



STATE OF NEW YORK
UNIFIED COURT SYSTEM
360 ADAMS STREET
BROOKLYN, NY 11201
(347) 296-1527

LAWRENCE K. MARKS
Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating Judge for
Matrimonial Cases

MEMORANDUM

TO: Hon. George J. Silver
Hon. Vito C. Caruso

FROM: Hon. Jeffrey S. Sunshine

DATE: May 14, 2021

RE: Filing Separation Agreements with the County Clerk Pursuant to DRL§170(6)

DRL § 170(6) provides that if a separation agreement is to be the basis for a conversion divorce assuming all requirements of the statute are satisfied, it must be filed with the County Clerk's Office where either party resides, but the statute permits the filing of a memorandum of the agreement instead of the agreement.

In those counties utilizing NYSCEF, in order to file a separation agreement pursuant to DRL§170(6) in the Court Record, an index number is required pursuant to CPLR § 8018 together with the \$35 filing fee pursuant to CPLR §8020(d). This is the practice that has been utilized in many Counties and the same index number is then utilized to obtain a judgment of separation (so there is an enforceable order to effectuate the agreement) or eventually to obtain a divorce after the one year period has expired if there is compliance pursuant to DRL§170(6). These documents filed through NYSCEF are sealed pursuant to DRL§ 235 and available only to the parties and their retained counsel.

In some jurisdictions, however, the separation agreement is filed with the County Clerk for a \$5 filing fee pursuant to CPLR 8021(b) as a county miscellaneous filing not in the records of the Court or the Unified Court System, and the filing is not part of the NYSCEF file or that of the County Clerk as clerk of the court. Since the statute does not distinguish the data base required, it imposes a filing requirement on the County Clerk. In those instances, that county

miscellaneous filing should be made in person or pursuant to EDDS in accordance with the local procedures established by the County Clerk's office.

If the filing is done as a miscellaneous county filing rather than through NYSCEF, it should be filed either as a memorandum or, if the entire agreement is filed, as a sealed document. Both options are permitted under DRL§170(6) so that the contents remain confidential. This will prevent an accidental disclosure in violation of DRL§235 by the County Clerk, who is also the clerk of the court. DRL§235 provides in pertinent part that an officer of the court with whom a written agreement of separation is filed, shall not permit a copy of the "written agreement of separation or memorandum thereof, ..., or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the court."

Please distribute this memorandum to Judges and Court Attorney Referees assigned to matrimonial matters, and appropriate staff. Questions about this memorandum may be directed to Susan Kaufman, Counsel to the Statewide Coordinating Judge for Matrimonial Cases, at skaufma1@nycourts.gov.

cc: Hon. Lawrence Marks
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Lisa Smith
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