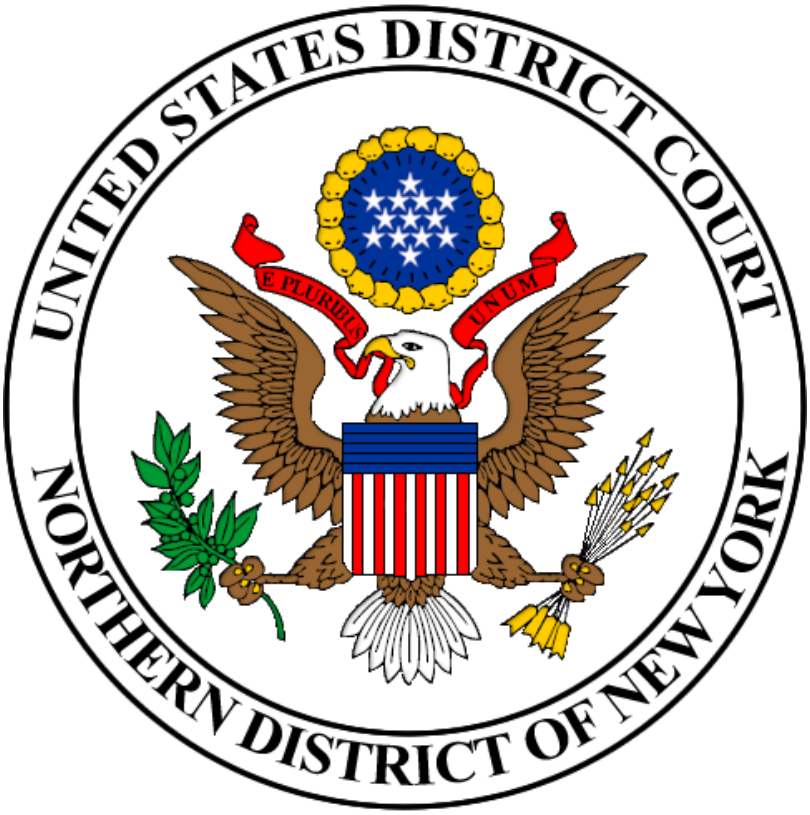
LOCAL RULES OF PRACTICE



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

Effective JANUARY 1, 2025

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Forward

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

John M. Domurad
Clerk of Court
James T. Foley U.S. Courthouse
445 Broadway
Room 509
Albany, New York 12207-2936

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

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

Amendments to the NDNY Local Rules

Effective January 1, 2025

The proposed amendments detailed below were submitted or derived from comments received from the public, practitioners, judges and court staff during the February – April 2024 suggestion period. The changes were approved by the Board of Judges on November 22, 2024, subject to the review and approval of the Second Circuit Council. On December 4, 2024, 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 will become effective January 1, 2025, and supersede and/or supplement the specific sections set forth below.

Summary Table of Changes to the NDNY Local Rules

Rule Number	Topic	Description of Change
5.1(b)	Service and Filing of Papers	Modified to reflect all proposed orders or judgments shall be filed on CM/ECF.
5.1.6	Documents to be provided to the Court Clerk	Modified to reflect all pretrial and settlement conference statements shall be submitted via MFT on the Court's website.
5.2(a)(2)	Personal Privacy Protection	Modified to include references to minor be made via minor's initials or a pseudonym
5.3	Sealed Matters	Modified to instruct parties to submit sealed documents using MFT on the Court's website, not via email.
7.1(e)	Order to Show Cause	Modified to clarify process for requesting an Order to Show Cause
7.2	Amicus Curiae	New local rule to clarify requirements for filing an Amicus Curiae brief.
83.1	Attorney Admissions	Modified to remove requirement of Declaration of Sponsor; update admission fee; clarify reporting requirements of disciplinary matters; and clarifying biennial registration process.
83.3	Discipline of Attorneys	Modified to clarify attorney disciplinary process.
Criminal Local Rule 32.3	Character Letters	New local rule requiring character letters in support of defendant be filed at least 7 days prior to sentencing hearing.

Criminal Local Rule 41.1	Search & Seizure Warrants	Modified to clarify that a proposed sealing order shall include an expiration date to unseal the case not to exceed 180 days after the *last* search warrant return is filed.
Criminal Local Rule 49.1(a)(2)	Personal Privacy Protection	Modified to reflect if the involvement of a minor child must be mentioned, use a pseudonym to refer to the minor.
Criminal Local Rule 49.2	Sealed Matters	Modified to instruct parties to submit sealed documents using MFT on the Court's website, not via email.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OFFICERS

DISTRICT JUDGES:	
Hon. Brenda K. Sannes, Chief Judge Federal Building and U.S. Courthouse 100 South Clinton Street Syracuse, NY 13261-7336	Hon. Mae A. D'Agostino James T. Foley U.S. Courthouse 445 Broadway, First Floor South Albany, NY 12207
Hon. Anne M. Nardacci James T. Foley U.S. Courthouse 445 Broadway, First Floor Albany, NY 12207	Hon. Anthony J. Brindisi Alexander Pirnie Federal Building 10 Broad Street Utica, NY 13501
Hon. Elizabeth C. Coombe Federal Building and U.S. Courthouse 100 South Clinton Street Syracuse, NY 13261	
SENIOR DISTRICT JUDGES:	
Hon. Thomas J. McAvoy U.S. Courthouse 15 Henry Street Binghamton, NY 13901	Hon. Frederick J. Scullin, Jr. Federal Building and U.S. Courthouse P.O. Box 7255 Syracuse, NY 13261-7255
Hon. Lawrence E. Kahn James T. Foley U.S. Courthouse 445 Broadway, Room 424 Albany, NY 12207-2926	Hon. Glenn T. Suddaby Federal Building and U.S. Courthouse P.O. Box 7336 Syracuse, NY 13261-7336
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MAGISTRATE JUDGES:	
Hon. Thérèse Wiley Dancks Federal Building & U.S. Courthouse Syracuse, NY 13261-7346	Hon. Daniel J. Stewart James T. Foley U.S. Courthouse Albany, NY 12207
Hon. Miroslav Lovric U.S. Courthouse 15 Henry Street Binghamton, NY 13901	Hon. Mitchell J. Katz Federal Building & U.S. Courthouse Syracuse, NY 13261-7346
Hon. Paul J. Evangelista James T. Foley U.S. Courthouse Albany, NY 12207	Hon. Gary L. Favro 14 Durkee Street- Suite 360 Plattsburgh, NY 12901-2834
BANKRUPTCY JUDGES:	
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14 Durkee Street, Suite 360 Plattsburgh, NY 12901 518-247-4501	

BANKRUPTCY CLERK Cynthia A. Platt, Clerk	
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Federal Building and U.S. Courthouse 15 Henry Street Binghamton, NY 13901 607-773-2887	Federal Building and U.S. Courthouse 15 Henry Street Binghamton, NY 13901 607-773-2893
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UNITED STATES PROBATION OFFICE Michael J. Kester, Chief Probation Officer	
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UNITED STATES MARSHAL David L. McNulty, U.S. Marshal	
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Alexander Pirnie Federal Building 10 Broad Street Utica, NY 13501 315-793-8109	Federal Building and U.S. Courthouse 15 Henry Street Binghamton, NY 13901 607-773-2723
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Syracuse Office 4 Clinton Exchange Building Syracuse, NY 13202 315-701-0080	Albany Office 39 North Pearl Street Albany, NY 12207 518-436-1850

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SECTION I.
SCOPE OF THE RULES

1.1 Scopes of the Rules

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

(b) Effective Date; Transitional Provision. These Rules became effective on **January 1, 2025**. Recent amendments are noted with the phrase (Amended January 1, 2025).

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

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

(e) Definitions.

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

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

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

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

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

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

7. The word “party” includes a party's representative.

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

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

1.2 Availability of the Local Rules

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

1.3 Local Patent Rules

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

2.1 One Form of Action

[Reserved]

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

3.1 Case Assignment System (formerly L.R. 40.1)

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

3.2 Civil Cover Sheet (formerly L.R. 3.1)

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

3.3 Venue (formerly L.R. 3.2)

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

3.4 Complex and Multi-District Litigation (formerly L.R. 3.3)

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

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

3.5 Non-Incarcerated Pro Se Litigant (added January 1, 2021)

(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 L.R. 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-compliant with legal filing requirements.

3.6 Incarcerated Pro Se Litigant (added January 1, 2021)

(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 L.R. 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.

3.7 Transfer of Cases to Another District (formerly L.R. 83.6)

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

4.1 Service of Process (Amended January 1, 2021)

(a) Service shall be made in the manner specified in the Federal Rules of Civil Procedure or as required or permitted by statute or local rules with respect to certain cases (e.g. Habeas Corpus petitions and Social Security appeals). The party seeking service of papers shall be responsible for arranging the service.

(b) Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25 which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice. In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4.

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

1. Judicial Case Assignment Form;

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

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

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

(d) In cases where an acknowledgment of service (also called "waiver of service") by a defendant located within any judicial district of the United States has been properly requested, whether pursuant to Rule 4(d) of the Federal Rules of Civil Procedure or pursuant to N.Y. Civil Practice Law and Rules § 312-a, the defendant shall have sixty days from the date the waiver request was sent to the defendant to answer or file a motion to dismiss plaintiff's complaint.

(e) If an individual, corporation or association defendant that is subject to service under Fed.R.Civ.P. 4(e), (f) or (h) and located within the United States fails, without good cause, to sign and return a waiver requested by plaintiff within the United States, that defendant will be required to pay the expenses incurred by plaintiff for 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.

5.1 Service and Filing of Papers (Amended January 1, 2025)

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

(b) In civil actions where the Court has directed a party to submit an order or judgment, that party shall file all such orders or judgments in CM/ECF.

If the assigned judge instructs the prevailing party to do so, the prevailing party shall submit a proposed order which the opposing party has approved, and which contains the endorsement of the opposing party: "Approved as to form."

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

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

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

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

(f) Where there has been a removal of a New York State action that has been commenced pursuant to N.Y. C.P.L.R. 305(b) (summons with notice), the defendant shall file a demand for a complaint within fourteen (14) days of filing the notice of removal, unless the Court excuses this requirement or extends the time period. Within twenty (20) days of the service of the demand, the plaintiff shall serve a complaint upon the defendant.

5.1.1. Electronic Case Filing

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

5.1.2 Prepayment of Fees (formerly L.R. 5.2) (Amended January 1, 2022)

(a) Filing Fees. A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee. Title 28 U.S.C. § 1915 and L.R. 5.1.4 govern *in forma pauperis* proceedings. Failure to pay the full filing fee or include a signed Application to Proceed *In Forma Pauperis* will result in the Clerk opening the case and referring the case to the assigned judicial officer for an order administratively closing the case.

5.1.3 Schedule of Fees (formerly L.R. 5.3)

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

5.1.4 Civil Actions Filed In Forma Pauperis; Applications for Leave to Proceed In Forma Pauperis (formerly L.R. 5.4) (Amended January 1, 2022)

(a) On receipt of a complaint or petition and an application to proceed *in forma pauperis*, and supporting documentation as required for prisoner litigants, the Clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 3.1. The Clerk shall then forward the complaint or petition, application and supporting documentation to the assigned judicial officer for a determination of the *in forma pauperis* application and the sufficiency of the complaint or petition and, if appropriate, to direct service by the Marshal. Prior to the Marshal serving process pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(e), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915(g) to determine whether *sua sponte* dismissal is appropriate. The granting of an *in forma pauperis* application shall not relieve a party of the obligation to pay all other fees for which that party is responsible regarding the action, including but not limited to copying and/or witness fees.

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

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

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

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

(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same.

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

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

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

5.1.5 Filing by Facsimile or E-mail (formerly L.R. 5.5)

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

5.1.6 **Documents to be provided to the Court Clerk** (Amended January 1, 2025)

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

5.1.7 **Recording of Proceedings** (formerly L.R. 5.8)

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

5.2 **Personal Privacy Protection** (formerly L.R. 8.1) (amended January 1, 2025)

(a) Personal Identifiers: Except as to documents in social security proceedings, pursuant to General Order 22 §§ 11.1 and 11.2, parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all filings with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

1. **Social security numbers and taxpayer identification numbers**. If an individual's social security number or taxpayer identification number must be included in a document, use only the last four digits of that number.
2. **Names of minor children**. If the involvement of a minor child must be mentioned, use only the initials of that child or a pseudonym.
3. **Dates of birth**. If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers**. If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses**. If a home address must be used, use only the City and State. However, *Pro Se* litigants must include their complete mailing address in the signature block on all documents filed with the court pursuant to L.R. 10.1(c)(2) which shall also appear on the face of the docket.
6. **Names of Sexual Assault Victims**. If the involvement of a sexual assault victim must be mentioned, use only information that does not tend to identify the victim(s) of sexual assault, and redact the name to "Victim 1," "Victim 2", etc.

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

1. personal identifying number, such as a driver's license number;
2. medical records, treatment and diagnosis;
3. employment history;
4. individual financial information; and
5. proprietary or trade secret information.

(b) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

1. file an unredacted version of the document under seal in compliance with Local Rule 5.3, or

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

Counsel is strongly urged to discuss this issue with all their clients so that they can make an informed decision about the inclusion of certain information. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties**. The Clerk will not review each filing for compliance with this Rule. Counsel and the parties are cautioned that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

For exceptions, see Federal Rule of Civil Procedure 5.2(b).

5.3 Sealed Matters (formerly L.R. 83.13) (Amended January 1, 2025)

(a) A party seeking to have a document, a portion of a document, a party or an entire case sealed bears the burden of filing an application setting forth the reason(s) that the referenced material should be sealed under the governing legal standard. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-27 (2d Cir. 2006). (The provisions of Local Rule 5.3 shall not apply to actions for which sealing is required by statute, e.g., 31 U.S.C. § 3730(b)(2), or to personal identifiers that are required to be redacted under Local Rule 5.2.)

