Amendments to the NDNY Local Rules
Effective January 1, 2021

The amendments detailed below were submitted or derived from comments received from the public, practitioners, judges and court staff during the May-July 2020 suggestion period. The changes were approved by the Board of Judges on _____, 2020 subject to the review and approval of the Second Circuit Council. On _____, 2020, 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, 2021 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
3.5	Non-Incarcerated Pro Se Litigant	General Order 49 has been incorporated into L.R. 3.5, and G.O. #49 will be abrogated.
3.6	Incarcerated Pro Se Litigant	General Order 46 has been incorporated into L.R. 3.6, and G.O. #46 will be abrogated.
4.1(f)	Service of Process	Allows for reasonable expenses, including attorneys' fees for bringing a motion, where a defendant fails to return a signed waiver of service.
7.1	Motion Practice	Local Rule 7.1 has been dissected, and various subsections have been renumbered and relocated to correspond with the appropriate Federal Rule. No oral argument will be held on any motions, without Court approval. The calculation of response/reply deadlines to motions has been revised.
54.1	Taxation of Costs	Revisions made to paragraph (a) to correlate to the Court's Guideline for Bill of Costs procedure and updates made to the deadlines to file objections to Bill of Costs/response to objections.
54.4	Motion for Attorneys' Fees under 42 U.S.C. 406(b)	This local rule was added to extend the time frame to file a motion for attorneys' fees under 42 U.S.C. §406(b) to 60 days.
64.1	Seizure of Property	This Local Rule was updated to provide guidance to attorneys with regard to clerk's office procedure for

		seizure of property, including applications under the Fair Debt Collection Act.
72.5	Habeas Corpus Petitions Involving the Death Penalty	Civil Local Rule 72.5 has been relocated to its own Section XIII, Rule 1.2, for Habeas Corpus petitions involving the death penalty. The addition of Rule 1.1(f) includes the requirement of the Court to issue or deny a certificate of appealability in decisions on Habeas Corpus petitions.
83.1	Admission to the Bar	This rule was updated to require attorneys seeking admission to the NDNY as well as when paying the biennial fee to affirm that he/she has not been convicted of a crime, or if so, to explain; as well as the requirement to notify the Court within 14 days of a conviction of misdemeanor or felony.
83.4	Discipline of Attorneys	This Local Rule was revised to incorporate General Order 57 which shall be abrogated, including but not limited to, reporting requirements of a conviction of a misdemeanor or felony; as well as a procedure for filing a motion to vacate a disciplinary order; and a procedure for applying for reinstatement 1 year after the disciplinary order was issued.
Criminal L.R. 12.1	Motions and Other Papers	. No oral argument will be held on any motions, without Court approval. The calculation of response/reply deadlines to motions has been revised.
Criminal L.R. 13.1	Sealed Matters	Criminal Local Rule 13.1 shall be renumbered and relocated to Criminal L.R. 49.2 to correlate with Fed.R.Crim.P. Rule 49.1. Paragraph (a) has been revised to clarify exceptions to this rule.
Local Admiralty & Maritime Rule E(7)	Actions In Rem and Quasi In Rem- General Provisions	Rule E(7) has been updated to include a required security amount of $1,000.00.

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 New Civil Local Rules 3.5 and 3.6
which will abrogate General Order 49 and General Order 46 respectively

Civil Local Rule 3.5 which will abrogate General Order 49:

3.5 Non-Incarcerated *Pro Se* Litigant:

(a) Upon receipt by mail of a complaint or petition from a non-incarcerated *pro se* litigant without the filing fee or a signed Application to Proceed *In Forma Pauperis*, the Clerk shall file the complaint or petition, assign the action in accordance with N.D.N.Y. Local Rule 3.1, and forward the action to a judicial officer for further review.

(b) This rule shall not limit the Clerk's authority to refuse to file any submission because that document is not clear, not properly filed, or otherwise non-compliance with legal file requirements.

Civil Local Rule 3.6 which will abrogate General Order 46

Proposed Text:

3.6 Incarcerated *Pro Se* Litigant:

(a) On receipt of a complaint or petition subject to the Prison Litigation Reform Act, the Clerk shall promptly file and assign an action in accordance with LR. 3.1 so as to ensure that a judicial officer may comply with the requirements set forth in L.R. 5.1.4(b)(2)(A).

(b) This rule shall not limit the Clerk's authority to reject for filing any submission that the Clerk's office cannot manage in the regular execution of its duties because that document is not clear, not properly filed, or otherwise noncompliant with legal filing requirements.

Proposed Change to Civil Local Rule 4.1

Current Text:

4.1 Service of Process

(f) If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by plaintiff within the United States, that defendant may be required to pay the expenses incurred by serving the summons and complaint in any other manner permitted by law.

Proposed Text:

(f) If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by plaintiff within the United States, that defendant may be required to pay the expenses incurred by plaintiff by serving the summons and complaint in any other manner permitted by law, and the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

Proposed Change to Civil Local Rule 7.1

Current Text:

7.1 Motion Practice (Amended January 1, 2020)

Introduction – Motion Dates and Times

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

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

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

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

1. **Memorandum of Law**. No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless that party obtains leave of the judge hearing the motion prior to filing. All memoranda of law shall contain a table of contents. When serving a *pro se* litigant with a memorandum of law or any other paper which contains citations to authorities that are unpublished or published exclusively on electronic databases, counsel shall include a hard copy of those authorities. Although copies of authorities published only on electronic databases are

not required to be filed, copies shall be provided upon request to opposing counsel who lack access to electronic databases.

