

Amendments to the NDNY Local Rules Effective January 1, 2022

The proposed amendments detailed below were submitted or derived from comments received from the public, practitioners, judges and court staff during the February-April 2021 suggestion period. The changes were approved by the Board of Judges on _____, 2021 subject to the review and approval of the Second Circuit Council. On _____, 2021, the Second Circuit Judicial Council approved these changes. In addition, several of the Rules were modified to reflect citation, grammatical and/or administrative changes which do not materially alter the current rule. These amendments are effective January 1, 2022 and supersede and/or supplement the specific sections set forth within this handout.

Summary Table of Requested Changes to the NDNY Local Rules

Rule Number	Topic	Description of Requested Change
5.1(b)	Orders	Paragraph 77.2(b) was relocated to Local Rule 5.1(b)
5.1.2	Prepayment of Fees	Modified to reflect that all civil cases filed will be opened, regardless of payment of filing fee or IFP application, but will be reviewed for an Order Administratively closing the case.
5.1.4(b)	Civil Actions Filed <i>In Forma Pauperis</i>	Modified to reflect that after a filing fee or IFP has been filed after a case was Administratively closed, the Clerk will reopen the same case, and if an IFP was filed, the Clerk will refer to the judicial officer for review.
41.2(a)	Dismissal of Actions	Removed language with regard to dismissal calendar and hearing.
67.1 and 67.2	Deposits/ Withdrawals in Court	General Order 56 was incorporated into Local Rules 67.1 and 67.2 regarding deposits and withdrawals of funds into the Court's interest-bearing account.
72.2(d)	Duties of Magistrate Judges	Removed Paragraph (d)(3) because this Act was repealed.
77.2	Orders	Modified to remove orders the Clerk of Court may issue.
77.2(b)	Orders	Paragraph 77.2(b) was relocated to Local Rule 5.1(b)
83.1(a)(5)	Admission to Bar	Updated to reflect that attorneys removed from the NDNY Bar will not require a sponsor affidavit when

		submitting attorney admission paperwork for readmittance for failure to pay the biennial fee.
83.3(b)(7)(G)	Complaints alleging Misconduct in this Court	Paragraph (G) was added to reciprocate an Appellate Division Rule allowing the sharing of information regarding attorney misconduct with a NYS Court.
Criminal 5.1	Notice of Arrest	Paragraph (b) was updated to reflect the USMS to advise Probation of date of arrest and place of confinement.
Criminal 12.1(e)	Motions and Other Papers	Modified to reflect that regardless if the parties agree to a suppression hearing, it is at the discretion of the Court to determine if a suppression hearing is necessary.
Criminal 14.1	Discovery	Modified to reflect recent case law requiring disclosure of <i>Brady</i> and <i>Giglio</i> material.
Criminal 17.1	Subpoenas	Modified to reflect that attorneys may request subpoena signed by judicial officer or Clerk; and paragraph (d) was added with regard to Grand Jury subpoenas which is language from General Order 11.
Criminal 59.1(a)(2)(C)	Magistrate Judges Powers and Duties	Incorporated language from General Order 9 regarding oversight and administration of each seated grand jury.

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.

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 pursuant to paragraph 8.2 of General Order 22.

Proposed Text:

5.1 Service and Filing of Papers

Paragraphs 2 and 3 below relocated from Local Rule 77.2(b)

(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.

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.

Proposed Change to Civil Local Rule 5.1.2

Current Text:

5.1.2 Prepayment of Fees (formerly L.R. 5.2)

(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. 5.1.4 govern in forma pauperis proceedings.

Proposed Text:

5.1.2 Prepayment of Fees (formerly L.R. 5.2)

(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. 5.1.4](#) govern in forma pauperis proceedings. Failure to pay the full filing fee or include a signed Application to Proceed *In Forma Pauperis* will result in the Clerk opening the case and referring the case to the assigned judicial officer for an order administratively closing the case.

Proposed Change to Civil Local Rule 5.1.4(b)

Current Text:

5.1.4 Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis* (formerly L.R. 5.4)

(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. 3.1](#). 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\(e\)](#), 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.

Proposed Text:

5.1.4 Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis* (formerly L.R. 5.4)

(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. 3.1](#). 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\(e\)](#), 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”) and administratively close the case.

