

Proposed amendments to the NDNY Local Rules

Procedural Background

The proposed amendments detailed below were submitted or derived from comments received from the public, practitioners, judges and court staff during the May-July 2019 suggestion period. If adopted by the Board of Judges, these proposed changes will become effective January 1, 2020.

Summary Table of Requested Changes to the NDNY Local Rules

Rule Number	Topic	Description of Requested Change
Rule 5.1(b)	Service and Filing of Papers	Omits the requirement that proposed orders or judgments be submitted in duplicate which is an outdated procedure.
Rule 5.1(d)	Service and Filing of Papers	Omits Section (d) in its entirety which requires submitting duplicate copies of motion papers which is an outdated procedure.
Rule 5.6	Service of the Writ in Exclusion and Deportation Cases	Omits the entire rule that requires service of a writ to the commanding officer of a ship or airplane which is an outdated procedure.
Rule 7.1(j)	Adjournments of Dispositive Motions	Requires all parties to make requests for extensions of any deadlines at least 3 business days before the expiration of the deadline, and omits the ability to file a reply to a letter request within 3 days.
Rule 30.1	Depositions	Omits this entire rule as it is outdated.
Rule 41.3	Actions Dismissed by Stipulation	Requires stipulations of dismissal be filed within 30 days of settlement or the Court may issue an order dismissing the case by reason of settlement.
Rule 58.1(b)	Entry of Judgment	Omits section (b) which requires the attorney to submit a list of parties to be served which is an outdated procedure.
Rule 72.1(b)	Authority of Magistrate Judges	Clarifies the language to reflect this section refers to an Appeal of a Magistrate Judge decision.

Rule 72.3(d)	Assignment of Duties to Magistrate Judges – Social Security Appeal Cases	Updates case assignment procedure for social security cases consistent with General Order 18.
Rule 72.3(e)(5)	Federal Debt Collection Act Cases	Corrects time frame to file objections to a report-recommendation to 14 days.
Rule 76.3(b)	Bankruptcy Record of Transmittal	Omits this entire rule as it is outdated and these motions are held by Bankruptcy Court.
Rule 79.1	Custody of Exhibits and Transcripts	Omits sections (b) through (d) as they are outdated. Exhibits and transcripts are not filed with the Court.
Rule 83.3(a)	Pro Bono Service	Modifies to be consistent with the Court's current pro bono service requirements.
Rule 83.3(b)(3)	Application for Appointment of Attorney	Clarifies that the Court may <i>sua sponte</i> appoint pro bono counsel for a pro se litigant.
Rule 83.3(i)	Grounds for Relief from Appointment	Clarifies that inexperienced attorneys must attend CLE in order to accept Pro Bono assignment in an unfamiliar area of law.
Criminal Rule 13.1	Sealed Matters	Updates the criminal rule for sealing documents to be consistent with Civil Local Rule 83.13 and <i>Lugosch vs. Pyramid Co. of Onondaga County</i> , 435 F.3d 110, 119-27 (2d Cir. 2006).
Criminal Rule 17.1(c)(1)	Subpoenas Requested by Attorneys Appointed under the CJA	Omits the requirement that CJA attorneys file a list of witnesses whom they have subpoenaed.
Criminal Rule 44.2(a)	Appearance and Withdrawal of Counsel	Clarifies requirements to withdraw as counsel, retained or appointed.

The full text version of the proposed changes are set forth below. If a proposed amendment alters an existing rule, the proposed alterations appear in **highlighted text** below the current language of the rule or are **redlined** within the text.

If you wish to submit a comment on the proposed amendments to the Local Rules of Practice, you may do so via email at LocalRules2020@nynd.uscourts.gov or via regular U.S. mail to

Daniel R. McAllister
Chief Deputy
James M. Hanley Federal Building
P.O. Box 7367
100 S. Clinton St.
Syracuse, NY 13261-7367

Comments must be received no later than the close of business on **Monday, October 14, 2019** to receive consideration. If the proposed amendments are adopted by the Northern District of New York Board of Judges, the Rule changes will become effective **January 1, 2020**.

Proposed Change to Civil Local Rule 5.1(b)

Current Text:

5.1 Service and Filing of Papers

(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).

Proposed Text:

(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 pursuant to paragraph 8.2 of General Order 22. ~~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).~~

Proposed Change to Civil Local Rule 5.1(d)

Current Text:

5.1 Service and Filing of Papers

(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.

Proposed Text:

Omit the entire section (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.~~

Proposed Change to Civil Local Rule 5.6(a) & (b)

Current Text:

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.