When a moving party makes a motion based upon a rule or statute, the moving party must specify in its moving papers the rule or statute upon which it bases its motion.

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

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

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

   An affidavit is required for all motions except the following:

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

3. **Summary Judgment Motions**. Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, 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.

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

   The motion must set forth specifically the proposed insertions and deletions of language and identify the amendments in the proposed pleading, either through the submission of a redline/strikeout version of the pleading sought to be amended or through other equivalent means.

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

submission of a redline/strikeout version of the pleading sought to be supplemented or other equivalent means.

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

(b) Motions.

1. **Dispositive Motions**. The moving party must file all motion papers with the Court and serve them upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion must state the return date that the moving party has selected.
The party opposing the motion must file its opposition papers with the Court and serve them upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

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

   A surreply is not permitted.

   Parties shall file all original motion papers, including memoranda of law and supporting affidavits, if any, in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The parties need not provide a courtesy copy of their motion papers to the assigned judge unless the assigned judge requests a copy.

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

A court conference is a prerequisite to filing a non-dispositive motion before the assigned Magistrate Judge. In the Notice of Motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information in the Notice of Motion may result in the Court rejecting the motion papers.

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

Unless the Court orders otherwise, the moving party must file all motion papers with the Court and serve them upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

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

Reply papers and adjournments are not permitted without the Court's prior permission. Permission to file a reply does not exist simply because CM/ECF generates a deadline for a reply on a nondispositive motion.

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

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

(c) Cross-Motions. A party may file and serve a cross-motion (meaning a request for relief that competes with the relief requested by another party against the cross-moving party) at the time it files and serves its opposition papers to the original motion, i.e., not less than **SEVENTEEN DAYS** prior to the return date of the motion. If a party makes a cross-motion, it must join its cross-motion brief with its opposition brief, and this combined brief may not exceed twenty-five (25) pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party must join its reply brief in further support of its original motion with its brief in opposition to the cross-motion, and this combined reply/opposition brief may not exceed twenty-five (25) pages in length, exclusive of exhibits. The original moving party must file its reply/opposition papers with the Court and serve them on the other parties not less than **ELEVEN DAYS** prior to the return date of the original motion. The original moving party shall file a response to a Statement of Material Facts contained in a cross-motion for summary judgment, in accordance with L.R. 7.1(a)(3).

The cross-moving party may not reply in further support of its cross-motion without the Court's prior permission.

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

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

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

3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a court conference with the assigned Magistrate Judge. Incarcerated, pro se parties are not subject to the court conference requirement prior to filing a motion to compel discovery. The assigned Magistrate Judge may direct the party making the request for a court conference to file an affidavit setting forth the

date(s) and mode(s) of the consultation(s) with the opposing party and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the Court should allow or disallow that item.

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

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

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

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

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

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

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

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

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

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

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

The parties shall not appear for oral argument on motions that they make returnable before a Magistrate Judge on the scheduled return date of the motion unless

the Magistrate Judge sua sponte directs or grants the request of any party for oral argument.

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

(j) Adjournments of Dispositive Motions. (Amended January 1, 2020). 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 extension of any deadlines must be made at least three business days prior to the expiration of the deadline, absent a showing of cause as to why it could not be made earlier. 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:

7.1 Motion Practice (Amended January 1, 2021)

~~**Introduction – Motion Dates and Times**~~

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

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

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

(a) Briefing Schedule. Motions are decided without oral argument unless scheduled by the Court. Parties may make a written request for oral argument, which is subject to the discretion of the presiding judge.

1. **Dispositive Motions**. Unless otherwise ordered by the Court, the opposing party must file and serve its opposition papers no more than **TWENTY ONE (21) DAYS** after service of the motion. The moving party must file and serve its reply papers, if any, which may not exceed (10) pages in length, no more than **SEVEN (7) DAYS** after service of the response papers. A surreply is not permitted.

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

A court conference is a prerequisite to filing a non-dispositive motion before the assigned Magistrate Judge. In the Notice of Motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information in the Notice of Motion may result in the Court rejecting the motion papers. For discovery motions, see L.R. 37.1

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

Unless the Court orders otherwise, the moving party must file all motion papers with the Court and serve them upon the other parties.

The opposing party must file and serve its opposition papers no more than **TWENTY ONE (21) DAYS** after service of the motion, unless otherwise ordered by the Court.

Reply papers and adjournments are not permitted without the Court's prior permission. Permission to file a reply does not exist simply because CM/ECF generates a deadline for a reply on a nondispositive motion.

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

papers as this Rule requires shall be deemed as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. They should provide such notice at the earliest practicable date, but in any event no more than **FOURTEEN DAYS** after service of the motion.

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

Documents that are on file with the Court in the same action should not be attached as exhibits to the motion papers, but should be referenced to the appropriate docket number.

Parties shall file all original motion papers, including memoranda of law and supporting affidavits, if any, in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The parties need not provide a courtesy copy of their motion papers to the assigned judge unless the assigned judge requests a copy.

