FBEM system. Scanned PDF

documents will take much longer to upload than PDF documents created from word processors due to the scanned documents larger file size. Larger files take a longer time to transmit than smaller files. In addition, a scanned file cannot be searched word by word, while a word processed PDF file is fully word searchable.

XV. Signing of Legal Papers

To avoid the necessity of using a scanned page for the signature of documents, the FBEM regulations permit a Filing User to transmit a document to the system, and the act of doing so with the Filing User's Identification and Password, is deemed by the regulations to be an act of "signing." Even documents signed by persons other than the Filing User, such as by an affiant or deponent who is not the Filing User, can be transmitted (by the Filing User only, of course) without the necessity of transmitting the actual signature. However, when the signature on a document is made by a person other than the Filing User who transmits it, the Filing User is representing to the court by the act of filing that the document has been executed in hard copy, and that the original exists and is maintained by the Filing User in the Filing User's office. The Filing User agrees to produce the original document on the request of the court or any person.

XVI. Technical Failure and Helpline

A Technical Failure is the unavailability of the Unified Court System Internet site for filings or access to filed documents, continuously or intermittently, over any period of time greater than one (1) hour after 12:00 Noon on any day. In the event of a [Technical Failure](#), the clerk is directed under the Regulations to provide notice of the [Technical Failure](#) on the Unified Court System Internet site. In addition, the Unified Court System Internet site status telephone number is 1-800-622-2522 and may be telephoned by any person in order to learn the current status of the Unified Court System Internet site.

In the event of a [Technical Failure](#), a party may file or serve documents in hard copy form. The FBEM Rules provide that with the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to a [Technical Failure](#) will be extended for one (1) day for each day in which such a failure occurs. The court also has discretion, except where such discretion is restricted by law, to extend or otherwise deal with time limitations in order to address circumstances arising out of [Technical Failures](#).

The Unified Court System also provides telephone help assistance, and a frequently asked questions ("FAQ") list with answers. Users are encouraged to consult the FAQ first, then contact their local clerk for answers to questions regarding the use of FBEM and contact the Office of Court Administration only if the local clerks cannot resolve the problem.

XVII. Searches on the FBEM System

General Searches. [Filing Users](#) or [Public Users](#) may search for cases on the FBEM system using the FBEM search engine. The search engine searches for cases, but not directly for documents within cases. Users are permitted to conduct a statewide search, although during the pilot project only counties in which the FBEM system is operative will return information.

A search may be by index number, party name, attorney name or judge name. A User who seeks to use the search screen need not complete all the fields on the screen, although it may be desirable to do so to prevent a search from returning too many undesired cases. For example, a search may be made by a party's first and last name without the middle initial, or by an attorney's last name.

When a search term is entered, the search will return only exact matches unless a "wildcard character" is used. Therefore, a User should be wary of possible misspellings in entering of search terms. A User who is unsure of a particular spelling may use "wildcard" searches.

Wildcard Searches. Wildcard searches permit a User access to cases by the entering of only part of the

information in a search term. A question mark ("?") may be used as a substitute for an unknown letter. An asterisk (*) may be used for an unknown letter or series of letters, as when only part of a name is known. A wildcard can be used at the front, back or middle of a search term. For example: "Ascenz?" as a search term will return "Ascenzi" or "Ascenze." "John*" as a search term will return "Johnson," "Johns" or "Johnsen." "Se?or" will return "Secor," "Selar" or "Semor."

Searches may be restricted by date, in order to narrow the number of correct responses to an inquiry. The result of a search inquiry, if it is positive, will be a listing of cases as stated in their official captions. The listing will show index numbers, the court in which the cases were filed, the filing dates and the [Filing Users](#) who filed the initiating paper in the cases.

Document Searches. It should be noted that although the FBEM search screen will search for cases and not documents once a PDF file is opened and displayed on the Acrobat Reader® software, there is a search option that will allow searches within the open PDF document. Users may access this feature by clicking on the binoculars icon displayed on the Acrobat Reader® window.

XVIII. Definitions

Adobe Acrobat Reader Software. The Adobe Acrobat Reader Software allows a computer to read documents that are stored in the [Portable Document Format](#) ("PDF"). The Adobe Acrobat Reader Software is necessary for any User who wishes to view documents on the Court's Internet site. All documents on the Court's Internet site are stored as PDF files.

Adobe Acrobat Software. The Adobe Acrobat Software is a commercially available software product that allows Users to read and create PDF documents. The Acrobat Software is necessary for all [Filing Users](#), but is not necessary for [Public Users](#) who cannot file to the system and therefore do not need to create PDF documents.

Dispositive Orders. Dispositive Orders are all orders that affect a substantive or significant procedural right of a party. Dispositive Orders must be submitted in hardcopy form. [Non-Dispositive Orders](#) may be electronically filed by the assigned judge or his clerk.

Electronic Docket. Also known as [List of Papers Filed](#).

E-Mail Filing Notification. The FBEM system generates an E-Mail Filing Notification when a document has been received by the FBEM system. An E-mail Filing Notification is also generated when a document is accepted for filing. To effect service of a paper, the E-Mail Filing Notification is forwarded through e-mail by the Filing User who filed the document that resulted in the E-Mail Filing Notification.

List of Papers Filed. The List of Papers Filed ("LPF") is the index of all papers filed through FBEM. The LPF is represented on a publicly accessible Internet web page, which sets forth the documents actually filed in the case, as well as other pertinent information for filed documents and for the case. Also known as the Electronic Docket.

Filing Users. Filing Users are those persons who have been granted a User Name and Password and who have been granted the privilege of filing papers on the court's Internet site. Filing Users must register at the Supreme Court Clerk's office on a paper form, which is transmitted to the Office of Court Administration for processing. A Filing User may be an attorney who may register and file papers in more than one case, or a party to an action who is permitted to file papers only in that action in which they are a party. Attorneys who are not New York attorneys and who wish to file in an FBEM case as a Filing User must be admitted pro hac vice and may only file in the case for which they are permitted to act as counsel.

Non-Dispositive Orders. Non-Dispositive Orders are scheduling orders, orders designating a particular case as an FBEM case, or orders that do not affect substantive or significant procedural rights of parties.

Participating Judges. A Participating Judge is a Supreme Court or Acting Supreme Court Justice who has agreed to be assigned to cases that will proceed under the FBEM system. In the event that a Request for Judicial Intervention results in the assignment of a case to a Non-Participating Judge, the case will not be designated as an FBEM case and will thereafter proceed in paper form, as is the case with any non-FBEM action or proceeding.

Portable Document Format ("PDF"). The Portable Document Format ("PDF") is a computer file format created through software licensed by Adobe Systems, Inc. The PDF format is the standard format for all documents filed in FBEM. The FBEM system interrogates all filings and will only accept PDF documents for filing on the court's Internet site.

Public User. A Public User is any User other than a Filing User. Public Users do not have the privilege of filing papers on the court's Internet site but are permitted to conduct searches and view all papers filed on the court's Internet site.

Technical Failure. A Technical Failure is the unavailability of the Unified Court System Internet site to accept filings or provide access to filed documents for a period greater than one (1) hour after 12:00 Noon on any day.

User Identification ("User ID"). The User ID is the unique text and/or number identifier of a Filing User that is issued to the Filing User by the Office of Court Administration.