(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.~~

(iii) After a case has been administratively closed, upon receipt of a signed, fully completed and properly certified *in forma pauperis* application and a signed authorization form, or the full filing fee has been paid, the Clerk shall reopen the case. If the action is not subject to *sua sponte* dismissal, the judicial officer shall review the *in forma pauperis* application, if applicable.

(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.

Proposed Change to Civil Local Rule 41.2

Current Text:

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 may 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.

Proposed Text:

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 **may** 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.

Proposed Change to Civil Local Rules 67.1 and 67.2

Current Text:

67.1 Deposits in Court

(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. See also [General Order 56](#).

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. See [28 U.S.C. § 2042](#).

Proposed Text:

The changes made to this rule incorporate language from General Order 56. These changes will abrogate General Order 56.

67.1 Deposits in Court

(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 in the case or proceeding. The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court. 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 depositories institutions that the Treasury has designated to accept such deposit on its behalf via cashier's check or certified check. ~~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.~~ (moved up to 2nd sentence)

(b) **Order Directing the Investment of Funds.** Where, by order of the Court, ~~The Clerk of the Court shall place the~~ funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interesting bearing instrument using the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under [28 U.S.C. §2045](#). 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. Interpleader funds deposited under [28 U.S.C. §1335](#) meet the IRS definition of a "Disputed Ownership Fund" (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.
3. The Director of the Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director's designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

- ~~2.~~ **4.** 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.~~ The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.
- ~~3.~~ **5.** An account for each case will be established in CRIS Liquidity Fund 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 after the CRIS fee has been applied. Quarterly Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to the litigants and/or their counsel.
- 6.** For each interpleader case, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest application for each court participating in the CRIS and made available to litigants and/or their counsel. On appointment of an administrator authorized to incur expenses on behalf of the DOF in a case, the case DOF funds should be transferred to another investment account as directed by court order.

(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 and Taxes.

1. The custodian is authorized and directed to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. ~~, for maintaining accounts in CRIS, the registry fee.~~ According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases. ~~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. See also General Order 56.~~
2. The custodian is authorized and directed by this Order to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution for earnings is made to court cases. The custodian is further authorized and directed by this Order to withhold and pay federal taxes due on behalf of the DOF.
3. Deposits to the CRIS DOF will not be transferred from any existing CRIS Funds. Only new deposits pursuant to 28 U.S.C. §1335 from the effective date of this order will be placed in the CRIS DOF.

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

(a) 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 shall file a motion in compliance with Local Rule 7.1, with a proposed order. The proposed Order for Disbursement of the funds must contain the following information:

1. The principal sum initially deposited and the date in which it was deposited.
2. The amount(s) of principal to be disbursed;

3. The percentage of accrued interest payable with each principal amount (less the Registry fee)
4. To whom exactly each disbursement check should be made payable; and
5. Full mailing instructions for each disbursement check, including complete street address and zip code.

(b) A social security or Tax ID number shall be provided via a completed Internal Revenue Service Form W-9 [or W-8BEN (foreign)] for interest accrued (if more than \$10) with the motion papers seeking withdrawal of the funds. See [28 U.S.C. § 2042](#).

(c) Disbursements from the investment accounts will be made by check from U.S. Treasury as the Clerk's Office allows; or by electronic fund transfer (EFT). Individual Registry disbursements totaling \$500,000 or more must be issued via EFT.

Proposed Change to Civil Local Rule 72.2(d)

Current Text:

72.2 Duties of Magistrate Judges

- (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\(d\)](#), [46 U.S.C. §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.

Proposed Text:

72.2 Duties of Magistrate Judges

- (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\(d\)](#), [46 U.S.C. §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.

Proposed Change to Civil Local Rule 77.2

Current Text:

77.2 Orders (Amended January 1, 2020)

(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](#); and
2. Orders restoring an action to the court docket after the filing of a demand for trial de novo pursuant to [L.R. 83.5](#); (Mandatory Mediation Plan).

(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.

(c) Orders may be issued as text-only entries on the docket without an attached, signed document. Such orders are official and binding. The Clerk's Office will send a paper copy of the text-only order to any non-ECF parties in the case. See [General Order 22](#), section 8.1.

Proposed Text:

77.2 Orders (Amended January 1, 2020)

~~(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; and~~
- ~~2. Orders restoring an action to the court docket after the filing of a demand for trial de novo pursuant to L.R. 83.5; (Mandatory Mediation Plan).~~

Relocated to Local Rule 5.1(b)

~~(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.~~

~~(c)~~ Orders may be issued as text-only entries on the docket without an attached, signed document. Such orders are official and binding. The Clerk’s Office will send a paper copy of the text-only order to any non-ECF parties in the case. See [General Order 22](#), section 8.1.