1. **Memorandum of Law**. No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless that party obtains leave of the judge hearing the motion prior to filing. All memoranda of law shall contain a table of contents. When serving a *pro se* litigant with a memorandum of law or any other paper which contains citations to authorities that are unpublished or published exclusively on electronic databases, counsel shall include a hard copy of those authorities. Although copies of authorities published only on electronic databases are not required to be filed, copies shall be provided upon request to opposing counsel who lack access to electronic databases.

When a moving party makes a motion based upon a rule or statute, the moving party must specify in its moving papers the rule or statute upon which it bases its motion.

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

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

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

An affidavit is required for all motions except the following:

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

3. Statement of Material Facts. Any motion for summary judgment shall include a Statement of Material Facts, and any opposition shall contain a response to the Statement of Material Facts. See L.R. 56.1.

[THIS ENTIRE SECTION WAS RELOCATED TO L.R. 56.1]
~~**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.

4. **Unsigned Copy of Proposed Amended Pleading**. A party moving to amend a pleading pursuant to Fed. R. Civ. P. 14, 15, 19-22 must attach an unsigned copy of the proposed amended pleading to its motion papers. See L.R. 14, 15, 19-22.

[THIS SECTION RELOCATED TO L.R. 15]

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

The motion must set forth specifically the proposed insertions and deletions of language and identify the amendments in the proposed pleading, either through the submission of a redline/strikeout version of the pleading sought to be amended or through other equivalent means.

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

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

[THIS SECTION WAS MODIFIED AND MOVED UP TO RULE 7.1(a)

(b) Motions.

1. **Dispositive Motions**. The moving party must file all motion papers with the Court and serve them upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion must state the return date that the moving party has selected.

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

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

A surreply is not permitted.

Parties shall file all original motion papers, including memoranda of law and supporting affidavits, if any, in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The parties need not provide a courtesy copy of their motion papers to the assigned judge unless the assigned judge requests a copy.

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

A court conference is a prerequisite to filing a non-dispositive motion before the assigned Magistrate Judge. In the Notice of Motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information in the Notice of Motion may result in the Court rejecting the motion papers.

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

Unless the Court orders otherwise, the moving party must file all motion papers with the Court and serve them upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

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

Reply papers and adjournments are not permitted without the Court's prior permission. Permission to file a reply does not exist simply because CM/ECF generates a deadline for a reply on a nondispositive motion.

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

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

(c) Cross-Motions. A party may file and serve a cross-motion (meaning a request for relief that competes with the relief requested by another party against the cross-moving party) at the time it files and serves its opposition papers to the original motion, i.e., not more ~~less~~ than ~~**SEVENTEEN DAYS** prior to the return date of the motion~~. **TWENTY ONE DAYS** after service of the motion, unless otherwise ordered by the Court. If a party makes a cross-motion, it must join its cross-motion brief with its opposition brief, and this combined brief may not exceed twenty-five (25) pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party must join its reply brief in further support of its original motion with its brief in opposition to the cross-motion, and this combined reply/opposition brief may not exceed twenty-five (25) pages in length, exclusive of exhibits. The original moving party must file its reply/opposition papers with the Court and serve them on the other parties not ~~less~~ more than ~~**ELEVEN DAYS** prior to the return date of the original motion~~. **SEVEN DAYS** after service of the cross-motion/opposition to motion. The original moving party shall file a response to a Statement of Material Facts contained in a cross-motion for summary judgment, in accordance with L.R. 56.1(b). ~~7.1(a)(3).~~

The cross-moving party may not reply in further support of its cross-motion without the Court's prior permission.

(d) Discovery Motions. See L.R. 37.1.

[THIS SECTION WAS RELOCATED TO L.R. 37.1]

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

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

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

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

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

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

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

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

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

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

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

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

(f) Temporary Restraining Order. See L.R. 65.1.

[THIS SECTION WAS RELOCATED TO L.R. 65.1]

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

(g) Motion for Reconsideration. See L.R. 60.1.

[**THIS SECTION WAS MODIFIED & RELOCATED TO L.R. 60**]

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

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

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

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

(j) Adjournments of Dispositive Motions. ~~(Amended January 1, 2020).~~ All requests for extension of any deadlines must be made at least three business days prior to the expiration of the deadline, absent a showing of cause as to why it could not be made earlier. ~~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 extension of any deadlines must be made at least three business days prior to the expiration of the deadline, absent a showing of cause as to why it could not be made earlier. 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 54.1

Current Text:

54.1 Taxation of Costs

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

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

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

(d) Printing Costs Associated with serving Pro Se litigants with Pleadings.

Absent prior approval from the Court, printing costs associated with pleadings served upon pro se litigants are not recoverable under this section.

