L O C A L R U L E S O F P R A C T I C E

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF NEW YORK

Effective January 1, 2012

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Forward

The Board of Judges for the Northern District of New York has adopted the following time schedule for the approval and amendment of the Local Rules of Practice. The Court will solicit comment on new and amended local rules from the bar and public during the months of May, June and July. Comments should be addressed to

Lawrence K. Baerman
Clerk of Court
James Hanley Federal Building
P.O. Box 7367
100 South Clinton Street
Syracuse, New York 13261-7367

New and amended rules of practice will be forwarded to the Circuit Council of the Second Circuit for review and approval during the month of October. All new and amended local rules will become effective on January 1st each year. The Clerk of the Court will then make available to the bar and public the amended local rules.

Please note that the public can obtain a copy of the Court's Local Rules and General Orders from the Court's webpage at www.nynd.uscourts.gov.

SUMMARY OF AMENDMENTS EFFECTIVE JANUARY 1, 2012

Local Rule Number	Summary of Amendment
Civ. 1.3	***New Rule*** Establishes existence and applicability of the new Local Patent Rules.
Civ. 3.2	Notifies practitioners of obligations under General Order 12 concerning venue.
Civ. 7.1(a)(3)	Adds phrase "properly supported" to modify "facts" to more accurately indicate consequences of failing to address a fact in an opposing party's Statement of Material Facts.
Civ. 7.1(c)	Enhances clarity and precision
Civ. 7.1(h)	Directs practitioners to look at General Order 25 and clarifies that most Judges decide motions on submission.
Civ. 9.1	Modernizes procedure for requesting a three-judge court.
Civ. 10.1(c)(2)	Enhances clarity, encourages *pro se* litigants to provide more contact information, and requires litigants to clearly notify the court of changes of address.
Civ. 47.1	Corrects list of authorized stations for jury selection proceedings
Civ. 67.1	Fully incorporates General Order 43, investment of funds in CRIS.
Civ. 67.4	Updates Rule to reflect current refund procedures.
Civ. 67.5	***New Rule*** Prohibits the Clerk from accepting cash in excess of $500 unless specifically authorized by Local Rule or Court Order.
Civ. 77.7	Updates list to include Plattsburgh.
Civ. 83.1(a)(1)	Improves clarity and consistency.
Civ. 83.1(a)(5)	Updates the fee amounts based on recent changes to the Miscellaneous Fee Schedules and clarifies that the $50 biennial fee is only due every odd-numbered year *after* the year of admission.
Civ. 83.1(e)–(g)	Reorders and clarifies rules pertaining to admission of government attorneys who are admitted to practice in another federal district.
Civ. 83.1(h)	***New Rule*** Establishes ongoing duty of admitted attorneys to promptly notify the Court of any adverse disciplinary action in another jurisdiction.
Civ. 83.1(i)	***New Rule*** Establishes procedure and limits of public access to attorney admission materials.
Civ. 83.3(e)	Modernizes procedures for notifying *pro bono* counsel of appointment.
Civ. 83.4(j)	Updates Rule to reflection adoption of the New York Rules of Professional Conduct.

Civ. 83.4(*l*)	***New Rule*** Gives notice of consequences of failing to cooperate or respond to attorney disciplinary investigations.
Civ. 83.6	Modernizes procedure for managing filings for cases that are transferred to other districts.
Civ. 83.7-6(d)	Updates Rule to reflect changes to the U.S. Code.
Civ. 83.11-2(e) & **Civ. 83.12-2(e)**	Enables parties to agree privately to pay the appointed neutral for services in court-annexed mediation and evaluation proceedings.
Civ. 83.8 & **Civ. 83.3(f)**	***New Rule*** Incorporates General Order 35, Assisted Mediation Pilot Program.
Civ. 83.13	Improves clarity.
Crim. 57.2	Clarifies that the proper recipient of a bond refund is the surety or the defendant.
XIII: Local Patent Rules	***New Rules*** Establishes special rules for practice in cases with patent-related claims.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OFFICERS

ACTIVE JUDGES:

Hon. Gary L. Sharpe, Chief Judge
James T. Foley U.S. Courthouse
445 Broadway, First Floor South
Albany, NY 12207

Hon. David N. Hurd
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Hon. Mae A. D'Agostino
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MAGISTRATE JUDGES:

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Albany, NY 12207

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Hon. Andrew T. Baxter
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DISTRICT COURT CLERK

Lawrence K. Baerman, Clerk

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SECTION I.
SCOPE OF THE RULES
ONE FORM OF ACTION

1.1 Scope of the Rules

(a) Title and Citation. These are the Local Rules of Practice for the United States District Court for the Northern District of New York. They shall be cited as "L.R.___."

(b) Effective Date; Transitional Provision. These Rules became effective on **January 1, 2012.** Recent amendments are noted with the phrase (Amended January 1, 2012).

(c) Scope of the Rules; Construction. These Rules supplement the Federal Rules of Civil and Criminal Procedure. They shall be construed to be consistent with those Rules and to promote the just, efficient and economical determination of every action and proceeding.

(d) Sanctions and Penalties for Noncompliance. Failure of an attorney or of a party to comply with any provision of these Rules, General Orders of this District, Orders of the Court, or the Federal Rules of Civil or Criminal Procedure shall be a ground for imposition of sanctions.

(e) Definitions.

1. The word "court," except where the context otherwise requires, refers to the United States District Court for the Northern District of New York.

2. The word "judge" refers either to a United States District Judge or to a United States Magistrate Judge.

3. The words "assigned judge," except where the context otherwise requires, refer to the United States District Judge or United States Magistrate Judge exercising jurisdiction with respect to a particular action or proceeding.

4. The words "Chief Judge" refer to the Chief Judge or a judge temporarily performing the duties of Chief Judge under 28 U.S.C. § 136(e).

5. The word "clerk" refers to the Clerk of the Court or to a deputy clerk whom the Clerk designates to perform services of the general class provided for in Fed. R. Civ. P. 77.

6. The word "marshal" refers to the United States Marshal of this District and includes deputy marshals.

7. The word "party" includes a party's representative.

8. Reference in these Rules to an attorney for a party is in no way intended to preclude a party from appearing *pro se*, in which case reference to an attorney applies to the *pro se* litigant.

9. Where appropriate, the "singular" shall include the "plural" and vice versa.

1.2 Availability of the Local Rules

Copies of these Rules are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

1.3 Local Patent Rules (Amended January 1, 2012)

All Civilian Actions filed in or transferred to this Court alleging infringement of a patent in a complaint, counterclaim, cross-claim or third party claim, or seeking declaratory judgment that a patent is not infringed, is invalid, or is unenforceable shall be subject to the Local Patent Rules for the Northern District of New York.

2.1 One Form of Action

[Reserved]

SECTION II.
COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS.

3.1 Civil Cover Sheet

A completed civil cover sheet on a form available from the Clerk shall be submitted with every complaint, notice of removal, or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

3.2 Venue (Amended January 1, 2012)

The Court's Civil Case Assignment Plan as set forth in General Order 12 shall control venue for civil cases filed in the Northern District of New York. When filing a related action, parties must comply with Section G of General Order 12.

3.3 Complex and Multi-district Litigation

(a) If the assigned judge determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen months from the date the complaint is filed, the assigned judge may design and issue a particularized case management order that will move the case to trial as quickly as the complexity of the case allows.

(b) The parties shall promptly notify the Court in writing if any action commenced is appropriate for multi-district litigation.

4.1 Service of Process

(a) Service shall be made in the manner specified in the Federal Rules of Civil Procedure or as required or permitted by statute. The party seeking service of papers shall be responsible for arranging the service. The Clerk is authorized to sign orders appointing persons to serve process.

(b) Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25 which

requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice. In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4.

(c) At the time the complaint or notice of removal is served, the party seeking to invoke the jurisdiction of this Court shall also serve on all parties the following materials:

1. Judicial Case Assignment Form;

2. Joint Civil Case Management Plan Containing Notice of Initial Pretrial Conference;

3. Notice and Consent Form to Proceed Before a United States Magistrate Judge; and

4. Notice and Consent Form for the Court Sponsored Alternative Dispute Resolution Procedures

The Clerk shall furnish these materials to the party seeking to invoke the jurisdiction of the Court at the time the complaint or notice of removal is filed.

5.1 Service and Filing of Papers

(a) All pleadings and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure and shall be in the form prescribed by L.R. 10.1. The party or its designee shall declare, by affidavit or certification, that it has provided all other parties in the action with all documents it has filed with the Court. See also L.R. 26.2 (discovery material).

(b) In civil actions where the Court has directed a party to submit an order or judgment, that party shall file all such orders or judgments in duplicate, and the Clerk's entry of such duplicate in the proper record book shall be deemed in compliance with Fed. R. Civ. P. 79(b). Such party shall also furnish the Clerk with a sufficient number of additional copies for each party to the action, which the Clerk shall mail with notice of entry in accordance with Fed. R. Civ. P. 77(d).

(c) In a civil action, upon filing a notice of appeal, the appellant shall furnish the Clerk with a sufficient number of copies for mailing in accordance with Fed. R. App. P. 3(d).

(d) Upon filing of a motion pursuant to Fed. R. Civ. P. 65.1, the moving party shall furnish the Clerk with a sufficient number of copies of the motion and notice of the motion in compliance with the mailing provision of that rule.

(e) No paper on file in the Clerk's office shall be removed except pursuant to the Court's order.

(f) All civil complaints submitted to the Clerk for filing shall be accompanied by a summons or, if electing to serve by mail, the approved service by mail forms, together with sufficient copies of the complaint for service on each of the named defendants.

(g) A private process server shall serve every summons, except as otherwise required by statute or rule or as the Court directs for good cause shown. A private process server is any person authorized to serve process in an action brought in the New York State Supreme Court or in the court of general jurisdiction of

the State in which service is made.

(h) In the case of a prisoner's civil rights action, or any action where a party has been granted leave to proceed *in forma pauperis*, the Marshal shall serve the summons and complaint by regular mail pursuant to Fed. R. Civ. P. 4(c)(3). The Marshal shall file the return or other acknowledgment of service with the Court. The return shall constitute *prima facie* evidence of the service of process. If no acknowledgment of service is filed with the Court, the Marshal shall notify the plaintiff, and, if the plaintiff so requests, the Marshal shall make personal service as provided in Fed. R. Civ. P. 4.

5.1.1 Electronic Case Filing

All cases filed in this Court may be assigned to the Electronic Case Files System ("ECF") in accordance with the *Procedural Order on Electronic Case Filing* (General Order #22), the provisions of which are incorporated herein by reference, and which the Court may amend from time to time. Copies of General Order # 22 are available at the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

5.2 Prepayment of Fees

(a) Filing Fees. A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee before the case will be docketed and process issued. Title 28 U.S.C. § 1915 and L.R. 5.4 govern *in forma pauperis* proceedings.

(b) Miscellaneous Fees. The Clerk is not required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance.

5.3 Schedule of Fees

Fee schedules are available at the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

5.4 Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis*

(a) On receipt of a complaint or petition and an application to proceed *in forma pauperis*, and supporting documentation as required for prisoner litigants, the Clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The Clerk shall then forward the complaint or petition, application and supporting documentation to the assigned judicial officer for a determination of the *in forma pauperis* application and the sufficiency of the complaint or petition and, if appropriate, to direct service by the Marshal. Prior to the Marshal serving process pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915(g) to determine whether *sua sponte* dismissal is appropriate. The granting of an *in forma pauperis* application shall not relieve a party of the obligation to pay all other fees for which that party is responsible regarding the action, including but not limited to copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act ("PLRA"), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified *in forma pauperis* application; and

(B) Submit the authorization form issued by the Clerk's office.

2. **(A)** **(i)** If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner about what he or she must submit in order to proceed with such action in this District ("Order").

(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner fails to comply fully with the terms of such Order within such period of time, the Court shall dismiss the action.

(B) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the *in forma pauperis* application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.

3. After being notified of the filing of the civil action, the agency having custody of the prisoner shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due for the action.

5.5 Filing by Facsimile

Neither the Court nor the Clerk's Office will accept for filing any facsimile transmission without prior authorization from the Court. The party using facsimile transmission to file its papers must accompany any such documents with a cover letter stating that the Court authorized such transmission and the date on which the Court provided that authorization. Violations of this Rule subject the offending party to the Court's full disciplinary powers.

5.6 Service of the Writ in Exclusion and Deportation Cases

(a) After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served on, the master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ shall not be recognized as binding without proper service. Service shall be made by delivery of the original writ to the respondent while the alien is in custody. Service shall not be made on a master after a ship has cast off her moorings.

(b) In case the writ is served on the master of a ship or on the commanding officer of an airplane, such person may deliver the alien at once to the officer from whom such person received the alien for custody until the return day. In such case, the writ shall be deemed returnable promptly; and the custody of the officer receiving the alien shall be deemed that of the respondent, pending disposition of the writ.

5.7 Documents to be provided to the Clerk

All pretrial and settlement conference statements shall be provided to the Clerk but not filed. These documents are not for public view. Forms for preparation of pretrial and settlement conference statements are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

6.1 Calculation of Time Periods

[Reserved]

SECTION III.
PLEADINGS AND MOTIONS

7.1 Motion Practice (Amended January 1, 2012)

Introduction - Motion Dates and Times

Unless the Court directs otherwise, the moving party shall make its motion returnable at the **next regularly scheduled motion date at least thirty-one days from the date the moving party files and serves its motion.** The moving party shall select a return date in accordance with the procedures set forth in subdivision (b). If the return date the moving party selects is not the next regularly scheduled motion date, or if the moving party selects no return date, the Clerk will set the proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form that the Court provides to the parties at the commencement of the litigation or the parties may obtain this form from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

The Court hereby directs the Clerk to set a proper return date in motions that pro se litigants submit for filing that do not specify a return date or fail to allow for sufficient time pursuant to this Rule. Generally, the return date that the Clerk selects should not exceed 30 days from the date of filing. Furthermore, the Clerk shall forward a copy of the revised or corrected notice of motion to the parties.

(a) Papers Required. Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit, and proof of service on all the parties. See L.R. 5.1(a). Additional requirements for specific types of motions, including cross-motions, see L.R. 7.1(c), are set forth in this Rule.

1. Memorandum of Law. No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless that party obtains leave of the judge hearing the motion prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases, e.g., Westlaw, Lexis, Juris, shall include copies of those decisions.

When a moving party makes a motion based upon a rule or statute, the moving party must specify

in its moving papers the rule or statute upon which it bases its motion.

A memorandum of law is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
(B) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
(C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian *ad litem*;
(D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties;
(E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery; and
(F) a motion pursuant to Fed. R. Civ. P. 55 for default.

2. Affidavit. An affidavit must not contain legal arguments but must contain factual and procedural background that is relevant to the motion the affidavit supports.

An affidavit is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
(B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
(C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading

3. Summary Judgment Motions. Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact about which the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The moving party shall also advise *pro se* litigants about the consequences of their failure to respond to a motion for summary judgment. See also L.R. 56.2.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute in separately numbered paragraphs. The Court shall deem admitted any properly supported facts set forth in the Statement of Material Facts that the opposing party does not specifically controvert.

4. Motions to Amend or Supplement Pleadings or for Joinder or Interpleader. A party moving to amend a pleading pursuant to Fed. R. Civ. P. 14, 15, 19-22 must attach an unsigned copy of the proposed amended pleading to its motion papers. Except if the Court otherwise orders, the proposed amended pleading must be a complete pleading, which will supersede the original pleading in all respects. A party shall not incorporate any portion of its prior pleading into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means.

Where a party seeks leave to supplement a pleading pursuant to Fed. R. Civ. P. 15(d), the party must limit the proposed supplemental pleading to transactions or occurrences or events which have occurred since the date of the pleading that the party seeks to supplement. The party must number the paragraphs in the proposed pleading consecutively to the paragraphs contained in the pleading that it seeks to supplement. In addition to the pleading requirements set forth above, the party requesting leave to supplement must set forth specifically the proposed supplements and identify the supplements in the proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means.

Caveat: The granting of the motion does not constitute the filing of the amended pleading. After the Court grants leave, unless the Court otherwise orders, the moving party must file and serve the original signed amended pleading within fourteen (14) days of the Order granting the motion.

(b) Motions.

1. Dispositive Motions. The moving party must file all motion papers with the Court and serve them 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 that the moving party has selected.

The party opposing the motion must file its opposition papers with the Court and serve them upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

The moving party must file its reply papers, which may not exceed (10) pages with the Court and serve them upon the other parties not less than **ELEVEN DAYS** prior to the return date of the motion.

A surreply is not permitted.

Parties shall file all original motion papers, including memoranda of law and supporting affidavits, if any, 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 parties need not provide a courtesy copy of their motion papers to the assigned judge unless the assigned judge requests a copy.

2. Non-Dispositive Motions. Prior to making any non-dispositive motion before the assigned Magistrate Judge, 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 before the assigned Magistrate Judge. In the Notice of Motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information in the Notice of Motion may result in the Court rejecting 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 the Court orders otherwise, the moving party must file all motion papers with the Court and serve them upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

The party opposing the motion must file its Opposition papers with the Court and serve them upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers and adjournments are not permitted without the Court's prior permission.

3. Failure To Timely File or Comply. The Court shall not consider any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule unless good cause is shown. Where a properly filed motion is unopposed and the Court determines that the moving party has met its burden to demonstrate entitlement to the relief requested therein, the non-moving party's failure to file or serve any papers as this Rule requires shall be deemed as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. They should provide such notice at the earliest practicable date, but in any event no less than **FOURTEEN DAYS** prior to the scheduled return date of the motion, unless for good cause shown. **Failure to comply with this Rule may result in the Court imposing sanctions.**

(c) Cross-Motions. A party may file and serve a cross-motion (meaning a competing request for relief or order similar to that requested by another party against the cross-moving party) at the time it files and serves its opposition papers to the original motion, i.e., not less than **SEVENTEEN DAYS** prior to the return date of the motion. If a party makes a cross-motion, it must join its cross motion brief with its opposition brief, and this combined brief may not exceed twenty-five (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 twenty-five (25) pages in length, exclusive of exhibits. The original moving party must file its reply/opposition papers with the Court and serve them on the other parties 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 without the Court's prior permission.

(d) Discovery Motions. The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention.

2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.

3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a court conference with the assigned Magistrate Judge. Incarcerated, *pro se* parties are not subject to the court conference requirement prior to filing a motion to compel discovery. The assigned Magistrate Judge may direct the party making the request for a court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing party and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the Court should allow or disallow that item.

4. Following a request for a discovery conference, the Court may schedule a conference and advise all parties of a date and time. The assigned Magistrate Judge may, in his or her discretion, conduct the discovery conference by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance.

5. Following a discovery conference, the Court may direct the prevailing party to submit a proposed order on notice to the other parties.

6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, the Court, at its discretion, may subject the resisting party to the sanction of the imposition of costs, including the attorney's fees of opposing party in accordance with Fed. R. Civ. P. 37.

7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the claimed privilege. The parties may not make any generalized claims of privilege.

8. The parties shall file any motion to compel discovery that these Rules authorize no later than **FOURTEEN DAYS** after the discovery cut-off date. See L.R. 16.2. A party shall accompany any motion that it files pursuant to Fed. R. Civ. P. 37 with the discovery materials to which the motion relates if the parties have not previously filed those materials with the Court.

(e) Order to Show Cause. All motions that a party brings by Order to Show Cause shall conform to the requirements set forth in L.R. 7.1(a)(1) and (2). **Immediately after filing an Order to Show Cause, the moving party must telephone the Chambers of the presiding judicial officer and inform Chambers staff that it has filed an Order to Show Cause.** Parties may obtain the telephone numbers for all Chambers from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov." The Court shall determine the briefing schedule and return date applicable to motions brought by Order to Show Cause.

In addition to the requirements set forth in Local Rule 7.1(a)(1) and (2), a motion brought by Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. The moving party must give reasonable advance notice of the application for an Order to Show Cause to the other parties, except in those circumstances where the

movant can demonstrate, in a detailed and specific affidavit, good cause and substantial prejudice that would result from the requirement of reasonable notice.

An Order to Show Cause must contain a space for the assigned judge to set forth (a) the deadline for filing and serving supporting papers, (b) the deadline for filing and serving opposing papers, and (c) the date and time for the hearing.

(f) Temporary Restraining Order. A party may seek a temporary restraining order by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. The moving party must serve any application for a temporary restraining order on all other parties unless Fed. R. Civ. P. 65 otherwise permits. L.R. 7.1(b)(2) governs motions for injunctive relief, other than those brought by Order to Show Cause. L.R. 7.1(e) governs motions brought by Order to Show Cause.

(g) Motion for Reconsideration. Unless Fed. R. Civ. P. 60 otherwise governs, a party may file and serve a motion for reconsideration or reargument no later than **FOURTEEN DAYS** after the entry of the challenged judgment, order, or decree. All motions for reconsideration shall conform with the requirements set forth in L.R. 7.1(a)(1) and (2). The briefing schedule and return date applicable to motions for reconsideration shall conform to L.R. 7.1(b)(2). A motion for reconsideration of a Magistrate Judges's determination of a non-dispositive matter shall toll the fourteen (14) day time period to file objections pursuant to L.R. 72.1(b). The Court will decide motions for reconsideration or reargument on submission of the papers, without oral argument, unless the Court directs otherwise.

(h) Oral Argument. The parties shall appear for oral argument on all motions that they make returnable before a district court judge, except motions for reconsideration, on the scheduled return date of the motion. A motion may be disposed of without oral argument as described in General Order 25, on consideration of a request of any party, or otherwise at the discretion of the presiding judge. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

The parties shall not appear for oral argument on motions that they make returnable before a Magistrate Judge on the scheduled return date of the motion unless the Magistrate Judge *sua sponte* directs or grants the request of any party for oral argument.

(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule. A party who presents vexatious or frivolous motion papers or fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorney's fees to the opposing party.

(j) Adjournments of Dispositive Motions. After the moving party files and serves its motion papers requesting dispositive relief, but before the time that the opposing party must file and serve its opposing papers, the parties may agree to an adjournment of the return date for the motion. However, any such adjournment may not be for more than **THIRTY-ONE DAYS** from the return date that the moving party selected. In addition, the parties may agree to new dates for the filing and service of opposition and reply papers. However, the parties must file all papers with the Court and serve them upon the other parties not less than **ELEVEN DAYS** prior to the newly selected return date of the motion. If the parties agree to such an adjournment, they must file a letter with the Court stating the following: (1) that they have agreed to an adjournment of the return date for the motion, (2) the new return date, (3) the date on which the opposing

party must file and serve its opposition papers, and (4) the date on which the moving party must file and serve its reply papers. The parties may not agree to any further adjournment.

If one of the parties seeks an adjournment of not more than **THIRTY-ONE DAYS** from the return date that the moving party selected, but the other parties will not agree to such an adjournment, the party seeking the adjournment must file a letter request with the Court and serve the same upon the other parties, stating the following: (1) that the parties cannot agree to an adjournment, (2) the reason that the party is seeking the adjournment, and (3) the suggested return date for the motion. Within three days of receiving this letter request, the parties who have not agreed to an adjournment may file a letter with the Court and serve the same upon the other parties, setting forth the reasons that they do not agree to the requested adjournment. The Court will then take the request under advisement and, as soon as practicable, will enter an order granting or denying the request and, if granting the request, will set forth new dates for the filing and serving of opposition and reply papers.

If any party seeks an adjournment of the return date that is more than **THIRTY-ONE DAYS** from the return date that the moving party selected, that party must file a letter request with the Court stating the following: (1) why the party needs a longer adjournment and (2) a suggested return date for the motion. The Court will grant such an adjournment only upon a showing of exceptional circumstances. In the alternative or if the Court denies the request for an adjournment, the moving party may **withdraw its motion without prejudice** to refile at a later date. The moving party must refile its motion within the time frame set in the Uniform Pretrial Scheduling Order unless either the assigned District Judge or the assigned Magistrate Judge has granted an extension of the motion-filing deadline.

8.1 Personal Privacy Protection

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings that they file 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 document, use only the last four digits of that number.
2. **Names of minor children.** If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers.** If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses.** If a home address must be used, use only the City and State.

