**§ 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 courts of New York having civil jurisdiction 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 hereunder in the supreme court or the county 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. Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel.

2. (A) Where participation in this program is to be voluntary:

(i) commencement of an action or proceeding by facsimile transmission or electronic means shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding 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;

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(iv) where a party 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) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with members of the organized bar including but not limited to city, state, county, and women's bar associations and, where they practice in such court in such county, with (a) institutional service providers, (b) not-for-profit legal service providers, (c) attorneys assigned pursuant to article eighteen-B of the county law, (d) unaffiliated attorneys who regularly appear in proceedings that are or have been affected by a program of electronic filing in such county, and (e) any other persons as deemed to be appropriate by the chief administrator;

(2) afford all those with whom he or she consults pursuant to item one of this clause the opportunity to submit comments with respect to the program, which comments, including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(ii) as provided in paragraph three of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

3. Where the chief administrator requires participation in electronic filing as provided in paragraph one 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. Such 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.