Proposed Text:

54.1 Taxation of Costs

(a) Procedure for Taxation in Civil Cases. The party entitled to recover costs set forth in 28 U.S.C. §1920 shall file, within thirty (30) days after entry of judgment, a verified bill of costs on the forms that the Clerk provides, together with an affidavit verifying that (1) the items claimed in the Bill of Costs are correct; (2) the costs

have been necessarily incurred in the case; and (3) the services for which the fees have been charged were actually and necessarily performed, and a Certificate of Service. The party seeking costs shall accompany its request with receipts indicating that the party actually incurred the costs that it seeks. ~~The verified bill of costs shall include the date on which the party shall appear before the Clerk for taxation of the costs and proof of service of a copy on the party liable for the costs~~. Opposing party may file objections to the Bill of Costs within 14 days of the filing date. The prevailing party may file a reply to the objections within 7 days of the filing of the objections. Post-trial motions shall not serve to extend the time within which a party may file a verified bill of costs as provided in this Rule, except on a showing of good cause or an order extending the time. Forms and a handbook for the preparation of a bill of costs are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

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

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

(d) Printing Costs Associated with serving Pro Se litigants with Pleadings.

Absent prior approval from the Court, printing costs associated with pleadings served upon pro se litigants are not recoverable under this section.

Proposed New Local Rule 54.4

Proposed Text:

54.4 Motion for Attorneys' Fees under 42 U.S.C. § 406(b)

Motions for attorney's fees pursuant to 42 U.S.C. § 406(b) shall be filed within sixty (60) days from the date plaintiff's counsel of record was notified of the final notice of award at the conclusion of defendant's past-due benefit calculation. See General Order 18.

Proposed Change to Local Civil Rule 64.1

Current Rule:

64.1 Seizure of Person or Property.

The Court has adopted General Order 15, a Uniform Procedure for Civil and Criminal Forfeiture Cases, which is available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

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

Pursuant to Fed. R. Civ. P. Supp. R. C(3)(b)(ii), personnel of the United States Customs Service, Office of Fines, Penalties and Forfeitures, 127 North Water Street, Ogdensburg, New York, shall be appointed as special process servers in all cases pertaining to assets and/or property seized and forfeited under the laws administered or enforced by the United States Customs Service, to perform the tasks of service by mail, or in person, execution of the warrants of seizure and monition, publication of the notices of the action in newspapers having general circulation in the district in which the res were seized, and filing of all returns of such process with the United States District Court Clerk's Office for the Northern District of New York.

Proposed Rule:

64.1 Seizure of Person or Property:

A party may secure a pre-judgment remedy to secure satisfaction of a potential judgment as permitted by, and in accordance with, the laws and procedures of the State of New York, but a federal statute governs to the extent it applies. The requesting party may be required to provide an indemnity bond. A signed complaint shall be filed, together with a civil cover sheet, proposed summons(es) (or waiver), before filing an application for one of the following: pre-judgment remedies. arrest, attachment, garnishment, replevin, and sequestration. Any request to seal the documents shall comply with Local Rule 5.2

(a) Civil and Criminal Forfeiture Cases. The Court has adopted General Order 15, a Uniform Procedure for Civil and Criminal Forfeiture Cases, which is available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

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

Pursuant to Fed. R. Civ. P. Supp. R. C(3)(b)(ii), personnel of the United States Customs Service, Office of Fines, Penalties and Forfeitures, 127 North Water Street, Ogdensburg, New York, shall be appointed as special process servers in all cases pertaining to assets and/or property seized and forfeited under the laws administered or enforced by the United States Customs Service, to perform the tasks of service by mail, or in person, execution of the warrants of seizure and monition, publication of the notices of the action in newspapers having general circulation in7 the district in which the res were seized, and filing of all returns of such process with the United States District Court Clerk's Office for the Northern District of New York.

(b) Federal Debt Collection Procedure: Exclusive civil procedures for the United States (1) to recover a judgment on a debt; or (2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

Pre-judgment Remedies:

- Writ of Attachment: See 28 U.S.C. § 3102; For Maritime actions, see Supplemental Rule B
- Writ of Receivership: See 28 U.S.C. § 3103
- Writ of Garnishment: See 28 U.S.C. § 3104; For Maritime actions see Supplemental Rule B
- Writ of Sequestration: See 28 U.S.C. § 3105

Post-judgment Remedies:

- Writ of Garnishment: See 28 U.S.C. § 3205
- Writ of Execution: See 28 U.S.C. § 3203

(1) Papers Required. Attorney shall file an application with affidavit/affirmation; proposed order; Notice to Debtor; and proposed Writ. See 28 U.S.C. § 3101

(2) Request for Hearing:

(A) Pre-Judgment Application for Remedies: The debtor may request a hearing by filing a written request with the Clerk's Office, or by checking the appropriate box at the bottom of the Notice, at any time before judgment is entered. The Court shall hold a hearing on such motion within five (5) days, if requested, or as soon thereafter as possible. See 28 U.S.C. § 3101(d)(2).

(B) Post-Judgment Application for Remedies: The debtor may request a hearing by filing a written request with the Clerk's Office, or by checking the appropriate box at the bottom of the Notice, within twenty (20) days after receipt by the debtor of the Notice. The Court shall hold a hearing on such a motion within five (5) days, if requested, or as soon thereafter as possible. See 28 U.S.C. §3202(d).

(C) Transfer Case. The debtor may request a transfer of the proceeding from this District to the District in which the debtor resides not later than twenty (20) days after receipt of the Notice. Such request must be in writing and filed with the Clerk's Office.

Proposed Addition to Civil Local Rule 72.4(f)
(relocated as Habeas Corpus Rule 1.1(f))

Proposed Rule:

Rule 1.1 (f) The District Judge shall issue or deny a certificate of appealability when it enters a final order adverse to the applicant. See Rule 11 of the Rules Governing §2254 Cases and §2255 Proceedings.