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

1. personal identifying number, such as a 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 listed above may

1. file an unredacted version of the document under seal, or

2. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal and may be amended as of right.

Counsel is strongly urged to discuss this issue with all their clients so that they can make an informed decision about the inclusion of certain information. 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 Court's full disciplinary power.

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.

9.1 Request for Three-Judge Court (Amended January 1, 2012)

Whenever a party believes that only a three-judge court is required, the party shall submit a separate application to convene a three-judge court along with the first pleading in which the party asserts the cause of action requiring a three-judge court. On the convening of a three-judge court, the parties shall make three copies of all non-electronically filed pleadings, motion papers, and memoranda of law available to the Clerk for distribution.

9.2 Requirement to File a Civil RICO Statement

In any action in which a party asserts a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, the party asserting such a claim shall file a RICO statement within thirty (30) days of the filing of the pleading containing such claim. This statement shall conform to the format that the Court has adopted and shall be entitled "RICO Statement." Parties may obtain copies of General Order #14 - CIVIL RICO STATEMENT FILING REQUIREMENTS from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov." This statement shall state in detail and with specificity the information requested in the RICO Statement. The Court shall construe the RICO Statement as an amendment to the pleadings.

10.1 Form of Papers (Amended January 1, 2012)

(a) Form Generally. All pleadings, motions, and other documents that a party presents for filing, whether in paper form or in electronic form, shall meet the following requirements:

1. all text, whether in the body of the document or in footnotes, must be a minimum of 12 point type

2. all documents must have one-inch margins on all four sides of the page

3. all text in the body of the document must be double-spaced

4. the text in block quotations and footnotes may be single-spaced

5. extensive footnotes must not be used to circumvent page limitations

6. compacted or other compressed printing features must not be used

7. pages must be consecutively numbered

(b) Additional requirements for all pleadings, motions, and other documents that a party presents for filing in paper form:

1. all documents must be on 8 ½ x 11 inch white paper of good quality

2. all text must be plainly and legibly written, typewritten, printed or reproduced without erasures or interlineations materially defacing them

3. all documents must be in black or blue ink

4. pages of all documents must be stapled (or in some other way fastened) together

5. all documents must be single-sided

6. the Court, at its discretion, may require the electronic submission of any document in a WordPerfect-compatible format

The Court may reject documents that do not comply with the above-listed requirements.

(c) Information required. The following information must appear on each document that a party files.

1. A caption, which must include the title of the Court, the title of the action, the civil action number of the case, the initials of the assigned judge(s), and the name or nature of the paper in sufficient detail for identification. **The parties must separately caption affidavits and declarations and must not physically attach them to the Notice of Motion or Memorandum of Law.**

2. Each document must identify the person filing the document. This identification must include an original 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. Telephone numbers of non-prisoner *pro se* parties may be provided voluntarily or upon request of the Court. See General Order # 22 for signature requirements.

All attorneys of record and *pro se* litigants must immediately notify the Court of any change of address. Parties must file the notice of change of address with the Clerk and serve the same on all other parties to the action. The notice must identify each and every action to which the notice shall apply. In addition, the notice shall be clearly entitled, "Notice of Change of Address." Attorneys shall update their e-mail address, telephone or fax number through CM/ECF within

fourteen (14) days of a change. Detailed instructions are available on the Court's website, www.nynd.uscourts.gov. Attorneys shall notify the Court within fourteen (14) days of any change to their mailing address by completing the automated Update My Information form located on the Court's website: http://www.nynd.uscourts.gov/e-filingregistration/procform13.cfm.

Failure to keep this information current will result in removal from the roll of the Court.

(d) The record on hearings, unless ordered printed, shall be plainly typewritten and bound in book form, paginated and indexed.

(e) The Court conducts its reviews and deliberations in English. Unless otherwise directed by the Court, any document that a party transmits to the Court (including one in the record on appeal) that is in a language other than English must be accompanied by an English translation that the translator has certified as true and accurate, pursuant to 28 U.S.C. § 1746. Any party who disputes a translation must file notice of its intention to challenge the translation with the Court and all other parties within seven (7) days of receiving the Notice of Electronic Filing for the translation, or, if a non-Filing User, within seven (7) days of receiving the translation. Upon receipt of a notice to challenge a translation, the Court shall establish the procedure and applicable time periods for the challenge to be heard.

11.1 Signing of Pleadings, Motions, and Other Papers; Sanctions

[Reserved]

12.1 Defenses and Objections - How Presented

[Reserved]

13.1 Counterclaims and Cross-Claims

[Reserved]

14.1 Impleader

See L.R. 7.1(a)(4).

15.1 Form of a Motion to Amend and Its Supporting Documentation

See L.R. 7.1(a)(4).

16.1 Civil Case Management.

This Court has found that the interests of justice are most effectively served by adopting a systematic, differential case management system that tailors the level of individualized and case- specific management to such criteria as case complexity, time required to prepare a case for trial, and availability of judicial and other resources.

(a) Filing of Complaint/Service of Process. Upon the filing of a complaint, the Clerk shall issue to the

plaintiff General Order 25, which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice.

(b) Assignment of District Judge/Magistrate Judge. Immediately upon the filing of a civil action, the Clerk shall assign the action or proceeding to a District Judge and may also assign the action or proceeding to a Magistrate Judge pursuant to the Court's assignment plan. When a civil action is assigned to a Magistrate Judge, the Magistrate Judge shall conduct proceedings in accordance with these Rules and 28 U.S.C. § 636 as directed by the District Judge. Once assigned, either judicial officer shall have authority to design and issue a case management order.

(c) Initial Pretrial Conference. Except for cases excluded under section II of General Order 25, an initial pretrial conference pursuant to Fed. R. Civ. P. 16 shall be held within 120 days after the filing of the complaint. The Clerk shall set the date of this conference upon the filing of the complaint. The purpose of this conference will be to prepare and adopt a case-specific management plan which will be memorialized in a case management order. See subsection (d) below. In order to facilitate the adoption of such a plan, prior to the scheduled conference, counsel for all parties shall confer among themselves as Fed. R. Civ. P. 26(f) requires and shall use the Civil Case Management Plan form contained in the General Order 25 filing packet. The parties shall file their jointly-proposed plan, or if they cannot reach consensus, each party shall file its own proposed plan with the Clerk at least fourteen (14) business days prior to the scheduled pretrial conference.

(d) Subject Matter of Initial Pretrial Conference. At the initial pretrial conference, the Court shall consider, and the parties shall be prepared to discuss, the following:

1. Deadlines for joinder of parties, amendment of pleadings, completion of discovery, and filing of dispositive motions;

2. Trial date;

3. Requests for jury trial;

4. Subject matter and personal jurisdiction;

5. Factual and legal bases for claims and defenses;

6. Factual and legal issues in dispute;

7. Factual and legal issues upon which the parties can agree or which they can narrow through motion practice and which will expedite resolution of the dispute;

8. Specific relief requested, including method for computing damages;

9. Intended discovery and proposed methods to limit and/or decrease time and expense thereof;

10. Suitability of case for voluntary arbitration;

11. Measures for reducing length of trial;

12. Related cases pending before this or other U.S. District Courts;

13. Procedures for certifying class actions, if appropriate;

14. Settlement prospects; and

15. If the case is in the ADR track, choice of ADR method and estimated time for completion of ADR.

(e) Uniform Pretrial Scheduling Order. Upon completion of the initial pretrial conference, the presiding judge may issue a Uniform Pretrial Scheduling Order setting forth deadlines for joinder of parties, amendment of pleadings, production of expert reports, completion of discovery, and filing of motions; a trial ready date; the requirements for all trial submissions; and if an ADR track case, the ADR method to be used and the deadline for completion of ADR.

(f) Enforcement of Deadlines. The Court shall strictly enforce any deadlines that it establishes in any case management order, and the Court shall not modify these, even upon stipulation of the parties, except upon a showing of good cause.

16.2 Discovery Cut-Off

The "discovery cut-off" is that date by which all responses to written discovery, including requests for admissions, shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this Rule. Discovery requests that call for responses or scheduled depositions after the discovery cut-off will not be enforceable except by order of the Court for good cause shown. Parties shall file and serve motions to compel discovery no later than fourteen (14) days after the discovery cut-off. See L.R. 7.1(d)(8).

SECTION IV.
PARTIES

17.1 Actions by or on Behalf of Infants and/or Incompetents.

(a) An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the Court embodied in an order, judgment or decree. The proceedings on an application to settle or compromise such an action shall conform to the New York State statutes and rules; but the Court, for good cause shown, may dispense with any New York State requirement.

(b) The Court shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise, and shall determine the fee and disbursements after due inquiry as to all charges against the amount recovered.

(c) The Court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems will best protect the interest of the infant or incompetent.

18.1 Joinder of Claims and Remedies

See L.R. 7.1(a)(4).

19.1 Joinder of Persons Necessary for Just Adjudication

See L.R. 7.1(a)(4).

20.1 Permissive Joinder of Parties

See L.R. 7.1(a)(4).

21.1 Misjoinder and Nonjoinder of Parties

See L.R. 7.1(a)(4).

22.1 Interpleader

[Reserved]

23.1 Designation of "Class Action" in the Caption

(a) If a party seeks to maintain a case as a class action pursuant to Fed. R. Civ. P. 23, the party shall include the words "Class Action" in the complaint or other pleading asserting a class action next to its caption.

(b) The plaintiff also shall check the appropriate box on the Civil Cover Sheet at the time of filing the action.

23.2 Certification of a Class Action

As soon as practicable after the commencement of an action designated as a "Class Action," the plaintiff shall file a motion, with the assigned district judge, seeking an order of the Court determining that the plaintiff may maintain the action as a class action.

24.1 Intervention

[Reserved]

25.1 Substitution of Parties

[Reserved]

SECTION V.
DEPOSITIONS AND DISCOVERY

26.1 Form of Certain Discovery Documents

The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In answering or objecting to interrogatories, requests for admission, or requests to produce or inspect, the responding party shall first state verbatim the propounded interrogatory or request and immediately thereafter the answer or objection.

26.2 Filing Discovery

Parties shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, requests for admissions, disclosures, and answers and responses to these notices and requests unless the Court orders otherwise; provided, however, that a party shall file any discovery material that it expects to use at trial or to support any motion, including a motion to compel or for summary judgment prior to the trial or motion return date. A party shall include with any motion pursuant to Fed. R. Civ. P. 37 the discovery materials to which the motion relates if the parties have not previously filed those materials with the Court.

26.3 Production of Expert Witness Information

There shall be binding disclosure of the identity of expert witnesses. The parties shall make such disclosure, including a *curriculum vitae* and, unless waived by the other parties, service of the expert's written report pursuant to Fed. R. Civ. P. 26(a)(2)(B), before the completion of discovery in accordance with the deadlines contained in the Uniform Pretrial Scheduling Order or any other Court order. Failure to comply with these deadlines may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).

If a party expects to call a treating physician as a witness, the party must identify the treating physician in accordance with the timetable provided in the Uniform Pretrial Scheduling Order or other Court order.

26.4 Timing of Discovery

Fed. R. Civ. P. 26(d), which prohibits discovery prior to a meeting and conference between the parties, and Fed. R. Civ. P. 26(f), which directs parties to meet and confer with each other relative to the nature and basis of claims and defenses to a lawsuit, shall not apply to any action in which a party is incarcerated.

27.1 Depositions Before Action or Pending Appeal

[Reserved]

28.1 Persons Before Whom Depositions Shall be Taken

[Reserved]

29.1 Discovery Stipulations

[Reserved] See L.R. 16.1(f); 16.2.

30.1 Depositions

Unless the Court orders otherwise pursuant to Fed. R. Civ. P. 5(d) and 26(c), transcripts of depositions when received and filed by the Clerk, shall then be opened by the Clerk who shall affix the filing stamp to the cover page of the transcripts. See L.R. 26.2.

31.1 Depositions On Written Questions

[Reserved]

32.1 Use of Depositions in Court Proceedings

[Reserved]

33.1 Interrogatories

[Reserved]

34.1 Production of Documents and Things

[Reserved]

35.1 Physical and Mental Examination of Persons

[Reserved]

36.1 Requests for Admission

[Reserved]

37.1 Form of Discovery Motions

See L.R. 7.1(d).

SECTION VI.
TRIALS

38.1 Notation of "Jury Demand" in the Pleading

(a) If a party demands a jury trial as Fed. R. Civ. P. 38(b) permits, the party shall place a notation on the front page of the initial pleading which that party signed , stating "Demand for Jury Trial" or an equivalent statement. This notation shall serve as a sufficient demand under Fed. R. Civ. P. 38(b).

(b) In cases removed from state court, a party may file a "Demand for Jury Trial" that is separate from the initial pleading. See Fed. R. Civ. P. 81(c); L.R. 81.3.

39.1 Opening Statements and Closing Arguments

The Court will determine the time to be allotted for opening and closing arguments.

39.2 Submission of Pretrial Papers

The parties shall file all pretrial submissions in accordance with the requirements of the Uniform Pretrial Scheduling Order unless the Court orders otherwise.

40.1 Case Assignment System

Immediately upon the filing of a civil action or proceeding, the Clerk shall assign the action or proceeding to a District Judge and may also assign the action or proceeding to a Magistrate Judge pursuant to the Court's Assignment Plan. When a civil action or proceeding is assigned to a Magistrate Judge, the Magistrate Judge shall conduct proceedings in accordance with these Rules and 28 U.S.C. § 636 as directed by the District Judge. See General Order #12.

40.2 Preferences

Only the following causes shall be entitled to preferences:

1. Issues in bankruptcy framed by an answer to a bankruptcy petition which are triable by a jury;

2. Causes entitled to a preference under any statute of the United States;

3. Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment, or after a mistrial;

4. Causes to which a receiver appointed by any court or a trustee or debtor-in-possession in a bankruptcy proceeding is a party;

5. Causes which, in the discretion of the assigned judge, are entitled to a preference for meritorious reasons.

Preferences shall be obtained only by order of the Court on seven-days notice of the application.

40.3 Trial Calendar

The trial calendar number shall be the same as the docket number. No note of issue is required. Each judge shall dispose of cases as the law and the effective administration of justice require.

41.1 Settlements, Apportionments and Allowances in Wrongful Death Actions.

In an action for wrongful death,

1. The Court shall apportion the proceeds of the action only where required by statute;

2. The Court shall approve a settlement only in a case covered by subdivision 1; and

3. The Court shall approve an attorney's fee only upon application in accordance with the provisions of the Judiciary Law of the State of New York.

41.2 Dismissal of Actions

(a) Each judge shall from time to time notice for hearing on a dismissal calendar such actions or proceedings assigned to that judge which appear not to have been diligently prosecuted. Whenever it appears that the plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge shall order it dismissed. In the absence of an order by the assigned judge or magistrate judge setting any date for any pretrial proceeding or for trial, the plaintiff's failure to take action for four (4) months shall be presumptive evidence of lack of prosecution. Unless the assigned judge or magistrate judge otherwise orders, each party shall, not less than fourteen (14) days prior to the noticed hearing date, serve and file a certificate setting forth the status of the action or proceeding and whether good cause exists to dismiss it for failure to prosecute. The parties need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable. If a party fails to respond as this Rule requires, the Court shall issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires. Nothing in this Rule shall preclude any party from filing a motion to dismiss an action or proceeding for failure to prosecute under Fed. R. Civ. P. 41(b).

(b) Failure to notify the Court of a change of address in accordance with L.R. 10.1(c)(2) may result in the dismissal of any pending action.

41.3 Actions Dismissed by Stipulation

Stipulations of dismissal shall be signed by each attorney and/or *pro se* litigant appearing in the action. Any action which is submitted for dismissal by stipulation of the parties shall contain the following language, if applicable: "That no party hereto is an infant or incompetent." For actions involving an infant or incompetent, see L.R. 17.1.

42.1 Separation of Issues in Civil Suits

[Reserved]

43.1 Examination of Witnesses

[Reserved]

44.1 Official Records

[Reserved]

45.1 Subpoenas

[Reserved] See Fed. R. Civ. P. 45.

46.1 Exceptions to Rulings

[Reserved]

47.1 Grand and Petit Jurors (Amended January 1, 2012)

Grand and petit jurors to serve at stated and special sessions of the Court shall be summoned pursuant to 28 U.S.C. §§ 1861–67, and the Plan adopted and approved by the judges of this Court and approved by the Judicial Council for the Court of Appeals for the Second Circuit. The selection of grand and petit jurors is made by random selection from voter registration lists and supplemented by, if available, lists of licensed drivers from the New York State Department of Motor Vehicles. Court sessions, pursuant to 28 U.S.C. § 112, are designated to be held in the Northern District of New York in the cities of Albany, Auburn, Binghamton, Malone/Plattsburgh, Syracuse, Utica, and Watertown. For jury selection purposes under § 1869(c), this District is divided into divisions from which jurors are selected for the particular place where jury sessions are to be held. The divisions are as follows:

1. ALBANY DIVISION: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren and Washington Counties

2. BINGHAMTON DIVISION: Broome, Chenango, Delaware, Otsego and Tioga Counties

3. SYRACUSE - AUBURN DIVISION: Cayuga, Cortland, Madison, Onondaga, Oswego, and Tompkins Counties

4. UTICA DIVISION: Fulton, Hamilton, Herkimer, Montgomery and Oneida Counties

5. WATERTOWN DIVISION: Jefferson, Lewis and St. Lawrence Counties

6. MALONE/PLATTSBURGH DIVISION: Clinton, Essex and Franklin Counties

A copy of the Plan for the NDNY for Random Selection of Grand and Petit Jurors is available upon request at the Clerk's office or on the Court's webpage at "www.nynd.uscourts.gov."

47.2 Jury Selection

(a) Voir Dire. The Court, the attorneys, or both shall conduct voir dire examination as the Court shall determine. The court, in its sound discretion, may limit the attorneys' examination in time and subject matter.

(b) Impanelment of the Jury. In its discretion, the Court shall impanel the jury by use of either the "Strike" or "Jury Box" selection method unless the Court determines otherwise.

(c) Peremptory Challenges. Unless the Court orders otherwise, all parties shall alternately exercise their peremptory challenges.

(d) Waiver of Peremptory Challenges. Except when using the strike method, if a party passes or refuses to exercise a peremptory challenge, such action shall constitute a waiver of the right to exercise the challenge.

(e) Names of Potential Jurors during Voir Dire. During the voir dire process, unless otherwise directed by the presiding judicial officer, potential jurors shall be referred to by their assigned juror number. Should an issue develop where the name of the potential juror is germane, the requesting party shall submit a written request to the presiding judicial officer for release of the potential juror's name.

47.3 Assessment of Juror Costs

Whenever any civil action scheduled for jury trial is postponed, settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including marshal's fees, mileage and per diem, shall be assessed against the parties and/or their attorneys as the Court directs, unless the parties or their attorneys notify the Court and the Clerk's office at least one full business day prior to the day on which the action is scheduled for trial, so that the Clerk has time to advise the jurors that it shall not be necessary for them to attend. The parties may request an advance estimate of costs from the Clerk.

47.4 Jury Deliberation

Availability of Attorneys During Jury Deliberations. Attorneys shall be available on short notice during jury deliberations in the event of a verdict or a question by the jury. Attorneys shall keep the Clerk informed as to where they will be at all times when the jury is deliberating. Attorneys should not leave the building without the presiding judge's prior approval.

47.5 Jury Contact Prohibition

The following rules apply in connection with contact between attorneys or parties and jurors.

1. At any time after the Court has called a jury panel from which jurors shall be selected to try cases for a term of Court fixed by the presiding judge or otherwise impaneled, no party or attorney, or anyone associated with the party or the attorney, shall have any communication or contact by any means or manner with any juror until such time as the panel of jurors has been excused and the term of court ended.

2. This prohibition is designed to prevent all unauthorized contact between attorneys or parties and jurors and does not apply when authorized by the judge while court is in session or when otherwise authorized by the presiding judge.

48.1 Number of Jurors

In civil cases, the Court shall determine the number of jurors, which shall not be less than six nor more than twelve.

49.1 Special Verdicts and Interrogatories

[Reserved]

50.1 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

[Reserved]

51.1 Instructions to the Jury

When Submitted and Served. See Uniform Pretrial Scheduling Order issued by the court following

the initial pretrial conference. See L.R. 16.1(e).

52.1 Proposed Findings in Civil Cases

(a) In civil non-jury trials, each party shall submit proposed findings of fact and conclusions of law sufficiently detailed that, if the Court adopts them, would form an adequate factual basis, supported by anticipated evidence, for the resolution of the case and the entry of judgment.

(b) When Submitted and Served. See Uniform Pretrial Scheduling Order issued by the Court following the initial pretrial conference. See L.R. 16.1(e).

53.1 Masters

[Reserved]

53.2 Master's Fees

The Court, in its discretion, shall fix the compensation of masters. Factors the Court shall consider include expended hours, disbursements, the relative complexity of the matter, and whether the parties have previously consented to a reasonable rate of compensation. The compensation and disbursements shall be paid and taxed as costs in the manner and amounts that the Court directs unless the parties stipulate otherwise.

53.3 Oath of Master, Commissioner, etc.

Every person appointed master, special master, commissioner, special commissioner, referee, assessor or appraiser (collectively referred to as "master") shall take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that they will faithfully and impartially discharge their duties. The oath shall be taken before any federal or state officer authorized by federal law to administer oaths and shall be filed in the Clerk's office.

SECTION VII.
JUDGMENTS

54.1 Taxation of Costs

(a) Procedure for Taxation in Civil Cases. The party entitled to recover costs shall file, within thirty (30) days after entry of judgment, a verified bill of costs on the forms that the Clerk provides. The party seeking costs shall accompany its request with receipts indicating that the party actually incurred the costs that it seeks. The verified bill of costs shall include the date on which the party shall appear before the Clerk for taxation of the costs and proof of service of a copy on the party liable for the costs. Post-trial motions shall not serve to extend the time within which a party may file a verified bill of costs as provided in this Rule, except on an order extending the time. Forms for the preparation of a bill of costs are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

(b) To Whom Payable. Except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases that the Department of Justice does not handle, all costs taxed are payable directly to the party entitled thereto and not to the Clerk, unless the Court orders otherwise.

(c) Waiver of Costs. Failure to file a bill of costs within the time provided for in this Rule shall constitute a waiver of the taxable costs.

54.2 Jury Cost Assessment

See L.R. 47.3.

54.3 Award of Attorney's Fees

[Reserved]

54.4 Allowances to Attorneys and Receivers

Every attorney and receiver requesting an allowance for services rendered in a civil action in which the Court has appointed a receiver shall, on filing the receiver's report with the Clerk, file a detailed statement of the services rendered and the amount claimed, with a statement of any partial allowance previously made, together with an affidavit of the applicants, stating that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between the attorney and the receiver. The petition shall be heard and allowance made on notice as the Court shall direct.

55.1 Certificate of Entry of Default

A party applying to the Clerk for a certificate of entry of default pursuant to Fed. R. Civ. P. 55(a) shall submit an affidavit showing that (1) a party against whom it seeks a judgment for affirmative relief has failed to plead or otherwise defend the action as provided in the Federal Rules of Civil Procedure and (2) it has properly served the pleading to which the opposing party has not responded.

55.2 Default Judgment

(a) By the Clerk. When a party is entitled to have the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, **the Clerk's certificate of entry of default**, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a *per diem* rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that

1. The party against whom it seeks judgment is not an infant or an incompetent person;
2. The party against whom it seeks judgment is not in the military service, or if unable to set forth this fact, the affidavit shall state that the party against whom the moving party seeks judgment by default is in the military service or that the party seeking a default judgment is not able to determine whether or not the party against whom it seeks judgment by default is in the military service;
3. The party has defaulted in appearance in the action;
4. Service was properly effected under Fed. R. Civ. P. 4;
5. The amount shown in the statement is justly due and owing and that no part has been paid except as set forth in the statement this Rule requires; and
6. The disbursements sought to be taxed have been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest and costs. If, however, the Clerk determines, for whatever reason, that it is not proper for a default judgment to be entered, the Clerk shall forward the documents submitted in accordance with L.R. 55.2(a) to the assigned district judge for review. The assigned district judge shall then promptly notify the Clerk as to whether the Clerk shall properly enter a default judgment under L.R. 55.2(a).