The application to seal shall be filed on ECF. The party should also attach to the application or file separately a redacted version of any document that is to contain the sealed material (unless the party seeks to seal the entire document). When the party seeks to seal an entire document, the party shall attach or file that document with a blank page marked appropriately (e.g., as "Sealed Affidavit" or "Sealed Exhibit Number ___") for each requested sealed document.

The application shall also attach a proposed sealing order (which shall not be filed under seal unless the Court deems doing so to be appropriate) containing specific findings justifying the sealing under the governing legal standard for the assigned judge's approval. The proposed order shall include an "ORDERED" paragraph stating the referenced material to be sealed. All material sought to be sealed shall be submitted to the Court for its in camera consideration via MFT on the Court's website, and shall be served on all counsel.

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

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

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

6.1 **Calculation of Time Periods** (amended January 1, 2021)

The time for briefing motions is set in Local Rule 7.1, unless otherwise ordered by the Court.

SECTION III.
PLEADINGS AND MOTIONS

7.1 Motion Practice (amended January 1, 2024)

(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. In any such requests for oral argument, the parties should specify the ground(s) for the request (e.g., the need of an inexperienced lawyer to gain experience in the courtroom, the need to respond to arguments presented in the last-filed brief, the need to advise the Court of recently occurring events or arguments regarding new controlling or persuasive case law, and/or the need to help familiarize the Court with the case's complex facts and/or procedural history given the length of time that has passed since the Court last reviewed the case or the fact that the case has recently been transferred from another judge, etc.). In accordance with Local Rule 7.1(b)(5), a movant requesting oral argument must state the grounds therefore in its Notice of Motion.

1. **Dispositive Motions**. Unless the Court orders otherwise, the moving party must file all motion papers with the Court and serve them upon any *pro se* parties. 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, including a memorandum of law that 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 (upon filing all motion papers with the Court) serve its motion papers on any *pro se* 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 non-dispositive motion. When leave of court is granted, reply briefs may not exceed 10 pages in length.

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 **TWENTY-ONE DAYS** after service of the motion.

(b) **Papers Required**. Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit when necessary to establish and provide factual and procedural background relevant to the motion, and proof of service on all the parties. In addition, all motions require a Notice of Motion (except for non-dispositive motions and requests that are permitted by chambers to take the form of letter-requests, provided that the party seeking relief has identified in its motion or letter the precise relief sought). Additional requirements for specific types of motions, including cross-motions, see L.R. 7.1(c), are set forth in the Local Rule that 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 rather 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, double-spaced, unless that party obtains leave of the judge hearing the motion prior to filing. All memoranda of law shall contain a table of contents and numbered pages. 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 not required for the following motions:
   (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.

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

5. **Notice of Motion.** A Notice of Motion shall identify the following information: the case caption and docket number, if then known; the supporting papers upon which the motion is based; and the relief demanded and the grounds therefor. If publicly filed, the Notice of Motion shall be the main document filed on ECF, with the supporting documents filed as attachments. Relief in the alternative or of several different types may be demanded. If oral argument is requested, the Notice of Motion should so state and should identify the reason(s) argument is requested.

(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 than **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 restrictions of Local Rule 7.1(c) relating to "cross-motions" do not apply when summary judgment motions are filed by multiple parties on or before the deadline for filing of initial dispositive motions, even if the motions seek competing relief.

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 more than **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).

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.

(e) Order to Show Cause. All requests for an Order to Show Cause shall conform to the requirements set forth in L.R. 7.1(b)(1) and (2). Immediately after filing a request for 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 a request for 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 the request for an Order to Show Cause.

In addition to the requirements set forth in Local Rule 7.1(b)(1) and (2), a request for an Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard motion procedure (i.e., advanced notice, 21 days for an opposition, and 7 days for a reply) cannot be used with regard to the underlying motion. In addition, the moving party must give reasonable advance notice of the request for an Order to Show Cause to the other parties, except in those circumstances where the movant demonstrates, in a detailed and specific affidavit, good cause why reasonable advance notice cannot be used, and that substantial prejudice would result from the requirement of reasonable advance notice.

A proposed 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.

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

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

(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. 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.

7.2 Brief of an Amicus Curiae (new rule effective 1/1/25)

(a) **When permitted**. An amicus curiae may file a brief only by leave of court, but the court ordinarily will deny leave to file an amicus brief when, by reason of a relationship between the assigned judge and the amicus curiae or its counsel, the filing of the brief might cause the recusal of the assigned judge.

(b) **Motion for Leave to File.** An amicus curiae shall file a motion for leave to file an amicus brief in CM/ECF, or via MFT found on the court's website if the filer is not admitted to NDNY, which shall concisely state the nature of the movant's interest, identify the party or parties supported, set forth why an amicus brief would be helpful to the Court, and why the matters asserted are relevant to the disposition of the case. The brief and a proposed order shall be attached as exhibits to the motion for leave to file. If the amicus curiae is a corporation, a disclosure statement like that required of parties by Fed. R. Civ. P. 7.1 shall also accompany the motion.

(c) **Time for Filing**. An amicus curiae shall file its motion for leave to file an amicus brief no later than 7 days after the principal brief of the party being supported is filed unless the amicus curiae makes a showing of good cause as to why the motion could not have been filed within said 7 days. An amicus curiae who does not support either party must file its motion for leave to file an amicus brief no later than 7 days after the moving party files its principal brief unless the amicus curiae makes a showing of good cause as to why the motion could not have been filed within said 7 days. A certificate of service via regular mail on all pro se litigants shall be filed with the motion.

(d) **Contents and Form**. An amicus brief shall be no more than twelve (12) pages in length, double-spaced, shall contain a table of contents and numbered pages, and shall meet the requirements of Local Rule 10.1(a). In addition, unless the amicus curiae is the United States or its officer or agency or a state, the amicus brief shall contain a statement indicating whether (1) a party's counsel authored the brief in whole or in part; (2) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) a person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person.

(e) **Oral Argument**. Amicus curiae shall not be permitted oral argument unless leave is granted by the Court.

8.1 General Rules of Pleading (amended January 1, 2021)

[Reserved]

9.1 Request for Three-Judge Court (amended January 1, 2022)

Whenever a party believes that a three-judge court is required, the party shall submit a separate application to convene a three-judge court along with the first pleading in which the party asserts the cause of action requiring a three-judge court pursuant to 28 U.S.C. §2284.

9.2 Requirement to File a Civil RICO Statement

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

10.1 Form of Papers (Amended January 1, 2024)

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

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

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

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

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

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

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

7. pages must be consecutively numbered.

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

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

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

3. all documents must be in black or blue ink.

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

5. all documents must be single-sided.

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

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

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

1. Each document must contain a caption for the specific case to which it pertains. The caption must include the title of the Court, the title of the action, the civil action number of the case, the initials of the assigned judge(s), and the name or nature of the paper in sufficient detail for identification. If a litigant has more than one action pending in this Court, any and all papers filed in a case must contain and pertain to one civil action number, unless the civil actions have been consolidated by the Court. Any motion or other papers purporting to relate to more than one action will not be accepted for filing and may be stricken by the Court. This Rule shall not apply, as noted below, to notices of change of address filed by attorneys of record and pro se litigants. **The parties must separately caption affidavits and declarations and must not physically attach them to the Notice of Motion or Memorandum of Law.**

2. Each document must identify the person filing the document. This identification must include an original or electronic signature of the attorney or *pro se* litigant; the typewritten name of that person; the address of a *pro se* litigant, including zip code; and the bar roll number, office address, telephone number, and e-mail address of the attorney. A *pro se* litigant's complete mailing address in the signature block is required on all documents filed with the court and shall also appear on the face of the docket. Telephone numbers of non-prisoner *pro se* parties are required to be displayed on the docket for purposes of scheduling court proceedings. See General Order # 22 for signature requirements.

   All attorneys of record and *pro se* litigants must immediately notify the Court of any change of address and/or telephone number. Parties must file the notice

of change of address with the Clerk and serve the same on all other parties to the action. The notice must identify each and every action to which the notice shall apply. In addition, the notice shall be clearly entitled, "Notice of Change of Address." **Attorneys shall update their bar record within (14) days of a change, including their address, email address, and telephone number through www.pacer.gov.** Detailed instructions to update the bar record are available on the Court's website at www.nynd.uscourts.gov.

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

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

11.1 Appearance and Withdrawal of Attorney (Amended January 1, 2024)

(a) Appearance. An attorney appearing for a party in a civil case shall promptly file with the Clerk a written notice of appearance; however, an attorney does not need to file a notice of appearance if the attorney who would be filing the notice of appearance is the same individual who has signed the complaint, notice of removal, pre-answer motion, or answer. A consent to change attorney form must be signed by the withdrawing attorney, the substituting attorney, and the party, subject to the approval of the Court. If the Court grants the substitution of counsel, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

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

If the client whose attorney seeks to withdraw has consented to substitution of new counsel, the attorney who seeks to withdraw must file a consent to change attorney that bears the withdrawing attorney's signature, as well as the signatures of the attorney who is to be substituted as counsel and the client who has consented to this substitution. A form Consent to Change Attorney can be found on the Court's website at www.nynd.uscourts.gov. Upon receipt

of this document, the Court shall review the same and determine whether to grant the substitution. If the Court grants the substitution of counsel, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

Where new counsel is appearing for a party and where the firm representing the client remains the same, a notice of appearance is all that is required to be filed and a motion or consent to substitute counsel need not be filed. Where two attorneys from the same law firm represent a party, and one attorney leaves the firm, only a letter is required to be filed on the docket indicating that the attorney has left the firm and should be removed from the docket.

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

12.1 Defenses and Objections/Motions under Fed.R.Civ.P. Rule 12

All motions to dismiss and motions for judgment on the pleadings must conform with L.R. 7.1. A motion to dismiss made pursuant to Fed.R.Civ.P. 12(b)(6), motion for judgment on the pleadings made pursuant to Fed.R.Civ.P. 12(c), or motion to strike made pursuant to Fed.R.Civ.P. 12(f) does not require an affidavit. Any motion for a more definite statement made pursuant to Fed.R.Civ.P. 12(e) does not require a memorandum of law.

13.1 Counterclaims and Crossclaims

[Reserved]

14.1 Impleader

See L.R. 15.1(a).

15.1 Amended and Supplemental Pleadings (Amended January 1, 2023)

(a) 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 or exhibits thereto 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.

(b) Motions to supplement a pleading pursuant to Fed.R.Civ.P. 15(d). 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, 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.

(c) Filing of Amended Complaint. The granting of the motion to amend 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. For all parties who have not yet appeared, service must be made pursuant to Rule 4 of the Federal Rules of Civil Procedure. For all parties who have appeared, service via CM/ECF is acceptable.

16.1 Civil Case Management (Amended January 1, 2023)

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

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

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

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

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

1. Deadlines for joinder of parties, amendment of pleadings, completion of discovery, filing of non-dispositive and dispositive motions, and expert witness disclosure;

2. Trial date;

3. Requests for jury trial;

4. Subject matter and personal jurisdiction;

5. Factual and legal bases for claims and defenses;

6. Factual and legal issues in dispute;

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

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

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

10. Suitability of case for mandatory mediation;

11. Measures for reducing length of trial;

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

13. Procedures for certifying class actions, if appropriate;

14. Settlement prospects; and

15. If the case is in the mediation track, the estimated time for completion of mediation.

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

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

16.2 Discovery Cut-Off

The "discovery cut-off" is that date by which all responses to written discovery, including requests for admissions, shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel is advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this Rule. Discovery requests that call for responses or scheduled depositions after the discovery cut-off will not be enforceable except by order of the Court for good cause shown. Parties shall file and serve motions to compel discovery no later than fourteen (14) days after the discovery cut-off. See Local Rule 37.1(h).

SECTION IV.
PARTIES

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

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

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

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

18.1 Joinder of Claims and Remedies

See L.R. 15.1.

19.1 Joinder of Persons Necessary for Just Adjudication

See L.R. 15.1.

20.1 Permissive Joinder of Parties

See L.R. 15.1.

21.1 Misjoinder and Nonjoinder of Parties

See L.R. 15.1.

22.1 Interpleader

[Reserved]

23.1 Designation of "Class Action" in the Caption

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

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

23.2 Certification of a Class Action

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

24.1 Intervention

[Reserved]

25.1 Substitution of Parties

[Reserved]

SECTION V.
DEPOSITIONS AND DISCOVERY

26.1 Form of Certain Discovery Documents

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

26.2 Filing Discovery

Parties shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, requests for admissions, disclosures, and answers and responses to these notices and requests unless the Court orders otherwise; provided, however, that a party shall file as an exhibit any discovery material to support any motion, including a motion to compel or for summary judgment. A party shall include with any motion pursuant to Fed. R. Civ. P. 37 the discovery materials to which the motion relates if the parties have not previously filed those materials with the Court. Even if the Court has requested that trial exhibits be provided in electronic format, including deposition transcripts or other discovery, they should not be filed on the docket. All trial exhibits requested electronically shall be pre-marked and provided in electronic format via USB drive or CD/DVD.

26.3 Production of Expert Witness Information

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

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

26.4 Timing of Discovery

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

26.5 Privilege Log (added January 1, 2022)

A party intending to assert a claim of privilege or work product protection in accordance with Fed.R.Civ.P. 26(b)(5) shall confer with opposing counsel in preparation for the initial Rule 16 conference and agree upon a deadline in the civil case management plan to serve a privilege log with respect to all documents withheld on that basis except for the following: written or electronic communications between a party and its trial counsel after commencement of the action and the work product material created after the commencement of the action are exempt from disclosure on the privilege log. Subject to court approval, the privilege log may take a categorical approach in lieu of itemization of each document, and this should be discussed and agreed upon at the Rule 16 conference.

27.1 Depositions Before Action or Pending Appeal

[Reserved]

28.1 Persons Before Whom Depositions Shall be Taken

[Reserved]

29.1 Discovery Stipulations

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

30.1 Depositions by Oral Examination

[Reserved]

31.1 Depositions by Written Questions

[Reserved]

32.1 Use of Depositions in Court Proceedings

[Reserved]

33.1 Interrogatories

[Reserved]

34.1 Production of Documents and Things

[Reserved]

35.1 Physical and Mental Examination of Persons

[Reserved]

36.1 Requests for Admission

[Reserved]

37.1 Discovery Motions (formerly L.R. 7.1(d)) (amended January 1, 2021)

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

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

b. 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.

c. 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. *Pro se* parties who are incarcerated 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.

d. 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.