Proposed Change to Civil Local Rule 83.1

Current Text:

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 forms are available from the Court's webpage at** "www.nynd.uscourts.gov."

Each applicant for permanent admission must electronically file, in PACER (https://www.pacer.gov/) documentation required for admission as set forth below. 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. 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.

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.

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 **$231.00**. 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.

(b) 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 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), (4), and (5), 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(c). 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 (https://www.pacer.gov/) for filing access to the Court.

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), (2) and (3).

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) Changes to the Bar Record. Every attorney must update the information contained in their bar record within 14 days of a change. Attorneys shall update their information in PACER (https://www.pacer.gov/). Updates to an attorney's bar record are received by the Court via the attorney's PACER account which may take up to 24 hours to process. Detailed instructions to update a bar record are available on the Court's website, www.nynd.uscourts.gov. 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 14 days thereof. Failure to do so will result in removal from the roll of the Court.

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

Proposed Text:

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 forms are available from the Court's webpage at** www.nynd.uscourts.gov.

Each applicant for ~~permanent~~ admission must electronically file in PACER (https://www.pacer.gov/) the documentation required for admission ~~as set forth below. Documentation required for permanent admission~~ including~~es~~ 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;
   - whether the applicant has ever been convicted of a crime, either a felony or misdemeanor, 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. **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.

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.

4. **Certificate of Good Standing.** Court issued certificate of good standing as required by subdivision (b) below must be dated within six (6) months of the date of the application for 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 **$231.00**. 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. 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 ~~THIS~~ 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.

(b) 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 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 (5)~~, an applicant must make a Motion for Limited Admission *Pro Hac Vice*, which includes the case caption of the particular case for which the applicant seeks admission. See L.R. 10.1(c). ~~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,~~ Upon receipt of an Order granting the motion for limited admission, the attorney seeking *pro hac vice* admission must immediately submit a Pro Hac Vice request in PACER (https://www.pacer.gov/) for filing access to the Court. **Admission forms are available from the Court's webpage at** www.nynd.uscourts.gov.

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.

In lieu of a written motion for admission, the sponsoring attorney may make an oral motion in open court on the record. Following the proceeding, the attorney seeking *pro hac vice* admission must report to the Clerk's Office to pay the admission fee and file the required documents.

(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), (2) and (3).

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~~ admission or *pro hac vice* admission described in subsections (a)–(d) above.

(f) Changes to the Bar Record. Every attorney must update the information contained in their bar record within 14 days of a change. Attorneys shall update their information in PACER (https://www.pacer.gov/). Updates to an attorney's bar record are received by the Court via the attorney's PACER account which may take up to 24 hours to process. Detailed instructions to update a bar record are available on the Court's website, www.nynd.uscourts.gov. 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. Attorneys employed by the State or Federal Government are exempt from this pro bono requirement.

(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 14 days thereof. Failure to do so may ~~will~~ result in removal from the roll of the Court.

(i) Felony or Misdemeanor Conviction. An attorney convicted of a felony or misdemeanor shall advise this Court of such conviction within 14 days thereafter. Failure to do so may result in removal from the roll of the Court in accordance with Local Rule 84.3.

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

Proposed change to L.R. 83.4

Current Text:

83.4 – Discipline of Attorneys

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

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

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

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

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

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

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject;
3. that this Court's imposition of the same discipline would result in grave injustice; or
4. that this Court has held that the misconduct warrants substantially different discipline.

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

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

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

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

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

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

Judge shall refer the matter to a Magistrate Judge for all pre-disposition proceedings.

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

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

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

(6) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned Magistrate Judge shall schedule a prompt evidentiary hearing. The Magistrate Judge may grant such pre-hearing discovery as deemed necessary, shall hear witnesses called by the panel attorney supporting the charges and by the responding attorney, and may consider such other evidence included in the record of the hearing that the Magistrate Judge deems relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The Magistrate Judge shall report his or her findings and recommendations in writing to the Chief Judge and shall serve them upon the

responding attorney and the panel attorney. The responding attorney and the panel attorney may file objections to the Magistrate Judge's report and recommendations within twenty-one days of the date thereof.

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

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

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

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

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

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

(l) If an attorney fails to respond or cooperate with any disciplinary investigation or proceeding conducted under these Rules, the Court may treat such behavior as a waiver of procedural rights, and impose discipline or take any other action as

justice and this Rule may require, including suspension or removal of the attorney from the bar of the Northern District of New York without further process.

Proposed Text:

83.4 Discipline of Attorneys

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

(b) **Grounds for Discipline or Other Relief**: Any person admitted to practice in this Court may be censured, suspended, disbarred or otherwise disciplined for cause shown pursuant to subsections (1) through (8) of this section, after judicial review of the papers submitted, oral argument and/or an evidentiary hearing in the Court's discretion. The Chief Judge may appoint one or more judges to investigate, review, hear and to report findings and a recommendation as to any disciplinary matter, including any grievances or complaints lodged from any source and any application made by an attorney for relief from discipline. Complaints or grievances, and any related documents, shall be treated as confidential. Discipline shall be imposed only upon order of the Court, and the Court, in its discretion, shall determine whether the order will be made available to the public, or published, or circulated.