(b) By the Court. A party shall accompany a motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), with a **clerk's certificate of entry of default** in accordance with Fed. R. Civ. P. 55(a), a **proposed form of default judgment**, and a copy of the pleading to which no response has been made. The moving party shall also include in its application an affidavit of the moving party or the moving party's attorney setting forth facts as required by L.R. 55.2(a).

56.1 Summary Judgment Procedure

See L.R. 7.1(a)(3).

56.2 Notice to Pro Se Litigants of the Consequences of Failing to Respond to a Summary Judgment Motion

When moving for summary judgment against a *pro se* litigant, the moving party shall inform the pro se litigant of the consequences of failing to respond to the summary judgment motion. Counsel for the moving party shall send a notice to the *pro se* litigant that a motion for summary judgment seeks dismissal of some or all of the claims or defenses asserted in their complaint or answer and that the *pro se* litigant's failure to respond to the motion may result in the Court entering a judgment against the *pro se* litigant. Parties can obtain a sample notice from the Court's webpage at "www.nynd.uscourts.gov."

57.1 Declaratory Judgment

[Reserved]

58.1 Entry of Judgment

(a) Upon the verdict of a jury or the decision of the Court, the Clerk shall sign and enter a separate document which shall constitute the judgment. The judgment shall contain no recitals other than a recital of the verdict or any direction of the Court on which the judgment is entered. Unless the Court specifically directs otherwise, the Clerk shall promptly prepare the judgment. The Clerk shall promptly sign and enter the judgment, except that where Fed. R. Civ. P. 58 requires the Court's approval, the Clerk shall first submit the judgment to the Court, which shall manifest approval by signing it or noting approval on the margin. The notation of the judgment in the appropriate docket shall constitute the entry of judgment.

(b) The attorney causing the entry of an order or judgment shall append to, or endorse on, it a list of the names of the parties entitled to be notified of the entry and the names and addresses of their respective attorneys if known.

58.2 Entering Satisfaction of Judgment or Decree

The Clerk shall enter satisfaction of a money judgment recovered or registered in the District as follows:

(a) Upon the payment into Court of the amount, plus applicable interest, and the payment of the Marshal's fees, if any;

(b) Upon the filing of a satisfaction-piece executed and acknowledged by

1. The judgment-creditor; or
2. The judgment-creditor's legal representative or assigns, with evidence of the representative's authority; or
3. The judgment-creditor's attorney or proctor, if within two years of the entry of the judgment or decree

(c) If the judgment-creditor is the United States, upon the filing of a satisfaction-piece executed by the United States Attorney.

(d) In admiralty, pursuant to an order of satisfaction; but an order shall not be made on the consent of the proctors only, unless consent is given within two years from the entry of the decree to be satisfied.

(e) Upon the registration of a certified copy of a satisfaction entered in another district.

59.1 New Trial; Amendment of Judgment

[Reserved] See L.R. 7.1(g) (Motions for Reconsideration).

60.1 Relief from Judgment or Order

[Reserved]

61.1 Harmless Error

[Reserved]

62.1 Stay of Proceedings

[Reserved]

62.2 Supersedeas Bond

See L.R. 67.1.

63.1 Disability of a Judge

[Reserved]

SECTION VIII.
PROVISIONAL AND FINAL REMEDIES
AND SPECIAL PROCEEDINGS

64.1 Seizure of Person or Property.

The Court has adopted a Uniform Procedure for Civil Forfeiture Cases, which is available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

Pursuant to Title 19, United States Code, Section 1605, the United States Customs Service, Ogdensburg, New York, shall be appointed the Substitute Custodian and be responsible for the execution of warrants of arrest in rem for assets and/or property seized and forfeited under the laws administered or enforced by the United States Customs Service.

Pursuant to Fed. R. Civ. P. Supp. R. C(3)(b)(ii), personnel of the United States Customs Service, Office of Fines, Penalties and Forfeitures, 127 North Water Street, Ogdensburg, New York, shall be appointed as

special process servers in all cases pertaining to assets and/or property seized and forfeited under the laws administered or enforced by the United States Customs Service, to perform the tasks of service by mail, or in person, execution of the warrants of seizure and monition, publication of the notices of the action in newspapers having general circulation in the district in which the res were seized, and filing of all returns of such process with the United States District Court Clerk's Office for the Northern District of New York.

65.1 Injunctions

See L.R. 7.1(f).

65.1.1 Sureties

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation shall be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation; or be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or the undertaking or guaranty of two individual residents of the Northern District of New York, each of whom owns real or personal property within the District worth double the amount of the bond, undertaking or stipulation, over all the debts and liabilities of each of the residents, and over all obligations assumed by each of the residents on other bonds, undertakings or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond or undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving full name, occupation, residence and business address and showing that the surety is qualified as an individual surety under subdivision (b) of this Rule.

(d) Members of the bar, administrative officers or employees of this Court, the Marshal, or the Marshal's deputies or assistants shall not act as sureties in any suit, action or proceeding pending in this Court. See L.R. 67.3.

65.2 Temporary Restraining Orders

See L.R. 7.1(f).

66.1 Receiverships

[Reserved]

67.1 Deposits in Court (Amended January 1, 2012)

(a) No money shall be sent to the Court or to the Clerk of the Court for deposit into the Court's registry without a court order signed by the presiding Judge. Unless provided for elsewhere in this Rule, all money ordered to be paid into the Court or received by the Clerk of the Court in any case pending or adjudicated shall be deposited with the Treasury of the United States in the name and to the credit of this Court pursuant to 28

U.S.C. § 2041 through institutions that the Treasury has designated to accept such deposit on its behalf. The party making the deposit or transferring funds to the Court's registry shall serve the Clerk of the Court with the Order permitting the deposit or transfer.

(b) Order Directing the Investment of Funds. The Clerk of the Court shall place the funds on deposit with the Court in some form of interest bearing account using the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts. Any order directing the Clerk of the Court to invest funds deposited with the Court's CRIS pursuant to 28 U.S.C. § 2041 shall specify the amount to be invested. The Clerk of the Court shall take all reasonable steps to invest the funds within fourteen (14) days of the filing date of the order.

(c) Investment of Registry Funds.

1. When the Court orders funds on deposit with the Court be placed in some form of interest-bearing account, CRIS shall be the only investment mechanism authorized.

2. Money from each case deposited into CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts, hereby designated as custodian for CRIS.

3. An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to the litigants and/or their counsel.

(d) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and any damage for delay as may be awarded, plus $250 to cover costs.

When a stay shall be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond. In all other cases, the Court shall, on notice, grant a stay on the terms it deems proper. On approval, a party shall file the supersedeas bond with the Clerk, and shall promptly serve a copy thereof, with notice of filing, upon all parties affected thereby. If a party raises objections to the form of the bond or to the sufficiency of the surety, the Court shall provide prompt notice of a hearing to consider such objections.

(e) Registry Investment Fee. The custodian is authorized and directed to deduct, for maintaining accounts in CRIS, the registry fee. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference. If registry fees were assessed against the case under the old 45-day requirement prior to deposit in CRIS, no additional registry fee will be assessed.

67.2 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67

Any person seeking withdrawal of money deposited in the Court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as Fed. R. Civ. P. 67 requires shall provide a completed Internal Revenue Service Form W-9 with the motion papers seeking withdrawal of the funds.

67.3 Bonds and Other Sureties

(a) General Requirements. Unless the Court expressly directs otherwise pursuant to the provisions of 18 U.S.C. § 3146 in the supervision of a criminal matter, the principal obligor or one or more sureties qualified under this Rule shall execute every bond, recognizance or other undertaking that the law or court order requires in any proceeding.

(b) Unacceptable Sureties. An attorney or the attorney's employee, a party to an action, or the spouse of a party to an action or of an attorney shall not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond.

(c) Corporate Surety. A corporate surety on any undertaking in which the United States is the obligee shall be qualified in accordance with the provisions of 31 U.S.C. §§ 9304–08, and approved thereunder by the Secretary of the Treasury of the United States. In all other instances, a corporate surety qualified to write bonds in the State of New York shall be an acceptable surety. In all actions, a power of attorney showing authority of the agent signing the bond shall be attached to the bond.

(d) Personal Surety. Persons competent to convey real property who own real property in the State of New York of an unencumbered value of at least the stated penalty of the bond shall obtain consideration for qualification as surety thereon by attaching thereto a duly acknowledged justification showing (1) the legal description of the real property; (2) a complete list of all encumbrances and liens thereon; (3) its market value based upon recent sales of like property; (4) a waiver of inchoate rights of any character and certification that the real property is not exempt from execution; and (5) certification as to the aggregate amount of penalties of all other existing undertakings, if any, assured by the bondsperson as of that date. The Court will review the justifications and certifications for approval or disapproval of the surety.

(e) Cost Bonds. The Court on motion, or upon its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order shall designate.

(f) Cash Bonds. Cash bonds shall be deposited into the Court's registry only upon execution and filing of a written bond sufficient as to form and setting forth the conditions of the bond. Withdrawal of cash bonds so deposited shall not be made except upon the Court's written order.

(g) Insufficiency--Remedy. An opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the Court shall order that a party file a sufficient bond within a stated time. If the party does not comply with the order, the Court shall dismiss the case for want of prosecution, or the Court shall take other appropriate action as justice requires.

67.4 Refund of Overpayments (Amended January 1, 2012)

The Clerk of the Court or his designee shall be authorized to refund duplicate filing, admission or biennial fees. In addition, the Clerk of the Court or his designee shall be authorized to refund overpayments made in criminal cases, such as duplicate or overpayments for Special Assessments, Fines, and Restitution.

A party or its counsel may request a refund by notifying the Clerk of the Court of its request in writing. If the Clerk of the Court verifies the error, he will process the refund by government check if the party or its counsel made the original payment in cash, by debit card, or by check. If the party or its counsel made the original payment by credit card, the Clerk of the Court shall initiate a refund request through Pay.gov in the form of a credit to the credit card with which the original payment was made.

67.5 Payments Generally (Amended January 1, 2012)

Except as provided otherwise by Local Rule or court order, Clerk's Office personnel shall not accept cash in amounts exceeding $500. Acceptable forms of payment for amounts exceeding $500 include but are not limited to (i) credit cards, (ii) certified checks, or (iii) cashier's checks drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

68.1 Settlement Conferences

See L.R. 16.1.

68.2 Settlement Procedures

(a) On notice to the Court or the Clerk that the parties have settled an action, and upon confirmation of the settlement by all parties, the Court may issue a judgment dismissing the action by reason of settlement. The Court shall issue the order without prejudice to the parties' right to secure reinstatement of the case within thirty (30) days after the date of judgment by making a showing that the settlement was not, in fact, consummated.

(b) If the Court decides not to follow the procedures set forth in L.R. 68.2(a), the parties shall file within thirty (30) days of the notification to the Court, unless otherwise directed by written order, such pleadings as are necessary to terminate the action. If the required documents are not filed within the thirty (30) day period, the Clerk shall place the action on the dismissal calendar.

See also L.R. 17.1 (Actions involving infants and/or incompetents).

69.1 Execution

[Reserved]

70.1 Judgment for Specific Acts; Vesting Title

[Reserved]

71.1 Process in Behalf of and Against Persons Not Parties

[Reserved]

71.1.1 Condemnation Cases

[Reserved]

72.1 Authority of Magistrate Judges

(a) A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c) and any additional duties that are consistent with the Constitution and laws of the United States. Part-time Magistrate Judges are authorized to exercise all of those duties, except that only those Magistrate Judges whom the Court specifically designates are authorized to perform duties allowed under 28 U.S.C. § 636(c) and any additional duties consistent with the Constitution and laws of the United States.

(b) Any party may file objections to a Magistrate Judge's determination of a non-dispositive matter by filing with the Clerk and serving upon all parties their objections. The party must file and serve its objections within fourteen (14) days after being served with the Magistrate Judge's order, must state a return date in accordance with L.R. 7.1(b)(2) and must specifically designate the order or part of the order from which the party seeks relief and the basis for the objection. The parties shall file all supporting and opposition papers in accordance with L.R. 7.1(b)(2). The supporting papers shall include the following documents:

1. A designation of the contents of the record on appeal, including the documents, exhibits and other materials the Court is to consider; and

2. A memorandum of law.

Opposition papers shall also include a memorandum of law responsive to the appellant's arguments. Unless the Court directs otherwise, it will decide all appeals on submission of the papers without oral argument.

(c) Any party may object to a Magistrate Judge's proposed findings, recommendations, or report issued pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) within fourteen (14) days after being served with a copy of the Magistrate Judge's recommendation. The party must file with the Clerk and serve upon all parties written objections which specifically identify the portions of the proposed findings, recommendations, or report to which it has an objection and the basis for the objection. The party shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which it has an objection. Objections may not exceed twenty-five (25) pages without the Court's prior approval. The opposing party may file and serve its response to the objections within fourteen (14) days after being served with a copy of the objections. The objecting party may not file a reply. The Court will proceed in accordance with Fed. R. Civ. P. 72(b) or Rule 8(b) of the Rules Governing Section 2254 Petitions, as applicable.

72.2 Duties of Magistrate Judges

(a) In all civil cases, in accordance with Fed. R. Civ. P. 16, the Magistrate Judge assigned pursuant to

L.R. 40.1 is authorized to hold conferences before trial, enter scheduling orders, and modify scheduling orders. The scheduling order may limit the time to join parties, amend pleadings, file and hear motions, and complete discovery. It may also include dates for a final pretrial conference and other conferences, a trial ready date, a trial date, and any other matters appropriate under the circumstances of the case. A schedule cannot be modified except by order of the Court. The Magistrate Judge may explore the possibility of settlement and hold settlement conferences.

(b) The following procedure shall be followed regarding consent of the parties and designation of a Magistrate Judge to exercise civil trial jurisdiction under 28 U.S.C. § 636(c):

1. Upon the filing of a complaint or petition for removal, the Clerk shall promptly provide to the plaintiff, or the plaintiff's attorney, a notice, as approved by the Court, informing the parties of their right to consent to have the full-time Magistrate Judge conduct all proceedings in the case. Proceedings in the case include hearing and determining all pretrial and post-trial motions, including dispositive motions; conducting a jury or non-jury trial; and ordering the entry of a final judgment. The plaintiff shall attach copies of the notice to the copies of the complaint and summons when served. Additional copies of the notice shall be furnished to the parties at later stages of the proceedings and shall be included with pretrial notices and instructions. The consent form will state that any appeal lies directly with the Court of Appeals for the Second Circuit.

2. If the parties agree to consent, the attorney for each party or the party, if *pro se*, must execute the consent form. The parties shall file the executed consent forms directly with the Clerk. No consent form shall be made available, nor shall its contents be made known, to any District Judge or Magistrate Judge, unless all of the parties have executed the consent form. No judge or other court official shall attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. A District Judge, Magistrate Judge, or other court official may again inform or remind the parties that they have the option of referring the case to a Magistrate Judge. In reminding the parties about the availability of consent to a Magistrate Judge, the judge or other court official must inform the parties that they are free to withhold consent without adverse substantive consequences. The parties may agree to a Magistrate Judge's exercise of civil jurisdiction at any time prior to trial, subject to the approval of the District Judge.

3. When all of the parties have executed and filed the consent forms, the Clerk shall then transmit those forms along with the file to the assigned District Judge for approval and referral of the case to a Magistrate Judge. If the District Judge assigns the case to a Magistrate Judge on consent, authority vests in the Magistrate Judge to conduct all proceedings and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided over the case.

4. The Clerk shall notify any parties added to an action after consent and reference to a Magistrate Judge of their right to consent to the exercise of jurisdiction by the Magistrate Judge. If an added party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the referring District Judge for further proceedings.

(c) Assignment of Magistrate Judges to Serve as Special Masters. A Magistrate Judge shall serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Where the parties consent, a Magistrate Judge shall serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).

(d) Other Duties in Civil Actions. A Magistrate Judge is also authorized to

1. Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, as amended, in accordance with 46 U.S.C. § 4311(d), 12309(c);

2. Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

3. Review petitions in civil commitment proceedings under Title III of the Narcotic Rehabilitation Act;

4. Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782;

5. Exercise general supervision of the Court's civil calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges; and

6. Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

72.3 Assignment of Duties to Magistrate Judges

(a) Immediately upon the filing of a civil action or proceeding, the Clerk shall assign the action or proceeding to a District Judge and may also assign the action or proceeding to a Magistrate Judge pursuant to the Court's Assignment Plan. When a civil action or proceeding is assigned to a Magistrate Judge, the Magistrate Judge shall conduct proceedings in accordance with these Rules and 28 U.S.C. § 636 as directed by the District Judge. See L.R. 40.1.

(b) All civil cases in which the parties have executed and filed consent forms pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b) shall be transmitted to the assigned District Judge for approval and referral of the case to a Magistrate Judge, who shall then have the authority to conduct all proceedings and to direct the Clerk to enter final judgment. See L.R. 72.2(b)(3).

(c) Prisoner Cases. Any proceedings that an unrepresented prisoner commences shall, unless the Court orders otherwise, be referred to a Magistrate Judge for the purpose of reviewing applications, petitions and motions in accordance with these Rules and 28 U.S.C. § 636.

(d) Social Security Appeal Cases. Upon the filing of the complaint, the Clerk shall assign social security appeal cases in rotation to the District Judges. The assigned District Judge shall immediately refer these cases in rotation to a full-time Magistrate Judge for the purpose of review and submission of a report-recommendation relative to the complaint or, if the Magistrate Judge has been assigned to the case pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b), for final judgment.

(e) Federal Debt Collection Act Cases.

1. Any action brought pursuant to the Federal Debt Collection Act, 28 U.S.C. § 3001 *et seq.*, shall be handled on an expedited basis and brought before a Magistrate Judge in Syracuse, New York, or to a District Judge if no Magistrate Judge is available, for an initial determination.

2. If appropriate, the Court shall issue an order directing the Clerk to issue the writ being sought,

except that an application under 28 U.S.C. § 3203 for a writ of execution in a post-judgment proceeding shall not require an order of the Court.

3. Thereafter, the Clerk shall assign geographically a Magistrate Judge if no Magistrate Judge was previously assigned in accordance with General Order #12.

4. The assigned Magistrate Judge shall conduct any hearing that may be requested, decide all non-dispositive issues, and issue a report-recommendation on any and all dispositive issues.

5. The parties shall file any written objections to the report-recommendation within twenty-one (21) days of the filing of same. Without oral argument, the assigned District Judge shall review the report-recommendation along with any objections that the parties have filed.

6. If a party requests a hearing, the Clerk shall make a good faith effort to schedule the hearing within seven (7) days of the receipt of the request or "as soon after that as possible" pursuant to 28 U.S.C. § 3101(d)(1).

72.4 Habeas Corpus

(a) Petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed pursuant to the Rules Governing § 2254 Cases in the United States District Courts and the Rules Governing § 2255 Proceedings in the United States District Courts. All memoranda of law filed in Habeas Corpus proceedings shall conform to the requirements set forth in Local Rule 7.1(a)(1).

(b) Subject to the requirement of subsection (c), the petitioner shall file the original verified petition with the Clerk at Syracuse, New York. Applications for a writ of habeas corpus made by persons in custody shall be filed, heard and determined in the district court for the district in which they were convicted and sentenced provided, however, that if the convenience of the parties and witnesses requires a hearing in a different district, such application shall be transferred to any district that the assigned judge finds or determines to be more convenient.

(c) Before a second or successive application is filed in this Court, the applicant shall move in the Second Circuit Court of Appeals for an order authorizing the district court to consider the application.

(d) If the respondent submits the state-court records with its answer to the petition, the respondent must properly identify the records in the answer and arrange them in chronological order. The respondent must also sequentially number the pages of the state-court record so that citations to those records will identify the exact location where the information appears. If documents are separately bound and the citation to the documents is easily identifiable, the respondent does not need to repaginate the documents.

72.5 Habeas Corpus Petitions Involving the Death Penalty; Special Requirements

(a) Applicability. This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. The Court may deem a subsequent filing relating to a particular petition a first petition under this Rule if a court did not dismiss the original filing on the merits. The District Judge or Magistrate Judge to whom the petition is assigned may modify the application of this Rule. This Rule shall supplement the Rules

Governing § 2254 Cases and does not in any regard alter or supplant those rules.

(b) Notices From Office of the Attorney General for the State of New York. The Office of the Attorney General for the State of New York ("Attorney General") shall send to the Clerk (1) prompt notice whenever the New York State Court of Appeals affirms a sentence of death; (2) at least once a month, a list of scheduled executions; and (3) at least once a month, a list of the death penalty appeals pending before the New York State Court of Appeals.

(c) Notice From Petitioner's Counsel. Whenever counsel decides to file a petition in this Court, counsel shall promptly file with the Clerk and serve on the Attorney General a written notice of counsel's intention to file a petition. The notice shall state the name of the petitioner, the district in which the petitioner was convicted, the place of the petitioner's incarceration, the status of the petitioner's state-court proceedings, and the scheduled date of execution. The notice is for the Court's information only, and the failure to file the notice shall not preclude the filing of the petition.

(d) Counsel

1. Appointment of Counsel. Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed *pro se* and the Court is satisfied, after a hearing, that petitioner's election is intelligent, competent, and voluntary. Where the Court is to appoint counsel, such appointment shall be made at the earliest practicable time. The active judges of this District will certify a panel of attorneys qualified for appointment in death penalty cases ("qualified panel").

If state appellate counsel is available to continue representation in the federal courts and the assigned District Judge deems counsel qualified to continue representation, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial. In light of this presumption, it is expected that any appointed counsel who is willing to continue representation and whom the assigned District Judge has found qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above before filing the petition.

If state appellate counsel is not available to represent the petitioner in the federal habeas corpus proceeding or if appointment of state appellate counsel would be inappropriate for any reason, the Court may appoint counsel upon application of the petitioner. The Clerk shall have available forms for such application. The Court may appoint counsel from the qualified panel. The assigned District Judge may suggest one or more counsel for appointment. If a petitioner makes an application for appointed counsel before filing the petition, the Clerk shall assign the application to a District Judge and Magistrate Judge in the same manner that the Clerk would assign a non-capital petition. The District Judge and Magistrate Judge so assigned shall be the District Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

2. Second Counsel. The Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases shall govern the appointment and compensation of second counsel.

(e) Filing.

1. General requirement. Petitioners shall file petitions as to which venue lies in this District in accordance with the applicable Local Rules. Petitioners shall fill in their petitions by printing or typewriting. In the alternative, the petitioner may typewrite or legibly write a petition which contains all of the information that the form requires. All petitions shall (1) state whether the petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full caps and underscored "Death Penalty Case" directly under the case number on each pleading. Counsel for petitioner shall file an original and three (3) copies of the petition. A *pro se* petitioner need file only the original.

The Clerk will immediately notify the Attorney General's office when a petition is filed.

When a petitioner who was convicted outside of this District files a petition, the Court will immediately advise the clerk of the district in which the petitioner was convicted.

2. Emergency motions or applications. Counsel shall file emergency motions or applications with the Clerk. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by facsimile. Counsel should communicate with the Clerk by telephone as soon as it becomes evident that he or she will seek emergency relief from this Court. The motion or application shall contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in the prior actions.

(f) Assignment to Judges. Notwithstanding the Court's case assignment plan, the Clerk shall assign petitions to judges of the Court as follows: (1) the Clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case"; (2) all active judges of this Court shall participate in the assignments; (3) the Clerk shall assign petitions in the Capital Case category randomly to each of the available active judges of the Court; (4) if a petitioner has previously sought relief in this Court with respect to the same conviction, the petition shall, when practical, be assigned to the judges who were assigned to the prior proceeding; and (5) pursuant to 28 U.S.C. § 636(b)(1)(B), and consistent with law, the Court may designate Magistrate Judges to perform all duties under this Rule, including evidentiary hearings.

(g) Transfer of Venue. Subject to the provisions of 28 U.S.C. § 2241(d), it is the Court's policy that a petition should be heard in the district in which the petitioner was convicted rather than in the district of the petitioner's present confinement. See L.R. 72.4(b). If an order for the transfer of venue is made, the Court will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution.