Proposed Change to Civil Local Rule 83.1(a)(5)

Current Text:

83.1 Admission to the Bar (amended January 1, 2021)

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 **\$238.00**. 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 \$188.00 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. The Member must also certify at the time of payment of the biennial fee that he/she has not been convicted of a felony or misdemeanor, or been the subject of any disciplinary action by another Federal, State or Local Court within the last two years.

FAILURE TO REMIT THE BIENNIAL 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.

Proposed Text:

83.1 Admission to the Bar (amended January 1, 2021)

- 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 **\$238.00**. 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 \$188.00 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. The Member must also certify at the time of payment of the biennial fee that he/she has not been convicted of a felony or misdemeanor, or been the subject of any disciplinary action by another Federal, State or Local Court within the last two years.

FAILURE TO REMIT THE BIENNIAL 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), WITH THE EXCEPTION OF A SPONSOR AFFIDAVIT WHICH IS NOT REQUIRED FOR READMITTANCE FOR FAILURE TO PAY THE BIENNIEL FEE.

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.

Proposed addition to Civil Local Rule 83.3(b)(7)(G)

83.3(b)(7)(G) Complaints Alleging Misconduct in this Court

- (G) A duly constituted disciplinary authority of a New York State Court may request expedited disclosure of records or documents that are confidential for use in an investigation or proceeding pending before the disciplinary authority. The request shall be made in writing and submitted to the Chief Judge. The request should, to the extent practicable, identify the nature of the pending investigation or proceeding and the specific records or documents sought. The request may also seek deferral of notice of the request for so long as the matter is in the investigative before the disciplinary authority. Upon receipt of the request, the Chief Judge may take any appropriate action and may refer the request to one or more judges to investigate. Confidential records and documents disclosed to the disciplinary authority in response to the request shall not be used for any purpose other than the investigation or proceeding pending before the disciplinary authority.

Proposed Change to Criminal Local Rule 5.1

Current Text:

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.

Proposed Text:

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 **of the date of the arrest and the place of confinement of the alleged violator.**

(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.

Proposed Change to Criminal Local Rule 12.1(e)

Current Text:

12.1 Motions and Other Papers

(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.

Proposed Text:

12.1 Motions and Other Papers

(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 make a determination as to whether a hearing is necessary, and** 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.

Proposed Change to Criminal Local Rule 14.1

Current Text:

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.

Proposed Text:

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). **The Government shall disclose such information to the defense promptly after its existence becomes known to the Government. The foregoing obligation is a continuing one.**
- ~~3.~~ 4. **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.

In the event the Government believes that a disclosure under this Order would compromise witness safety, victim rights, national security, a sensitive law-enforcement technique, or any other substantial government interest, it may apply to the Court for a modification of its obligations, which may include in camera review or withholding or subjecting to a protective order all or part of the information otherwise subject to disclosure. The Government has an affirmative obligation to seek all information subject to disclosure under this Order from all current or former federal, state, and local prosecutors, law enforcement officers, and other officers who have participated in the prosecution, or investigation that led to the prosecution, of the offense or offenses with which the defendant is charged.

(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.

Proposed Change to Criminal Local Rule 17.1

Current Text:

17.1 Subpoenas (Amended January 1, 2020)

(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.
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. See also [28 U.S.C. § 1825](#).

Proposed Text:

17.1 Subpoenas (Amended January 1, 2020)

(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.
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. See also [28 U.S.C. § 1825](#).

(d) Grand Jury Subpoenas: The Clerk may issue to the U.S. Attorney a blank Grand Jury Subpoena, signed and sealed for use in their Grand Jury Tracking System ("GJTS"). Use of the blank, signed and sealed subpoena form shall be limited to the issuance of Grand Jury Subpoenas only by the U.S. Attorney.

Proposed Change to Criminal Local Rule 59.1(a)(2)(C)

Current Text:

59.1 Magistrate Judges (formerly Criminal L.R. 58.1)

(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\(f\)](#);

Remainder of this Local Rule remains the same.

Proposed Text:

59.1 Magistrate Judges (formerly Criminal L.R. 58.1)

(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\(f\)](#).
Oversight and administration for each seated grand jury will be assigned to the Magistrate Judge that impaneled them.

Remainder of this Local Rule remains the same.