(1)~~(b)~~ **Felony Conviction**: Any member of the bar of this Court who is convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this Court, upon presentation of a copy of the judgment of conviction, and unless an order to vacate the order of suspension has been granted, and shall cease to be a member of the bar of this Court. The attorney who is convicted of a felony is required to submit a copy of the judgment of conviction to the Clerk of Court within fourteen (14) days from the date the judgment is issued. In all proceedings, a judgment of conviction shall constitute conclusive proof of the attorney's guilt of the conduct for which the attorney was convicted.

After the Court receives notice of the felony conviction, by the member or otherwise, the Chief Judge will issue an order suspending that attorney from practice before this Court. The suspension order shall be mailed to the last known business address of the attorney by certified mail with notice that he/she has been suspended in accord with L.R. 83.4. The attorney may file an application to vacate the suspension order within

twenty (20) days from the date of the order pursuant to subsection (h) below. If no application to vacate the suspension order is made within twenty (20) days from the date of the order, the Chief Judge will issue an order of disbarment and direct that the attorney's name be struck from the roll of Members of the bar of this Court. A copy of the disbarment order shall be mailed to the last known business address of the attorney by certified mail. Any future request by the attorney to be admitted to this Court will require the member to file an application for reinstatement pursuant to subsection (i) below. In the event the judgment of conviction is vacated on appeal, the attorney may seek reinstatement of admission to this Court pursuant to subsection (i) below.

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

(2)~~(e)~~ **Misdemeanor Conviction**: The Court may disbar, suspend or censure any member of the bar of this Court who is convicted of a misdemeanor in any State, Territory, other District, Commonwealth, or Possession, upon such conviction. The attorney who is convicted of a misdemeanor must submit a copy of the judgment of conviction within fourteen (14) days from the date the judgment is issued.

After the Court receives notice of the misdemeanor conviction, by the member or otherwise, the Chief Judge may be presented the misdemeanor conviction to the active and senior District Judges for a determination by majority vote as to whether any disciplinary action should be taken. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. In the event that the majority of the active and senior District Judges vote to take disciplinary action, the Chief Judge will issue an order permitting the attorney to show cause within thirty (30) days of the date of the order why the recommended disciplinary action should not be imposed, and a copy of the order shall be mailed to the last known business address of the attorney by certified mail. In the event that the Chief Judge determines that more information is necessary to make a recommendation to the active and senior District Judges, the Chief Judge will issue an order requiring the attorney to show cause within thirty (30) days of the date of the order, why the attorney should not be disciplined and permitting the attorney to provide any additional information requested. Upon receiving the attorney's response to the order to show cause, the Chief Judge may

consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing before a court of one or more judges to hear and to report findings and a recommendation on the matter. After a hearing and report, or if the attorney makes no timely answer or the answer raises no issue requiring a hearing, the Court shall issue an order in accordance with the majority vote by all the active and senior District Judges. A copy of the disciplinary order shall be mailed to the attorney via certified mail. In all proceedings, a judgment of conviction shall constitute conclusive proof of the attorney's guilt of the conduct for which the attorney was convicted. In the event the judgment of conviction is vacated on appeal, the attorney may seek reinstatement of admission to this Court pursuant to subsection (i) below.

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

(3)~~(c)~~ **Resignation While Misconduct Investigation Is Pending:** Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall be deemed to have resigned from the bar of this Court. The attorney shall report such resignation to the Clerk of this Court within fourteen (14) days after the submission of the resignation.

On the presentation to the Court of a ~~certified or exemplified~~ copy of an order accepting resignation, the name of the attorney resigning shall, by order of the Court, be struck from the roll of members of the bar of this Court. The disbarment order shall be mailed to the last known business address of the attorney by certified mail. The attorney may file an

application to vacate the disbarment order within twenty (20) days from the date of the order pursuant to subsection (h) below.

(4)~~(d)~~ **Disciplinary Action by Another Court**: Any member of the bar of the Northern District of New York who ~~shall be~~ has been disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this Court unless an examination of the record resulting in the discipline discloses one or more of a following:

(A) ~~1.~~ that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
(B) ~~2.~~ that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject;
(C) ~~3.~~ that this Court's imposition of the same discipline would result in grave injustice; or
(D) ~~4.~~ that this Court has held, or these Rules provide, that the misconduct warrants substantially different discipline.

The attorney shall deliver a copy of any disciplinary order from another Federal, State or Local Court to the Clerk of this Court within fourteen (14) days after the entry of the order.

On the filing of a ~~certified or exemplified~~ copy of an order imposing discipline, the Chief Judge will issue an order disciplining the attorney to the same extent as imposed in the other jurisdiction. ~~this Court shall, by order, discipline the attorney to the same extent.~~ The disciplinary order shall be mailed to the last known business address of the attorney by certified mail. ~~It is provided, however, that~~ Within twenty (20) ~~thirty (30)~~ days of service on the attorney of the Court's order of discipline, ~~either~~ the attorney may file an application to vacate the disciplinary order pursuant to subsection (h) below. ~~or a bar association that the Chief Judge designated in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in this District should not be modified on the basis of one or more of the grounds set forth in this Rule. The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.~~

(5)~~(f)~~ **Disbarment/Suspension from State Bar**: Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have his or her name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be

suspended automatically for a like period from practice in this Court, unless an examination of the record resulting in such disbarment/suspension discloses one or more of the four circumstances set forth in subjection (4) of this Rule. The attorney shall deliver a copy of said order to the Clerk of this Court within fourteen (14) days after the entry of the order. The Chief Judge will issue an order suspending or disbarring the attorney from this Court in the same matter as the other jurisdiction. The order of disbarment/suspension shall be mailed to the last known business address of the attorney by certified mail. The attorney may file an application to vacate the suspension/disbarment order within twenty (20) days from the date of the order pursuant to subsection (h) below.