1. Stay Pending Final Disposition. Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the Court shall issue a stay of execution pending final disposition of the matter. Notwithstanding any provision of this paragraph (h), the Court shall not grant or maintain stays of execution, except in accordance with law. Thus, the provisions of this paragraph (h) for a stay shall be ineffective in any case in which the stay would be inconsistent with the limitations of 28 U.S.C. § 2262 or any other governing statute.

2. Temporary Stay for Appointment of Counsel. Where counsel in the state-court proceedings withdraws at the conclusion of the state-court proceedings or is otherwise not available or qualified to proceed, the Court may designate an attorney who will assist an indigent petitioner in filing *pro se* applications for appointment of counsel and for a temporary stay of execution. Upon the filing of this application, the Court shall issue a temporary stay of execution and appoint counsel. The temporary stay will remain in effect for forty-five (45) days unless the Court extends this time.

3. Temporary Stay for Preparation of the Petition. Where the Court appoints new counsel to the case, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the Court shall issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The Court may extend the temporary stay upon a subsequent showing of good cause.

4. Temporary Stay for Transfer of Venue. See paragraph (g).

5. Temporary Stay for Unexhausted Claims. If the petition indicates that there are unexhausted claims for which a state-court remedy is still available, the Court shall grant the petitioner a sixty (60) day stay of execution in which to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the Court will stay the proceedings on the petition. After the state-court proceedings have been completed, the petitioner may amend the petition with respect to the newly exhausted claims.

6. Stay Pending Appeal. If the Court denies the petition and issues a certificate of appealability, the Court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

7. Notice of Stay. Upon the granting of any stay of execution, the Clerk will immediately notify the appropriate prison superintendent and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four (24) hour telephone number for the superintendent.

(i) Procedures for Considering the Petition. Unless the Court summarily dismisses the petition as patently frivolous, the following schedule and procedures shall apply subject to the Court's modification. Requests for enlargement of any time period in this Rule shall comply with these Local Rules.

1. Respondent shall, as soon as practicable, but in any event on or before twenty-one (21) days from the date of service of the petition, file with the Court the following:

- **(A)** Transcripts of the state trial-court proceedings;
- **(B)** Appellant's and respondent's briefs on direct appeal to the Court of Appeals, and the opinion or orders of that Court;
- **(C)** Petitioner's and respondent's briefs in any state-court habeas corpus proceedings and all opinions, orders and transcripts of such proceedings;
- **(D)** Copies of all pleadings, opinions and orders that the petitioner has filed in any previous federal habeas corpus proceeding which arose from the same conviction; and
- **(E)** An index of all materials described in paragraphs (A) through (D) above.

Respondent shall mark and number the materials so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner or the petitioner *pro se*. If time does not permit, the respondent may file the answer without attachments (A) through (D) above, but the respondent shall file these attachments as soon as possible. If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be filed.

2. If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), or if counsel for petitioner does not have copies of all the documents that respondent filed with the Court, counsel for petitioner shall immediately notify the Court in writing, with a copy to respondent. The Court will provide copies of any missing documents to the petitioner's counsel.

3. Respondent shall file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent shall attach to the answer any other relevant documents that the parties have not already filed.

4. Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

5. There shall be no discovery without leave of the Court.

6. Either party shall make any request for an evidentiary hearing within fifteen (15) days from the filing of the traverse or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether it will hold an evidentiary hearing.

(j) Evidentiary Hearing. If the Court holds an evidentiary hearing, the Court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument about the issues considered at the hearing.

(k) Rulings. The Court's rulings may be in the form of a written opinion, which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed. The Clerk will immediately notify the appropriate prison superintendent and the Attorney General whenever relief is granted on a petition. The Clerk will immediately notify the clerk of the United States Court of Appeals for the Second Circuit by telephone of (1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal or (2) the denial of a stay of execution. If the petitioner files a notice of appeal, the Clerk will transmit the appropriate documents to the United States Court of Appeals for the Second Circuit immediately.

73.1 Magistrate Judges: Trial by Consent

Upon the consent of the parties, a Magistrate Judge shall conduct all proceedings in any civil case, including a jury or non-jury trial and shall order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). See L.R. 72.2(b)(2).

74.1 Method of Appeal to District Judge in Consent Cases

[Reserved]

75.1 Proceedings on Appeal from Magistrate Judge to District Judge under Rule 73(d).

[Reserved]

76.1 Bankruptcy Cases

Reference to Bankruptcy Court. All cases under Title 11 of the United States Code, and all proceedings arising under Title 11, or arising in, or related to, a case under Title 11, are referred to the bankruptcy court of this District pursuant to 28 U.S.C. § 157.

In accordance with the provisions of 28 U.S.C. § 157(e), the Board of Judges has specifically designated the United States Bankruptcy Court Judges of this District to conduct jury trials in all proceedings commenced in cases filed under Title 11 of the United States Code where the right to a jury trial applies and where all the parties have expressly consented thereto.

76.2 Bankruptcy Appeals.

(a) When a party files a notice of appeal with the bankruptcy court clerk, and the notice is not timely filed in accordance with Fed. R. Bankr. P. 8002(a), and the party did not file a motion for extension of time in accordance with Fed. R. Bankr. P. 8002(c), the bankruptcy court clerk shall forward the notice of appeal together with a "Certification of Noncompliance" to the Clerk without assembling the record as provided for in Fed. R. Bankr. P. 8007(b). The Clerk shall file the notice and certificate, assign a civil action number, and forward the file to a District Judge to determine whether the party timely filed the notice of appeal or whether to dismiss the appeal as untimely. If the District Judge determines that the party timely filed the appeal or that the appeal should otherwise be perfected, the Clerk shall notify the bankruptcy court clerk to complete the record promptly in accordance with Fed. R. Bankr. P. 8007(b).

(b) The Clerk shall issue a standard bankruptcy appeal scheduling order at the time of the filing of the record on appeal, a copy of which the Clerk shall provide to the parties, the bankruptcy judge from whom the appeal was taken, and the bankruptcy court clerk.

(c) Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. Fed. R. Bankr. P. 8009 respecting the filing of briefs shall not be applicable, and the parties shall file their briefs in accordance with this Court's scheduling order.

76.3 Bankruptcy Record of Transmittal, Certificate of Facts, and Proposed Findings Pursuant to Title 11, Section 110(i)

(a) Upon direction of the bankruptcy judge, the bankruptcy court clerk shall cause to be filed with the Clerk the designated record of transmittal, which shall consist of certified copies of the Memorandum-Decision, Findings of Fact, Conclusions of Law, bankruptcy docket, and transcript of proceedings which relate to the bankruptcy judge's findings. The bankruptcy court clerk shall also provide the Clerk with a list of those individuals to whom the notice of filing shall be given.

(b) Upon receipt of the above, the Clerk shall assign a civil action number, assign a District Judge and issue a scheduling order for the filing of motions pursuant to 11 U.S.C. § 110(i)(1). The Clerk shall serve copies of the scheduling order upon those individuals whom the bankruptcy court clerk designates.

Upon the filing of any motion(s), the Clerk shall schedule and notice all concerned parties of a hearing date. Failure to file motions within the time ordered will be deemed a waiver of the provisions of 11 U.S.C. § 110(i)(1). The Clerk shall prepare and present to the assigned District Judge a proposed order pursuant to the provisions of L.R. 41.2.

SECTION IX.
DISTRICT COURT AND CLERKS

77.1 Hours of Court

[Reserved]

77.2 Orders

(a) With these exceptions, all orders, whether by consent or otherwise, shall be presented for approval and execution to the assigned judge. The Clerk may sign without submission to the assigned judge the following orders:

1. Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;

2. Orders restoring an action to the court docket after the filing of a demand for trial *de novo* pursuant to L.R. 83.7-7 (Consensual Arbitration Program);

3. Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

(b) If the assigned judge instructs the prevailing party to do so, the prevailing party shall submit a proposed order which the opposing party has approved and which contains the endorsement of the opposing

party: "Approved as to form."

When the parties are unable to agree as to the form of the proposed order, the prevailing party shall, on seven (7) days notice to all other parties, submit a proposed order and a written explanation for the form of that order. The Court may award costs and attorney's fees against a party whose unreasonable conduct the Court deemed to have required the bringing of the motion. The provisions of L.R. 7.1 shall not apply to such motion, and the Court shall not hear oral argument.

77.3 Sessions of Court

The Court shall be in continuous session in Albany, Binghamton, Syracuse, and Utica. The Court shall from time to time hold sessions in Auburn, Malone and Watertown, or such other place as the Court shall, by order, deem appropriate. Jurors shall serve as the Court directs.

77.4 Court Library

The district court libraries are not open for use by the public.

77.5 Official Newspapers

All process, notices, and orders required to be published shall be published in the proper county in an official newspaper. The Court shall direct the publication of process, notices, and orders in any other newspaper, upon proper showing, as it shall deem advisable. The following are designated as official newspapers:

County	Newspaper	City
Albany	Times Union (D)	Albany, NY
Broome	Binghamton Press/Sun Bulletin (D)	Binghamton, NY
Cayuga	The Citizen (D)	Auburn, NY
Clinton	Press-Republican (D)	Plattsburgh, NY
Chenango	Evening Sun (D)	Norwich, NY
Columbia	Register Star (D)	Hudson, NY
	The Independent (W)	Hillsdale, NY
Cortland	Cortland Standard (D)	Cortland, NY
Delaware	Walton Reporter (W)	Walton, NY
Essex	Lake Placid News (W)	Lake Placid, NY
Franklin	Adirondack Enterprise (D)	Saranac Lake, NY
Fulton	Leader Herald (D)	Gloversville, NY
Greene	Catskill Daily Mail (D)	Catskill, NY
Hamilton	Post Star (D)	Glens Falls, NY
Herkimer	Telegram (D)	Herkimer, NY
	The Evening Times (D)	Little Falls, NY
Jefferson	Watertown Times (D)	Watertown, NY
	Thousand Island Sun (W)	Alexandria Bay, NY
Lewis	Journal Republican (W)	Lowville, NY
Madison	Oneida Dispatch (D)	Oneida, NY
Montgomery	The Recorder (D)	Amsterdam, NY
Oneida	Utica Observer Dispatch (D)	Utica, NY
	Rome Sentinel (D)	Rome, NY
Onondaga	Post Standard (D)	Syracuse, NY
Oswego	Palladium Times (D)	Oswego, NY

County	Newspaper	City
Otsego	The Daily Star (D)	Oneonta, NY
Rensselaer	Times Record (D)	Troy, NY
St. Lawrence	Ogdensburg Journal (D)	Ogdensburg, NY
	Tribune Press (W)	Gouverneur, NY
	Daily Courier Observer (D)	Massena, NY
Saratoga	Saratogian-Tri City News (D)	Saratoga Springs, NY
Schenectady	Schenectady Gazette (D)	Schenectady, NY
Schoharie	Times Journal (W)	Cobleskill, NY
Tioga	Owego Pennysaver (W)	Owego, NY
Tompkins	Ithaca Journal (D)	Ithaca, NY
Ulster	The Daily Freeman (D)	Kingston, NY
Warren	Post Star (D)	Glen Falls, NY
	Times (D)	Glen Falls, NY
Washington	Whitehall Times (W)	Whitehall, NY

(D) = Daily (W) = Weekly

77.6 Release of Information

All court personnel, including but not limited to marshals, deputy clerks, court clerks, bailiffs, court reporters, law clerks, secretaries, and probation officers, shall not disclose to any person, without the Court's authorization, information divulged in arguments and hearings held in chambers or otherwise outside the presence of the public or any information relating to a pending case that is not part of the Court's public records.

77.7 Official Station of the Clerk (Amended January 1, 2012)

The Clerk's official station shall be Syracuse. The Clerk shall appoint deputy clerks in such number as are necessary, and they shall be stationed at Albany, Binghamton, Plattsburgh, Syracuse, Utica, and Watertown.

78.1 Motion Days

Listings of the regularly scheduled motion days for all judges shall be available at each Clerk's office and are available on the Court's webpage at "www.nynd.uscourts.gov." The Clerk shall provide notice of the regular motion days for all judges to the parties at the time an action is commenced.

79.1 Custody of Exhibits and Transcripts.

(a) Unless the Court orders otherwise, the parties shall not file exhibits and transcripts with the Clerk. Rather, the party that produced them in court shall retain them.

(b) In the case of an appeal or other review by an appellate court, the parties are encouraged to agree with respect to which exhibits and transcripts are necessary for the determination of the appeal. In the absence of agreement and except as provided in this Rule, a party, upon written request of any other party or by Court order, shall make available at the Clerk's office all the original exhibits in the party's possession, or true copies, to enable such other party to prepare the record on appeal. At the same time and place, such other party also shall make available all the original exhibits in that party's possession. All exhibits made available

at the Clerk's office, which any party designates as part of the record on appeal, shall be filed with the Clerk, who shall transmit them together with the record on appeal to the clerk of the Second Circuit Court of Appeals. Exhibits and transcripts not so designated shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding them to the clerk of the Second Circuit Court of Appeals on request.

(c) Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the party producing them, who shall permit any party yo inspect them for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Second Circuit Court of Appeals.

(d) The party responsible for filing the exhibits and transcripts with the Clerk shall be responsible for removing them (1) if no appeal is taken, within ninety (90) days after a final decision is rendered or (2), if an appeal has been taken, within thirty (30) days after the mandate of the final reviewing court is filed. The Clerk shall notify the parties that fail to comply with this Rule to remove their exhibits. Upon their failure to do so within thirty (30) days, the Clerk shall dispose of these exhibits and transcripts as the Clerk sees fit.

79.2 Books and Records of the Clerk

[Reserved.]

80.1 Stenographic Transcript: Court Reporting Fees

Subject to the provisions of Fed. R. Civ. P. 54(d), the expense of any party in obtaining all or any part of a transcript for the Court's use when the Court so orders and the expense of any party in obtaining all or any part of a transcript for the purposes of a new trial or for amended findings or for appeals shall be a taxable cost against the unsuccessful party. A fee schedule of transcript rates is available on the Court's webpage at "www.nynd.uscourts.gov."

81.1 Removal Bonds

[Reserved]

81.2 Copies of State Court Proceedings in Removed Actions

[Reserved]

81.3 Removed Cases, Demand for Jury Trial

In an action removed from a state court, a party entitled to trial by jury under Fed. R. Civ. P. 38 shall be accorded a jury trial if the party files and serves a demand in accordance with the provisions of Fed. R. Civ. P. 81 and L.R. 38.1. The Court will not consider a motion that a party filed in state court unless that party refiles the motion in this Court in accordance with the Local Rules of Practice for the Northern District of New York.

81.4 Actions Removed Pursuant to 28 U.S.C. § 1452

If removal is based upon 28 U.S.C. § 1452 (Removal of claims related to bankruptcy cases), the removing party shall specifically identify in its Notice of Removal which claims or causes of action it is removing and which of the parties in the state-court action are parties to the removed claims or causes of action.

82.1 Jurisdiction and Venue Unaffected

[Reserved]

82.2 Waiver of Judicial Disqualification

During the course of a proceeding potential issues may arise which would require the disqualification of the presiding judicial officer. If such an issue does arise, the judicial officer will advise the parties and the Clerk of Court of the potential conflict.

Upon such notification, the Clerk of the Court will send, via regular mail, a letter to all counsel/parties containing a Waiver of Judicial Disqualification form. Parties are required to complete and return this form to the Clerk of the Court, **via regular mail**, within fourteen days of its receipt. Counsel/parties shall not file these forms electronically. **These forms will not appear on the docket or be available to the presiding judicial officer.**

If all parties agree to waive the potential conflict, the presiding judge will continue to preside over the case. If any party does not waive the potential conflict, the Clerk of the Court shall reassign the case to another judicial officer.

83.1 Admission to the Bar (Amended January 1, 2012)

(a) Permanent Admission. A member in good standing of the bar of the State of New York or of the bar of any United States District Court, or of the highest court in the state in which they reside, whose professional character is good, may be permanently admitted to practice in this Court on motion of a member of the bar of this Court in compliance with the requirements of this Rule. **An admission packet containing all the required forms is available from the Clerk's office and on the Court's webpage at** "www.nynd.uscourts.gov."

Each applicant for permanent admission must file, at least fourteen (14) days prior to the scheduled hearing (unless, for good cause shown, the Court shortens the time), documentation for admission as set forth below. Ordinarily, the Court entertains applications for admission only on regularly scheduled motion days. Documentation required for permanent admission includes the following:

1. **A verified petition for admission** stating the following:

   - place of residence and office address;
   - the date(s) when and court(s) where previously admitted;
   - whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and
   - that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which

pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Federal Rules of Criminal Procedure for the District Courts; the Local Rules of the District Court for the Northern District of New York; and the New York Rules of Professional Conduct. The applicant shall further affirm faithful adherence to these Rules and responsibilities.

The applicant is not required to notarize the petition if it is executed in accordance with 28 U.S.C. § 1746.

2. **Affidavit of Sponsor.** The sponsor must be a member in good standing of the bar of the Northern District of New York who has personal knowledge of the petitioner's background and character. A form Affidavit of Sponsor is available from the Clerk's office.

3. **Attorney E-Filing Registration Form**. The E-Filing Registration Form must be in the form the Clerk prescribes, which sets forth the attorney's current office address(es); telephone and fax number(s), and e-mail address. A copy of the Attorney E-Filing Registration Form is available on the Court's webpage at "www.nynd.uscourts.gov." See subdivision (f) for requirements when information on the Registration Form changes.

4. **Certificate of Good Standing.** The certificate of good standing must be dated within six (6) months of the date of admission.

5. **The Required Fee.** As prescribed by and pursuant to the Judicial Conference of the United States and the Rules of this Court, the fee for admission to the bar is **$226.00**. This fee includes the fee set by the Judicial Conference of $176.00 plus an additional fee set by the Court of $50.00 unless the Chief Judge waives such additional fee upon a showing of good cause.

   On years following the year of admission, there shall also be a **$50.00** biennial registration fee. This fee shall be due on June 1, 2001, **and every two years thereafter** unless the Board of Judges directs otherwise. Failure to remit this fee will result in the removal of the non-paying attorney from the Court's bar roll. Should the payment of this biennial fee present a significant financial hardship, an attorney may request, by submitting an application to the Chief Judge, that the biennial registration fee be waived.

   The Clerk shall deposit the additional **$50.00** fee required for admission to the bar and the **$50.00** biennial registration fee into the District Court Fund. The Clerk shall be the trustee of the Fund, and the monies deposited in the Fund shall be used only for the benefit of the bench and bar in the administration of justice. All withdrawals from the Fund require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize the withdrawals.

   The admission fees and biennial registration fees are waived for all attorneys in the full-time employ of the United States Government. The biennial registration fees **only** are waived for all attorneys employed full-time by state and local public sector entities.

6. **Oath on Admission.** Applicants must swear or affirm that as attorneys and counselors of this Court, they will conduct themselves uprightly and according to law and that they will support the Constitution of the United States. The applicant signs the Oath on Admission, Form AO 153, in

court at the time of the admission.

(b) Applicants who are not admitted to another United States District Court in New York State must appear with their sponsor for formal admission unless the Court, in the exercise of its discretion, waives such appearance. If the applicant is admitted to practice in New York State, the Certificate of Good Standing submitted with the application for admission must be from the appropriate New York State Appellate Division. All requirements of subdivision (a) apply.

If the applicant is from outside New York State, the Certificate of Good Standing may be from the highest court of the state or from a United States District Court. All requirements of subdivision (a) apply.

(c) Applicants who are members in good standing of a United States District Court for the Eastern, Western, or Southern District of New York need not appear for formal admission. They must submit a Certificate of Good Standing from the United States District Court where they are members and a proposed order granting the admission. A sponsor's affidavit is not required. All other requirements of subdivision (a) apply.

(d) Pro Hac Vice Admission. A member in good standing of the bar of any state, or of any United States District Court, may be admitted *pro hac vice* to argue or try a particular case in whole or in part. In addition to the requirements of L.R. 83.1(a)(1), (3), (4), and (6), an applicant must make a Motion for *Pro Hac Vice* Admission, which includes the case caption of the particular case for which the applicant seeks admission. See L.R. 10.1(b). In lieu of a written motion for admission, the sponsoring attorney may make an oral motion in open court on the record. In that case, the attorney seeking *pro hac vice* admission must immediately complete and file the required documents as set forth above.

The *pro hac vice* admission fee is **$100.00**. The Clerk deposits all *pro hac vice* admission fees into the District Court Fund. See L.R. 83.1(a)(5). An attorney admitted *pro hac vice* must file a written notice of appearance in the case for which the attorney was admitted in accordance with L.R. 83.2.

(e) Admission of United States Attorneys Admitted in Other Federal Districts. An attorney admitted to practice before any United States District Court who is appointed as a United States Attorney, an Assistant United States Attorney, or as a Special Assistant United States Attorney under 28 U.S.C. §§ 541–543, shall be admitted to practice in this Court upon: (i) motion of a member of the bar of this Court and (ii) satisfaction of the requirements of L.R. 83.1(a)(1), (3), and (6).

All other attorneys in the employ of the United States Government seeking admission to practice in this Court, including those appointed under 28 U.S.C. §§ 541–543 who are not admitted to practice before any United States District Court, must comply with the requirements for permanent or *pro hac vice* admission described in subsections (a)–(d) above.

(f) Registration Form Changes. Every attorney must update their e-mail address, telephone or fax number through CM/ECF within 14 days of a change. Detailed instructions are available on the Court's website, www.nynd.uscourts.gov. Attorneys shall notify the Court within 14 days of any change to their mailing address by completing the automated Update My Information form located on the Court's website: http://www.nynd.uscourts.gov/e-filingregistration/procform13.cfm. Failure to keep this information current will result in removal from the roll of the Court.

(g) Pro Bono Service. Every member of the bar of this Court shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. The Court shall make appointments under this Rule in a manner such that the Court shall not request any attorney to accept more than one appointment during any twelve-month period.

(h) Disciplinary Action in Other Jurisdictions. An attorney admitted pursuant to this section who is disciplined in any other jurisdiction shall advise this Court of such discipline within 15 days thereof. Failure to do so will result in removal from the roll of the Court.

(i) Public Availability of Admissions Materials. The Clerk's Office shall make all admissions materials available upon written request, except that the Clerk may redact any non-public personal identifiers described in L.R. 8.1.

83.2 Appearance and Withdrawal of Attorney

(a) Appearance. An attorney appearing for a party in a civil case shall promptly file with the Clerk a written notice of appearance; however, an attorney does not need to file a notice of appearance if the attorney who would be filing the notice of appearance is the same individual who has signed the complaint, notice of removal, pre-answer motion, or answer.

(b) Withdrawal. An attorney who has appeared may withdraw only upon notice to the client and all parties to the case and an order of the Court, upon a finding of good cause, granting leave to withdraw. If the Court grants leave to withdraw, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

If the client whose attorney seeks to withdraw has consented to substitution of new counsel, the attorney who seeks to withdraw must file a document that bears his signature, as well as the signatures of the attorney who is to be substituted as counsel and the client who has consented to this substitution. Upon receipt of this document, the Court shall review the same and determine whether to grant the substitution. If the Court grants the substitution of counsel, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

Unless the Court orders otherwise, withdrawal of counsel, with or without the consent of the client, shall not result in the extension of any of the deadlines contained in any case management orders, including the Uniform Pretrial Scheduling Order, see L.R. 16.1(e), or the adjournment of a trial ready or trial date.

83.3 Pro Bono Service (Amended January 1, 2012)

(a) Description of Panel. In recognition of the need for representation of indigent parties in civil actions, this Court has established the Pro Bono Panel ("Panel") of the Northern District of New York.

1. The Panel shall include those members of the Criminal Assigned Counsel Panel in this Court. The Court also expects any other attorney admitted to practice in this Court to participate in periodic training that the Court offers and to accept no more than one pro bono assignment per year.

2. The Court shall maintain a list of Panel members, which shall include the information deemed necessary for the effective administration and assignment of Panel attorneys.

