UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN
Clerk

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MEMORANDUM

TO: Northern District of New York Bar Members

FROM: Lawrence K. Baerman, Clerk of Court

DATE: July 15, 2003

SUBJECT: Proposed changes to the Local Rules

Dear Northern District of New York Bar Member,

What follows is a synopsis of the proposed changes to the Local Rules. I encourage you to review these proposed changes and forward to me any comments or suggestions you may have regarding them. Comments or suggestions are due by ***September 2nd, 2003***, and may be forwarded to me electronically at **LocalRules2004@nynd.uscourts.gov** or sent to me at:

Lawrence K. Baerman, Clerk of Court
James Hanley Federal Building
P.O. Box 7367
Syracuse, NY 13261
Attn: Local Rules Committee

All comments will be compiled and presented, along with the final version of the proposed modifications, to the Board of Judges at their September 2003 meeting. When enacted, the new Local Rules would become effective January 1, 2004.

Thank you for your attention to these important procedural changes.

Sincerely,
Lawrence K. Baerman
Clerk of Court

Local Rule 5.1.2

Rule 5.1.2 Electronic Case Filing – All cases filed in this court may be assigned to the Electronic Case Filing System in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22), the provisions of which are incorporated herein by reference, and which may be amended from time to time by the court.

Purpose of change: Allows the Court to enact the procedures necessary to implement CM/ECF.

Local Rule 7.1

Introduction - Motion Dates and Times.

Unless the court directs otherwise, motions shall be made returnable at the next regularly scheduled motion date at least **31 days** from the date the motion is filed and served. The moving party shall select a return date in accordance with the procedures set forth in subdivision (b). If the return date selected is not the next regularly scheduled motion date, or if no return date is selected, the clerk will set the proper return date and notify the parties

Purpose of change: Prohibits parties from filing motions far in advance of the scheduled return date.

Local Rule 7.1(b) Motions

(b) Motions.

1. Dispositive Motions.

All motion papers must be filed with the court and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion must state the return date which has been selected by the moving party.

Opposing papers must be filed with the court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers must be filed with the court and served upon the other parties not less than **ELEVEN DAYS** prior to the return date of the motion.

A surreply is not permitted.

All original motion papers, including memoranda of law and supporting affidavits, if any, shall be filed in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The assigned judge may request that the parties provide a courtesy copy of the motion papers.

Purpose of change: A cornerstone of the electronic filing system is the fact that an attorney's login and password are the equivalent of their original signature for Rule 11 purposes. This fact prohibits an attorney from electronically filing the papers of another party/attorney. Accordingly, the Court is compelled to modify its current motion practice. Based upon the resolution adopted at the last judges meeting, the Court has restructured its dispostive motion procedures to conform to the 31-17-11 briefing schedule set forth above.

Please note that within the current proposal reply papers are allowed as a matter of right. The Court's current rule requires attorneys to seek permission from chambers prior to filing reply papers.

Local Rule 7.1(b)(2)

2. Non-Dispositive Motions.

Prior to making any non-dispositive motion, the parties must make **good faith efforts among themselves to resolve or reduce all differences relating to the non-dispositive issue**. If after conferring, the parties are unable to arrive at a mutually satisfactory resolution, the party seeking relief must then request a court conference with the assigned magistrate judge.

A court conference is a prerequisite to filing a non-dispositive motion. Within the notice of motion, the moving party is required to set forth the date that the court conference with the magistrate judge was held on the issues being presented in the motion. Failure to include this information within the notice of motion may result in the rejection of the motion papers.

Actions which involve an incarcerated, pro se party are not subject to the requirement that a court conference be held prior to filing a non-dispositive motion.

Unless otherwise ordered by the court, all motion papers must be filed and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

Opposing papers must be filed with the court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers are not permitted without prior permission from the court.

Purpose of Change:

It has proven beneficial to require a court conference prior to the filing of non-dispositive motions.

Local Rule 7.1 C

©) Cross-Motions.