~~(h)~~(6) **~~Visiting~~ Attorney Admitted *Pro Hac Vice* Found Guilty of Misconduct**: An ~~visiting~~ attorney permitted to argue or try a particular case via *pro hac vice* admission in accordance with L.R. 83.1 who is found guilty of misconduct in this Court shall be precluded from again appearing in this Court. On entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the Court's opinion.

(7)~~(g)~~ **Complaints Alleging Misconduct in this Court**

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

~~(2)~~(A) Complaints lodged from any source against a member of the bar of this Court alleging attorney misconduct or any other cause for discipline must be in writing and shall be directed to the Chief Judge ~~and must be in writing~~ for review and determination as to whether the conduct warrants further investigation. If the Chief Judge deems the conduct alleged in the complaint not sanctionable, the Chief Judge will dismiss the complaint and notify the filer in writing of the dismissal with a copy to the attorney. If the Chief Judge deems the conduct alleged in the complaint sanctionable, the Chief Judge ~~shall~~ may appoint ~~a panel attorney~~ one or more judges to investigate, review, hear and report findings and recommendation as to any disciplinary action to be taken ~~and, if necessary, support the complaint. At the same time, the Chief~~

~~Judge shall refer the matter to a Magistrate Judge for all pre-disposition proceedings.~~

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

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

~~(5)~~ (C) If the judge(s) ~~panel attorney~~ determine(s) after investigation that the evidence establishes probable cause to believe that one or more violations of the Rules of Professional Conduct has occurred, the judge(s) ~~panel attorney~~ shall prepare a statement of charges alleging the grounds for discipline. The Clerk shall cause the Statement of Charges to be served upon the attorney concerned ("responding attorney") by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this Court and, if different, to the last known address of the attorney as shown in any other source together with a direction from the Clerk that the responding attorney shall show cause in writing within thirty (30) days why discipline should not be imposed.

~~(6)~~ (D) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned ~~Magistrate~~ judge(s) shall determine whether an evidentiary hearing is necessary. If no hearing is necessary, a finding and recommendation will be made

to the Chief Judge on the papers submitted. If it is determined a hearing is necessary, an evidentiary hearing will be scheduled promptly. ~~schedule a prompt evidentiary hearing.~~ The ~~Magistrate~~ assigned judge(s) may grant such pre-hearing discovery as deemed necessary, ~~shall~~ hear witnesses testimony as warranted ~~called by the panel attorney supporting the charges and by the responding attorney~~, and may consider such other evidence included in the record of the hearing that the ~~Magistrate~~ assigned judge(s) deems relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The ~~Magistrate~~ assigned judge(s) shall report the findings and recommendations in writing to the Chief Judge and shall serve them upon the responding attorney ~~and the panel attorney.~~ The responding attorney ~~and the panel attorney~~ may file objections to the assigned judge(s)'s report and recommendations within fourteen ~~twenty one~~ days of the date thereof.

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

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

(8) **Attorneys Found to Have Infirmity**: Should it appear to the Court that an attorney who is a member of the bar of the Court may have an infirmity that prevents the attorney from practicing law before the Court, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney has such an infirmity. Should it take or direct such action, the Court shall provide to the attorney notice and an opportunity to be heard, and may appoint counsel to represent the

attorney if he or she is without representation. If the Court finds by clear and convincing evidence that the attorney has such an infirmity, it shall enter an order suspending the attorney for an indefinite period and until further order of the Court. A copy of such order shall be served upon the attorney or his or her guardian.

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

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

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

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

(g) In the instance that an attorney is suspended or disbarred from practicing in this court, the presiding judge shall issue an order in each of the attorney's open cases in this Court directing the litigant represented by the attorney of the need to retain a new attorney within thirty (30) days from the date of the order.

(h) **Application to Vacate Disciplinary Order**: The member may file an application to vacate an order of suspension, order of disbarment or order imposing other disciplinary action with the Clerk of Court within twenty (20) days from the date of issuance of the order, except for an order issued pursuant to section (b)(7) above. The application shall be filed in a miscellaneous action assigned to the Chief Judge. The application shall set forth with specificity the facts and principles relied upon by the attorney as showing cause why a different disposition should be ordered by this Court. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. The Chief Judge may appoint a one or more judges to investigate, review, hear and report findings and recommendation as to whether the disciplinary order should be vacated. If good cause is not shown to

hold an evidentiary hearing, the Chief Judge may proceed to impose discipline or take such other action as justice and this rule may require upon the majority vote of the active and senior District Judges. Upon good cause shown, a majority vote of the active and senior District Judges may vacate the disciplinary order when it is in the interest of justice to do so. A copy of the order on the application to vacate a disciplinary order shall be served upon the attorney by regular mail.