3. The Court shall select Panel members for assignment upon its determination that the appointment of an attorney is warranted. The Court shall select from the Panel a member who has not received an appointment from the Court during the past year and (1) has attended a training seminar that this Court sponsors, (2) has adequate prior experience closely related to the matter assigned, or (3) has accepted criminal (CJA) assignments from the Court.

4. Where a *pro se* party has one or more other cases pending before this Court in which the Court has appointed an attorney, the Court may determine it to be appropriate that the attorney appointed in the other case or cases be appointed to represent the *pro se* party in the case before the Court.

5. Where the Court finds that the nature of the case requires specific expertise, and among the Panel members available for appointment there are some with the required expertise, the attorney may be selected from among those included in the group or the Court may designate a specific member of the Panel.

6. Where the Court finds that the nature of the case requires specific expertise and none of the Panel members available for appointment has indicated that expertise, the Court may appoint an attorney with the required expertise who is not on the Panel.

(b) Application for Appointment of Attorney

1. Any application that a party appearing pro se makes for the appointment of an attorney shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this Court, including both pending and terminated actions.

2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.

3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, the Court may entertain a subsequent application, using the procedures specified above, within a reasonable time after the change in circumstances has occurred.

(c) Factors Used in Determining Whether to Appoint Counsel. Upon receipt of an application for the appointment of an attorney, the Court shall determine whether to appoint an attorney to represent the *pro se* party. The Court shall make that determination within a reasonable time after the party makes the application. Factors that the Court will take into account in making the determination are as follows:

1. The potential merit of the claims as set forth in the pleading;

2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;

3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;

4. The capability of the *pro se* party to present the case;

5. The inability of the *pro se* party to retain an attorney by other means;

6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit that the Court shall derive from the assistance of an appointed attorney;

7. Any other factors the Court deems appropriate.

(d) Order of Appointment. Whenever the Court concludes that the appointment of an attorney is warranted, the Court shall issue an order directing the appointment of an attorney to represent the *pro se* party. The Court shall promptly transmit the order to the Clerk. If service of the summons and complaint has not yet been made, the Court shall accompany its appointment order with an order directing service by the United States Marshal or by other appropriate method of service.

(e) Notification of Appointment. After the Court has appointed an attorney, the Clerk shall send the attorney a copy of the order of appointment. Costs the attorney incurs in obtaining copies of materials filed prior to appointment are recoverable under L.R. 83.3(g).

(f) Duties and Responsibilities of Appointed Counsel. On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as these Rules or court order provide. If the attorney is appointed as Special Mediation Counsel, the attorney-client relationship will be terminated by Court order at the end of the mediation process, as described in L.R. 83.8(b)(4).

In the Court's discretion, the Court may appoint stand-by counsel to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the Court where appropriate. The Court may in its discretion appoint counsel for other purposes.

(g) Reimbursement for Expenses. *Pro Bono* attorneys whom the Court appoints pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **$2,000.00**. Any expenses in excess of **$500.00** should receive the Court's prior approval. If good cause is shown, the Court may approve additional expenses. Appointed counsel should seek reimbursement using the Pro Bono Fund Voucher and Request for Reimbursement Form and should accompany this form with detailed documentation. The Court advises counsel that if they submit a voucher seeking more than **$2,000.00** without the Court's prior approval, the Court may reduce or deny the request. The Chief Judge or a judge whom the Chief Judge designates to authorize withdrawals must approve all reimbursements made by withdrawal from the District Fund. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on**

the form the Clerk provides for reimbursement of such expenses.

(h) Attorney's Fees. Except as provided in this subsection, an appointed attorney cannot recover attorney's fees from the *Pro Bono* Fund. However, in its discretion, the Court may award an appointed attorney for a prevailing party attorney's fees from the judgment or settlement to the extent that the applicable law permits. See, e.g., 28 U.S.C. § 2678 (permitting the attorney for a prevailing party under the Federal Tort Claims Act to recover up to 25% of any judgment or settlement); 42 U.S.C. § 1988(b) (authorizing an additional award of attorney's fees to prevailing parties in civil rights actions).

(i) Grounds for Relief from Appointment. After appointment, an attorney may apply to be relieved from an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;

2. the attorney does not feel competent to represent the party in the particular type of action assigned;

3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or

4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

(j) Application for Relief from Appointment. An appointed attorney shall make any application for relief from an order of appointment on any of the grounds set forth in this Rule to the Court promptly after the attorney becomes aware of the existence of such grounds or within such additional period as the Court may permit for good cause shown.

(k) Order Granting Relief from Appointment. If the Court grants an application for relief from an order of appointment, the Court shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the Court shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se.*

83.4 Discipline of Attorneys (Amended January 1, 2012)

(a) The Chief Judge shall have charge of all matters relating to discipline of members of the bar of this Court.

(b) Any member of the bar of this Court who is convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this Court and, upon the judgment of conviction becoming final, shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of a judgment of conviction, the attorney shall be suspended from practicing before this Court and, on presentation of proof that judgment of conviction is final, the name of the attorney convicted shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(c) Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of an order accepting resignation, the name of the attorney resigning shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(d) Any member of the bar of the Northern District of New York who shall be disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this Court unless an examination of the record resulting in the discipline discloses

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject;

3. that this Court's imposition of the same discipline would result in grave injustice; or

4. that this Court has held that the misconduct warrants substantially different discipline

On the filing of a certified or exemplified copy of an order imposing discipline, this Court shall, by order, discipline the attorney to the same extent. It is provided, however, that within thirty (30) days of service on the attorney of the Court's order of discipline, either the attorney or a bar association that the Chief Judge designated in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in this District should not be modified on the basis of one or more of the grounds set forth in this Rule. The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.

(e) The Court may disbar, suspend or censure any member of the bar of this Court who is convicted of a misdemeanor in any State, Territory, other District, Commonwealth, or Possession, upon such conviction.

Upon the filing of a certified or exemplified copy of a judgment of conviction, the Chief Judge may designate a bar association to prosecute a proceeding against the attorney. The bar association shall obtain an order requiring the attorney to show cause within thirty (30) days after service, personally or by mail, why the attorney should not be disciplined. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. Upon receiving the attorney's answer to the order to show cause, the Chief Judge may set the matter for prompt hearing before a court of one or more judges or shall appoint a master to hear and to report findings and a recommendation. After a hearing and report, or if the attorney makes no timely answer or the answer raises no issue requiring a hearing, the Court shall take action as justice requires. In all proceedings, a certificate of conviction shall constitute conclusive proof of the attorney's guilt

of the conduct for which the attorney was convicted.

(f) Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have his or her name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended automatically for a like period from practice in this Court.

(g) **(1)** In addition to any other sanctions imposed in any particular case under these Rules, any person admitted to practice in this Court may be prohibited from practicing in this Court or otherwise disciplined for cause.

(2) Complaints alleging any cause for discipline shall be directed to the Chief Judge and must be in writing. If the Chief Judge deems the conduct alleged in the complaint sanctionable, the Chief Judge shall appoint a panel attorney to investigate and, if necessary, support the complaint. At the same time, the Chief Judge shall refer the matter to a Magistrate Judge for all pre-disposition proceedings.

(3) The Chief Judge shall appoint a panel of attorneys who are members of the bar of this Court to investigate complaints and, if the complaint is supported by the evidence, to prepare statements of charges and to support such charges at any hearing. In making appointments to the panel, the Chief Judge may solicit recommendations from the Federal Court Bar Association and other bar associations and groups. The Chief Judge shall appoint attorneys to the panel for terms not to exceed four years without limitation as to the number of terms an attorney may serve. The Court may reimburse an attorney from this panel whom the Chief Judge appoints to investigate and support a complaint in accordance with subsection (3) below ("panel attorney") for expenses incurred in performing such duties from the Pro Bono Fund to the extent and in the manner provided in L.R. 83.3(g).

(4) If the panel attorney determines after investigation that the evidence fails to establish probable cause to believe that any violation of the Rules of Professional Conduct has occurred, the panel attorney shall submit a report of such findings and conclusions to the Chief Judge for the consideration of the active and senior district judges.

(5) If the panel attorney determines after investigation that the evidence establishes probable cause to believe that one or more violations of the Rules of Professional Conduct has occurred, the panel attorney shall prepare a statement of charges alleging the grounds for discipline. The Clerk shall cause the Statement of Charges to be served upon the attorney concerned ("responding attorney") by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this Court and, if different, to the last known address of the attorney as shown in any other source together with a direction from the Clerk that the responding attorney shall show cause in writing within thirty days why discipline should not be imposed.

(6) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned Magistrate Judge shall schedule a prompt evidentiary hearing. The Magistrate Judge may grant such pre-hearing discovery as deemed necessary, shall hear witnesses called by the panel attorney supporting the charges and by the responding attorney, and may consider such other evidence included in the record of the hearing that the Magistrate Judge deems relevant and material. A disciplinary charge may not be

found proven unless supported by clear and convincing evidence. The Magistrate Judge shall report his or her findings and recommendations in writing to the Chief Judge and shall serve them upon the responding attorney and the panel attorney. The responding attorney and the panel attorney may file objections to the Magistrate Judge's report and recommendations within twenty-one days of the date thereof.

(7) An attorney may not be found guilty of a disciplinary charge except upon a majority vote of the district judges, including senior district judges, that such charge has been proven by clear and convincing evidence. Any discipline imposed shall also be determined by a majority vote of the district judges, including senior district judges, except that in the event of a tie vote, the Chief Judge shall cast a tie-breaking vote. If the District Judge submitted the complaint under subsection (2) above giving rise to the disciplinary proceeding, that judge shall be recused from participating in the decisions regarding guilt and discipline.

(8) Unless the Court orders otherwise, all documents, records, and proceedings concerning a disciplinary matter shall be filed and conducted confidentially except that, without further order of the Court, the Clerk may notify other licensing jurisdictions of the imposition of any sanctions.

(h) A visiting attorney permitted to argue or try a particular cause in accordance with L.R. 83.1 who is found guilty of misconduct shall be precluded from again appearing in this Court. On entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the Court's opinion.

(i) Unless the Court orders otherwise, no action shall be taken pursuant to L.R. 83.4(e) and (f) in any case in which disciplinary proceedings against the attorney have been instituted in the State.

(j) The Court shall enforce the New York Rules of Professional Conduct, in construing which the Court as a matter of comity will follow decisions of the New York State Court of Appeals and other New York state courts absent an over-arching federal interest and as interpreted and applied by the United States Court of Appeals for the Second Circuit.

(k) Nothing in this Rule shall limit the Court's power to punish contempts or to sanction counsel in accordance with the Federal Rules of Civil or Criminal Procedure or the Court's inherent authority to enforce its rules and orders.

(l) If an attorney fails to respond or cooperate with any disciplinary investigation or proceeding conducted under these Rules, the Court may treat such behavior as a waiver of procedural rights, and impose discipline or take any other action as justice and this Rule may require, including suspension or removal of the attorney from the bar of the Northern District of New York without further process.

83.5 Contempt

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit on which the notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for resulting damages, and evidence as to the amount of

damages that is available to the moving party. A reasonable attorney's fee, necessitated by the contempt proceeding, may be included as an item of damages. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers on which it is based shall be served on the contemnor's attorney; otherwise service shall be made personally in the manner provided by the Federal Rules of Civil Procedure for the service of summons. If an order to show cause is sought, the order may, on necessity shown, embody a direction to the United States Marshal to arrest and hold the alleged contemnor on bail in an amount fixed by the order, conditioned upon appearance at the hearing and further conditioned upon the alleged contemnor's amenability to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the resulting damages, the alleged contemnor shall, on demand, be entitled to have oral evidence taken either before the Court or before a master whom the Court appoints. When by law the alleged contemnor is entitled to a trial by jury, the contemnor shall make a written demand on or before the return day or adjourned day of the application; otherwise the Court will deem that the alleged contemnor has waived a trial by jury.

(c) If the Court finds that the alleged contemnor is in contempt of the Court, the Court shall issue and enter an order

1. Reciting or referring to the verdict or findings of fact on which the adjudication is based;

2. Setting forth the amount of the damages to which the complainant is entitled;

3. Fixing the fine, if any, imposed by the Court, which fine shall include the damages found and naming the person to whom the fine shall be payable;

4. Stating any other conditions, the performance of which shall operate to purge the contempt;

5. Directing, in the Court's discretion, the Marshal to arrest and confine the contemnor until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. On an order of contempt, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) If the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the proceeding and, in the discretion of the Court, shall have judgment against the complainant for costs, disbursements and a reasonable attorney's fee.

83.6 Transfer of Cases to Another District (Amended January 1, 2012)

When possible and unless otherwise directed, the Clerk shall electronically transfer all materials in a case to the transferee district fourteen (14) days after the transfer order. The clerk shall otherwise mail all case materials to the transferee district fourteen (14) days after the transfer order.

SECTION X.
ALTERNATE DISPUTE RESOLUTION
AND GENERAL PROVISIONS

83.7 Arbitration

83.7-1 Scope and Effectiveness of Rule

This Rule governs the consensual arbitration program for referral of civil actions to court-annexed arbitration. It may remain in effect until further order of the Court. Its purpose is to establish a less formal procedure for the just, efficient and economical resolution of disputes, while preserving the right to a full trial

on demand.

83.7-2 Actions Subject to this Rule

The Clerk shall notify the parties in all civil cases, except as the Rules otherwise direct, that they may consent to non-binding arbitration under this Rule. The notice shall be furnished to the parties at pretrial/scheduling conferences or shall be included with pretrial conference notices and instructions. Consent to arbitration under this Rule shall be discussed at the pretrial/scheduling conference. No party or attorney shall be prejudiced for refusing to participate in arbitration. The Court shall allow the referral of any civil action pending before it to the arbitration process if the parties consent. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing the form with the Clerk within fourteen (14) days after the parties receive the form. The parties shall freely and knowingly enter into the consent.

83.7-3 Referral to Arbitration

(a) Time for Referral. The Clerk shall refer every action subject to this Rule to arbitration in accordance with the procedures under this Rule twenty-one (21) days after the filing of the last responsive pleading or within twenty-one (21) days of the filing of a stipulated consent order referring the action to arbitration, whichever event occurs last, except as otherwise provided. If any party notices a motion to dismiss under the provisions of Fed. R. Civ. P. 12(a) and/or (b), or a motion to join necessary parties pursuant to the Federal Rules of Civil Procedure prior to the expiration of the twenty-one (21) day period, the assigned judge shall hear the motion and further proceedings under this Rule shall be deferred pending decision on the motion. If the Court does not dismiss the action on the motion, the Court shall refer the action to arbitration twenty-one (21) days after the filing of the decision.

Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed and served within twenty-one (21) days following the close of discovery. The filing of a Rule 56 motion shall defer further proceedings under this Rule pending decision on the motion.

(b) Authority of Assigned Judge. Notwithstanding any provision of this Rule, the Clerk shall assign every action subject to this Rule to a judge upon filing in the normal course, in accordance with the Court's Assignment Plan. The assigned judge shall have authority to conduct status and settlement conferences, hear motions and in all other respects supervise the action in accordance with these Rules notwithstanding its referral by consent to arbitration.

(c) Relief from Referral. Any party shall request relief from the operation of this Rule by filing with the Court a motion for the relief within twenty-one (21) days after entry of the initial stipulated consent order which refers the case for arbitration. The assigned judge shall, *sua sponte*, exempt an action from the application of this Rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) legal issues predominate over factual issues, or (3) for other good cause.

83.7-4 Selection and Compensation of Arbitrator

(a) Selection of Arbitrators. The Clerk shall maintain a roster of arbitrators qualified to hear and determine actions under this Rule. The Court shall select arbitrators from time to time from applications submitted by or on behalf of attorneys willing to serve. To be eligible for selection, an attorney (1) shall have been admitted to practice for not less than five (5) years; (2) shall be a member of the bar of this Court or a

member of the New York bar and reside within the Northern District of New York; and (3) shall either (i) for not less than five (5) years have devoted 50% or more of the attorney's professional time to matters involving litigation, or (ii) have substantial experience serving as a "neutral" in dispute resolution proceedings, or (iii) have substantial experience negotiating consensual resolutions to complex problems. Each attorney shall, upon selection, take the oath or affirmation prescribed in 28 U.S.C. § 453 and shall complete any training that the Court requires.

(b) Selection of the Panel. Whenever an action has been referred to arbitration through consent of the parties pursuant to this Rule, the parties shall nominate the arbitrator or arbitrators whom they select to serve as an arbitrator(s) in full compliance with L.R. 83.7-4(a), or the Clerk shall promptly furnish to each party a list of arbitrators whose names shall have been drawn at random from the roster for the division in which the case is pending. If the parties have elected to proceed with a **single** arbitrator, the Clerk shall provide five (5) names for the selection process. If the parties have elected to proceed with a panel of **three** (3) arbitrators, the Clerk shall provide seven (7) names for the selection process.

1. Each side shall be entitled to strike two names from the list. All parties shall sign the list and return it to the Clerk within fourteen (14) days of receipt. Failure of the parties to timely notify the Clerk of strikes shall result in the Clerk's selection of the panel.

2. The Clerk shall promptly notify the person or persons whom the parties did not strike. If the parties have elected to proceed with a single arbitrator, and the arbitrator selected is unable or unwilling to serve, the process of selection under this Rule shall begin anew. If the parties have elected to proceed with a panel of arbitrators and any person whom they select is unable or unwilling to serve, the Clerk shall select an additional individual at random who shall constitute the third member of the panel. If the Clerk is still unable to form a panel of three arbitrators for any reason, the process of selection under this Rule shall begin anew. When a single arbitrator, or when three of the selected arbitrators have agreed to serve, the Clerk shall promptly send written notice of the membership of the panel to each arbitrator and the parties.

(c) Disqualification. No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 (conflict of interest) exist or in good faith shall be believed to exist.

(d) Withdrawal by Arbitrator. Any person whose name appears on the roster maintained in the Clerk's office may ask at any time to have his or her name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(e) Compensation and Reimbursement. Arbitrators shall be paid $250.00 per day or portion of each day of hearing in which they participate serving as a single arbitrator or $100.00 for each day or portion of a day if serving as a member of a panel of three (3). Compensation for an arbitrator's services outside of the hearing shall be supported by an affidavit setting forth in detail the time required for pre- and post-hearing matters. When the arbitrators file their decision, each shall submit a voucher, on the form that the Clerk prescribes, for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of their duties under this Rule. No reimbursement shall be made for the cost of office or other space for the hearing.

83.7-5 Arbitration Hearings

(a) Hearing date. After an answer is filed in a case in which the parties have consented to arbitration and the Court has approved the consent and on completion of the parties' selection of the panel, the arbitration clerk shall send a notice to the attorneys setting forth the date, time and location for the arbitration hearing. The date of the arbitration hearing set forth in the notice shall be approximately five (5) months, but in no event later than 180 days, from the date the answer was filed, except that the arbitration proceeding shall not, in the absence of the parties' consent, commence until thirty (30) days after the Court's disposition of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties if such a motion was filed and served within twenty-one (21) days after the filing of the last responsive pleading. Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed in accordance with L.R. 83.7-3(a). The Court may modify the 180-day and twenty-one (21) day periods specified in L.R. 83.7 for good cause shown. The notice shall also advise the attorneys that they may agree to an earlier date for the arbitration hearing provided the arbitration clerk is notified within thirty (30) days of the date of the notice.

The notice shall also advise the attorneys that they have 120 days to complete discovery unless the Court orders a shorter or longer period for discovery. If a third party has been brought into the action, this notice shall not be sent until the third party has filed an answer.

(b) Upon entry of the order designating the arbitrator(s), the arbitration clerk shall send to each arbitrator a copy of the order designating the arbitrator, a copy of the court docket sheet and a copy of the guidelines for arbitrators. On receipt of the notice scheduling the case to proceed to arbitration and appointing an arbitrator, the plaintiff's attorney shall promptly forward to the arbitrator copies of all pleadings, including any counterclaim or third-party complaint and respective answer. Thereafter, and at least ten (10) days prior to the arbitration hearing, each attorney shall deliver to the arbitrator(s) and to the adverse attorney pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories to which reference shall be made at the hearing (but not including documents intended solely for impeachment).

(c) Default of a Party. The arbitration hearing shall proceed in the absence of any party who, after notice, fails to be present. If a party fails to participate in the arbitration process in a meaningful manner, the arbitrator(s) shall make that determination and shall support it with specific written findings filed with the Clerk. The Court shall then conduct a hearing, on notice to all attorneys and personal notice to any party adversely affected by the arbitrator's determination, and may impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial *de novo* which that party has filed.

(d) Conduct of Hearing. The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses, except as otherwise provided. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence. These rules, however, shall not preclude the arbitrator from receiving evidence that the arbitrator considers to be relevant and trustworthy and that is not privileged. A party desiring to offer a document, otherwise subject to hearsay objections, at the hearing shall serve a copy on the adverse party not less than ten (10) days in advance of the hearing, indicating intent to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross-examine the author of the document, the arbitrator shall deem that the adverse party has waived any hearsay objection to the document. Attendance of witnesses and production of documents shall be compelled in accordance with Fed. R. Civ. P. 45.

(e) Transcript or Recording. A party may cause a transcript or recording to be made of the

proceedings at its expense but shall, at the request of the opposing party, make a copy available to that party at no charge, unless the parties have otherwise agreed. Except as provided in L.R. 83.7-7(c), no transcript of the proceeding shall be admissible in evidence at any subsequent de novo trial of the action.

(f) Place of Hearing. Hearings shall be held at any location within the Northern District of New York that the arbitrator(s) designates. Hearings may be held in any courtroom or other room in any federal courthouse that the Clerk makes available to the arbitrator(s). When no room is available, the hearing shall be held at any suitable location that the arbitrator(s) selects. In selecting a hearing location, the arbitrator shall consider the convenience of the panel, the parties and the witnesses. The date for the hearing shall not be continued except for extreme and unanticipated emergencies.

(g) Time of Hearing. Unless the parties agree otherwise, hearings shall be held during normal business hours.

(h) Authority of Arbitrator. The arbitrator(s) shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before the arbitrator(s). Any two members of a panel shall constitute a quorum; but, unless the parties stipulate otherwise, the concurrence of a majority of the entire panel shall be required for any action or decision.

(i) *Ex Parte* Communication. There shall be no *ex parte* communication between an arbitrator(s) and any attorney or party on any matter related to the action except for purposes of scheduling or continuing the hearing.

83.7-6 Award and Judgment (Amended January 1, 2012)

(a) Filing of Award. The arbitrator(s) shall file the award with the Clerk promptly following the close of the hearing and in any event not more than fourteen (14) days following the close of the hearing. As soon as the arbitrator(s) files the award, the Clerk shall serve copies on the parties.

(b) Form of Award. The award shall state clearly and concisely the name or names of the prevailing party or parties, the party or parties against which the award is rendered, and the precise amount of money and other relief, if any, awarded. The award shall be in writing; and, unless the parties stipulate otherwise, the arbitrator or at least two members of a panel must sign the award. No panel member shall participate in the award without having attended the hearing.

(c) Entry of Judgment on Award. Unless a party has filed a demand for a trial *de novo* (or a notice of appeal which shall be treated as a demand for trial *de novo*) within thirty (30) days of the filing of the arbitration award, the Clerk shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(d) Sealing of Arbitration Awards. The contents of any arbitration award made under this Rule shall not be made known to any judicial officer who might be assigned to the case until the Court has entered final judgment on the action or the action has otherwise terminated.

83.7-7 Trial De Novo

(a) Time for Demand. If either party files and serves a written demand for a trial *de novo* within thirty (30) days of entry of judgment on the award, the Clerk shall immediately vacate the judgment and the action shall proceed in the normal manner before the assigned judge.

(b) Restoration to Court Docket. On a demand for a trial *de novo*, the Clerk shall restore the action to the Court's docket, trial ready, and the action shall be treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the Court calendar which is no later than that which a party otherwise would have had, is preserved.