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

f. 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.

g. 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.

h. 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.

SECTION VI.
TRIALS

38.1 Notation of "Jury Demand" in the Pleading

(a) If a party demands a jury trial as Fed. R. Civ. P. 38(b) permits, the party shall place a notation on the front page of the initial pleading which that party signed, stating "Demand for Jury Trial" or an equivalent statement. This notation shall serve as a sufficient demand under Fed. R. Civ. P. 38(b). Selecting "yes" to the question for a Jury Demand on the Civil Cover Sheet is not sufficient to comply with Fed. R. Civ. P. 38(b).

(b) In cases removed from state court, a party may file a "Demand for Jury Trial" that is separate from the initial pleading. See Fed. R. Civ. P. 81(c); L.R. 81.4.

39.1 Opening Statements and Closing Arguments

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

39.2 Submission of Pretrial Papers

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

40.1 Preferences (formerly L.R. 40.2)

Only the following causes shall be entitled to preferences:

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

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

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

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

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

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

40.2 Trial Calendar (formerly L.R. 40.3)

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

41.1 Settlements, Apportionments and Allowances in Wrongful Death Actions

In an action for wrongful death,

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

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

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

41.2 Dismissal of Actions (amended January 1, 2022)

(a) Whenever it appears that the plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge may order it dismissed. In the absence of an order by the assigned judge or magistrate judge setting any date for any pretrial proceeding or for trial, the plaintiff's failure to take action for four (4) months shall be presumptive evidence of lack of prosecution. Nothing in this Rule shall preclude any party from filing a motion to dismiss an action or proceeding for failure to prosecute under Fed. R. Civ. P. 41(b).

(b) Failure to notify the Court of a change of address by counsel or *pro se* litigant within 14 days of a change in accordance with L.R. 10.1(c)(2) may result in the dismissal of any pending action.

41.3 Actions Dismissed by Stipulation (amended January 1, 2020)

Within 30 days after notifying the Court or Clerk that they have settled an action, or within 90 days of such notification in an action involving a municipal defendant, the parties shall file a stipulation of dismissal signed by each attorney and/or *pro se* litigant appearing in the action. Any such stipulation of dismissal that is submitted by the parties shall contain the following language, if applicable: "That no party hereto is an infant or incompetent." For actions involving an infant or incompetent, see L.R. 17.1. If a stipulation of dismissal is not timely filed, the Judge may enter an order dismissing the case by reason of settlement pursuant to the procedure set forth in L.R. 68.1.

42.1 Consolidation; Separation of Issues in Civil Suits

[Reserved]

43.1 Examination of Witnesses

[Reserved]

44.1 Official Records

[Reserved]

45.1 Subpoenas

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

46.1 Exceptions to Rulings

[Reserved]

47.1 Grand and Petit Jurors

Grand and petit jurors to serve at stated and special sessions of the Court shall be summoned pursuant to 28 U.S.C. §§ 1861–67, and the Plan adopted and approved by the judges of this Court and approved by the Judicial Council for the Court of Appeals for the Second Circuit contained in General Order 24. The selection of grand and petit jurors is made by random selection from voter registration lists and supplemented by, if available, lists of licensed drivers from the New York State Department of Motor Vehicles and tax filers from the New York State Department of Taxation and Finance. Court sessions, pursuant to 28 U.S.C. § 112, are designated to be held in the Northern District of New York in the cities of Albany, Binghamton, Malone/Plattsburgh, Syracuse, Utica, and Watertown. For jury selection purposes under 28 U.S.C. § 1869(c), this District is divided into divisions from which jurors are selected for the particular place where jury sessions are to be held. The divisions are as follows:

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

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

3. SYRACUSE: Cayuga, Cortland, Jefferson, Madison, Onondaga, and Oswego Counties

4. UTICA DIVISION: Hamilton, Herkimer, Lewis, Oneida and Otsego Counties

5. PLATTSBURGH DIVISION: Clinton, Essex, Franklin and St. Lawrence Counties

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

47.2 Jury Selection (amended January 1, 2021)

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

(b) Impanelment of the Jury. In its discretion, the Court shall impanel the jury by use of either the "Strike" or "Jury Box" selection method unless the Court determines otherwise. Impanelment via the "Strike" method requires all potential jurors to be questioned, and after challenges for cause are entertained, the attorneys on each side will alternate striking one juror until there are a sufficient number of jurors remaining which comprises the jury, as decided by the presiding judge.

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

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

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

47.3 Assessment of Juror Costs

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

47.4 Jury Deliberation

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

47.5 Jury Contact Prohibition

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

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

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

47.6 Social Media Juror Inquiries

(a) Attorneys may use websites available to the public, including social media websites, for juror or prospective juror research, so long as:

1. The website or information is available and accessible to the public;

2. The attorney does not send an access request to a juror's electronic social media;

3. No direct communication or contact occurs between the attorney and a juror or prospective juror as a result of the research, including, but not limited to, Facebook "friend" requests, Twitter or Instagram "follow" requests, LinkedIn "connection" requests, or other forms of internet and social media contact;

4. Social media research is done anonymously. For example, a search on a social media site must not disclose to the juror who is making the inquiry, and it must only seek information available and accessible to the public and not the result of an attorney's account on said social media site; and

5. Deception is not used to gain access to any website or to obtain any information.

(b) Third parties working for the benefit of or on behalf of any attorney must comply with all the same restrictions as set forth above for attorneys.

(c) If an attorney becomes aware of a juror's posting on the internet about the case in which she or he is serving, the attorney shall report the issue to the court.

48.1 Number of Jurors

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

49.1 Special Verdicts and Interrogatories

[Reserved]

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

[Reserved]

51.1 Instructions to the Jury

When Submitted and Served. See Uniform Pretrial Scheduling Order issued by the court following the initial pretrial conference, or any subsequent order issued by the presiding judge setting a superseding deadline. See Fed.R.Civ.P. 51 and L.R. 16.1(e).

52.1 Proposed Findings in Civil Cases

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

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

53.1 Masters

[Reserved]

53.2 Master's Fees

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

53.3 Oath of Master, Commissioner, etc.

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

SECTION VII.
JUDGMENTS

54.1 Taxation of Costs (amended January 1, 2021)

(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 reimbursement. 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.

54.2 Jury Cost Assessment

See L.R. 47.3.

54.3 Award of Attorney's Fees

[Reserved]

54.4 Motion for Attorneys' Fees under 42 U.S.C. 406(b) (Amended 1/1/23)

Motions for attorney's fees pursuant to 42 U.S.C. § 406(b) shall be filed within fourteen (14) days pursuant to Fed.R.Civ.P. 54(d)(2)(B) 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 or within the time frame set forth in *Sinkler vs. Berryhill*, 932 F.3d 83, 88 (2d Cir. 2019). See General Order 18.

54.5 Allowances to Attorneys and Receivers

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

55.1 Clerk's Certificate of Entry of Default

A party applying to the Clerk for a certificate of entry of default pursuant to Fed. R. Civ. P. 55(a) shall submit an affidavit showing that (1) the party against whom it seeks a judgment of affirmative relief is not an infant, in the military, or an incompetent person (2) a party against whom it seeks a judgment for affirmative relief has failed to plead or otherwise defend the action as provided in the Federal Rules of Civil Procedure and (3) it has properly served the pleading to which the opposing party has not responded.

55.2 Default Judgment (amended January 1, 2022)

(a) By the Clerk. Prior to filing a request for a default judgment for a sum certain, the party must first obtain a Clerk's Certificate of Entry of Default as required by L.R. 55.1. When a party is entitled to have the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, the Clerk's certificate of entry of default, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a per diem rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that:

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

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

(b) By the Court. Prior to filing a motion for default judgment, the party must first obtain a Clerk's Certificate of Entry of Default as required by L.R. 55.1. A party shall accompany a motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), with a clerk's certificate of entry of default in accordance with Fed. R. Civ. P. 55(a), a proposed form of default judgment, and a copy of the pleading to which no response has been made. The moving party shall also include in its application an affidavit of the moving party or the moving party's attorney setting forth facts as required by L.R. 55.2(a).

56.1 Summary Judgment Procedure (formerly L.R. 7.1(a)(3)) (amended January 1, 2021)

(a) **Statement of Material Facts**: Any motion for summary judgment shall contain a separate 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. For the recommended Notification of the Consequences of Failing to Respond to a Summary Judgment Motion, visit the District's webpage at Notification of Consequences.

(b) **Response to Statement of Material Facts**: The opposing party shall file a separate Response to the Statement of Material Facts. The opposing party 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 may deem admitted any properly supported facts set forth in the Statement of Material Facts that the opposing party does not specifically controvert. In addition, the opposing party's Response may set forth any assertions that the opposing party contends are in dispute in a short and concise Statement of Additional Material Facts in Dispute, containing separately numbered paragraphs, followed by a specific citation to the record where the fact is established. The moving party may reply to the opposing party's contended assertions in a separate Reply Statement and/or its Reply Memorandum of Law.

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

When moving for summary judgment against a *pro se* litigant, the moving party shall inform the *pro se* litigant of the consequences of failing to respond to the summary judgment motion. Counsel for the moving party shall send a notice to the *pro se* litigant that a motion for summary judgment seeks dismissal of some or all of the claims or defenses asserted in their complaint or answer and that the *pro se* litigant's failure to respond to the motion may result in the Court entering a judgment against the *pro se* litigant. For the recommended Notification of the Consequences of Failing to Respond to a Summary Judgment Motion, visit the District's webpage at Notification of Consequences.

57.1 Declaratory Judgment

[Reserved]

58.1 Entry of Judgment (amended January 1, 2020)

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

58.2 Entering Satisfaction of Judgment or Decree

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

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

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

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

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

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

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

59.1 New Trial; Amendment of Judgment

See L.R. 60.1 (Motions for Reconsideration).

60.1 Relief from Judgment or Order (formerly L.R. 7.1(g)) (amended January 1, 2021)

Unless otherwise provided by the Court, by statute or rule (such as Fed.R.Civ.P. 50, 52, 59 and 60), 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(a). 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 re-argument on submission of the papers, without oral argument, unless the Court directs otherwise.

61.1 Harmless Error

[Reserved]

62.1 Stay of Proceedings

[Reserved]

62.2 Supersedeas Bond

See L.R. 67.1.

63.1 Disability of a Judge

[Reserved]

SECTION VIII.
PROVISIONAL AND FINAL REMEDIES
AND SPECIAL PROCEEDINGS

64.1 Seizure of Person or Property (amended January 1, 2022)

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 5.3.

(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 and Border Protection, Champlain, 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 and Border Protection, Office of Fines, Penalties and Forfeitures, 237 West Service Road, Champlain, New York, 12919 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.

(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; Clerk's Notice to Debtor; and proposed Writ to the Magistrate Judge assigned. 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.

65.1 Injunctions and Temporary Restraining Orders (formerly L.R. 7.1(f)) (amended January 1, 2021)

A party may seek a temporary restraining order by the standard motion procedure (i.e., advanced notice, 21 days for an opposition, and 7 days for a reply) or by Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in Local Rule 7.1 for other motions. The application must include the following: the motion for Temporary Restraining Order and/or Preliminary Injunction; a copy of the complaint, only if the case has been recently filed; a memorandum of law; and a proposed order granting the injunctive relief. 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) governs motions brought by Order to Show Cause.

65.1.1 Sureties

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

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

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

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

66.1 Receiverships

[Reserved]

67.1 Deposits in Court (amended January 1, 2022)

(a) No money shall be sent to the Court or to the Clerk of the Court for deposit into the Court's registry without a court order signed by the presiding Judge in the case or proceeding. The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk of Court. Unless provided for elsewhere in this Rule, all money ordered to be paid into the Court or received by the Clerk of the Court in any case pending or adjudicated shall be deposited with the Treasury of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories that the Treasury has designated to accept such deposit on its behalf via cashier's check or certified check.

(b) Order Directing the Investment of Funds. Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interest bearing instrument using the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. §2045. Any order directing the Clerk of the Court to invest funds deposited with the Court's CRIS pursuant to 28 U.S.C. § 2041 shall specify the amount to be invested. The Clerk of the Court shall take all reasonable steps to invest the funds within fourteen (14) days of the filing date of the order.

(c) Investment of Registry Funds.

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

2. Interpleader funds deposited under 28 U.S.C. §1335 meet the IRS definition of a "Disputed Ownership Fund" (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements.

3. The Director of the Administrative Office of the United States Courts is designated as custodian for all CRIS funds. The Director or the Director's designee shall perform the duties of custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.

4. Money from each case deposited into CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.

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

6. For each interpleader case, an account shall be established in the CRIS Disputed Ownership Fund, titled in the name of the case giving rise to the deposit invested in the fund. Income generated from fund investments will be distributed to each case after the DOF fee has been applied and tax withholdings have been deducted from the fund. Reports showing the interest earned and the principal amounts contributed in each case will be available through the FedInvest application for each court participating in the CRIS and made available to litigants and/or their counsel. On appointment of an administrator authorized to incur expenses on behalf of the DOF in a case, the case DOF funds should be transferred to another investment account as directed by court order.

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

When a stay shall be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond. In all other cases, the Court shall, on notice, grant a stay on the terms it deems proper.

On approval, a party shall file the supersedeas bond with the Clerk, and shall promptly serve a copy thereof, with notice of filing, upon all parties affected thereby. If a party raises objections to the form of the bond or to the sufficiency of the surety, the Court shall provide prompt notice of a hearing to consider such objections.

(e) Registry Investment Fee and Taxes.

1. The custodian is authorized and directed to deduct the CRIS fee of an annualized 10 basis points on assets on deposit for all CRIS funds, excluding the case funds held in the DOF, for the management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

2. The custodian is authorized and directed by this Order to deduct the DOF fee of an annualized 20 basis points on assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata distribution for earnings is made to court cases. The custodian is further authorized and directed by this Order to withhold and pay federal taxes due on behalf of the DOF.