Proposed Text:

Omit the entire Rule 5.6.

~~——(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.~~

Proposed Change to Civil Local Rule 7.1(j)

Current Text:

7.1(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.

Proposed Text:

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. **All requests for extensions of any deadlines must be made at least three business days prior to the expiration of the deadline.** ~~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.

Proposed Change to Civil Local Rule 30.1

Current Text:

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.

Proposed Text:

Omit the entire Rule 30.1.

~~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.~~

Proposed Change to Civil Local Rule 41.3

Current Text:

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.

Proposed Text:

Within 30 days after notifying the Court or Clerk that they have settled an action, the parties shall file a stipulation of dismissal ~~shall be~~ signed by each attorney and/or pro se litigant appearing in the action. Any ~~action~~ such stipulation which is submitted for dismissal ~~by stipulation of~~ by 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. If a stipulation of dismissal is not timely filed, the Judge may enter an order dismissing the case by reason of settlement pursuant to L.R. 68.2.

Proposed Change to Civil Local Rule 58.1(b)

Current Text:

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.

Proposed Text:

(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.~~

Proposed Change to Civil Local Rule 72.1(b)

Current Text:

72.1(b) Authority of Magistrate Judges

(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.

(which are also known as appeals from)

Proposed Text:

(b) **Appeal from a Magistrate Judge Decision.** Any party may file **an appeal from** ~~objections to~~ a Magistrate Judge's ~~decision~~ ~~determination~~ of a non-dispositive matter **to the District Judge** by **electronically** filing with the Clerk and serving upon all parties their objections **to the decision**. 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:

No further changes.

Proposed Change to Civil Local Rule 72.3(d)

Current Text:

72.3(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.

Proposed Text:

~~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.~~

Upon the filing of the complaint, the Clerk shall randomly assign Social Security appeal cases in rotation directly to a Magistrate Judge pursuant to General Order 18. The Clerk shall promptly notify plaintiff's counsel or pro se plaintiff of plaintiff's right to consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). Plaintiff has 21 days from receipt of the clerk's notice to file a consent or declination to consent to the jurisdiction of the Magistrate Judge. If plaintiff timely consents, and if the United States does not timely withdraw consent, the case shall be deemed assigned to the Magistrate Judge without the necessity of an order of referral. In the event that the plaintiff does not timely consent, or if the United States timely withdraws its consent, the Clerk shall reassign the case to a U.S. District Judge consistent with General Order 12.2. Such reassigned cases shall be referred to the same Magistrate Judge to whom the case was originally assigned for all pretrial, non-dispositive matters and for issuance of a report and recommendation.

Proposed Change to Civil Local Rule 72.3(e)(5)

Current Text:

72.3(e) Federal Debt Collection Act Cases.

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.

Proposed Text:

5. The parties shall file any written objections to the report-recommendation within **fourteen (14)** ~~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.

Proposed Change to Civil Local Rule 76.3

Current Text:

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.

Proposed Text:

Omit this entire Rule as 11 USC §110(i) was repealed.

~~(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.~~

Proposed Change to Civil Local Rule 79.1

Current Text:

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, shall remain in the custody of the party producing them, who shall permit any party to 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.

Proposed Text:

(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 **for appeal purposes**.

~~(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, shall remain in the custody of the party producing them, who shall permit any party to 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.~~

Proposed Change to Civil Local Rule 83.3(a)

Current Text:

83.3(a) Pro Bono Service

(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 all attorneys admitted to practice within the Northern District of New York. The Court expects attorneys 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.

Proposed Text:

(a) **Pro Bono Appointment.** ~~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~~ All attorneys admitted to practice within the Northern District of New York ~~are required to accept no more than one pro bono assignment per year on a rotating basis.~~ ~~The Court expects attorneys 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. Any request to be excused from accepting a pro bono case assignment must be directed to the Chief Judge. Lack of experience in a specific area of law is not an acceptable reason to be excused. The Court expects attorneys admitted to practice in the NDNY to participate in periodic CLE training that the Court offers. ~~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.~~

~~3. 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.

4. The attorney will be contacted via email by the Pro Bono Administrator giving the attorney ten (10) business days to review the potential case assignment for any conflict. Failure to respond within 10 business days will result in an order appointing the attorney as pro bono counsel to be filed, and a notice of appearance by the attorney will be due.

~~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.~~

Proposed Change to Civil Local Rule 83.3(b)(3)

Current Text:

83.3(b) Application for Appointment of Attorney

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.