(c) Limitation on Admission of Evidence. At the trial *de novo*, the Court shall not admit any evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless

1. The evidence would otherwise be admissible in the Court under the Federal Rules of Evidence; or

2. The parties have stipulated otherwise.

(d) Arbitrator's Costs. The party requesting a trial *de novo* shall deposit the cost of the arbitrator's services as a prerequisite to the trial. If the requesting party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, the Clerk shall retain those funds. However, if that party is successful in obtaining a more favorable result, the Clerk shall return the prepaid costs to the party who deposited them.

(e) Opposing Party's Costs. If a party has rejected an award and the action proceeds to trial, that party shall pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the arbitrator's award on that claim. If the opposing party has also rejected that award, however, a party is entitled to costs only if the verdict is more favorable to that party than the arbitrator's award.

1. Actual costs include those costs and fees taxable in any civil action and attorney's fees for each day of trial not to exceed **$500.00.**

2. For good cause shown, the Court shall order relief from payment of any or all costs.

3. The provisions of L.R. 83.7-7(d) and (e) shall not apply to claims to which the United States or one of its agencies is a party.

83.7-8 Cases Pending Prior to the Implementation of Arbitration

Notwithstanding the provisions of the Rules set forth above, each district judge shall select cases from the docket currently in process and notify the attorneys involved of the availability of the consensual arbitration program. A case shall qualify for referral to arbitration if it complies with the provisions of this Rule.

83.8 Assisted Mediation Program (Amended January 1, 2012)

(a) Scope. The Court may assign specially trained *pro bono* Special Mediation Counsel to assist *pro se* civilian litigants with preparing for and participating in mediation. The Assisted Mediation Program is open to civilian *pro se* parties to actions in the Northern District of New York. The assigned judge or magistrate judge determines if the case would benefit from mediation and would also benefit from the assignment of Special Mediation Counsel to assist the *pro se* party with the mediation process.

Appointment of Special Mediation Counsel is in no way guaranteed, even if the action is referred to the court-annexed mediation program. Appointment is at the sole discretion of the presiding judge.

(b) Procedure. The procedure and limits of Assisted Mediation are governed by L.R. 83.11, including the filing requirements preceding and following the mediation session described in L.R. 83.11-5 and L.R. 83.11-6, except as otherwise provided in this Rule.

1. If the court determines that referral to the Assisted Mediation Program is appropriate, the Court shall enter an order of reference to the Assisted Mediation Program.

2. Within ten (10) days of the entry of the order of reference, the *pro se* party shall complete and sign the Assisted Mediation Program declaration form provided by the Clerk's Office.

3. After receipt of the completed declaration, the Court shall issue an order appointing Special Mediation Counsel, appointing a mediator, and setting a date or time frame in which the mediation session should be held. The court may appoint a member of the court's mediation panel, the assigned magistrate judge, or another magistrate judge as the mediator.

4. If the mediation session does not result in settlement, at the conclusion of mediation procedures, the Court shall issue an order relieving the Special Mediation Counsel of further representation duties and termination the attorney-client relationship.

(c) Duties of Special Mediation Counsel. Within five days of the filing of the order of reference, the Special Mediation Counsel shall contact the *pro se* party to help prepare for the mediation session. On the agreed upon or set date, **the Special Mediation Counsel shall attend the mediation session** and provide assistance to the *pro se* party. Thereafter, the Special Mediation Counsel shall help the *pro se* party complete any follow-up to the mediation session, including the processing of a settlement agreement when necessary.

(d) Service to the Bar and Court Provided by Special Mediation Counsel. Special Mediation Counsel performs duties as a *pro bono* service to the Court, litigants, and the bar. Costs Special Mediation Counsel incurs during the course of representation of the *pro se* party, including costs associated with obtaining copies of materials filed prior to appointment and in attending mediation sessions, are recoverable under L.R. 83.3(g).

83.9 Commission to Take Testimony

(a) Except as the law otherwise provides, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the depositions shall comply with the Federal Rules of Civil Procedure. The party seeking the deposition shall furnish the officer to whom

the commission is issued with a copy of the Federal Rules of Civil Procedure pertaining to discovery.

(b) Upon receipt of a deposition, the Clerk, unless otherwise ordered, shall open and file it promptly.

83.10 Student Practice

General Order #13 pertains to the rules regarding student practice in this District. Parties may obtain a copy of General Order #13 from the Clerk's office or on the Court's webpage at "www.nynd.uscourts.gov."

83.11-1 Mediation

(a) Purpose. The purpose of this Rule is to provide a supplementary procedure to the Court's existing alternative dispute resolution procedures. This Rule provides for an earlier resolution of civil disputes resulting in savings of time and cost to litigants and the Court without sacrificing the quality of justice rendered or the right of litigants to a full trial on all issues not resolved through mediation.

(b) Definitions. Mediation is a process by which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement. The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

83.11-2 Designation and Qualifications of Mediators (Amended January 1, 2012)

(a) Designation of Mediators. The judges of this Court may authorize those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw such designation of any mediator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.

(b) List of Mediators. The Alternative Dispute Resolution clerk (ADR clerk) shall maintain a list of court-approved mediators and make that list available to counsel and the public upon request.

(c) Required Qualifications of Mediators.

1. An individual may be designated as a mediator if he or she (1) has practiced law for at least five (5) years; and (2) is a member in good standing of the bar of this Court or of the New York bar and resides within the Northern District of New York; or (3)is a professional mediator who would otherwise qualify as a special master or is a professional whom the Court has determined to be competent to perform the duties of the mediator and has completed appropriate training in the process of mediation as the Court may from time to time determine and direct; and (4) shall attend and complete a mediation training course that the Court sponsors. Upon Court approval as a mediator, every mediator shall take the oath prescribed by 28 U.S.C.§ 453.

2. No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exists, or may in good faith be believed to exist. Additionally, any mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the mediator has a

continuing obligation to disclose any information that may cause a party or the court to believe, in good faith, that such mediator should be disqualified.

(d) Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which the Board of Judges may terminate at any time, as it, in its sole discretion may determine.

(e) Mediator Compensation. Individuals appointed as mediators by the Northern District of New York may be compensated by the parties. If they are not compensated, then they perform their duties as a *pro bono* service to the Court, litigants, and the bar.

83.11-3 Actions Subject to Mediation

(a) The Court may refer any civil action (or any portion thereof) to mediation under this Rule

1. By order of referral; or
2. On the motion of any party; or
3. By consent of the parties

(b) The parties may withdraw from mediation any civil action or claim that the Court refers to mediation pursuant to this Rule by application to the assigned judge at least ten (10) days prior to the scheduled mediation session.

(c) Notwithstanding the provisions of the Rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the mediation program.

83.11-4 Procedures for Referral, Selecting the Mediator, and Scheduling the Mediation Session

(a) The parties shall discuss with the Court the possibility and appropriateness of mediation under this Rule at the initial status/scheduling conference of the case that the Court holds in accordance with the provisions of General Order #25.

(b) In every case in which the Court determines that referral to mediation is appropriate pursuant to L.R. 83.11-3, the Court shall enter an order of reference, which shall define the period of time during which the mediation session shall be conducted. The Court intends that mediation under this Rule shall occur at the earliest practical time in an effort to encourage earlier, less costly resolutions of disputes. Referral to mediation under this Rule shall not delay or stay other proceedings, including but not limited to discovery, unless the Court so orders.

(c) Within fourteen (14) days of the order of reference, parties are to select a mediator of their choice from a list of mediators available from the Court and submit the selection to the ADR clerk in the Clerk's office. If the parties do not select a mediator in a timely manner or if the parties cannot agree upon a mediator, the ADR clerk shall select a mediator for them. The ADR clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date for the mediation within the time prescribed in the order of reference.

(d) Mediation sessions under this Rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the convenience of the

parties and to the cost and time of travel involved.

(e) There shall be no continuance of a mediation session beyond the time set in the referral order except by order of the Court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the parties or the mediator must notify the ADR clerk and select the location of the rescheduled hearing.

(f) The parties shall promptly report any settlement that occurs prior to the scheduled mediation to the mediator and to the ADR clerk.

83.11-5 The Mediation Session

(a) Memorandum for Mediation. At least two days prior to the mediation session, each party shall provide to the mediator and all other such parties a "memorandum for mediation." This memo shall

1. State the name and role of each person expected to attend;
2. Identify each person with full settlement authority;
3. Include a concise summary of the parties' claims or defenses;
4. Discuss liability and damages; and
5. State the relief sought by such party

The memorandum for mediation shall not exceed five pages, and the parties shall not file these documents in the case or otherwise make them part of the court file.

(b) Attendance Required. The attorneys who are expected to try the case for the parties shall appear and shall be accompanied by an individual with authority to settle the lawsuit. Those latter individuals shall be the parties (if the parties are natural persons) or representatives of parties that are not natural persons. These latter individuals may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers or indemnitors who shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any attorney, party, or party's representative. Anyone who wants to be excused from attending the mediation must make such request in writing to the presiding judge at least forty-eight (48) hours in advance of the mediation session.

(c) Good Faith Participation in the Process. Parties and counsel shall participate in good faith, without any time constraints, and put forth their best efforts toward settlement. Typically, the mediator will meet initially with all parties to the dispute and their counsel in a joint session and thereafter separately with each party and their representative. This process permits the mediator and the parties to explore the needs and interests underlying their respective positions, generate and evaluate alternative settlement proposals or potential solutions, and consider interests that may be outside the scope of the stated controversy including matters that the Court may not address. The parties will participate in crafting a resolution of the dispute.

(d) Confidentiality. Mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

1. All written and oral communications made in connection with or during the mediation session are confidential.

2. No communication made in connection with or during any mediation session may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.

3. Privileged and confidential status is afforded all communications made in connection with the mediation session, including matters emanating from parties and counsel as well as mediators' comments, assessments, and recommendations concerning case development, discovery, and motions. Except for communication between the assigned judge and the mediator regarding noncompliance with program procedures (*as set forth in this Rule*), there will be no communications between the Court and the mediator regarding a case that has been designated for mediation. The parties will be asked to sign an agreement of confidentiality at the beginning of the mediation session.

4. Parties, counsel and mediators may respond to inquiries from authorized court staff which are made for the purpose of program evaluation. Such responses will be kept in strict confidence.

5. The mediator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the mediator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

6. Immunity. Mediators, as well as the Mediation Administrator (ADR clerk), shall be immune from claims arising out of acts or omissions incident to service as a court appointee in the mediation program. *See, e.g.*, *Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994).

7. Default. Subject to the mediator's approval, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in accordance with this Rule.

8. Conclusion of the Mediation Session. The mediation shall be concluded

- **a.** By the parties' resolution and settlement of the dispute;
- **b.** By adjournment for future mediation by agreement of the parties and the mediator; or
- **c.** Upon the mediator's declaration of impasse that future efforts to resolve the dispute are no longer worthwhile.

Unless the Court authorizes otherwise, mediation sessions shall be concluded at least fourteen (14) days prior to any final pretrial conference that the Court has scheduled.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the time the Court orders.

83.11-6 Mediation Report; Notice of Settlement or Trial

(a) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the ADR clerk, indicating only whether the case settled, settled in part, or did not settle.

(b) In the event the parties reach an agreement to settle the case, the representatives for each party shall

promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

(c) If the parties reach a partial agreement to narrow, withdraw or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within five (5) days of the mediation. The stipulation shall bind the parties.

(d) If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.12-1 Early Neutral Evaluation

The ENE Process. Early neutral evaluation (ENE) is a process in which parties obtain from an experienced neutral (an "evaluator") a nonbinding, reasoned, oral evaluation of the merits of the case. The first step in the ENE process involves the Court appointing an evaluator who has expertise in the area of law in the case. After the parties exchange essential information and position statements early in the pretrial period (usually within 150 to 200 days after a complaint has been filed), the evaluator convenes an ENE session that typically lasts about two hours. At the ENE meeting, each side briefly presents the factual and legal basis of its position. The evaluator may ask questions of the parties and help them identify the main issues in dispute and the areas of agreement. The evaluator may also help the parties explore options for settlement. If settlement does not occur, the evaluator then offers an opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the evaluator's assistance. The parties may also explore ways to narrow the issues in dispute, exchange information about the case or otherwise prepare efficiently for trial.

The evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case. The ENE process, whether or not it results in settlement, is confidential.

83.12-2 Designation and Qualifications of Evaluators (Amended January 1, 2012)

(a) Designation of Evaluators. The judges of this Court may authorize those persons who are eligible and qualified to serve as evaluators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw such designation of any evaluator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.

(b) List of Evaluators. The ADR clerk shall maintain a list of court-approved evaluators that shall make the list available to counsel and the public upon request.

(c) Required Qualifications of Evaluators.

1. An individual may be designated as an Early Neutral Evaluator if he or she (1) has practiced law for at least fifteen years; and (2) is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or (3) is a professional whom this Court determines to be competent to perform the duties of the evaluator and has completed appropriate training in the process of Early Neutral Evaluation as the Court may from time to time determine and direct. Upon Court approval as an evaluator, every evaluator shall take the oath prescribed by 28 U.S.C. § 453.

2. No person shall serve as an evaluator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist. Additionally, any evaluator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the evaluator has a continuing obligation to disclose any information which may cause a party or the Court to believe in good faith that such evaluator should be disqualified.

(d) Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which the Board of Judges may terminate at any time, as it, in its sole discretion, may determine.

(e) Evaluator Compensation. Individuals appointed as evaluators by the Northern District of New York may be compensated by the parties. If they are not compensated, then they perform their duties as a *pro bono* service to the Court, litigants, and the bar.

83.12-3 Actions Subject to Early Neutral Evaluation

(a) The Court may refer any civil action (or any portion thereof) to ENE under this Rule

1. By order of referral;
2. On the motion of any party; or
3. By consent of the parties

(b) The parties may withdraw any civil action or claim that the Court has referred to the ENE Process pursuant to this Rule by application to the assigned judge at least ten (10) days before the scheduled evaluation session.

(c) Notwithstanding the provisions of the rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the ENE Process.

(d) When a case is designated for ENE, the ADR clerk will provide counsel with copies of the judge's designation order, a listing by division of the available early neutral evaluators, and a copy of the ENE procedure guide.

83.12-4 Administrative Procedures and Requirements

(a) In most cases, the Court will issue the ENE order early enough in the pretrial period to allow the ENE session to be held within 150 to 200 days from the filing of the complaint.

(b) When the ADR clerk receives a copy of a judicial order designating a case for ENE, the ADR clerk will give the parties a date by which they must choose an evaluator from the list provided to counsel. If the parties do not select an evaluator by the designated date, the ADR clerk will assign an evaluator with expertise in the subject matter of the lawsuit and notify counsel.

(c) The evaluator will contact all attorneys and set the date and place of the evaluation session. Whenever possible, the evaluator shall hold the ENE session within 150 to 200 days of the filing of the complaint and within forty-five days of the date that the ADR clerk notifies counsel of the identity of the evaluator.

(d) The ADR clerk and evaluators shall schedule ENE proceedings in a manner that does not interfere in any way with the management of case processing or the actions of the referring judge. No party may avoid or postpone any obligation imposed by the order of reference on any ground related to the ENE process.

83.12-5 Evaluation Statements

(a) No later than ten (10) days prior to the ENE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written evaluation statement not to exceed ten (10) pages *excluding exhibits and attachments*.

Such statements must

1. Identify person(s), in addition to counsel, who will attend the ENE session and who have decision-making authority;

2. Address whether the case involves legal or factual issues the early resolution of which might reduce the scope of the dispute or contribute significantly to settlement negotiations; and

3. Identify the discovery that will contribute most to meaningful settlement negotiations

(b) Parties may also identify persons whose presence at the ENE session might improve significantly the productivity of the session.

(c) Parties shall attach to the evaluation statements, copies of key documents out of which the suit arose (*e.g., contracts*) or materials that might advance the purposes of the ENE session (*e.g., medical reports*).

The parties shall NOT file written evaluation statements with the Court. Evaluation statements are considered confidential between the parties and the evaluator.

83.12-6 Attendance at ENE Sessions

(a) The Court requires parties to attend evaluation sessions. The main purposes of an ENE session are to give litigants the opportunity (1) to present their positions; (2) to hear their opponents' view of the issues in dispute; and (3) to hear a neutral assessment of the strengths of each side's case.

(b) When a party to a case is not a natural person (*e.g., a corporation*), a person *other than the outside counsel* who has authority to enter stipulations and to bind the party in a settlement must attend.

(c) In cases involving insurance carriers, company representatives with settlement authority shall attend.

(d) When a party is a unit of the federal government, an agency representative and counsel from the U.S. Attorney's Office must attend the ENE session.

(e) An attorney for each party who has primary responsibility for handling the trial of the matter must attend the ENE session.

(f) A party or attorney may be excused from attending an ENE session only after petitioning the

referring judge in writing no fewer than ten (10) days before the scheduled ENE session. Such a petition must show that attendance at the ENE session would impose an extraordinary or unjustifiable hardship.

(g) Default. Subject to the evaluator's approval, the evaluation session may proceed in the absence of a party, who, after due notice, fails to attend. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the evaluation session in good faith in accordance with this Rule.

83.12-7 Procedures at ENE Sessions

(a) The evaluator has broad discretion to structure the ENE session. The evaluator will determine the time and place of the session and will structure the session and any follow-up sessions. Rules of Evidence shall not apply and there is no formal examination or cross-examination of witnesses.

(b) The evaluator shall

1. Permit each party, or counsel, to make an oral presentation of its position;

2. Help parties identify areas of agreement and enter stipulations, wherever feasible;

3. Assess the relative strengths and weaknesses of the parties' positions and explain the reasons for the assessments;

4. Help parties explore settlement;

5. Estimate, where possible, the likelihood of liability and the range of damages;

6. Help parties develop an information-sharing or discovery plan to expedite settlement discussions or to position the case for disposition by other means; and

7. Determine what, if any, follow-up measures will contribute to case development or settlement (*e.g., written reports; telephone reports; additional ENE sessions; or other forms of ADR, such as arbitration, mediation, settlement conference, or consent before a Magistrate Judge*).

(c) When an evaluator completes work on a case, the evaluator will, regardless of case outcome, submit an evaluator-assessment form to the ADR clerk.

83.12-8 Confidentiality

Early Neutral Evaluation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during the ENE session. There shall be no stenographic or electronic record, e.g., audio or video, of the ENE process.

(a) All written and oral communications made in connection with or during any ENE sessions are confidential.

(b) No communication made in connection with or during any ENE sessions may be disclosed or used

for any purpose in any pending or future proceeding in this Court.

(c) Privileged and confidential status is afforded all communications made in connection with ENE sessions, including matters emanating from parties and counsel as well as evaluators' comments, assessments, and recommendations concerning case development, discovery and motions. Except for communication between the assigned judge and the evaluator regarding noncompliance with program procedures *as set forth in this Rule*, there will be no communications between the Court and the evaluator regarding a case that has been designated for evaluation. The parties will be asked to sign an agreement of confidentiality at the beginning of the evaluation session.

(d) Parties, counsel, and evaluators may respond to inquiries from authorized court staff which are made for the purposes of program evaluation. Such responses will be kept in strict confidence.

(e) The evaluator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the evaluator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

83.12-9 Role of Evaluators

(a) Evaluators may not compel parties or counsel to conduct or respond to discovery or to file motions.

(b) Evaluators may not determine the issues in a case or impose limits on pretrial activities.

(c) Evaluators, and any parties who encounter a problem during the ENE session and have discussed such problem with the evaluator without obtaining a satisfactory resolution of the matter, shall report to the assigned judge any instances of noncompliance with ENE procedures that, in their view, may disrupt the evaluation process or threaten the integrity of the ENE program.

(d) Immunity. Evaluators, as well as the ADR clerk, shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this Early Neutral Evaluation Program.

83.12-10 Early Neutral Evaluation Report

(a) Immediately upon conclusion of the evaluation session, the evaluator shall file a report with the ADR clerk indicating only whether the case settled, settled in part, or did not settle.

(b) In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

(c) If the parties reach a partial agreement to narrow, withdraw, or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within seven (7) days of the evaluation session. The stipulation shall bind the parties.

(d) If the Early Neutral Evaluation Session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.13 Sealed Matters (Amended January 1, 2012)

(a) Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for the assigned judge's approval. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the proposed order. Once the Court seals a document or case, it shall remain under seal until a subsequent order, upon the Court's own motion (under subsection (b) of this Rule or otherwise) or in response to the motion of a party, is entered directing that the document or case be unsealed.

(b) Pleadings and other papers filed under seal in civil actions shall remain under seal for sixty (60) days following final disposition of the action, i.e., final disposition of the action includes any time allowed by the federal rules to file an appeal in a civil matter, and, if an appeal is filed, sixty (60) days from the date of the filing of the mandate if the action was not remanded for further proceedings. After that time, the Court will unseal all sealed documents and place them in the case record unless, upon motion of a party, the district judge or magistrate judge orders that the pleading or other document remain under seal or be returned to the filing party. If the case is fully electronic, documents that have been unsealed may be uploaded to CM/ECF where they would be available for public viewing.

83.14 Production and Disclosure of Documents and Testimony of Judicial Personnel in Legal Proceedings

(a) The purpose of the rule is to implement the policy of the Judicial Conference of the United States with regard

1. to the production or disclosure of official information or records by the federal judiciary, and

2. the testimony of present or former judicial personnel relating to any official information acquired by any such individual as part of the individual's performance of official duties, or by virtue of that individual's official status, in federal, state, or other legal proceedings. Implementation of this Rule is subject to the regulations that the Judicial Conference of the United States has established and which are incorporated herein. Parties can obtain a copy of such regulations from the Clerk's office.

(b) Requests that this Rule covers include an order, subpoena, or other demand of a court or administrative or other authority, of competent jurisdiction, under color of law, or any other request by whatever method, for the production, disclosure, or release of information or records by the federal judiciary, or for the appearance and testimony of federal judicial personnel as witnesses as to matters arising out of the performance of their official duties, in legal proceedings. This includes requests for voluntary production or testimony in the absence of any legal process.

(c) This Rule does not apply to requests that members of the public make, when properly made through

the procedures that the Court has established for records or documents, such as court files or dockets, routinely made available to members of the public for inspection or copying.

(d) In any request for testimony or production of records, the party shall set forth a written statement explaining the nature of the testimony or records the party seeks, the relevance of that testimony or those records to the legal proceedings, and the reasons why that testimony or those records, or the information contained therein, are not readily available from other sources or by other means. This explanation shall contain sufficient information for the determining officer to decide whether or not federal judicial personnel should be allowed to testify or the records should be produced. Where the request does not contain an explanation sufficient for this purpose, the determining officer may deny the request or may ask the requester to provide additional information. The request for testimony or production of records shall be provided to the federal judicial personnel from whom testimony or production of records is sought at least twenty-one (21) days in advance of the date on which the testimony or production of records is required. Failure to meet this requirement shall provide a sufficient basis for denial of the request.

(e) In the case of a request directed to a district judge or a magistrate judge, or directed to a current or former member of such a judge's personal staff, the determining officer shall be the district judge or the magistrate judge.

(f) Procedures to be followed.

1. In the case of a request directed to an employee or former employee of the Clerk's office, the determining officer shall be the Clerk. The Clerk shall consult with the Chief Judge for determination of the proper response to a request.

2. In the case of a request directed to an employee or former employee of the Probation Office, the determining officer will be the Chief Probation Officer or his or her designee. The determining officer shall consult with the Chief Judge or his or her designee regarding the proper response to a request. The Chief Probation Officer's designee(s) will be the officer to whom the request is directed and the officer's supervisor or manager. The Chief Judge's designee will be the judge who sentenced the offender who made the request or whose records are the subject of the request. Requests for disclosure, other than subpoenas, not otherwise covered by memorandum of understanding, statute, rule of procedure, regulation, case law, or court-approved local policy, will be presented to the sentencing judge, or in that judge's absence, the Chief Judge, for approval. All subpoenas will be presented to the Court.

84.1 Forms

[Reserved]

85.1 Title

[Reserved]

86.1 Effective Date

See L.R. 1.1(b).

SECTION XI.
CRIMINAL PROCEDURE

1.1 Scope of the Rules

These are the Local Rules of Practice for Criminal Cases in the United States District Court for the Northern District of New York. They shall be cited as "**L. R. Cr. P. ____**."