3. Deposits to the CRIS DOF will not be transferred from any existing CRIS Funds. Only new deposits pursuant to 28 U.S.C. §1335 from the effective date of this order will be placed in the CRIS DOF.

67.2 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67 (amended 1/1/22)

(a) Any person seeking withdrawal of money deposited in the Court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as Fed. R. Civ. P. 67 requires shall file a motion in compliance with Local Rule 7.1, with a proposed order. The proposed Order for Disbursement of the funds must contain the following information:

1. The principal sum initially deposited and the date on which it was deposited;
2. The amount(s) of principal to be disbursed;
3. The percentage of accrued interest payable with each principal amount (less the Registry fee);
4. To whom exactly each disbursement check should be made payable; and
5. Full mailing instructions for each disbursement check, including complete street address and zip code.

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

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

67.3 Bonds and Other Sureties

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

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

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

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

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

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

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

67.4 Refund of Overpayments

The Clerk of the Court or his designee shall be authorized to refund duplicate filing, admission, or biennial fees. In addition, the Clerk of the Court or his designee shall be authorized to refund overpayments made in criminal cases, such as duplicate or overpayments for Special Assessments, Fines, and Restitution, after confirming that the account has been paid in full, or the defendant's portion of Court-ordered restitution has been paid in full.

The Clerk of the Court or his designee shall be authorized to make a refund if an erroneous payment is discovered by the Court or the Clerk's Office, or if a party or its counsel files a written request for a refund. Instructions for filing a request for a refund are available on the Court's website at www.nynd.uscourts.gov.

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

67.5 Payments Generally (Amended January 1, 2020)

Except as provided otherwise by Local Rule or court order, Clerk's Office personnel shall not accept cash in amounts exceeding $500 and shall not accept foreign currency. Acceptable forms of payment for amounts exceeding $500 include but are not limited to (i) credit cards, (ii) certified checks, or (iii) cashier's checks drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Credit card payments will not be accepted for payment of any criminal debt. The Court will only accept debit cards (with the word debit written on the card), cash, money orders and certified bank checks as form of payment for all criminal debt.

68.1 Settlement Procedures (formerly L.R. 68.2)

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

(b) If the Court decides not to follow the procedures set forth in L.R. 68.1(a), the parties shall file within thirty (30) days of the notification to the Court, unless otherwise ordered, such notices, stipulations and/or motions as are necessary to terminate the action. If the required documents are not filed within the thirty (30) day period, the Clerk shall place the action on the dismissal calendar.

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

69.1 Execution

[Reserved]

70.1 Judgment for Specific Acts; Vesting Title

[Reserved]

71.1 Enforcing Relief for or Against a Nonparty

[Reserved]

71.1.1 Condemnation Cases

[Reserved]

72.1 Authority of Magistrate Judges (Amended January 1, 2024)

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

(b) Appeal of a Magistrate Decision. Any party may file an appeal from a Magistrate Judge's decision of a non-dispositive matter to the assigned District Judge by filing with the Clerk and serving upon all parties their appeal from the decision. There is no filing fee. The party must file and serve its notice of appeal and appellant's brief within fourteen (14) days after being served with the Magistrate Judge's order and must specifically designate the order or part of the order from which the party seeks relief and the basis for the appeal.

Opposition papers are due 14 days after the appellant's brief is filed and shall also include a memorandum of law responsive to the appellant's arguments. Appellant's reply brief is due 7 days after the appellee's brief is filed. Unless the Court directs otherwise, it will decide all appeals on submission of the papers without oral argument.

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

72.2 Duties of Magistrate Judges (amended January 1, 2022)

(a) In all civil cases, in accordance with Fed. R. Civ. P. 16, the Magistrate Judge assigned pursuant to L.R. 3.1 is authorized to hold conferences before trial, enter scheduling orders, and modify scheduling orders. The scheduling order may limit the time to join parties, amend pleadings, file and hear motions, and complete discovery. It may also include dates for a final pretrial conference and other conferences, a trial ready date, a trial date, and any other matters appropriate under the circumstances of the case. A schedule cannot be modified except by order of the Court. The Magistrate Judge may explore the possibility of settlement and hold settlement conferences.

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

1. Upon the filing of a complaint or notice of removal, the Clerk shall promptly provide to the plaintiff, or the plaintiff's attorney, a notice, as approved by the Court, informing the parties of their right to consent to have the full-time Magistrate Judge conduct all proceedings in the case.

Proceedings in the case include hearing and determining all pretrial and post-trial motions, including dispositive motions; conducting a jury or non-jury trial; and ordering the entry of a final judgment. The plaintiff shall attach copies of the notice to the copies of the complaint and summons when served. Additional copies of the notice shall be furnished to the parties at later stages of the proceedings and shall be included with pretrial notices and instructions. The consent form will state that any appeal lies directly with the Court of Appeals for the Second Circuit.

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

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

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

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

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

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

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

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

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

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

72.3 Assignment of Duties to Magistrate Judges (amended January 1, 2024)

(a) Immediately upon the filing of a civil action or proceeding, the Clerk shall assign the action or proceeding to a District Judge and may also assign the action or proceeding to a Magistrate Judge pursuant to the Court's Assignment Plan. When a civil action or proceeding is assigned to a Magistrate Judge, the Magistrate Judge shall conduct proceedings in accordance with these Rules and 28 U.S.C. § 636 as directed by the District Judge. See L.R. 3.1.

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

(c) Prisoner Cases. Unless the Court orders otherwise, any proceeding that an unrepresented prisoner commences, and any proceeding commenced under 28 U.S.C. §§ 2241 and 2254, may, unless the Court orders otherwise, be referred to a Magistrate Judge for the purpose of reviewing applications, petitions and motions in accordance with these Rules and 28 U.S.C. §636.

(d) ***Pro Se* Non-Prisoner Cases**. Unless the Court orders otherwise, any civil action that a non-prisoner *pro se* litigant commences shall be referred to a Magistrate Judge for the purpose of review under 28 U.S.C. §1915(e)(2) and 28 U.S.C. §1915A when an application to proceed *in forma pauperis* is filed.

(e) **Social Security Appeal Cases**. (Amended January 1, 2020). Upon the filing of the complaint, the Clerk shall randomly assign social security appeal cases in rotation directly to a Magistrate Judge pursuant to General Order 18. The Clerk shall promptly notify plaintiff's counsel or *pro se* plaintiff of plaintiff's right to consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). Plaintiff has 21 days from receipt of the clerk's notice to file a consent or declination to consent to the jurisdiction of the Magistrate Judge. If plaintiff timely consents, and if the United States does not timely withdraw consent, the case shall be deemed assigned to the Magistrate Judge without the necessity of an order of referral. In the event that the plaintiff does not timely consent, or if the United States timely withdraws its consent, the Clerk shall reassign the case to a U.S. District Judge consistent with General Order #12. Such reassigned cases shall be referred to the same Magistrate Judge to whom the case was originally assigned for all pretrial, non-dispositive matters and for issuance of a report and recommendation.

(f) **Federal Debt Collection Act Cases.** (modified January 1, 2021)

1. The Clerk shall assign a District Judge and a Magistrate Judge in accordance with General Order #12.

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

3. If a party requests a hearing, the Clerk shall make a good faith effort to schedule the hearing as soon as practicable, or if requested by the debtor, within five (5) days of the receipt of the request, or "as soon after that as possible" pursuant to 28 U.S.C. § 3101(d)(1).

4. If appropriate, the Court shall issue an order directing the Clerk to issue the writ being sought, except that an application under 28 U.S.C. § 3203 for a writ of execution in a post-judgment proceeding shall not require an order of the Court.

5. The assigned Magistrate Judge shall conduct any hearing that may be requested, decide all non-dispositive issues, including a decision on a request for a Final Order of Garnishment, and issue a report-recommendation on any and all dispositive issues.

6. The parties shall file any written objections to the report-recommendation within fourteen (14) days of the filing of same. Without oral argument, the assigned District Judge shall review the report-recommendation along with any objections that the parties have filed.

73.1 Magistrate Judges: Trial by Consent

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

SECTION IX.
DISTRICT COURT AND CLERKS

77.1 Hours of Court

[Reserved]

77.2 Orders (amended January 1, 2022)

(a) All orders, whether by consent or otherwise, shall be presented for approval and execution to the assigned judge.

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

77.3 Sessions of Court

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

77.4 Court Library

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

77.5 Official Newspapers (amended January 1, 2022)

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

County	Newspaper	City
Albany	Times Union (D)	Albany, NY
Broome	Binghamton Press/Sun Bulletin (D)	Binghamton, NY
Cayuga	The Citizen (D)	Auburn, NY
Clinton	Press-Republican (D)	Plattsburgh, NY
Chenango	Evening Sun (D)	Norwich, NY
Columbia	Register Star (D)	Hudson, NY
Cortland	Cortland Standard (D)	Cortland, NY
Delaware	The Reporter (W)	Delhi, NY
Essex	Lake Placid News (W)	Lake Placid, NY
Franklin	Adirondack Daily Enterprise (D)	Saranac Lake, NY
Fulton	Leader Herald (D)	Gloversville, NY
Greene	HudsonValley360	Catskill, NY
Hamilton	Hamilton County Express (W)	Hamilton, NY
Herkimer	Times Telegram	Herkimer, NY
Jefferson	Watertown Daily Times (D)	Watertown, NY
	Thousand Island Sun (W)	Alexandria Bay, NY
Lewis	NNY360	Lowville, NY
Madison	Oneida Dispatch (D)	Oneida, NY
Montgomery	The Recorder (D)	Amsterdam, NY
Oneida	Utica Observer Dispatch (D)	Utica, NY
	Rome Sentinel (D)	Rome, NY
Onondaga	Post Standard (D)	Syracuse, NY
Oswego	Palladium Times (D)	Oswego, NY
Otsego	The Daily Star (D)	Oneonta, NY
Rensselaer	The Record (D)	Troy, NY

St. Lawrence	Tribune Press (W)	Gouverneur, NY
	North Country Now	Massena, NY
Saratoga	The Saratogian (D)	Saratoga Springs, NY
Schenectady	The Daily Gazette (D)	Schenectady, NY
Schoharie	Times Journal (W)	Cobleskill, NY
Tioga	Owego Pennysaver (W)	Owego, NY
Tompkins	Ithaca Journal (D)	Ithaca, NY
Ulster	The Daily Freeman (D)	Kingston, NY
Warren	Post Star (D)	Glens Falls, NY
Washington	Whitehall Times (W)	Whitehall, NY

(D) = Daily (W) = Weekly

77.6 Release of Information

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

77.7 Official Station of the Clerk

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

78.1 Hearing Motions (amended January 1, 2021)

[Reserved]

79.1 Custody of Exhibits and Transcripts (Amended January 1, 2020)

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

80.1 Stenographic Transcript: Court Reporting Fees

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

81.1 Bankruptcy Cases (formerly L.R. 76.1)

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

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

81.2 Bankruptcy Appeals (formerly L.R. 76.2) (Amended January 1, 2023)

(a) When a party files a notice of appeal with the bankruptcy court clerk, and the notice is not timely filed in accordance with Fed. R. Bankr. P. 8002(a); and the party did not file a motion for extension of time in accordance with Fed. R. Bankr. P. 8002(c), the bankruptcy court clerk shall forward the notice of appeal together with a "Certification of Noncompliance" to the Clerk without assembling the record as provided for in Fed. R. Bankr. P. 8010(b). The Clerk shall file the notice and certificate, assign a civil action number, and forward the file to a District Judge to determine whether the party timely filed the notice of appeal or whether to dismiss the appeal as untimely. If the District Judge determines that the party timely filed the appeal or that the appeal should otherwise be perfected, the Clerk shall notify the bankruptcy court clerk to complete the record promptly in accordance with Fed. R. Bankr. P. 8010(b).

(b) The Clerk shall issue a standard bankruptcy appeal scheduling notice at the time of the filing of the record on appeal, a copy of which the Clerk shall serve on the parties via CM/ECF, or by regular mail on a *pro se* party. There will be no oral argument unless the court notifies the parties that oral argument is necessary.

i. Appellant's brief, not to exceed 25 pages, is due forty (40) days from the filing of the Court's Scheduling Notice.
ii. Appellee's brief, not to exceed 25 pages, is due forty (40) days from the filing of the appellant's brief.
iii. Appellant's reply brief, not to exceed 10 pages, is due twenty (20) days from the filing of the appellee's brief.

(c) Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. The time to file briefs shall be in accordance with the District Court's Bankruptcy Appeal Scheduling Order.

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

81.3 Actions Removed Pursuant to 28 U.S.C. § 1452 (formerly L.R. 81.4)

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

81.4 Removed Cases, Demand for Jury Trial (formerly L.R. 81.3)

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

82.1 Jurisdiction and Venue Unaffected

[Reserved]

82.2 Waiver of Judicial Disqualification

During the course of a proceeding, potential issues may arise which would require the disqualification of the presiding judicial officer pursuant to 28 U.S.C. §455. If such an issue does arise, the judicial officer will advise the parties and the Clerk of Court of the potential conflict.

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

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

83.1 Admission to the Bar (amended January 1, 2025)

(a) 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 admitted to practice in this Court upon submission of the required documentation 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 admission must electronically file in PACER (https://www.pacer.gov/) the documentation required for admission including the following:

1. **A 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
     - convicted of a felony or misdemeanor;
     - held in contempt of court, disbarred, suspended, censured, sanctioned, or otherwise disciplined by any Federal, State or Local Court or attorney disciplinary authority; and/or
     - resigned from the bar of any jurisdiction while a professional misconduct investigation was pending;

     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. **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.

3. **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.

4. **The Required Fee**. As prescribed by and pursuant to the Judicial Conference of the United States and the Local Rules of this Court, the fee for admission to the bar is $249.00. 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 $199.00 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. The admission fees are waived for all attorneys in the full-time employ of the United States Government.

(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 must submit a Certificate of Good Standing from the United States District Court in which they are members and a proposed order granting the admission. All other requirements of subdivision (a) apply.