(i) **Application for Reinstatement**: Any attorney who has been suspended or precluded from appearing in this Court or whose name has been struck from the roll of the members of the bar of this Court may apply in writing to the Chief Judge, for good cause shown, for the lifting of the suspension or preclusion or for reinstatement to the rolls no earlier than one (1) year from the date the disbarment order, suspension order, or disciplinary order was issued. The application shall be filed in a miscellaneous action assigned to the Chief Judge. The attorney has the burden of demonstrating by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or injurious to the public interest.

The application shall attach all orders from any court regarding disbarment, suspension or other disciplinary action of the attorney and any order reinstating the attorney to the practice of law. In addition, the application may attach any papers, including (but not limited to) a memorandum of law, declarations, and exhibits. The Chief Judge may appoint one or more judges to review the application and make findings and recommendations, or may act upon the application without making such a referral. In his or her discretion, the Chief Judge may conduct a hearing, at which the attorney may adduce oral argument and/or testimony (or rely on his or her declarations). After the application is complete and has been reviewed, the Chief Judge shall forward to the active and senior District Judges of the District (for consideration and vote at the next meeting of the Board of Judges) the following: (1) the attorney's application and supporting documents; (2) any findings and recommendations of any judges appointed to review the application; (3) the transcript of any hearing; and (4) the Chief Judge's findings and recommendations. Absent extraordinary circumstances, no such application will be granted unless the attorney seeking reinstatement meets the requirements for admission set forth in Local Civil Rule 83.1. Upon good cause shown, a majority vote of the active and senior District Judges may vacate the disciplinary order and reinstate the attorney when it is in the interest of justice to do so. A copy of the order on the application to for reinstatement shall be served upon the attorney by regular mail.

Proposed Change to Criminal Local Rule 12.1

Current Text:

12.1 Motions and Other Papers

(a) The moving party must file all motion papers with the Court and serve them upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date that the moving party selected. The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to the requested relief. The opposing party must file opposing papers with the Court and serve them upon the other parties not less than **SEVENTEEN CALENDAR DAYS** prior to the return date of the motion. For non-dispositive motions, the moving party may file reply papers only with leave of Court, upon a showing of necessity. Permission to file a reply does not exist where CM/ECF automatically generates a deadline for a reply on a non-dispositive motion. However, such permission does exist where the Court sets a reply date through a text order. For dispositive motions, permission to file a reply is granted where CM/ECF automatically generates a deadline for a reply. Reply briefs, if allowed, must be filed and served not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.

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

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

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

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

opposed by the motion or other paper and the amount of resulting excludable time.

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

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

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

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

Proposed Text:

12.1 Motions and Other Papers

(a) **Briefing Schedule**. Motions are decided without oral argument unless scheduled by the Court. Parties may make a written request for oral argument or hearing, which is subject to the discretion of the presiding judge.

1. **Dispositive Motions**. The opposing party must file and serve its opposition papers no more than **TWENTY ONE (21) DAYS** after service of the motion, unless otherwise ordered by the Court. The moving party must file and serve its reply papers, which may not exceed (10) pages in length, no more than **SEVEN (7) DAYS** after service of the response papers, unless otherwise ordered by the Court. A surreply is not permitted. ~~The moving party must file all motion papers with the Court and serve them upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date that the moving party selected.~~ The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to

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

2. **Non-dispositive motions**: The opposing party must file and serve its opposition papers no more than **TWENTY ONE (21) DAYS** after service of the motion, unless otherwise ordered by the Court.

Reply papers and adjournments are not permitted without the Court's prior permission. Permission to file a reply does not exist simply because CM/ECF generates a deadline for a reply on a nondispositive motion.
~~the moving party may file reply papers only with leave of Court, upon a showing of necessity. Permission to file a reply does not exist where CM/ECF automatically generates a deadline for a reply on a non-dispositive motion. However, such permission does exist where the Court sets a reply date through a text order. For dispositive motions, permission to file a reply is granted where CM/ECF automatically generates a deadline for a reply. Reply briefs, if allowed, must be filed and served not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.~~

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

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

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

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial

exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

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

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

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

(g) All papers filed in criminal cases shall comply with the guidelines established in L.R. Cr. P. ~~1.3~~ 49.1 regarding personal privacy protection.

Proposed change to Criminal Local Rule 13.1

Current Text:

13.1 Sealed Matters (Amended January 1, 2020)

(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.

Proposed Text:

~~13.1~~ **49.2 Sealed Matters**

(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~~ 49.1, or to other filings governed by Court policy. Nor shall this Local Rule apply to sealing of (i) investigative process during an ongoing criminal investigation or (ii) other criminal case documents of any kind before a charging document (e.g., a complaint, indictment or information) has been filed publicly against all defendants. The Court, the Clerk, and 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~~ for sealing of the categories of documents listed above. ~~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.~~

Proposed change to Local Admiralty and Maritime Rule E(7)

Current Text:

LOCAL ADMIRALTY AND MARITIME RULES

Rule E(7) Actions In Rem and Quasi In Rem – General Provisions

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

Proposed Text:

Rule E(7) Actions In Rem and Quasi In Rem – General Provisions

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be ~~$500.00~~ $1,000.00. The party so ordered shall post the security within seven (7) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.