Proposed Text:

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, **or the Court may, in its discretion *sua sponte* appoint pro bono counsel.**

Proposed Change to Civil Local Rule 83.3(i)

Current Text:

83.3(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.

Proposed Text:

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, **after the attorney has completed a Court CLE in that area of law;**
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.

Proposed Change to Criminal Local Rule 13.1

Current Text:

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.

Proposed Text:

~~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.~~

(a) This Local Rule shall not apply to actions or matters for which sealing is required by statute (e.g., 18 U.S.C. § 3509(d), 26 U.S.C. § 6103 or Fed. R. Cr. P. 6(e)), to personal identifiers that are required to be redacted under Local Rule 8.1, or to other filings governed by Court policy. Nor shall this Local Rule apply to sealing criminal case

documents of any kind before a charging document (e.g., a complaint, indictment or information) has been filed publicly; the United States Attorney's Office may continue to follow existing procedures for sealing criminal case documents of all kinds before a charging document has been filed publicly. Rather, this Local Rule shall apply only to requests to seal documents made by either the government or defense counsel after the public filing of a charging document.

(b) A party seeking to have a document, a portion of a document, a party or an entire case sealed bears the burden of filing an application setting forth the reason(s) that the referenced material should be sealed under the governing legal standard. See *Lugosch v. Pyramid Co. of Onondaga County*, 435 F.3d 110, 119-27 (2d Cir. 2006). The application shall be filed publicly. The party shall attach to the application or file separately a redacted version of any document that is to contain the sealed material (unless the party seeks to seal the entire document). When the party seeks to seal an entire document, the party shall attach or file that document with a blank page marked appropriately (e.g., as "Sealed Affidavit" or "Sealed Exhibit Number ____") for each requested sealed document. The application shall also attach a proposed order (which shall not be filed under seal unless the Court deems doing so to be appropriate) containing specific findings justifying the sealing under the governing legal standard for the assigned judge's approval, and including an "ORDERED" paragraph stating the referenced material to be sealed. All material sought to be sealed shall be submitted to the Court, for its in camera consideration, as an attachment (in .pdf format) to an email sent to the assigned judge's email address listed in Section 8.2 of General Order 22, and shall be served on all counsel for the affected parties. In the rare case that counsel believe that compelling interests (qualifying as the countervailing factors or higher values discussed in *Lugosch*) warrant an application to seal that is not filed publicly, and/or is filed *ex parte*, counsel shall submit a written letter request to the assigned judge's email address listed in Section 8.2 of General Order 22, explaining why counsel believe that the procedures set forth in this rule cannot be followed.

(c) Upon the assigned judge's approval of the sealing order, the sealing order shall be filed on the public docket (unless the Court deems sealing all or a portion of it to be appropriate), and the redacted or sealed document shall be filed as directed by the Court. A document, a portion of a document, a party or an entire case may be sealed when the case is initiated, or at various stages of the proceeding. The Court may on its own motion enter an order directing that a document, a portion of a document, a party or an entire case be sealed.

(d) Once the Court seals a document, a portion of a document, a party or an entire case, the material shall remain under seal for the duration of the sealing order or until a subsequent order is entered directing that the sealed material be unsealed. A party or third-party seeking unsealing must do so by motion on notice.

(e) Should an application to seal be denied, the documents sought to be sealed will be treated as withdrawn and will not be considered by the Court. The documents will be returned to the party advancing the request. The requesting party shall retain all submitted documents for a period of not less than sixty days after all dates for appellate review have expired.

Proposed Change to Criminal Local Rule 17.1(c)(1)

Current Text:

17.1 Subpoenas Requested by Attorneys Appointed under the CJA

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.

Proposed Text:

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.~~

Proposed Change to Criminal Local Rule 44.2(a)

Current Text:

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. That written appearance shall certify that the attorney has either completed six credit hours in federal criminal defense continuing education within the past two years or, if not, that the attorney will complete the required continuing education within 30 days of filing the notice of appearance. 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.

Proposed Text:

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. That written appearance shall certify that the attorney has either completed six credit hours in federal criminal defense continuing education within the past two years or, if not, that the attorney will complete the required continuing education within 30 days of filing the notice of appearance. 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. **If the Defendant whose attorney seeks to withdraw has consented to substitution of new counsel, the attorney who seeks to withdraw must file a consent to change attorney that bears his signature, as well as the signatures of the attorney who is to be substituted as counsel and the Defendant 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 Defendant and file an affidavit of service.**

No further changes.