(d) Pro Hac Vice 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 admitted *pro hac vice* to argue or try a particular case in whole or in part. In addition to the documents required by L.R. 83.1(a)(1), (2), and (3), each applicant for *pro hac vice* admission must electronically file, via MFT on the Court's website, a Motion for Limited Admission p*ro hac vice*, which includes the case caption of the particular case for which the applicant seeks admission. See L.R. 10.1(c). Upon receipt of an Order granting the motion for limited admission, the attorney seeking p*ro hac vice* admission must immediately submit a *pro hac vice* E-File Registration 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** and is payable upon acceptance of a complete application received by the Court via MFT. The Clerk deposits all *pro hac vice* admission fees into the District Court Fund. See L.R. 83.1(a)(4). 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. 11.1.

In lieu of a written motion for admission, an attorney may make an oral motion in open court on the record. Following the proceeding, the attorney seeking *pro hac vice* admission must file all of the required documents referenced above in CM/ECF in the particular case for which the applicant seeks admission, including payment of the filing fee via Pay.gov, within seven (7) days of the date of oral admission.

(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 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 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://pacer.uscourts.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 the Northern District of New York shall be required 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 Federal, State, Municipal Governments or not-for-profit organizations are exempt from this *pro bono* requirement.

(h) Conviction or Disciplinary Action in any Jurisdiction. An attorney admitted pursuant to this section who thereafter (1) is convicted of a felony or misdemeanor; (2) is held in contempt of court, disbarred, suspended, censured, sanctioned, or otherwise disciplined by any Federal, State or Local Court or attorney disciplinary authority; or (3) resigns from the bar of any jurisdiction while a professional misconduct investigation is pending, shall provide notice to this Court of such occurrence(s) and shall disclose the relevant circumstances in writing within 14 days thereof. Failure to provide such notice may result in removal from the roll of the Court. In response to such notice, the Court may take further action in accordance with Local Rule 83.3, including, where the Chief Judge determines good cause exists, provisional suspension from the bar of the Northern District of New York pending further investigation or proceedings.

(i) Biennial Registration. Every member of the bar of the Northern District of New York shall submit an application for biennial registration pursuant to notice from the Clerk of Court. A $50.00 biennial registration fee will be required 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 biennial registration fee is waived for all attorneys employed full-time by federal, state and local public sector entities.

1. Failure to comply with the biennial registration and remit the biennial fee, unless waived, will result in the automatic removal of the attorney from the Court's bar roll. Unless excused by the Chief Judge to gain readmittance to the Northern District of New York Bar, attorneys removed from the bar for failure to comply with the biennial registration must satisfy all of the admission requirements set forth in Local Rule 83.1(a).

2. 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.

3. In the application for biennial registration, the member must certify whether or not, within the time period since his/her admission to this bar or most recent biennial registration, he/she (1) has been convicted of a felony or misdemeanor; (2) has been held in contempt of court, disbarred, suspended, censured, sanctioned, or otherwise disciplined by any Federal, State or Local Court or attorney disciplinary authority; and (3) has resigned from the bar of any jurisdiction while a professional misconduct investigation was pending. Where the member provides notice of such occurrence, he/she shall also disclose the relevant circumstances in writing. Failure to provide notice of such an occurrence may result in removal from the roll of the Court. In response to such notice, the Court may take further action in accordance with Local Rule 83.3, including, where the Chief Judge determines good cause exists, provisional denial of the application for biennial registration pending further investigation or proceedings.

(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. 5.2.

83.2 Pro Bono Service (formerly L.R. 83.3)

(a) *Pro Bono* Appointment.

1. All attorneys admitted to practice within the Northern District of New York, except attorneys employed by the government, are required to accept no more than one *pro bono* assignment per year on a rotating basis.

2. Any request to be excused from accepting a *pro bono* case assignment must be directed to the Chief Judge. Lack of experience in a specific area of law is not an acceptable reason to be excused. The Court expects attorneys admitted to practice in the NDNY to participate in periodic CLE training that the Court offers.

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

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

(b) Application for Appointment of Attorney

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

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

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

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

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

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

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

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

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

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

7. Any other factors the Court deems appropriate.

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

(e) Notification of Appointment. After the Court has appointed *pro bono* counsel, the attorney will receive a copy of the appointment order via CM/ECF. Costs the attorney incurs in obtaining copies of materials filed prior to appointment are recoverable under L.R. 82.3(g). *Pro Bono* counsel may also make a request to the Clerk's office to regenerate any documents electronically filed on the docket which will be sent to the attorney via email at no cost.

(f) Duties and Responsibilities of Appointed Counsel. On receiving notice of the appointment, the attorney shall promptly file a notice of appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with

the party any possibilities of resolving the dispute in other forums, including but not limited to, administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as these Rules or court order provide. If the attorney is appointed as Special Mediation Counsel, the attorney-client relationship will be terminated by Court order at the end of the mediation process, as described in L.R. 83.6(d)(4).

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

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

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

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

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

2. the attorney does not feel competent to represent the party in the particular type of action assigned, after the attorney has completed a Court CLE in that area of law;

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

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

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

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

83.3 Discipline of Attorneys (formerly L.R. 83.4) (amended January 1, 2025)

(a) The Chief Judge shall have charge of all matters relating to discipline of members of the bar of the Northern District of New York.

(b) **Grounds for Discipline or Sanction**: Any member of the bar of the Northern District of New York may be censured, suspended, disbarred or otherwise disciplined for cause shown pursuant to subsections (1) through (7) 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 report findings and a recommendation as to any disciplinary matter, including any grievances or complaints lodged from any source and any notice or application made by an attorney relating to 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) **Felony Conviction**: Any member of the bar of the Northern District of New York who is convicted of a felony in the court of any federal district, state, county, commonwealth, territory, possession, recognized tribe, or any legal subdivision thereof, shall be suspended from practice before this Court, upon the Court's receipt of a copy of the judgment of conviction, and unless an order to vacate the order of suspension has been granted, shall cease to be a member of the bar of the Northern District of New York 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 clear and convincing evidence 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. 83.3. The attorney may file an application to vacate the suspension order within twenty (20) days from the date of the order pursuant to subsection (g) 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 the Northern District of New York. 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 attorney to file an application for reinstatement pursuant to subsection (h) 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 (h) below.

(2) **Misdemeanor Conviction**: The Court may disbar, suspend or censure any member of the bar of the Northern District of New York who is convicted of a misdemeanor in the court of any federal district, state, county, commonwealth, territory, possession, recognized tribe, or any legal subdivision thereof. 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. Failure to provide such notice may result in removal from the roll of the Court. In all proceedings, a judgment of conviction shall constitute clear and convincing evidence of the attorney's guilt of the conduct for which the attorney was convicted.

After the Court receives notice of the misdemeanor conviction, by the member or otherwise, the Chief Judge may determine that more information is necessary and direct the attorney to provide additional information and/or explanation. The Chief Judge may, for good cause, provisionally suspend the attorney from practice before this Court pending further investigation or proceedings. The Chief Judge may present the misdemeanor conviction to the District Judges for a determination by majority vote as to whether any disciplinary action should be taken. 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. 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 of the District Judges. A copy of the disciplinary order shall be mailed to the attorney via certified mail. In the event the judgment of conviction is vacated on appeal, the attorney may seek reinstatement of admission to this Court pursuant to subsection (h) below.

(3) **Disbarment/Suspension/Disciplinary Action by Another Court**: Any member of the bar of the Northern District of New York who has been disbarred, suspended, and/or disciplined by a court or attorney disciplinary authority in any federal jurisdiction, state, commonwealth, territory, possession, recognized tribe, or any legal subdivision thereof, shall be disbarred, suspended, and/or disciplined on comparable terms and conditions by this Court unless an examination of the record resulting in the disbarment, suspension, or discipline discloses one or more of the following:

(A) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
(B) 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) that this Court's imposition of the same discipline would result in grave injustice; or
(D) that this Court has held, or these Rules provide, that the misconduct warrants substantially different discipline.

The attorney shall deliver a copy of any such order of disbarment, suspension, or discipline to the Clerk of this Court within fourteen (14) days after the entry of the

order. Failure to provide such notice may result in removal from the roll of the Court.

After receiving notice of such an order, the Chief Judge will issue an order disbarring, suspending and/or disciplining the attorney on comparable terms and conditions as those imposed in the other jurisdiction. The Chief Judge's order shall be mailed to the last known business address of the attorney by certified mail. Within twenty (20) days of service on the attorney of the Chief Judge's order of discipline, the attorney may file an application to vacate the disciplinary order pursuant to (g) below.

(4) **Resignation While Misconduct Investigation Is Pending:** Any member of the bar of the Northern District of New York who has resigned from the bar of any federal court, state, territory, commonwealth, possession, recognized tribe, or any legal subdivision thereof, while an investigation into allegations of professional misconduct is pending shall be deemed to have resigned from the bar of the Northern District of New York. The attorney shall provide notice of such resignation to the Clerk of this Court within fourteen (14) days after the submission of the resignation. Failure to provide such notice may result in removal from the bar of the Northern District of New York.

After the Court receives notice of a 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 the Northern District of New York. 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 (g) below.

(5) **Allegations of Professional Malfeasance of Members of the Bar of the NDNY**

(A) Upon notice to the court, from any source, that a member of the bar of the Northern District of New York allegedly engaged in professional malfeasance, misconduct, or any other cause for discipline, the matter shall be directed to the Chief Judge for review and determination as to whether the conduct warrants further investigation. Complaints alleging professional malfeasance or misconduct on the part of a member of the bar of the Northern District of New York shall be addressed to the Chief Judge, in writing. If the allegation of malfeasance or misconduct is being addressed, or has been addressed in another jurisdiction where the misconduct occurred, the Chief Judge may decline consideration of the matter pending resolution of proceedings in the other jurisdiction, or defer to the resolution of the other jurisdiction. If the Chief Judge deems the conduct alleged in the complaint not sanctionable, the Chief Judge will

dismiss the complaint and notify any complainant 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 may appoint one or more judges to investigate, review, hear and report findings and recommendation as to any disciplinary action to be taken. The Chief Judge may, for good cause, provisionally suspend the attorney from practice before this Court pending further investigation or proceedings.

(B) If the appointed judge(s) 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) shall submit a report of such findings and conclusions to the Chief Judge for the consideration of the District Judges.

(C) If the judge(s) 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) 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.

(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 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. The assigned judge(s) may grant such pre-hearing discovery as deemed necessary, hear witness testimony as warranted, and may consider such other evidence included in the record of the hearing that the assigned judge(s) deems relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The assigned judge(s) shall report the findings and recommendations in writing to the Chief Judge and shall serve them upon the responding attorney. The responding attorney may file objections to the assigned judge(s)'s report and recommendations within fourteen (14) days of the date thereof.

(E) An attorney may not be found guilty of a disciplinary charge except upon a majority vote of the 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, except that in the event of a tie vote, the Chief Judge shall cast a tie-breaking vote. If a District Judge submitted the complaint under subsection (b)(5)(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.

(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.

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

(6) **Attorneys Found to Have Infirmity**: Should it appear to the Court that an attorney who is a member of the bar of the Northern District of New York 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. Upon evidence that the attorney no longer suffers from an infirmity that prevents the attorney from

practicing law before the Court, the attorney may seek reinstatement of admission to the bar of the Northern District of New York pursuant to subsection (h) below.

(7) **Attorney Admitted Pro Hac Vice**: An attorney permitted to argue or try a particular case via pro hac vice admission in accordance with L.R. 83.1 may have his pro hac admission revoked by the Judge who appointed him upon a finding that the attorney has committed professional malfeasance or misconduct in this Court. Upon such revocation, the attorney will then be precluded from again appearing in this Court via pro hac vice admission; but must apply for and be granted admission under L.R. 83.1 in order to appear before this Court.

(c) In all matters of attorney discipline, the Court shall enforce the New York Rules of Professional Conduct. In construing those Rules, 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.

(d) 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.

(e) If an attorney fails to respond, comply or cooperate with any request for information from the Court, or 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 allow, including suspension or removal of the attorney from the bar of the Northern District of New York.

(f) 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.

(g) **Application to Vacate Disciplinary Order**: An attorney who is the subject of an order of suspension, disbarment, or other disciplinary action may file an application with the Clerk of Court to vacate any such order within twenty (20) days from the date of issuance of the order, except for an order issued pursuant to section (b)(5) 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 one or more judges to investigate, review, hear and report findings and recommendation as to whether the disciplinary order should be vacated. If the Chief Judge determines, on good cause, that an evidentiary hearing is not required, 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 District Judges. Upon good cause shown, a majority vote of the 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 certified mail.

(h) **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 the Northern District of New York may apply in writing to the Chief Judge, for good cause shown, for the lifting of the suspension, preclusion or disbarment no earlier than one (1) year from the date of the challenged sanction. 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 character, candor, 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 or a designated 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 District Judges (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 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 for reinstatement shall be served upon the attorney by certified mail.

83.4 Contempt (formerly L.R. 83.5)

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

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

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

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

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

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

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

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

5. Directing, in the Court's discretion, the Marshal to arrest and confine the contemnor until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The

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

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

SECTION X.
ALTERNATE DISPUTE RESOLUTION AND GENERAL PROVISIONS

83.5 Mandatory Mediation Plan (formerly L.R. 83.7)

Purpose. The United States District Court for the Northern District of New York has adopted this Mandatory Mediation Plan. The paid Mediation Program is designed to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation, without impairing the quality of justice or the right to trial. (See General Order #47).

83.6 Assisted Mediation Program (formerly L.R. 83.8)

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

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

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

(d) Procedure. The procedure and limits of Assisted Mediation are governed by this Rule, including the filing requirements preceding and following the assisted mediation session.

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

2. Within ten (10) days of the entry of the order of reference, the *pro se* party shall complete and sign the Declaration of Assisted Mediation form provided by the Clerk's Office at www.nynd.uscourts.gov.