1.2 Electronic Case Filing

All criminal cases filed in this Court may be assigned to the Electronic Case Files System in accordance with the General Order # 22, the provisions of which are incorporated herein by reference, and which the

Court may amend from time to time.

1.3 Personal Privacy Protection

Effective November 1, 2004, the public will be able to view via the internet all non-sealed documents filed in criminal cases. Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings they file 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 document, use only the last four digits of that number.
2. **Names of minor children**. If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers**. If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses**. If a home address must be used, use only the City and State.

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

1. personal identifying number, such as a 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 listed above may

a. file an unredacted version of the document under seal, or

b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The Court will construe all references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The party must file the reference list under seal and may amend as of right.

The Court strongly urges counsel to discuss this issue with all their clients so that they can make an informed decision about the inclusion of certain information. 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. The Court cautions counsel and the parties that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

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.

2.1 THROUGH 4.1

[Reserved]

5.1 Notice of Arrest

(a) Notice of Arrest of Parole, Special Parole, Mandatory Release or Military Parole Violators. As soon as practicable after taking into custody any person charged with a violation of parole, special parole, mandatory release, or military parole, the United States Marshal shall give written notice to the Chief Probation Officer of the date of the arrest and the place of confinement of the alleged violator.

(b) Notice of Arrest of Probation or Supervised Release Violators. As soon as practicable after taking into custody any person charged with a violation of probation or supervised release, the United States Marshal shall give written notice to the Chief Probation Officer, the United States Attorney, and the Magistrate Judge assigned to the case.

(c) Notice of Arrest by Federal Agencies and Others. It shall be the duty of the United States Marshal to require all federal agencies and others who arrest or hold any person as a federal prisoner in this District, and all jailers who incarcerate any such person in any jail or place of confinement in this District, to give the United States Marshal notice of the arrest or incarceration promptly.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the District, the United States Marshal shall give written notice to the Magistrate Judge at the office closest to the place of confinement and to the United States Attorney and the pretrial services officer of the date of arrest and the prisoner's place of confinement.

5.1.1 THROUGH 10.1

[Reserved]

11.1 Pleas

(a) In all cases in which a presentence report is required, the Court will defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B) and its decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) until there has been an opportunity to consider the presentence report, unless the Court states otherwise.

(b) An attorney for a defendant indicating a desire to change a previously entered "not guilty" plea shall give notice to the United States Attorney and the assigned judge as soon as practicable and, if possible, at least twenty-four (24) hours prior to the commencement of the trial.

(c) For any plea agreement that is to be sealed, the United States Attorney shall provide the Court with a proposed sealing order.

12.1 Motions and Other Papers

(a) The moving party must file all motion papers with the Court and serve them upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of

Motion should state the return date that the moving party selected. 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. The opposing party must file opposing papers with the Court and serve them upon the other parties not less than **SEVENTEEN CALENDAR DAYS** prior to the return date of the motion. The moving party may file reply papers only with leave of the Court, upon a showing of necessity. If the Court grants leave, the moving party must file reply papers with the Court and serve them upon the other parties not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless the assigned judge specifically requests that they do so.

In addition, no party shall file or serve a memorandum of law which exceeds twenty-five (25) pages in length, unless the party obtains permission from the Court to do so prior to filing. All memoranda of law exceeding five (5) pages shall contain a table of contents and, wherever possible, parallel citations. A separate memorandum of law is unnecessary when the case law may be concisely cited (i.e., several paragraphs) in the body of the motion.

(b) The Court shall not hear a motion to compel discovery unless the attorney for the moving party files with the Court, simultaneously with the filing of the moving papers, a notice stating that the moving party has conferred and discussed in detail with the opposing party the issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

(d) Adjournment of motions shall be in the Court's discretion. Any party seeking an adjournment from the Court shall first contact the opposing attorney. A party shall make any application for an adjournment of a motion in writing and shall set forth the reason for requesting the adjournment.

(e) If the parties agree that a suppression hearing is necessary and the papers conform to the requirements of L.R. Cr. P. 12.1(a), the Court will set the matter for a hearing. If the government contests whether the Court should conduct a hearing, the defendant must accompany the motion with an affidavit, based upon personal knowledge, setting forth facts which, if proven true, would entitle the defendant to relief.

(f) An affidavit of counsel is not required when filing motions in criminal cases. A certificate of service is required at the conclusion of the motion.

(g) All papers filed in criminal cases shall comply with the guidelines established in L.R. Cr. P. 1.3 regarding personal privacy protection.

13.1 Sealed Matters

The Court may seal cases in their entirety, or only as to certain parties or documents, when the cases are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the Court should seal the

document, party or entire case, together with a proposed order for the assigned judge's approval. The proposed order shall include language in the "ORDERED" paragraph stating which document(s) are to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the proposed sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the proposed order. Once the Court orders a document or a case sealed, it shall remain under seal until the Court enters a subsequent order, upon its own motion or in response to the motion of a party, directing that the Clerk unseal the document or case.

14.1 Discovery

(a) It is the Court's policy to rely on the discovery procedure as set forth in this Rule as the sole means for the exchange of discovery in criminal actions except in extraordinary circumstances. This Rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, while at the same time eliminating the practice of routinely filling perfunctory and duplicative discovery motions.

(b) Fourteen (14) days after arraignment, or on a date that the Court otherwise sets for good cause shown, the government shall make available for inspection and copying to the defendant the following:

1. **Fed. R. Crim. P. 16(a) & Fed. R. Crim. P. 12(d) information.** All discoverable information within the scope of Fed. R. Crim. P 16(a), together with a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.

2. **Brady Material.** All information and material that the government knows may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963).

3. **Federal Rule of Evidence 404(b).** The government shall advise the defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal Rules of Evidence. This requirement shall replace the defendant's duty to demand such notice.

(c) Unless a defendant, in writing, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b) within twenty-one (21) days of arraignment.

(d) No less than fourteen (14) days prior to the start of jury selection, or on a date the Court sets otherwise for good cause shown, the government shall tender to the defendant the following:

1. **Giglio Material.** The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).

2. Testifying Informant's Convictions. A record of prior convictions of any alleged informant who will testify for the government at trial.

(e) The government shall anticipate the need for, and arrange for the transcription of, the grand jury

testimony of all witnesses who will testify in the government's case in chief, if subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500. The Court requests that the government, and where applicable, the defendant, make materials and statements subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500 available to the other party at a time earlier than rule or law requires to avoid undue delay at trial or hearings.

(f) It shall be the duty of counsel for all parties immediately to reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this Rule, and there is a continuing duty upon each attorney to disclose expeditiously. The government shall advise all government agents and officers involved in the action to preserve all rough notes.

(g) No attorney shall file a discovery motion without first conferring with opposing counsel, and the Court will not consider a motion unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. The parties shall not file any discovery motions for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order or a motion for an order modifying discovery. See Fed. R. Crim. P. 16(d). Discovery requests made pursuant to Fed. R. Crim. P. 16 and this Rule require no action on the part of the Court and should not be filed with the Court unless the party making the request desires to preserve the discovery matter for appeal.

15.1 THROUGH 16.1

[Reserved]

17.1 Subpoenas

(a) Production Before Trial. Except on order of a judge, no subpoena for production of documents or objects shall be sought or issued if the subpoena requests production before trial. See Fed. R. Crim. P. 17(c).

(b) Depositions. Except on order of a judge, no subpoena for a deposition shall be sought or issued. See Fed. R. Crim. P. 15; 17(f).

(c) Subpoenas Requested by Attorneys Appointed Under the Criminal Justice Act.

1. The Clerk shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this district. Attorneys shall file with the Clerk a list of those witnesses whom they have subpoenaed. This filing shall constitute certification that the subpoena(s) is necessary to obtain relevant and material testimony and that the witness' attendance is reasonably necessary to the defense of the charge.

2. If an attorney needs to subpoena a witness outside the boundaries of this District, the attorney shall make an *ex parte* application for issuance of a subpoena shall be made to the appropriate court.

3. The defense attorney shall request that the United States Marshal serve the subpoenas under this Rule. The defense attorney shall obtain an order from the Court directing the Marshal to serve subpoenas. The Marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense

attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless the attorney obtains express advance authorization by written order of the Court.

4. As authorized by Fed. R. Crim. P. 17(b), the Court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under this Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government.

17.1.1 Pretrial Conferences

At the request of any party or upon the Court's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding. The agenda at the pretrial conference shall consist of any of the following items, so far as applicable, and such other matters that the judge designates as may tend to promote the fair and expeditious trial of the action or proceeding:

(a) Production of witness statements under the Jenks Act, 18 U.S.C. § 3500 or Fed. R. Crim. P. 26.2;

(b) Production of grand jury testimony of witnesses that the parties intend to call at trial;

(c) Production of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;

(d) Stipulation of facts which may be deemed proved at the trial without further proof by either party and limitation of witnesses;

(e) Court appointment of interpreters under Fed. R. Crim. P. 28;

(f) Dismissal of certain counts and elimination from the case of certain issues; e.g., insanity, alibi, and statute of limitations;

(g) Severance of trial as to any co-defendant or joinder of any related case;

(h) Identification of informers, use of lineup or other identification evidence, use of evidence of prior convictions of defendant or any witness, etc.;

(i) Pretrial exchange of lists of witnesses whom the parties intend to call in person or by deposition to testify at trial, except those whom they may call only for impeachment or rebuttal;

(j) Pretrial exchange of documents, exhibits, summaries, schedules, models, or diagrams that the parties intend to offer or use at trial;

(k) Pretrial resolution of objections to exhibits or testimony that the parties intend to offer at trial;

(l) Preparation of trial briefs on controversial points of law likely to arise at trial;

(m) Scheduling of the trial and of witnesses;

(n) Settlement of jury instructions, voir dire questions, and challenges to the jury; and

(o) Any other matter which may tend to promote a fair and expeditious trial

18.1 THROUGH 19.1

[Reserved]

20.1 Transfer from a District for Plea and Sentence

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a minor offense, the Court shall refer the case immediately to a Magistrate Judge who shall take the plea and impose sentence in accordance with the rules for the trial of minor offenses if, pursuant to 18 U.S.C. § 3401, the defendant consents in writing to this procedure.

21.1 THROUGH 23.1

[Reserved]

23.1 Free Press- Fair Trial Directives

(a) It is the duty of the lawyer or law firm, and of non-lawyer personnel employed by a lawyer's office or subject to a lawyer's supervision, private investigators acting under the supervision of a criminal defense lawyer, and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With regard to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation (including government lawyers and lawyers for targets, subjects, and witnesses in the investigation) shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, and to warn the public of any dangers or otherwise to aid in the investigation if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the administration of justice.

(c) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will interfere with a fair trial; except that the lawyer or the law firm may quote from, or refer without comment to, public records of the Court in the case.

(d) Statements concerning the following subject matters presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this Rule:

1. The prior criminal record (including arrests, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

2. The existence or contents of any confession, admission or statement that the accused has given, or the refusal or failure of the accused to make any statement;

3. The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

4. The identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

5. The possibility of a plea of guilty to the offense charged or a lesser offense;

6. Information the lawyer or law firm knows is likely to be inadmissible at trial and would, if disclosed, create a substantial likelihood of prejudicing an impartial trial: and

7. Any opinion about the accused's guilt or innocence or about the merits of the case or the evidence in the case.

(e) Statements concerning the following subject matters presumptively do not involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this Rule;

1. An announcement, at the time of arrest, of the facts and circumstances of arrest (including time and place of arrest, resistance, pursuit and use of weapons), the identity of the investigating and arresting officer or agency and the length of the investigation;

2. An announcement, at the time of seizure, stating whether any items of physical evidence were seized and, if so, a description of the items seized (but not including any confession, admission or statement);

3. The nature, substance or text of the charge, including a brief description of the offense charges;

4. Quoting, or referring without comment to, public records of the Court in the case;

5. An announcement of the scheduling or result of any state in the judicial process, or an announcement that a matter is no longer under investigation;

6. A request for assistance in obtaining evidence and the disclosure of information necessary to further such a request for assistance; and

7. An announcement, without further comment, that the accused denies the charges, and a brief description of the nature of the defense

(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against said lawyer.

(g) The Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the Court may deem appropriate for inclusion in such order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies the Court must consider are as follows: change of venue, postponing the trial, a searching voir dire, emphatic jury instructions, and sequestration of jurors.

(h) The Court may take disciplinary action against any attorney who violates the terms of this Rule.

24.1 THROUGH 30.1

[Reserved]

30.1 Jury Instructions

The parties shall submit proposed jury instructions, accompanied by citations to relevant authorities, to the Court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment.

31.1

[Reserved]

32.1 Presentence Reports

(a) Order for Presentence Report. The Court will impose sentences without unnecessary delay following the completion of the presentence investigation and report. This Court adopts the use of a uniform presentence order. The uniform presentence order shall contain (1) the date by which the presentence report is to be made available; (2) the deadlines for filing objections, if any, to the presentence report; (3) the deadlines for filing presentence memoranda, recommendations and motions; and (4) a date for sentencing.

(b) Presence of Counsel. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview that a probation officer conducts of the defendant in the course of a presentence investigation. It shall be incumbent upon the defendant's counsel to advise the Probation Office within two (2) days of the date that the presentence report is ordered that counsel wishes to be present at any interview with the defendant.

(c) Disclosure Procedures.

1. The Presentence Report is confidential and should not be disclosed to anyone other than the defendant, the defendant's attorney, the United States Attorney and the Bureau of Prisons without the Court's consent except that, in cases that involve a sex offense as a count of conviction, the Probation Office shall disclose the Presentence Report to the New York State Board of Examiners for Sex Offenders for purposes of its completion of a sex-offender classification level. The disclosure shall adhere to the conditions set forth in the Memorandum of Understanding executed between the Probation Office and the New York State Board of Examiners for Sex Offenders.

2. The Court directs the probation officer not to disclose the probation officer's confidential recommendation to any of the parties, except that the Probation Officer may, at the discretion of the presiding judge, disclose the conditions of supervision to the United States Attorney, the defendant's attorney, and the defendant.

3. The Court admonishes all counsel that they shall adhere to the time limits set forth in the Uniform Presentence Order to allow sufficient time for the Court to read and analyze the material that the Court receives.

4. The Court, on motion of either party or of the probation office, may modify the time requirements set forth in the Uniform Presentence Order subject to the provisions of 18 U.S.C. § 3552(d).

(d) Responsibilities of the Clerk and Probation Office.

1. Within three (3) days after sentencing, the Clerk shall serve a copy of the judgment upon the parties and the United States Marshal.

2. Copies of the Presentence Report that the Clerk provides to the Court of Appeals for the Second Circuit shall include the Court's finding on unresolved objections.

33.1 THROUGH 43.1

[Reserved]

44.1 Right to and Assignment of Counsel

If a defendant, appearing without an attorney in a criminal proceeding, desires to obtain an attorney, the Court shall grant a reasonable continuance for arraignment, not to exceed one week at any one time, for that purpose. If the defendant requests that the Court appoint an attorney or fails for an unreasonable time to appear with an attorney, the assigned District Judge or Magistrate Judge shall, subject to the applicable financial eligibility requirements, appoint an attorney unless the defendant, electing to proceed without an attorney, waives the right to an attorney in a manner that the District Judge or the Magistrate Judge approves. In that case, the District Judge or Magistrate Judge shall, nevertheless, designate an attorney to advise and assist the defendant to the extent the defendant might thereafter desire. The Court shall appoint an attorney in accordance with the Court's Plan adopted pursuant to the Criminal Justice Act of 1964 and on file with the Clerk.

44.2 Appearance and Withdrawal of Counsel

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. An attorney who has appeared shall thereafter withdraw only upon notice to the defendant and all parties to the case and an order of the Court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless the Court determines otherwise.

(b) Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing a notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until the court having jurisdiction of the case grants leave to withdraw or until that court has appointed another attorney as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

45.1 Excludable Time under the Speedy Trial Act

The Court shall not grant a continuance or extension under the Speedy Trial Act unless a party submits a motion or stipulation that recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the party shall accompany the motion or stipulation with an affidavit of facts upon which the Court can base a finding that the requested relief is warranted. The attorneys shall also submit a proposed order setting forth the time to be excluded and the basis for its exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order shall have a space for the Court to enter a new trial date in accordance with the excludable time period. The Court shall disallow all requests for a continuance or extension that do not comply with this Rule.

46.1 Pretrial Services and Release on Bail

Pursuant to the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152 -3155, the Court authorizes the United States Probation Office and/or Pretrial Services Office of the Northern District of New York to perform all services as the Act provides.

(a) Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the Court as soon as practicable. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider all reports that Pretrial Service Officers, the government and defense counsel submit.

(b) Pretrial service reports shall be made available to the attorney for the accused and the attorney for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein.

(c) Pretrial Service Officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

47.1 Motions

See L.R. Cr. P. 12.1.

48.1 THROUGH 56.1

[Reserved]

57.1 Criminal Designation Forms

The United States Attorney shall file a criminal designation form with each new indictment or information. On this sheet the United States Attorney shall indicate the name and address of the defendant and the magistrate judge case number, if any. The criminal designation form also shall contain any further information that the Court or the Clerk deems pertinent. The United States Attorney can obtain a copy of the designation form from the Court's webpage at "www.nynd.uscourts.gov."

57.2 Release of Bond (Amended January 1, 2012)

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. The defendant's attorney shall prepare a motion and proposed order for the release of the bond and submit the motion to the Court for the assigned judge's signature.

Absent direction from a Judicial Officer of the Northern District indicating otherwise, Clerk's Office personnel shall not accept cash, personal checks or credit cards as collateral for bail. However, bail may be posted with other forms of legal tender, including, but not limited to, money orders and bank-certified checks.

Unless otherwise specified by court order, or upon such proof as the Court shall require, all bond refunds pursuant to this Rule shall be disbursed to the surety named on the bond, or if there is no surety named, the defendant.

58.1 Magistrate Judges

(a) Powers and Duties.

1. A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c), and any additional duties that are consistent with the Constitution and laws of the United States. A part-time Magistrate Judge is authorized to exercise all of those duties, except those permitted under 28 U.S.C. § 636(c), and any additional duties consistent with the Constitution and laws of the United States.

2. A Magistrate Judge is also authorized to

(A) Conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;

(B) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);

(D) Conduct *voir dire* and select petit juries for the Court;

(E) Conduct necessary proceedings leading to the potential revocation of probation;

(F) Order the exoneration or forfeiture of bonds;

(G) Exercise general supervision of the Court's criminal calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Court;

(H) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;

(I) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions;

(J) Determine motions pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of the defendant and, if necessary, order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4241(b); and

(K) Conduct hearings to determine the mental competency of the defendant pursuant to 18 U.S.C. § 4247(d) and issue a report and recommendation to the assigned District Judge pursuant to 28 U.S.C. § 636(b).

3. A party seeking review of a Magistrate Judge's release or detention order pursuant to 18 U.S.C. § 3145 shall file the following documents in support of its motion:

(A) Notice of motion;

(B) Memorandum of law;

(C) Attorney affidavit;

(D) Written transcript of all proceedings relating to the defendant's release or detention.

Upon the filing of any such motion, the opposing party shall file its papers in opposition to said motion within fourteen (14) days of the filing date of said motion.

No reply is permitted.

The Court shall promptly determine the motion based upon the submitted papers without oral argument.

(b) Felonies. On the return of an indictment or the filing of an information, a District Judge shall assign felony matters to a Magistrate Judge for the purpose of arraignment, for the determination and fixing the conditions of pretrial release, and for the assignment of an attorney to the extent authorized by law.

(c) Misdemeanors.

1. A Magistrate Judge is authorized to conduct trials of persons accused of misdemeanors committed within this District in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such persons who are convicted or plead guilty or *nolo contendere*, and sentence such persons.

2. Any person charged with a misdemeanor may, however, elect to be tried before a District Judge for the district in which the offense was committed. The Magistrate Judge shall carefully advise defendants of their right to trial, judgment, and sentencing by a District Judge and their right to a trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the Magistrate Judge. That consent specifically must waive trial, judgment, and sentencing by a District Judge.

3. Procedures on appeal to a District Judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g). Unless otherwise ordered,

(A) The appellant's brief shall be filed within fourteen (14) days following the filing of the notice of appeal;

(B) The appellee's brief shall be filed within fourteen (14) days following submission of the appellant's brief;

(C) No oral argument shall be permitted.

58.2 Forfeiture of Collateral in Lieu of Appearance

In accordance with Fed. R. Crim. P. 58(d)(1), the U.S. District Court for the Northern District of New York has adopted the schedule for violations as set forth in General Order #16. Parties may obtain copies of General Order #4 from the Clerk's office or on the Court's webpage at "www.nynd.uscourts.gov."

59.1 THROUGH 60.1

[Reserved]

SECTION XII.
LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CASES

Rule A Scope of the Rules

(a)1. Authority

A majority of the judges have promulgated this Court's local admiralty rules as authorized by and subject to the limitations of the Fed. R. Civ. P. 83.

(a)2. Scope

The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims ("Supplemental Rule or Rules"). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

(a)3. Citation

The local admiralty rules may be cited by the letter "LAR" and the lowercase letters and numbers in the parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

(a)4. Definitions

As used in the local admiralty rules, "court" refers to United States District Court for the Northern District of New York; "judge" refers to a United States District Judge or to a United States Magistrate Judge; "clerk" refers to the Clerk of the Court and includes deputy clerks of the Court; "marshal" refers to the United States Marshal of this district and includes deputy marshals; "keeper" refers to any person or entity that the Marshal appoints to take physical custody of and maintain the vessel or other property under arrest or attachment; and "substitute custodian" refers to the individual or entity who, upon motion and order of the Court, assumes the duties of the marshal or keeper with respect to the vessel or other property arrested or attached.

Rule B Maritime Attachment and Garnishment

(b)1. Found within the District

A defendant is not found within the District unless the defendant can be personally served therein by delivering process (i) in the case of an individual, to the individual personally, or by leaving a copy thereof at the individual's dwelling, house or usual place of abode with some person of suitable age and discretion; (ii) in the case of a corporation, trust or association, to an officer, trustee, managing or general agent thereof; (iii) in the case of a partnership, to a general partner thereof; and (iv) in the case of a limited liability company, to a manager thereof.

(b)2. Affidavit that defendant is not found within the District

The affidavit that Supplemental Rule B(1) requires to accompany the complaint shall specify with particularity the efforts made by and on behalf of the plaintiff to find and serve the defendant within the District.

(b)3. Notice to Defendant

In default applications, the affidavit or other proof that Supplemental Rule B(2) requires from the plaintiff or the garnishee shall specify with particularity the effort made to give notice of the action to the defendant.

(b)4. Service by Marshal

If property to be attached is a vessel or tangible property aboard a vessel, the process shall be delivered to the Marshal for service.

Rule C Actions in Rem – Special Provisions

(c)1. Intangible Property

The summons to show cause why property should not be deposited in the Court issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than fourteen (14) days after service why the intangible property should not be delivered to the Court to abide the judgment. The Court for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the Court's control. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the Court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to the Court.

(c)2. Publication of Notice of Action and Arrest

The notice that Supplemental Rule C(4) requires shall be published at least once in a newspaper named

in LAR (g)2, and the plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

(a) The court, title, and number of the action;

(b) The date of the arrest;

(c) The identity of the property arrested;

(d) The name, address, and telephone number of the attorney or the plaintiff;

(e) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the Clerk and serve it on the plaintiff's attorney within fourteen (14) days after publication;

(f) A statement that an answer to the complaint must be filed and served within thirty (30) calendar days after publication and that, otherwise, default may be entered and condemnation ordered;

(g) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons asserting maritime liens or other interests shall be filed within the time fixed by the Court; and

(h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

(c)3. Default In Action In Rem

(a) Notice Required. A party seeking a default judgment in an action *in rem* must satisfy the Court that due notice of the action and arrest of property has been given,

(1) by publication as required in LAR(c)(2); and

(2) by service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and

(3) by mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c)4. Entry of Default and Default Judgment

After the time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

(a) Notice has been given as LAR (c)(3)(a) requires; and

(b) Notice has been attempted as LAR (c)(3)(b) requires, where appropriate; and

(c) The time for claimants of ownership to or possession of the property to answer has expired; and

(d) No answer has been filed or no one has appeared to defend on behalf of the property. The plaintiff may move for judgment under Fed. R. Civ. P. Rule 55(b) at any time after default has been entered.