A cross-motion may be filed and served at the time opposition papers to the original motion are filed and served (not less than **SEVENTEEN DAYS** prior to the return date of the motion). If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed 25 pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed 25 pages in length, exclusive of exhibits. The reply/opposition papers must be filed and served on the opposing party not less than **ELEVEN DAYS** prior to the return date of the original motion.

The cross-moving party may not reply in further support of its cross-motion except with prior permission of the judge hearing the motion.

Purpose of Change: When the Court changed the Local Rules governing motion practice, it also needed to change the procedures governing cross-motions.

Local Rule 8.1

8.1 Personal Privacy Protection.

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper form, unless the court orders otherwise.

1. **Social security numbers**. If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
2. **Names of minor children**. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
3. **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
4. **Financial account numbers**. If financial account numbers are relevant, only the last four digits of that number should be used.

In addition, caution shall be exercised when filing documents that contain the following:

1) personal identifying number, such as driver's license number;
2) medical records, treatment and diagnosis;
3) employment history;
4) individual financial information; and
5) proprietary or trade secret information.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. The Court shall retain this document as part of the record. The Court may, however, still require the party to file a redacted copy for the public. Counsel is strongly urged to discuss this issue with all clients so that an informed decision about the inclusion of certain materials may be made. The responsibility for redacting these personal identifiers ***rests solely with counsel and the parties.*** *The clerk will not review each pleading for compliance with this Rule. Counsel and the parties are cautioned that failure to redact these personal identifiers may subject them to the full disciplinary power of the court.*

Exception: Transcripts of the administrative record in social security proceedings and state court records relating to a habeas corpus petitions are exempt from this requirement.

Purpose of Change: These modifications are required in order to comply with the E-Government Act of 2002.

Local Rule 10.1(b)(2)

2. Each document must identify the person filing the document. This identification must include a signature of the attorney or pro se litigant; the typewritten name of that person; the address of a pro se litigant; and the bar roll number, office address, telephone number, *e-mail address* and fax number of the attorney.

   All attorneys of record and pro se litigants must immediately notify the court of any change of address. The notice of change of address is to be filed with the clerk and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply.

   Attorneys shall also file a new registration statement within ten days of a change of address, firm name, telephone number, *e-mail address* and fax number. Attorney registration forms may be obtained at the court's web page at "**www.nynd.uscourts.gov**"; see also L.R. 41.2(b); L.R. 83.1(e).

Purpose of Change: Modification conforms to the *Administrative Procedures for Electronic Case Filing* (General Order #22) for Electronic Filing.

83.1 Admission to the Bar.

3. **Attorney Registration Form.** The Registration Form must be in the form prescribed by the clerk, which sets forth the attorney's current residence; office addresses; telephone, e-mail address and fax number(s), if any; and the bars of all states, territories, districts, commonwealths or possessions or other courts of the United States to which the attorney is admitted and the dates of admission. A copy of the Attorney Registration Form is available on the court's web page at "**www.nynd.uscourts.gov**." See subdivision (e) for requirements when information on the Registration Form changes.

83.1(d) Pro Hac Vice Admission.

Pro Hac Vice Admission to the Northern District of New York has been eliminated. Accordingly, all members of the bar must comply with the requirements for permanent admission.

Local Rule of Criminal Procedure 1.2

Rule 1.2 Electronic Case Filing – All criminal cases filed in this court may be assigned to the Electronic Case Filing System in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22), the provisions of which are incorporated herein by reference, and which may be amended from time to time by the court.

Purpose of change: Allows the Court to enact the Procedural Order necessary to implement CM/ECF.

Local Rule of Criminal Procedure 12.1

12.1 Motions and Other Papers.

(a) All motion papers must be filed with the court and served upon the other parties no less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion should state the return date which was selected by the moving party. The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to the requested relief. Opposing papers must be filed with the court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of the court, upon a showing of necessity. If leave is granted, reply papers must be filed with the court and served upon the other parties not less than **ELEVEN DAYS** prior to the return date of the motion.

Purpose of Change: The time frame to file a motion in a criminal proceeding was modified to remain consistent with the time frame to file a motion in a civil case.