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

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

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

1. **Memorandum for Assisted Mediation**. At least two days prior to the mediation session, each party shall provide to the mediator a "memorandum for assisted mediation." This memorandum shall

   a. State the name and role of each person expected to attend;
   b. Identify each person with full settlement authority;

c. Include a concise summary of the party's claims or defenses;
d. Discuss liability and damages; and
e. State the relief sought by such party

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

(f) Service to the Bar and Court Provided by Special Mediation Counsel. Special Mediation Counsel performs duties as a *pro bono* service to the Court, litigants, and the bar. Costs Special Mediation Counsel incurs during the course of representation of the *pro se* party, including costs associated with obtaining copies of materials filed prior to appointment and in attending mediation sessions, are recoverable under L.R. 82.3(g).

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

(h) Assisted mediation sessions under this Rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the convenience of the parties and to the cost and time of travel involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Immediately upon conclusion of the assisted mediation, the mediator shall file a mediation report with the ADR clerk, indicating only whether the case settled, settled in part, or did not settle. This requirement does not apply if a magistrate judge serves as the mediator.

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

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

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

83.7 Judicial Mediation in Prisoner Civil Rights Cases (formerly L.R. 83.9)

The Court may from time to time select cases from its prisoner civil rights docket for judicial mediation on such terms as it deems appropriate.

83.8 Student Practice (formerly L.R. 83.11) (amended January 1, 2018)

(a) Appearance of Law Student Intern: An eligible law student appearing as a Student Practitioner may with the court's approval, under supervision by a member of this bar, appear on behalf of any person, including the United States Attorney, or the Federal Public Defender, who has consented in writing on the form prescribed by the clerk.

(b) Requirements of Supervising Attorney: The attorney who supervises a student intern shall in compliance with this Rule:

1. Be a member of the bar of the United States District Court for the Northern District of New York;
2. Assume personal professional responsibility for the student's work;
3. Assist the student to the extent necessary;
4. Appear with the student in all proceedings before the court unless his presence is waived by the court;
5. Indicate in writing his or her consent to supervise the student intern under this rule.

(c) Requirements of Law Student Intern: In order to appear pursuant to this Rule, the law student intern shall:

1. Be duly enrolled in good standing in a law school approved by the American Bar Association;

2. Have completed legal studies amounting to at least four semesters, or the equivalent if the school is on some basis other than a semester basis;

3. Be recommended by either the dean or a faculty member of his or her law school as a student practitioner. This recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk or by termination by the court without notice of hearing and without showing of cause;

4. Neither be employed or ask for nor receive any compensation or remuneration of any kind for his/her services from the person on whose behalf s/he renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper

charges for its services. Any requested charges shall account for the unique role of the student practitioner(s) and the charges requested shall not exceed charges awarded for similar cases conducted by non-student practitioners.

5. Certify in writing that s/he is familiar with the federal procedural and evidentiary rules as well as the local rules of this court. The student practitioner shall complete and file an application for admission as a student practitioner on the form supplied by the Clerk. Form can be found at Student Practice Form.

6. Upon filing such application with the Clerk of the Court, in proper form, the Clerk shall file the order approving the student practitioner in the case in which they will appear. The application shall also contain information on the expected date of graduation from law school. The applications for student practitioners will be maintained by the Attorney Registration Clerk.

A student practitioner may appear and render services pursuant to this Rule after approval of the application by a District Court Judge or Magistrate Judge and until the results of the first New York State bar examination subsequent to the student's graduation has been published.

(d) Privileges of the Law Student Intern: The law student so enrolled and supervised in accordance with these rules, may:

1. Appear as counsel in court or at other proceedings when consent of the client or his authorized representative, or the United States Attorney when the client is the United States, or the Federal Public Defender, and the supervising attorney have been filed, and when the court has approved the student's request to appear in the particular case.

2. Prepare and sign motions, petitions, answers, briefs, and other documents in connection with any matter in which s/he had met the conditions of (a) above; each such document shall also be signed by the supervising attorney and shall be filed in the case file.

(e) **Forms:** Forms approved by the court for use in connection with this Rule shall be available in the Clerk's Office and on the Court's website, www.nynd.uscourts.gov.

83.9 Production and Disclosure of Documents and Testimony of Judicial Personnel in Legal Proceedings (formerly L.R. 83.12)

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

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

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

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

(c) This Rule does not apply to requests that members of the public make, when properly made through the procedures that the Court has established for records or documents, such as court files or dockets, routinely made available to members of the public for inspection or copying.

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

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

(f) Procedures to be followed.

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

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

83.10 Appearances of Former Judicial Officers (formerly L.R. 83.14)

No former judicial officer of the Northern District of New York shall appear of record or in person in any case in this District, or use or permit the use of his or her name on any pleading, memorandum of law, or other document filed in any case in this court, within one year after having left such court. Nothing in this General Order shall prohibit a law firm with which said judge is associated from appearing in any case in this District and using the name of the firm on its papers consistent with that appearance. The prohibition against a former judicial officer in this General Order may be remitted in a case upon the informed consent of all other parties made in writing or on the record. This Order shall not prohibit appearances at any time by a former judicial officer in any case assigned to a visiting judge.

85.1 Title

[Reserved]

86.1 Effective Date

See L.R. 1.1(b).

SECTION XI.
CRIMINAL PROCEDURE

1.1 Scope of the Rules

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

1.2 Electronic Case Filing

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

2.1 THROUGH 4.1

[Reserved]

5.1 Notice of Arrest (amended January 1, 2022)

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

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

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

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

(d) **Preparation of Pretrial Services Report.** Pursuant to 18 U.S.C. §3154(1), upon notification of a new arrest, the Probation Office shall prepare a Pretrial Services Report pursuant to Criminal L.R. 46.1, also known as a bail bond report, for each defendant making an initial appearance before a Magistrate Judge on all criminal complaints, informations and indictments. Immediately following an arrest, the agency effecting the arrest or the U.S. Marshal Service shall notify the Probation Office of the arrest, and unless extraordinary circumstances exist, initial appearances shall be scheduled so as to provide the Probation Officer two hours to interview the defendant, conduct a brief investigation, and prepare a Pretrial Services Report for the judicial officer. Pursuant to 18 U.S.C. § 3154, Pretrial Services Reports are not public records, are not to be reproduced or disclosed to any party, other than the government and attorney for the defendant, and the Court, and they shall remain **confidential**. Pretrial Services Reports may not be used for any other purpose than bail proceedings unless authorized by the Court. Pretrial Services Reports shall be lodged, not filed, on CM/ECF and are not available for public inspection. The ECF system will generate a notice of electronic filing to counsel for the USA, counsel for the **specific** defendant, to the presiding judge, and the active magistrate judges.

6.1 THROUGH 10.1

[Reserved]

11.1 Pleas

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

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

(c) For any plea agreement that is to be sealed, the United States Attorney shall provide the Court with a proposed sealing order in compliance with L. R. Cr. P. 49.2, subject to the Court's discretion.

12.1 Motions and Other Papers (amended January 1, 2024)

(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.

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, if any, 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 sur-reply is not permitted. 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.

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 make a determination as to whether a hearing is necessary, and, if so, 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. 49.1 regarding personal privacy protection.

(h) **Motion for Reconsideration**. A motion for reconsideration of a Court Order shall be filed within fourteen (14) days of the date of the decision. The motion shall be accompanied by a memorandum of law setting forth concisely the matters or controlling decisions that the party believes the Court has overlooked or misapplied.

13.1 Joint Trial of Separate Cases

[Reserved]

14.1 Discovery

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

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

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

2. ***Brady* Material**. All information and material that the government knows may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963). The Government shall disclose such information to the defense promptly after its existence becomes known to the Government. The foregoing obligation is a continuing one.

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

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

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

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

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

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

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

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

15.1 THROUGH 16.1

[Reserved]

17.1 Subpoenas (amended January 1, 2022)

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

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

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

1. The Clerk shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this District.

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

3. The defense attorney shall request that the United States Marshal serve the subpoenas under this Rule. The defense attorney shall obtain an order from the Court directing the Marshal to serve subpoenas. The Marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless the attorney obtains express advance authorization by written order of the Court.

4. As authorized by Fed. R. Crim. P. 17(b), the Court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under this Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government. See also 28 U.S.C. §1825.

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

17.1.1 Pretrial Conferences (amended January 1, 2022)

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

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

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

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

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

(e) Court appointment of interpreters under Fed. R. Crim. P. 28; see also 28 U.S.C. §1827(c)(2), except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses;

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

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

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

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

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

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

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

(m) Scheduling of the trial and of witnesses;

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

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

18.1 THROUGH 19.1

[Reserved]

20.1 Transfer from a District for Plea and Sentence (amended January 1, 2022)

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a petty offense or misdemeanor, the Court shall refer the case immediately to a Magistrate Judge who shall take the plea and impose sentence in the manner prescribed in the Federal Rules if, pursuant to 18 U.S.C. § 3401 and/or Fed. R. Crim. P. 41, the defendant consents in writing to this procedure.

21.1 THROUGH 22.1

[Reserved]

23.1 Free Press- Fair Trial Directives

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24.1 THROUGH 29.1

[Reserved]

30.1 Jury Instructions

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

31.1 Jury Verdict (Amended January 1, 2023)

The parties shall file a proposed jury verdict form with the Court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment, or any subsequent order thereof.

32.1 Presentence Reports (amended January 1, 2022)

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

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

(c) Disclosure Procedures.

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

2. a. The Probation Office will submit the initial draft of the Presentence Report through the ECF System which will generate a notice of electronic filing to counsel for the USA, counsel for the **specific** defendant, and to the presiding judge. The Presentence Report shall be lodged, not filed, on CM/ECF and is not available for public inspection.

b. Any objections to the Presentence Report shall be forwarded directly to the Probation Office and shall not be filed on the docket.

c. Once finalized, the Probation Office will submit the final Presentence Report and addendum through the ECF system which will generate a notice of electronic filing to counsel for the USA, counsel for the **specific** defendant, and to the judge. Access is restricted to counsel for the USA, counsel for the **specific** defendant, the presiding judge, and the active magistrate judges. This document is not available for public inspection.

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

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

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

(d) Responsibilities of the Clerk and Probation Office.

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

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

32.2 Statement of Reasons and Victim Restitution List (Amended January 1, 2023)

(a) **Statement of Reasons:** The Statement of Reasons shall be prepared in every criminal felony and Class A misdemeanor case pursuant to 18 U.S.C. § 3553(c). Because the Statement of Reasons may include sensitive information, such as the defendant's address, social security number and information indicating that the defendant provided substantial assistance to the government, public access to the Statement of Reasons shall be restricted in every criminal case in accordance with the policy proscribed by the Judicial Conference of the United States. The Statement of Reasons shall be lodged, but not filed, with the Court and shall not be available for public inspection. The presiding judge shall determine what documents, if any, shall be lodged and appended to the Statement of Reasons which shall be made available for review by the Court of Appeals, counsel for the Government and Defendant, Probation and the United States Sentencing Commission. The Statement of Reasons will be lodged in the ECF system which will generate a notice of electronic filing to counsel for the USA, counsel for the **specific** defendant, and the presiding judge.

(b) **Victim Restitution List:** If restitution is ordered, in order to protect the identify of all victims, the Victim Restitution List shall be lodged, but not filed, with the Court, and it shall not be available for public inspection. This list shall be used strictly for distribution of restitution collected by the Finance Department. Any further distribution or dissemination is prohibited.

32.3 Letters in Support for Defendant at Sentencing. (new rule January 1, 2025)

All letters in support with regard to the Defendant's character must be electronically filed in CM/ECF no later than seven (7) days prior to the sentencing date to be considered by the Court unless good cause is shown after the seven (7) day deadline.

33.1 THROUGH 40.1

[Reserved]

41.1 Search and Seizure Warrants (amended January 1, 2025)

(a) An Application and Affidavit for a Search Warrant, Seizure Warrant, Tracking Warrant, etc. (hereinafter "Search Warrants") must include a proposed Warrant. Any application to file the documents in a Sealed case shall also include an Application to Seal the case, a Public Sealing Order and a proposed Sealing Order with an expiration date to unseal the case not to exceed 180 days after the last search warrant return is filed, unless an extension has been granted by the Court.

(b) The search warrant return shall be filed within 30 days after the execution of the warrant. Tracking warrant returns are due within 10 days after the use of the tracking device has ended pursuant to Fed.R.Crim.P. Rule 41(f)(2)(B). If a delayed notice has been granted, a search warrant return is due 30 days after the expiration of the delayed notice deadline.

(c) The Government must file a request for an extension of the deadline to unseal the case no later than 180 days after the search warrant return is filed or 30 days after the delayed notification deadline has expired.

(d) The Government must file a motion to unseal a search warrant case no later than 180 days after the search warrant return is filed or 30 days after the delayed notification deadline has expired. Upon the unsealing of the case, if the Government seeks to have any of the individually filed documents remain under seal and/or be redacted, the Government shall include in its motion to unseal the docket number, the proposed redactions, if applicable, and the reason(s) that the referenced material should remain under seal and/or redacted under the governing legal standard pursuant to Criminal Local Rule 49.2.

42.1 THROUGH 43.1

[Reserved]

44.1 Right to and Assignment of Counsel

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

44.2 Appearance and Withdrawal of Counsel (amended January 1, 2024)

(a) Notice of Attorney Appearance. An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. That written appearance shall certify that the attorney has either completed six credit hours in federal criminal defense continuing education within the past two years or, if not, that

the attorney will complete the required continuing education within 30 days of filing the notice of appearance.

(b) Motion to Withdraw as Counsel. An attorney who has appeared for a defendant shall thereafter withdraw only upon notice of a motion to withdraw as counsel for the defendant and all parties to the case and an order of the Court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless the Court determines otherwise. If the Court grants the substitution of counsel, the withdrawing attorney must serve a copy of the order upon the defendant and file an affidavit of service.

(c) Consent to Change Attorney. If the defendant has consented to substitution of new counsel, the incoming attorney must file a consent to change attorney that bears the incoming attorney's signature, as well as the signature of the attorney being replaced as counsel, and the defendant who has consented to this substitution. A form Consent to Change attorney can be found on the court's website at www.nynd.uscourts.gov. Upon receipt of this document, the Court shall review the same and determine whether to grant the substitution. If the Court grants the substitution of counsel, the incoming attorney must serve a copy of the order upon the defendant and file an affidavit of service.