Rule D Possessory, Petitory, and Partition Actions

(d)1. Return Date.

In a possessory action under Supplemental Rule D, a judge may order that the statement of interest and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set a date for expedited hearing of the action.

Rule E Actions In Rem and Quasi In Rem – General Provisions

(e)1. Itemized Demand for Judgment

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

(e)2. Salvage Action Complaints

In an action for a salvage award, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved or other basis for an award and the dollar amount of the award sought.

(e)3. Verification of Pleadings

A party or authorized officer of a corporate party shall verify every complaint in Supplemental Rule B, C, and D actions upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746. If no party or authorized corporate officer is present within the District, an agent, attorney in fact, or attorney of record shall verify the complaint and shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why the party or an authorized representative of the party is not making the verification; and state that the affiant or declarant is authorized so to verify. If a party or authorized representative of the party did not make the verification, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

(e)4. Review by Judicial Officer

Unless the Court requires otherwise, the review of complaints and papers that the Supplemental Rules B(1) and C(3) require does not require the affiant or declarant party or attorney to be present. The application for review shall include a form of order to the Clerk which, upon the assigned judge's signature, will direct the arrest, attachment or garnishment that the applicant seeks. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

(e)5. Instructions to the Marshal

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

(e)6. Property in Possession of United States Officer

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property unless the Court orders otherwise.

(e)7. Security for Costs

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2) (b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

(e)8. Adversary Hearing

The Court shall conduct the adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) within seven (7) days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(e)9. Appraisal

The Clerk will enter an order for appraisal of property so that security may be given or altered at the request of any interested party. If the parties do not agree in writing upon an appraiser, a Judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The moving party shall pay the appraiser's fee in the first instance, but this fee is taxable as an administrative cost of the action.

(e)10. Security Deposit for Seizure of Vessels

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall make a minimum advance deposit with the United States Marshal's Service of $5,000.00, or other such amount as determined appropriate by the United States Marshal. The deposit will be held by the Marshal to cover the Marshal's expenses, including, but not limited to, dockage keepers, maintenance and insurance. The Marshal is not required to execute process until the deposit is made. The Marshal may also require the party to arrange, in advance of the seizure, for a private security company to maintain security over the vessel or property after attachment. Parties requesting the attachment of a vessel or property are advised to contact the local Marshal's office for further information regarding this requirement. The party shall advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to advance such additional costs that the Marshal requires may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within seven (7) days of the initial request for additional sums.

(e)11. Intervenors' Claims

(a) Presentation of Claims. When a vessel or property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present that claim by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint, unless the Court orders otherwise. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as LAR (e)(10) requires.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim against the property bears to the sum of all the claims asserted against the property. If any plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

(e)12. Custody of Property

(a) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for the adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal and must show the name of the proposed substitute custodian, the location of the vessel during the period of such custody, and that adequate insurance coverage is in place.

(b) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and

substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and in maintaining the Court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. A party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The initial party obtaining the arrest and holding of the property shall pay the premiums charged for the liability insurance in the first instance, but these premiums are taxable as administrative costs of the action while the vessel, cargo, or other property is in the custody of the Court.

(c) (1) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless the Court orders otherwise. No movement of or repairs to the vessel shall take place without order of the Court. The applicant for an order under this Rule shall give notice to the Marshal and to all parties of record.

(2) Insurance. Upon any application under (c)(1) above, the moving party shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party and shall not be taxable as an administrative cost of the action, unless the Court orders otherwise. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. The moving party shall give notice of the motion to the Marshal and all parties of record. The Court will require that the successor to the Marshal will maintain adequate insurances on the property before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid and claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

(e)13. Sale of Property

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published as provided in LAR (g)(1) at least three (3) times during the period of time consisting of thirty (30) days prior to the day of the sale.

(b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale; the person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is $1,000 or less. If the bid exceeds $1,000, the bidder shall immediately pay a deposit of at least $1,000 or 10% of the bid, whichever is greater, and shall pay the balance within seven (7) days after the day on which the bid was accepted. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until seven (7) days after the sale is approved. Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured

by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(d) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default. In such a case, the Court may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs that the Marshal incurs because of the default, the balance being retained in the registry of the Court awaiting further order of the Court.

(e) Report of sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, and any other pertinent information.

(f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within seven (7) days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed. Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(g) Confirmation of Sale. Unless an objection to the sale is filed, or any upset bid permitted by and conforming to the terms provided in the order of sale is filed, within seven (7) days of the sale, the sale shall be deemed confirmed without further order of the Court. The Clerk shall prepare and deliver to the Marshal a certificate of confirmation, and the Marshal shall transfer title to the confirmed purchaser only upon further order of the Court.

(h) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums that the successful bidder deposited will be returned to the bidder forthwith. The sum that the objector deposited will be applied to pay the fees and expenses that the Marshal incurred in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed from the proceeds of a subsequent sale for any expense of keeping the property.

(2) Objection Overruled. If the objection is overruled, the sum that the objector deposited will be applied to pay the expenses of keeping the property from the day the objection was filed until the day the sale is confirmed. Any balance remaining will be returned to the objector forthwith.

Rule F Limitation of Liability

(f)1. Security for Costs

The amount of security for costs under Supplemental Rule F(1) shall be $1,000, and it may be combined

with the security for value and interest, unless otherwise ordered.

(f)2. Order of Proof at Trial

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials.

Rule G Special Rules

(g)1. Newspapers for Publishing Notices

Unless the Court orders otherwise, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspapers of general circulation in accordance with the L.R. 77.5.

(g)2. Use of State Procedures

When the plaintiff invokes a state procedure in order to attach or garnish as the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims permit, the process for attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

SECTION XIII.
LOCAL RULES OF PROCEDURE FOR PATENT CASES

Rule 1 Introduction

1.1 Preamble

In recognition of the complexities and uniqueness of issues associated with management of patent infringement litigation, and to ensure just, efficient, and economical handling of such cases, the United States District Court for the Northern District of New York hereby enacts the following rules of practice for patent cases before the Court. These rules are calculated to provide a standard structure for addressing the issues which typically arise in such cases, and to foster predictability and facilitate planning for the litigants and the Court.

1.2 Scope and Construction

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a patent in a complaint, counterclaim, cross-claim or third-party claim, or which seek a declaratory judgment that a patent is not infringed, is invalid or is unenforceable. The local civil rules of this Court shall also apply to such actions, except to the extent that they are inconsistent with these local patent rules.

1.3 Modifications of These Rules

The Court may, in its discretion, modify any of the obligations or deadlines set forth in these proposed rules based upon the circumstances of any particular case including, without limitation, the degree of complexity of the case as shown by the number of patents, products, or parties involved. Such modifications will in most instances be made at the initial Rule 16 scheduling conference, but may be made at other times by the Court either *sua sponte* or at the request of a party, upon a showing of good cause. A party may at any time request modification of the requirements of these rules by letter request to the assigned magistrate judge on notice to opposing counsel provided, however, that before requesting such modification the parties must meet and confer for the purpose of attempting to reach an agreement, if possible, with respect to any proposed modification.

1.4 Citation

These rules shall be cited as "L. Pat. R. ___."

1.5 Effective Date

These local patent rules will take effect on January 1, 2012, and will govern all patent cases filed in, or transferred or removed to, this Court on or after that date. For any actions pending prior to that effective date, the Court will confer with the parties and apply these rules as the Court deems practicable.

Rule 2 General Provisions

2.1 Initial Scheduling Conference

(a) Consistent with the local rules of this Court and General Order No. 25, upon the filing in or removal or transfer to this Court of an action which falls within the scope of these rules, the Court will schedule a Rule 16 conference to be conducted by the magistrate judge assigned to the case. That conference may be held in-person or by telephone, depending upon the practices of the particular magistrate judge assigned.

(b) At least twenty-one (21) days prior to the scheduled Rule 16 conference the parties must confer, in person or by telephone, pursuant to Fed. R. Civ. P. 26(f) to formulate a discovery plan and to address the following topics:

(1) Proposed modification of the obligations or deadlines set forth in these local patent rules to ensure that they are suitable for the circumstances of the particular case;

(2) The scope and timing of any claim construction discovery, including disclosure of and discovery from any expert witness permitted by the Court;

(3) The format of the claim construction hearing, including whether the Court will hear live testimony, the order of presentation, and the estimated length of the hearing;

(4) How the parties intend to educate the Court with respect to the patent(s) at issue; and

(5) The need for alteration of the standard confidentiality order to supercede that which would otherwise be entered by the court pursuant to Local Patent Rule 2.2.

(c) Not later than fourteen (14) days prior to the scheduled Rule 16 conference the parties shall jointly submit a Civil Case Management Plan, in the form of that approved by the Court pursuant to General Order No. 25, completed to address the various issues raised in that form, based upon the parties' discussions during their Rule 26(f) meeting.

(d) One of the topics to be addressed at the Rule 16 conference is the timing and scope of mandatory disclosures required pursuant to Fed. R. Civ. P. 26(a)(1). Among the disclosures which ordinarily must be made pursuant to Rule 26(a)(1) in cases covered by these rules is information and documentation regarding proof of patent ownership or standing to assert patent infringement claims.

(e) Following the initial conference conducted by the court pursuant to Fed. R. Civ. P. 16, the assigned magistrate judge may, in his or her discretion, schedule and conduct such further status conferences, either telephonically or in person, as deemed appropriate. It is contemplated that such a conference may be conducted within sixty (60) to ninety (90) days following the initial Rule 16 conference, and that during that

conference the parties will be asked to discuss what efforts, if any, they have made to attempt to settle the case and how the court may assist their settlement efforts such as, for example, by scheduling a settlement conference or ordering mediation, either paid or through the court's Alternative Dispute Resolution program.

2.2 Confidentiality

(a) Not later than fourteen (14) days prior to the initial Rule 16 Conference and after conferring regarding the matter the parties may, if desired, submit either a stipulated protective order pursuant to Fed. R. Civ. P. 26(c) or, if agreement cannot be reached, may each submit a counter proposed protective order for the Court's consideration, highlighting for the Court any areas of disagreement. In the event that the parties do not request the entry of a different Rule 26(c) confidentiality order at or prior to the Rule 16 scheduling conference, or if otherwise deemed appropriate, the Court will enter a protective order pursuant to Fed. R. Civ. P. 26(c) in the form of that provided on the Court's webpage at "www.nynd.uscourts.gov."

2.3 Relationship to Federal Rules of Civil Procedure

(a) Except as provided in this paragraph or as otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (*e.g.*, interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these local patent rules, absent other legitimate objection. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in these local patent rules:

(1) Requests seeking to elicit a party's claim construction position;

(2) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, design, variety of plant or other instrumentality;

(3) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(4) Requests seeking to elicit from an accused infringer the identification of any advice of counsel received, and related documents.

(b) Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to be disclosed to an opposing party under these local patent rules or as set by the Court, unless there exists another legitimate ground for objection.

2.4 Exchange of Expert Materials

(a) Disclosures of claim construction expert materials and depositions of such experts are governed by Local Patent Rule 4.1 *et seq.*, unless otherwise ordered by the Court.

(b) Unless otherwise ordered by the Court, the disclosure of expert materials related to issues other than claim construction will not be required until claim construction issues have been decided, and shall be governed by the provisions of Local Patent Rule 5.1 *et seq*.

Rule 3 Patent Disclosures

3.1 Disclosure of Asserted Claims and Infringement Contentions

Not later than fourteen (14) days after the initial Rule 16 Conference, a party claiming patent infringement shall serve on all parties a Disclosure of Asserted Claims and Infringement Contentions. Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, design, variety of plant or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, design, variety of plant and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) **(i)** Except for design or variety of plant patent claim(s), a chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112 ¶ 6, the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(ii) For each design patent or variety of plant patent claim that is alleged, a chart displaying each view of the design or variety of plant patent drawings and a view of the accused design or variety of plant from every available angle for all embodiments.

(d) For each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as any alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(e) Except for design or variety of plant patent claims(s), whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality

practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

(h) If a party claiming patent infringement alleges willful infringement, all known bases for such allegation. A party claiming willful infringement shall be permitted to supplement its response to this subsection at or prior to the close of fact discovery, if necessary, to add facts developed through pretrial discovery.

3.2 Document Production Accompanying Infringement Disclosure

With the Disclosure of Asserted Claims and Infringement Contentions, the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying:

(a) Documents (*e.g.,* contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Local Patent Rule 3.1(f), whichever is earlier;

(c) A copy of the file history for each patent in suit (or so much thereof as is in the possession of the patentee);

(d) All documents evidencing ownership and maintenance of the patent rights by the party asserting patent infringement; and

(e) If a party identifies instrumentalities pursuant to Local Patent Rule 3.1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party shall separately identify by production number which documents correspond to each category.

3.3 Non-Infringement, Invalidity and Unenforceability

Not later than thirty (30) days after service upon it of the Disclosure of Asserted Claims and Infringement Contentions, each party opposing a claim of patent infringement on the basis of non-infringement, patent invalidity or patent unenforceability shall serve on all parties its Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions which shall contain the following information:

(a) Non-Infringement contentions shall contain a chart, responsive to the chart required under Local Patent Rule 3.1(c)(i), that identifies as to each limitation in each asserted claim disclosed in the

patentee's claim chart, to the extent then known by the party alleging infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions, and a chart, responsive to the chart required under Local Patent Rule 3.1(c)(ii), that displays a view from each angle of the accused design or variety of plant and of all embodiments and stating whether the accused design or variety of plant is substantially similar to the claimed design or variety of plant and, if not, the reasons for such a denial.

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

(1) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious, including in the case of a design or variety of plant patent a view from every available angle and all available embodiments. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication and, where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, the location where the item was sold or publicly used, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(2) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness, the reason why one of ordinary skill in the art would have combined the references at the time of the invention in issue in the case, and identification of what the accused considers to be the primary reference.

(3) A chart identifying where specifically in each alleged item of prior art each limitation or view of each asserted claim is found, and for utility patents, including for each limitation that such party contends is governed by 35 U.S.C. § 112 ¶ 6, the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112 ¶ 2 or enablement or written description under 35 U.S.C. § 112 ¶ 1 of any of the asserted claims.

(c) Subject to amendment in the event of later discovered facts, unenforceability contentions shall contain, in detail, each ground then known upon which the accused infringer will assert that any patent in suit is unenforceable. If the accused infringer's claim of unenforceability is based upon inequitable conduct, the accused infringer shall describe each omission or misrepresentation made to the Patent and Trademark Office ("PTO") and shall state all grounds upon which the accused

infringer will argue at trial that those prosecuting the patent intended to deceive the PTO, including the identification of any prior art references not disclosed to the PTO during the prosecution of the patent in suit, any facts suggesting that one or more persons substantially involved in the prosecution of the patent in suit were aware of such prior art reference prior to the issuance of the patent in suit, and any facts relevant to the element of intent to deceive.

3.4 Document Production Accompanying Non-Infringement, Invalidity and Unenforceability Disclosure

With the Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions, the party opposing a claim of patent infringement shall produce or make available for inspection and copying, if not previously disclosed pursuant to Fed. R. Civ. P. 26(a)(1), the following:

(a) Source code, specifications, schematics, flow charts, artwork, drawings, photographs, video or other images from every available view or other documentation sufficient to show the operation, composition, design, variety of plant or structure of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its Local Patent Rule 3.1(c) chart; and

(b) A copy or sample of the prior art identified pursuant to Local Patent Rule 3.3(b) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation shall be produced. In addition, a complete translation of the document relied upon, if in the possession of the producing party, shall also be produced.

(c) The producing party shall separately identify by production number which documents correspond to each category.

3.5 Disclosure Requirement in Patent Cases for Declaratory Judgment of Non-Infringement, Invalidity and Unenforceability

(a) Non-Infringement, Invalidity and Unenforceability Contentions If no Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Local Patent Rules 3.1 and 3.2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than fourteen (14) days after the defendant serves its answer or fourteen (14) days after the Initial Rule 16 Conference, whichever is later, the party seeking a declaratory judgment of non-infringement, invalidity or unenforceability shall serve upon each opposing party its Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions that conforms to Local Patent Rule 3.3, and produce or make available for inspection and copying the documents described in Local Patent Rule 3.4.

(b) Inapplicability of Rule. Local Patent Rule 3.5 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, invalid or unenforceable is filed in response to a complaint for infringement of the same patent, in which case the provisions of Local Patent Rule 3.3 shall govern.

3.6 Amendment to Contentions

(a) Amendment of the Disclosure of Asserted Claims and Infringement Contentions or the Disclosure

of Non-Infringement, Invalidity and Unenforceability Contentions may be made by order of the Court, upon a timely application and showing of good cause, following the procedures required under Local Rule 7.1(b)(2) for applying to an assigned magistrate judge for non-dispositive relief. The application shall disclose whether the adverse party consents or objects. Non-exhaustive examples of circumstances that may, absent undue prejudice to the adverse party, support a finding of good cause include:

(1) a claim construction by the Court different from that proposed by the party seeking amendment;

(2) recent discovery of material prior art not previously discovered despite an earlier diligent search; and

(3) recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contention.

(b) The duty to supplement discovery responses under Fed. R. Civ. P. 26(e) does not excuse the need to obtain leave of Court to amend contentions.

Rule 4 Claim Construction Proceedings

4.1 Inapplicability To Design and Variety of Plant Patents

Unless otherwise requested by a party and determined by the Court to be warranted, the provisions of this Local Patent Rule 4 shall not apply to design or variety of plant patents.

4.2 Exchange of Proposed Terms for Construction

(a) Not later than sixty (60) days after the initial Rule 16 Conference each party shall serve on each other party a list of claim terms which that party contends should be construed by the Court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112 ¶ 6.

(b) The parties shall thereafter meet and confer for the purpose of limiting the terms in dispute by narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

4.3 Exchange of Preliminary Claim Constructions and Extrinsic Evidence

(a) Not later than twenty-one (21) days after the exchange of lists pursuant to Local Patent Rule 4.2, the parties shall simultaneously exchange preliminary proposed constructions of each term identified by any party for claim construction. Each such Preliminary Claim Construction shall also, for each term which any party contends is governed by 35 U.S.C. § 112 ¶ 6, identify the structure(s), act(s), or material(s) corresponding to that term's function.

(b) At the same time the parties exchange their respective Preliminary Claim Constructions, each party shall also identify all references from the specification or prosecution history that support its preliminary proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of all witnesses including expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not

previously produced. With respect to all witnesses including experts, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4.4 Joint Claim Construction and Prehearing Statement

(a) Not later than twenty-one (21) days after the exchange of Preliminary Claim Constructions under Local Patent Rule 4.3(a), the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(1) The construction of those terms on which the parties agree;

(2) Each party's proposed construction of each disputed term, together with an identification of all references from the intrinsic evidence that support that construction, and an identification of any extrinsic evidence known to the party upon which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of all witnesses including experts;

(3) A prioritization of the disputed terms, based upon their significance to the resolution of the case and the court's construction of those terms and whether they will be case or claim dispositive or substantially conducive to promoting settlement, together with a statement of the significance of each term to the claims and defenses in the case;

(4) The anticipated length of time necessary for the Claim Construction Hearing; and

(5) Whether any party proposes to call any live witnesses to testify at the Claim Construction Hearing, the identity of each such witness and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.

(b) No more than ten (10) patent terms or phrases may be presented to the Court for construction, absent prior leave of Court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon which ten (10) terms are to be presented to the Court for construction, then five (5) shall be allocated to all plaintiffs, jointly, and five (5) to all defendants.

4.5 Completion of Claim Construction Discovery

Not later than thirty (30) days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any fact and expert witnesses, identified in the Preliminary Claim Construction Statement (Local Patent Rule 4.3) or Joint Claim Construction and Prehearing Statement (Local Patent Rule 4.4).

4.6 Claim Construction Submissions

(a) Not later than forty-five (45) days after serving and filing the Joint Claim Construction and Prehearing Statement, the parties shall contemporaneously file and serve their opening *Markman* briefs and any evidence supporting claim construction, including experts' certifications or declarations ("Opening *Markman* Submissions").

(b) Not later than thirty (30) days after the filing of the Opening *Markman* Submissions, the parties shall contemporaneously file and serve Responding *Markman* Submissions and any evidence supporting claim construction, including any responding experts' certifications or declarations.

(c) The parties' *Markman* opening and responsive briefs are subject to the page limits set forth in Local Rule 7.1(a)(1), absent Court permission to exceed those limitations, granted in advance of filing.

4.7 Claim Construction Hearing

Within fourteen (14) days following submission of the briefs and evidence specified in Local Patent Rule 4.6, counsel shall confer and propose to the Court a schedule for a Claim Construction Hearing, to the extent the parties believe and the Court deems it necessary to conduct such a hearing for construction of the claims at issue.

Rule 5 Post Claim Construction Procedures

5.1 For Cases Not Involving Separate Claim Construction Proceedings

For the purpose of this Local Patent Rule 5, in the case where there is no Claim Construction Proceeding, then any date herein which is otherwise measured from entry of the Court's claim construction order or from the Court's decision on claim construction shall be measured instead from 30 days from the date of service of materials under Local Patent Rule 3, namely the Accused Non-Infringement, Invalidity and Unenforceability Contentions.

5.2 Advice of Counsel

(a) Unless otherwise ordered by the Court, not later than thirty (30) days after entry of the Court's claim construction order, or upon such other date as is set by the Court, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall:

(1) Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client privilege and work product protection have been waived;

(2) Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client privilege and work product protection have been waived; and

(3) Serve a privilege log identifying any documents other than those identified in subpart (1) above, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice which the party is withholding on the grounds of attorney-client privilege or work product

protection.

(b) After advice of counsel information becomes discoverable pursuant to Local Patent Rule 5.2(a) a party claiming willful infringement may take the depositions of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.

(c) A party who does not comply with the requirements of this Local Patent Rule 5.2 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or an order of the Court.

5.3 Opening Expert Reports

A party expecting to offer expert testimony on issues other than claim construction on which it bears the burden of proof, including damages, shall disclose and serve upon all parties the name, address, and *curriculum vitae* of any expert witness expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B), within sixty (60) days following the issuance of the Court's decision on claim construction.

5.4 Responsive Expert Reports

A party expected to offer responsive expert testimony on issues on which the opposing party bears the burden of proof shall disclose and serve upon all parties the name, address, and *curriculum vitae,* of any expert witnesses expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B) within thirty (30) days following disclosure and service of the opposing party's expert report in accordance with Local Patent Rule 5.3.

5.5 Completion of Discovery

All discovery in the case, including expert depositions, must be completed within one hundred twenty (120) days following the issuance of the Court's decision on claim construction.

5.6 Deadline For Filing Dispositive Motions

All dispositive motions in the case shall be filed within thirty (30) days after the scheduled date for the end of all discovery.

APPENDIX A

TIMELINE	
Event	Deadline
Rule 26(f) Meeting	21 prior to Rule 16 conference
Filing of Civil Case Management Plan	14 days prior to Rule 16 conference
Rule 16 Conference	120 Days after filing/removal of the action
Patentee Infringement Contentions	14 days after Rule 16 conference
Accused Non-Infringement/ Invalidity/Unenforceability Contentions	30 days after service of infringement contentions
Exchange of Claim Terms for Construction	60 days after Rule 16 conference
Exchange of Proposed Constructions	21 days after exchange of lists of proposed terms for construction
Joint Claim Construction Statement	21 days after exchange of proposed construction
Completion of Claim Construction Discovery	30 days after filing of joint statement
Opening Markman Briefs	45 days after filing of joint statement
Opposing Markman Briefs	30 days after opening Markman submissions
Advice of Counsel Disclosure	30 days after claim construction decision
Initial Expert Reports (non-claim construction)	60 days after claim construction decision
Responsive Expert Reports	30 days after service of initial expert disclosure
Completion of All Discovery	120 days after claim construction
Filing of Motions	30 days after close of fact discovery
TIMELINE SUMMARY	
Filing of Suit to Full Markman Briefing	297 Days
Claim Construction Decision to Motion Deadline	150 Days