

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, 2019.

Summary Table of Requested Changes to the NDNY Local Rules

Rule Number	Topic	Description of Requested Change
Rule 5.8	Recording of Proceedings	Prohibits the recording of a court proceeding without notification and approval of presiding Judicial Officer.
Rule 7.1(a)(3)	Statement of Material Facts	Clarifies statement of material facts shall be contained in short and concise statements.
Rule 10.1C(2)	Zip Codes	Requires parties include their zip codes as part of their address.
Rule 76.2	Length of Memorandum in Bankruptcy Appeals	Proposed rule limits memorandum of law in Bankruptcy appeals to 25 pages.
Rule 77.7	Official Station of the Clerk	Modified to include Albany or Syracuse.
Rule 83.1	Admission to the Bar	Modifies procedures in accordance with Nextgen protocols.
Crim Rule 13.1	Sealed Matters.	Modifies to be consistent with Civil Rule 83.12 regarding sealed case procedures.

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 LocalRules2018@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 **Friday, October 12, 2018** 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, 2019**.

Proposed Change to Local Rule 5.8

Current Text:

No current text, new rule.

Proposed Text:

5.8 Recording of Proceedings

Recording of any court proceeding, regardless of the medium, is prohibited without prior notification and approval from the presiding judicial officer.

Proposed Change to Local Rule 7.1(a)(3)

Current Text:

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 Court shall deem admitted any properly supported facts set forth in the Statement of Material Facts that the opposing party does not specifically controvert. 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, followed by a specific citation to the record where the fact is established.

Proposed Text:

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, **a short and concise statement of** 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 **a short and concise statement**, in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. 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. The non-movant's response may also set forth **a short and concise statement of** any additional material facts that the non-movant contends are in dispute in separately numbered paragraphs, followed by a specific citation to the record where the fact is established

Proposed Change to Local Rule 10.1(C)(2)

Current Text:

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.

Proposed Text:

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, **including zip code**; 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.

Proposed Change to Local Rule 76.2

Current Text:

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. 8010(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. 8010(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. The time to file briefs shall be in accordance with the District Court’s Bankruptcy Appeal Scheduling Order.

Proposed Text:

(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. 8010(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. 8010(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. The time to file briefs shall be in accordance with the District Court’s Bankruptcy Appeal Scheduling Order.

(d) No party shall file a memorandum of law that exceeds twenty-five (25) pages in length, unless that party obtains leave of the judge hearing the appeal prior to filing.

Proposed Change to Local Rule 77.7

Current Text:

77.7 Official Station of the Clerk

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.

Proposed Text:

77.7 Official Station of the Clerk

The Clerk's official station shall be **Albany or** 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.

Proposed Change to Local Rule 83.1

83.1 Admission to the Bar

(a) **Permanent Admission.** A member in good standing of the courts 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. **Admission packet containing all the required forms is are available from the Clerk's office and on the Court's webpage at "www.nynd.uscourts.gov."**

Each applicant for permanent admission must **electronically** file, in PACER ~~at least fourteen (14) days prior to the scheduled hearing (unless, for good cause shown, the Court shortens the time)~~, documentation required 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 Declaration 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, **setting forth the full name of the attorney, indicating the appropriate method of admission sought and a fully executed Oath on Admission.** ~~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 **Court issued** 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.** **The admission fee is payable upon acceptance of a complete application received by the Court from an attorney's individual PACER account.** This fee includes the fee set by the Judicial Conference of \$181.00

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.

There shall also be a **\$50.00** biennial registration fee unless the Board of Judges directs otherwise. 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.

FAILURE TO REMIT THIS FEE WILL RESULT IN THE AUTOMATIC REMOVAL OF THE NON-PAYING ATTORNEY FROM THE COURT'S BAR ROLL. UNLESS EXCUSED BY THE CHIEF JUDGE, TO GAIN READMITTANCE TO THE NORTHERN DISTRICT OF NEW YORK BAR, NON-PAYING ATTORNEYS MUST SATISFY ALL OF THE ADMISSION REQUIREMENTS SET FORTH IN LOCAL RULE 83.1(A)

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~~ **declaration** is not required. All other requirements of [subdivision \(a\)](#) apply.

(d) **Pro Hac Vice Admission.** A member in good standing of the highest court 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), (2), (3), and (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 submit a Pro Hac Vice request in PACER for filing access to the Court. ~~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)~~ (4).

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 to the Bar Record.** Every attorney must update the information contained in their bar record ~~their e-mail address with the Court, telephone or fax number through CM/ECF~~ within 14 days of a change. Attorneys shall notify the Court via an update request within their PACER account. Detailed instructions are available on the Court's website, www.nynd.uscourts.gov. ~~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/efilingregistration/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 nonpublic personal identifiers described in L.R. 8.1.

Proposed Change to Local Criminal 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, part 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 the party, directing that the Clerk unseal the document or case.

Proposed Text:

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 provisions of Local Rule 13.1 shall not apply to personal identifiers that are required to be redacted under Local Rule 8.1.) The application shall be filed on ECF. The party should also 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. The proposed order shall include an "ORDERED" paragraph stating the referenced material to be sealed. All material sought to be sealed in a pending criminal case 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.