(d) **Representation until Relieved by the Court.** Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing a notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney, whether retained or appointed, shall continue to serve pursuant to Local Appellate Rule 4.1(a) until the court having jurisdiction of the case grants leave to withdraw or until that court has appointed another attorney as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

44.3 Reimbursement for Translation or Interpretation Services

Prior court authorization is required for any party seeking reimbursement from the Court for translation or interpretation services in amounts exceeding the limits set forth 18 U.S.C. § 3006A(e). The Court may deny any timely or untimely request for reimbursement at its discretion.

45.1 Excludable Time under the Speedy Trial Act

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

stipulation or proposed order shall have a space for the Court to enter a new trial date in accordance with the excludable time period. The Court shall disallow all requests for a continuance or extension that do not comply with this Rule.

46.1 Pretrial Services and Release on Bail

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

(a) Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the Court as soon as practicable. In non-custody instances, when the United States Attorney schedules an individual for initial appearance before the United States Magistrate Judge by Criminal Summons or appearance letter, the United States Attorney shall immediately notify the United State Probation Office to arrange for preparing a Pretrial Services Report. In those instances when a defendant is taken into custody by arrest or pursuant to a warrant, the United States Probation Office in the respective division shall be notified forthwith in accordance with Rule 5.1 Notice of Arrest, of the Local Rules of Criminal Procedure for the Northern District of New York by the agency effecting the arrest or the United States Marshal and, unless extraordinary circumstances exist, initial appearances shall be scheduled so as to provide the probation officer a reasonable (or "mutually agreed") period of time to interview the defendant, conduct a brief investigation, and prepare an oral or written report for the judicial officer. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider all reports that Pretrial Service Officers, the government and defense counsel submit.

(b) Pretrial service reports shall be made available to the attorney for the accused and the attorney for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein. The Pretrial Services Report shall be lodged, not filed, on CM/ECF, and it shall not be available for public inspection.

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

(d) Pursuant to 18 U.S.C. §3154(2), the Probation Office shall prepare a Release Status Report prior to a defendant entering a change of plea to guilty. Pursuant to 18 U.S.C. § 3154, Release Status Reports are not public record, are not to be reproduced or disclosed to any party, other than the government and attorney for the defendant, and the Court, and shall remain **confidential**. Release Status Reports may not be used for any other purpose than determining the release status of a defendant pursuant to F.R.Crim.P. Rule 46(c). The Release Status Report shall be lodged, not filed, on CM/ECF and is not available for public inspection. The ECF system will

generate a notice of electronic filing to counsel for the USA, counsel for the **specific** defendant, the presiding judge, and the active magistrate judges.

46.2 Release of Bond (formerly Criminal L.R. 57.2)

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. The defendant's attorney or the person who posted bond shall prepare a motion and proposed order for the release of the bond and submit the motion to the Court for the assigned judge's signature. Forms for a petition for the return of cash bail and the return of property are located on the Court's website at www.nynd.uscourts.gov.

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

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

47.1 Motions

See L.R. Cr. P. 12.1.

48.1 Dismissal

[Reserved]

49.1 Personal Privacy Protection (formerly Criminal L.R. 1.3) (amended January 1, 2025)

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all filings with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

(a) Personal Identifiers

1. **Social security/Taxpayer-identification numbers**. If an individual's social security number or a taxpayer-identification number must be included in a document, use only the last four digits of that number**.**
2. **Names of minor children.** If the involvement of a minor child must be mentioned, use a pseudonym.

3. **Dates of birth**. If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers**. If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses**. If a home address must be used, use only the City and State. However, a *Pro Se* defendant must include their complete mailing address in the signature block on all documents filed with the Court pursuant to L.R. 10.1(c)(2) which shall also appear on the face of the docket.
6. **Names of Sexual Assault Victims.** If the victim of a sexual assault must be referenced, redact the name to "Victim 1", "Victim 2," etc.

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

1. personal identifying number, such as a driver's license number;
2. medical records, treatment and diagnosis;
3. employment history;
4. individual financial information; and
5. proprietary or trade secret information.

For exceptions, see Federal Rule of Criminal Procedure 49.1.

(b) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

1. file an unredacted version of the document under seal in compliance with Criminal Local Rule 49.2, or

2. file a reference list under seal in compliance with Criminal Local Rule 49.2. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. The Court will construe all references in the case to the redacted identifiers included in the reference list to refer to the corresponding complete personal data identifier. The party must file the reference list under seal and may amend it as of right.

A person waives the protection afforded by Fed.R.Crim.P. 49.1(a) as to the person's own information by filing it without redaction and not under seal. See Fed.R.Crim.P. Rule 49.1(h). The Court strongly urges counsel to discuss this issue with all their clients so that they can make an informed decision about the inclusion of certain information. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties**. The Clerk will not review each filing for compliance with this Rule. The Court cautions counsel and the parties that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

(c) Protective Orders. See Fed.R.Crim.P. Rule 49.1(e).

49.2 Sealed Matters (formerly Criminal L.R. 13.1) (Amended January 1, 2025)

(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 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 of the categories of documents listed above.

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

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

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

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

50.1 THROUGH 56.1

[Reserved]

57.1 Criminal Cover Sheets

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

58.1 Forfeiture of Collateral in Lieu of Appearance (formerly Criminal L.R. 58.2)

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

59.1 Magistrate Judges (formerly Criminal L.R. 58.1) (amended January 1, 2022)

(a) Powers and Duties.

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

2. A Magistrate Judge is also authorized to

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

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

(C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f). Oversight and administration for each seated grand jury will be assigned to the Magistrate Judge who impaneled them.

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

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

(F) Order the exoneration or forfeiture of bonds;

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

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

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

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

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

3. A party seeking review of a Magistrate Judge's release or detention order pursuant to 18 U.S.C. § 3145(c) shall file a Notice of Appeal of Magistrate Judge Pretrial Order pursuant to Fed.R.Crim.P. 58(g)(2)(A) within fourteen (14) days of the date of entry. If the release or detention order appealed from is filed in a Magistrate case, the Clerk shall immediately randomly assign a District Judge and open a criminal case. The Appellant shall be responsible for obtaining a copy of any transcript, if requested by the Court. Unless otherwise ordered,

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

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

(C) Any reply brief shall be filed within seven (7) days following the submission of the appellee's brief; and

(D) Unless the Court orders otherwise, the appeal shall be taken on submission without oral argument.

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

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

(c) Misdemeanors.

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

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

3. Procedures on appeal of a Magistrate Judge's judgment of conviction to a District Judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g)(2)(B). The appellant must pay the current filing fee via pay.gov. Unless otherwise ordered,

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

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

(C) Unless the Court orders otherwise, the appeal shall be taken on submission without oral argument.

60.1 THROUGH 61.1

[Reserved]

SECTION XII.
LOCAL RULES OF PROCEDURE FOR SOCIAL SECURITY CASES

1.1 Scope of the Rules

The scope of the rules for the assignment, management and filing requirements for Social Security Appeals are set forth in General Order #18 for the Northern District of New York and the Supplemental Rules for Social Security Actions under 42 U.S.C. §405(g).

SECTION XIII.
LOCAL RULES OF PROCEDURE FOR
SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS

1.1 Habeas Corpus (formerly Civil L.R. 72.4)

(a) Petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed pursuant to the Rules Governing § 2254 Cases in the United States District Courts and the Rules Governing § 2255 Proceedings in the United States District Courts. No memoranda of law filed in Habeas Corpus proceedings shall exceed twenty-five (25) pages in length, unless the party filing the memorandum of law 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.

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

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

(d) If the respondent submits the state-court records with its answer to the petition, the respondent must properly identify the records in the answer and arrange them in chronological order. The respondent must also sequentially number the pages of the state-court record so that citations to those records will identify the exact location where the information appears.

(e) Effective for all Habeas Corpus Petitions pursuant to 28 U.S.C. §2254 filed after July 1, 2013, service of process shall be done via electronic means, namely via an email Notice of Electronic Filing through the Court's CM/ECF system. Once service is ordered by the Court, the Office of Attorney General for New York State will receive email notification and be given ninety (90) days within which to file a response. This time will allow the Office of Attorney General to obtain the records from the underlying state court and file their response to the petition.

(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.

1.2 Habeas Corpus Petitions Involving the Death Penalty; Special Requirements

(formerly Civil L.R. 72.5)

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

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

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

(d) Counsel

1. **Appointment of Counsel**. Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed *pro se* and the Court is satisfied, after a hearing, that petitioner's election is intelligent, competent, and voluntary. Where the Court is to appoint counsel, such appointment shall be

made at the earliest practicable time. The active judges of this District will certify a panel of attorneys qualified for appointment in death penalty cases ("qualified panel").

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

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

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

(e) Filing.

1. **General requirement**. Petitioners shall file petitions as to which venue lies in this District in accordance with the applicable Local Rules. Petitioners shall fill in their petitions by printing or typewriting. In the alternative, the petitioner may typewrite or legibly write a petition which contains all of the information that the form requires. All petitions shall (1) state whether the petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full caps and

underscored “Death Penalty Case” directly under the case number on each pleading.

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

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

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

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

(g) Transfer of Venue. Subject to the provisions of 28 U.S.C. § 2241(d), it is the Court’s policy that a petition should be heard in the district in which the petitioner was convicted rather than in the district of the petitioner's present confinement. See Rule 1.1 of Local Rules of Procedure for Section 2254 Cases and Section 2255 Proceedings. If an order for the transfer of venue is made, the Court will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution.

1. **Stay Pending Final Disposition.** Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the Court shall issue a stay of execution pending final disposition of the matter. Notwithstanding any provision of this paragraph (h), the Court shall not grant or maintain stays of execution, except in

accordance with law. Thus, the provisions of this paragraph (h) for a stay shall be ineffective in any case in which the stay would be inconsistent with the limitations of 28 U.S.C. § 2262 or any other governing statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule A Scope of the Rules

(a) 1. Authority

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

(a) 2. Scope

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

(a) 3. Citation

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

(a) 4. Definitions

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

the duties of the marshal or keeper with respect to the vessel or other property arrested or attached.

(a) 5. Newspapers for Publishing Notices (formerly Rule G(1))

Unless the Court orders otherwise, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspapers of general circulation in accordance with the L.R. 77.5.

(a) 6. Use of State Procedures (formerly Rule G(2))

When the plaintiff invokes a state procedure in order to attach or garnish as the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims permit, the process for attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Rule B Maritime Attachment and Garnishment

(b) 1. Found within the District

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

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

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

(b) 3. Notice to Defendant

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

(b) 4. Service by Marshal

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

Rule C Actions in Rem – Special Provisions

(c) 1. Intangible Property

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

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

The notice that Supplemental Rule C(4) requires shall be published at least once in a newspaper named in LAR(a)5, and the plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

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

(b) The date of the arrest;

(c) The identity of the property arrested;

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

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

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

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

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

(c) 3. Default In Action *In Rem*

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

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

(2) by service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and

(3) by mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

(b) **Persons with Recorded Interests.**

(1) If the defendant property is a vessel documented under the laws of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c) 4. Entry of Default and Default Judgment

After the time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

(a) Notice has been given as LAR (c)(3)(a) requires; and

(b) Notice has been attempted as LAR (c)(3)(b) requires, where appropriate; and

(c) The time for claimants of ownership to or possession of the property to answer has expired; and

(d) No answer has been filed or no one has appeared to defend on behalf of the property. The plaintiff may move for judgment under Fed. R. Civ. P. 55(b) at any time after default has been entered.

Rule D Possessory, Petitory, and Partition Actions

(d) 1. Return Date.

In a possessory action under Supplemental Rule D, a judge may order that the statement of interest and answer be filed on a date earlier than twenty-one (21) days after arrest. The order may also set a date for expedited hearing of the action.

Rule E Actions *In Rem* and *Quasi In Rem* – General Provisions

(e) 1. Itemized Demand for Judgment

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

(e) 2. Salvage Action Complaints

In an action for a salvage award, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged or other basis for an award and the dollar amount of the award sought.

(e) 3. Verification of Pleadings

A party or authorized officer of a corporate party shall verify every complaint in Supplemental Rule B, C, and D actions upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746. If no party or authorized corporate officer is present within the District, an agent, attorney in fact, or attorney of record shall verify the complaint and shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why the party or an authorized representative of the party is not making the verification; and state that the affiant or declarant is authorized so to verify. If a party or authorized representative of the party did not make the verification, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

(e) 4. Review by Judicial Officer

Unless the Court requires otherwise, the review of complaints and papers that the Supplemental Rules B(1) and C(3) require does not require the affiant or declarant party or attorney to be present. The application for review shall include a form of order to the Clerk which, upon the assigned judge's signature, will direct the arrest, attachment or garnishment that the applicant seeks. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

(e) 5. Instructions to the Marshal

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

(e) 6. Property in Possession of United States Officer

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property unless the Court orders otherwise.

(e) 7. Security for Costs

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $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.

(e) 8. Adversary Hearing

The Court shall conduct the adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) within seven (7) days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(e) 9. Appraisal

The Clerk will enter an order for appraisal of property so that security may be given or altered at the request of any interested party. If the parties do not agree in writing upon an appraiser, a Judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The moving party shall pay the appraiser's fee in the first instance, but this fee is taxable as an administrative cost of the action.

(e) 10. Security Deposit for Seizure of Vessels

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall make a minimum advance deposit with the United States Marshal's Service of $5,000.00, or other such amount as determined appropriate by the United States Marshal. The deposit will be held by the Marshal to cover the Marshal's expenses, including, but not limited to, dockage keepers, maintenance and insurance. The Marshal is not required to execute process until the deposit is made. The Marshal may also require the party to arrange, in advance of the seizure, for a private security company to maintain security over the vessel or property after attachment. Parties requesting the attachment of a vessel or property are advised to contact the local Marshal's office for further information regarding this requirement. The party shall advance additional sums from time to time as requested to cover the Marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to advance such additional costs that the Marshal requires may not participate further in the proceedings except by order of the Court. The Marshal may, upon notice to all parties, petition the Court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within seven (7) days of the initial request for additional sums.

(e) 11. Intervenors' Claims

(a) Presentation of Claims. When a vessel or property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present that claim by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint, unless the Court orders otherwise. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as LAR (e)(10) requires.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim against the property bears to the sum of all the claims asserted against the property. If any plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

(e) 12. Custody of Property

(a) Safekeeping of Property. When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for the adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal and must show the name of the proposed substitute custodian, the location of the vessel during the period of such custody, and that adequate insurance coverage is in place.

(b) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and in maintaining the Court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. A party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The initial party obtaining the arrest and holding of the property shall pay the premiums charged for the liability insurance in the first instance, but these premiums are taxable

as administrative costs of the action while the vessel, cargo, or other property is in the custody of the Court.

(c) (1) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless the Court orders otherwise. No movement of or repairs to the vessel shall take place without order of the Court. The applicant for an order under this Rule shall give notice to the Marshal and to all parties of record.

(2) Insurance. Upon any application under (c)(1) above, the moving party shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party and shall not be taxable as an administrative cost of the action, unless the Court orders otherwise. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. The moving party shall give notice of the motion to the Marshal and all parties of record. The Court will require that the successor to the Marshal will maintain adequate insurances on the property before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid and claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

(e) 13. Sale of Property

(a) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published as provided in LAR (a)(5) at least three (3) times during the period of time consisting of thirty (30) days prior to the day of the sale.

(b) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale; the person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is $1,000 or less. If the bid exceeds $1,000, the bidder shall immediately pay a deposit of at least $1,000 or 10% of the bid, whichever is greater, and shall pay the balance within seven (7) days after the day on which the bid was accepted. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until seven (7) days after the sale

is approved. Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(d) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default. In such a case, the Court may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs that the Marshal incurs because of the default, the balance being retained in the registry of the Court awaiting further order of the Court.

(e) Report of sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, and any other pertinent information.

(f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the Clerk within seven (7) days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed. Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(g) Confirmation of Sale. Unless an objection to the sale is filed, or any upset bid permitted by and conforming to the terms provided in the order of sale is filed, within seven (7) days of the sale, the sale shall be deemed confirmed without further order of the Court. The Clerk shall prepare and deliver to the Marshal a certificate of confirmation, and the Marshal shall transfer title to the confirmed purchaser only upon further order of the Court.

(h) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums that the successful bidder deposited will be returned to the bidder forthwith. The sum that the objector deposited will be applied to pay the fees and expenses that the Marshal incurred in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed from the proceeds of a subsequent sale for any expense of keeping the property.

(2) Objection Overruled. If the objection is overruled, the sum that the objector deposited will be applied to pay the expenses of keeping the property from the day the objection was filed until the day the sale is confirmed. Any balance remaining will be returned to the objector forthwith.

Rule F Limitation of Liability

(f) 1. Security for Costs

The amount of security for costs under Supplemental Rule F(1) shall be $1,000, and it may be combined with the security for value and interest, unless otherwise ordered.

(f) 2. Order of Proof at Trial

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials.

Rule G Forfeiture Actions in Rem

See General Order 15.

SECTION XV.
LOCAL RULES OF PROCEDURE FOR PATENT CASES

Rule 1 Introduction

1.1 Preamble

In recognition of the complexities and uniqueness of issues associated with management of patent infringement litigation, and to ensure just, efficient, and economical handling of such cases, the United States District Court for the Northern District of New York hereby enacts the following rules of practice for patent cases before the Court. These rules are calculated to provide a standard structure for addressing the issues which typically arise in such cases, and to foster predictability and facilitate planning for the litigants and the Court.

1.2 Scope and Construction

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a patent in a complaint, counterclaim, crossclaim or third-party claim, or which seek a declaratory judgment that a patent is not infringed, is invalid or is unenforceable. The local civil rules of this Court shall also apply to such actions, except to the extent that they are inconsistent with these local patent rules.

1.3 Modifications of These Rules

The Court may, in its discretion, modify any of the obligations or deadlines set forth in these proposed rules based upon the circumstances of any particular case including, without limitation, the degree of complexity of the case as shown by the number of patents, products, or parties involved. Such modifications will in most instances be made at the initial Rule 16 scheduling conference, but may be made at other times by the Court either *sua sponte* or at the request of a party, upon a showing of good cause. A party may at any time request modification of the requirements of these rules by letter request to the assigned magistrate judge on notice to opposing counsel provided, however, that before requesting such modification the parties must meet and confer for the purpose of attempting to reach an agreement, if possible, with respect to any proposed modification.

1.4 Citation

These rules shall be cited as "L. Pat. R. ___."

1.5 Effective Date

These local patent rules will take effect on January 1, 2012, and will govern all patent cases filed in, or transferred or removed to, this Court on or after that date. For any actions pending prior to that effective date, the Court will confer with the parties and apply these rules as the Court deems practicable.

Rule 2 General Provisions

2.1 Initial Scheduling Conference

(a) Consistent with the local rules of this Court and General Order No. 25, upon the filing in or removal or transfer to this Court of an action which falls within the scope of these rules, the Court will schedule a Rule 16 conference to be conducted by the magistrate judge assigned to the case. That conference may be held in-person or by telephone, depending upon the practices of the particular magistrate judge assigned.

(b) At least twenty-one (21) days prior to the scheduled Rule 16 conference the parties must confer, in person or by telephone, pursuant to Fed. R. Civ. P. 26(f) to formulate a discovery plan and to address the following topics:

(1) Proposed modification of the obligations or deadlines set forth in these local patent rules to ensure that they are suitable for the circumstances of the particular case;

(2) The scope and timing of any claim construction discovery, including disclosure of and discovery from any expert witness permitted by the Court;

(3) The format of the claim construction hearing, including whether the Court will hear live testimony, the order of presentation, and the estimated length of the hearing;

(4) How the parties intend to educate the Court with respect to the patent(s) at issue; and

(5) The need for alteration of the standard confidentiality order to supercede that which would otherwise be entered by the court pursuant to Local Patent Rule 2.2.

(c) Not later than fourteen (14) days prior to the scheduled Rule 16 conference the parties shall jointly submit a Civil Case Management Plan, in the form of that approved by the Court pursuant to General Order No. 25, completed to address the various issues raised in that form, based upon the parties' discussions during their Rule 26(f) meeting.

(d) One of the topics to be addressed at the Rule 16 conference is the timing and scope of mandatory disclosures required pursuant to Fed. R. Civ. P. 26(a)(1). Among the disclosures which ordinarily must be made pursuant to Rule 26(a)(1) in cases covered by these rules is information and documentation regarding proof of patent ownership or standing to assert patent infringement claims.

(e) Following the initial conference conducted by the Court pursuant to Fed. R. Civ. P. 16, the assigned magistrate judge may, in his or her discretion, schedule and conduct such further status conferences, either telephonically or in person, as deemed appropriate. It is contemplated that such a conference may be conducted within sixty (60) to ninety (90) days following the initial Rule 16 conference, and that during that conference the parties will be asked to discuss what efforts, if any, they have made to attempt to settle the case and how the Court may assist their settlement efforts such as, for example, by scheduling a settlement conference or ordering mediation.

2.2 Confidentiality

(a) Not later than fourteen (14) days prior to the initial Rule 16 Conference and after conferring regarding the matter, the parties may, if desired, submit either a stipulated protective order pursuant to Fed. R. Civ. P. 26(c) or, if agreement cannot be reached, may each submit a counter proposed protective order for the Court's consideration, highlighting for the Court any areas of disagreement. In the event that the parties do not request the entry of a different Rule 26(c) confidentiality order at or prior to the Rule 16 scheduling conference, or if otherwise deemed appropriate, the Court will enter a protective order pursuant to Fed. R. Civ. P. 26(c) in the form of that provided on the Court's webpage at www.nynd.uscourts.gov.

2.3 Relationship to Federal Rules of Civil Procedure

(a) Except as provided in this paragraph or as otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these local patent rules, absent other legitimate objection. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in these local patent rules:

(1) Requests seeking to elicit a party's claim construction position;

(2) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, design, variety of plant or other instrumentality;

(3) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(4) Requests seeking to elicit from an accused infringer the identification of any advice of counsel received and related documents.

(b) Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to be disclosed to an opposing party under these local patent rules or as set by the Court, unless there exists another legitimate ground for objection.

2.4 Exchange of Expert Materials

(a) Disclosures of claim construction expert materials and depositions of such experts are governed by Local Patent Rule 4.1 et seq., unless otherwise ordered by the Court.

(b) Unless otherwise ordered by the Court, the disclosure of expert materials related to issues other than claim construction will not be required until claim construction issues have been decided, and shall be governed by the provisions of Local Patent Rule 5.1 et seq.

Rule 3 Patent Disclosures

3.1 Disclosure of Asserted Claims and Infringement Contentions

Not later than fourteen (14) days after the initial Rule 16 Conference, a party claiming patent infringement shall serve on all parties a Disclosure of Asserted Claims and Infringement Contentions. Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, design, variety of plant or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, design, variety of plant and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) **(1)** Except for design or variety of plant patent claim(s), a chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(2) For each design patent or variety of plant patent claim that is alleged, a chart displaying each view of the design or variety of plant patent drawings and a view of the accused design or variety of plant from every available angle for all embodiments.

(d) For each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as any alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(e) Except for design or variety of plant patent claims(s), whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

(h) If a party claiming patent infringement alleges willful infringement, all known bases for such allegation. A party claiming willful infringement shall be permitted to supplement its response to this subsection at or prior to the close of fact discovery, if necessary, to add facts developed through pretrial discovery.

3.2 Document Production Accompanying Infringement Disclosure

With the Disclosure of Asserted Claims and Infringement Contentions, the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Local Patent Rule 3.1(f), whichever is earlier;

(c) A copy of the file history for each patent in suit (or so much thereof as is in the possession of the patentee);

(d) All documents evidencing ownership and maintenance of the patent rights by the party asserting patent infringement; and

(e) If a party identifies instrumentalities pursuant to Local Patent Rule 3.1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party shall separately identify by production number which documents correspond to each category.

3.3 Non-Infringement, Invalidity and Unenforceability

Not later than thirty (30) days after service upon it of the Disclosure of Asserted Claims and Infringement Contentions, each party opposing a claim of patent infringement on the basis of non-infringement, patent invalidity or patent unenforceability shall serve on all parties its Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions which shall contain the following information:

(a) Non-Infringement contentions shall contain a chart, responsive to the chart required under Local Patent Rule 3.1(c)(i), that identifies as to each limitation in each asserted claim disclosed in the patentee's claim chart, to the extent then known by the party alleging infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions, and a chart, responsive to the chart required under Local Patent Rule 3.1(c)(ii), that displays a view from each angle of the accused design or variety of plant and of all embodiments and stating whether the accused design or variety of plant is substantially similar to the claimed design or variety of plant and, if not, the reasons for such a denial.

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

(1) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious, including in the case of a design or variety of plant patent a view from every available angle and all available embodiments. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication and, where feasible, author and publisher. Prior art under 35 U.S.C. § 102(d) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, the location where the item was sold or publicly used, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was

made known. Prior art under 35 U.S.C. § 102(d) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(d) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(2) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness, the reason why one of ordinary skill in the art would have combined the references at the time of the invention in issue in the case, and identification of what the accused considers to be the primary reference.

(3) A chart identifying where specifically in each alleged item of prior art each limitation or view of each asserted claim is found, and for utility patents, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112 (b) or enablement or written description under 35 U.S.C. § 112(a) of any of the asserted claims.

(c) Subject to amendment in the event of later discovered facts, unenforceability contentions shall contain, in detail, each ground then known upon which the accused infringer will assert that any patent in suit is unenforceable. If the accused infringer's claim of unenforceability is based upon inequitable conduct, the accused infringer shall describe each omission or misrepresentation made to the Patent and Trademark Office ("PTO") and shall state all grounds upon which the accused infringer will argue at trial that those prosecuting the patent intended to deceive the PTO, including the identification of any prior art references not disclosed to the PTO during the prosecution of the patent in suit, any facts suggesting that one or more persons substantially involved in the prosecution of the patent in suit were aware of such prior art reference prior to the issuance of the patent in suit, and any facts relevant to the element of intent to deceive.

3.4 Document Production Accompanying Non-Infringement, Invalidity and Unenforceability Disclosure

With the Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions, the party opposing a claim of patent infringement shall produce or make available for inspection and copying, if not previously disclosed pursuant to Fed. R. Civ. P. 26(a)(1), the following:

(a) Source code, specifications, schematics, flow charts, artwork, drawings, photographs, video or other images from every available view or other documentation sufficient to show the operation, composition, design, variety of plant or structure of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its Local Patent Rule 3.1(c) chart; and

(b) A copy or sample of the prior art identified pursuant to Local Patent Rule 3.3(b) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation shall be produced. In addition, a complete translation of the document relied upon, if in the possession of the producing party, shall also be produced.

(c) The producing party shall separately identify by production number which documents correspond to each category.

3.5 Disclosure Requirement in Patent Cases for Declaratory Judgment of Non-Infringement, Invalidity and Unenforceability

(a) **Non-Infringement, Invalidity and Unenforceability Contentions.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Local Patent Rules 3.1 and 3.2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than fourteen (14) days after the defendant serves its answer or fourteen (14) days after the Initial Rule 16 Conference, whichever is later, the party seeking a declaratory judgment of non-infringement, invalidity or unenforceability shall serve upon each opposing party its Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions that conforms to Local Patent Rule 3.3, and produce or make available for inspection and copying the documents described in Local Patent Rule 3.4.

(b) **Inapplicability of Rule.** Local Patent Rule 3.5 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, invalid or unenforceable is filed in response to a complaint for infringement of the same patent, in which case the provisions of Local Patent Rule 3.3 shall govern.

3.6 Amendment to Contentions

(a) Amendment of the Disclosure of Asserted Claims and Infringement Contentions or the Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions may be made by order of the Court, upon a timely application and showing of good cause, following the procedures required under Local Rule 7.1(a)(2) for applying to an assigned magistrate judge for non-dispositive relief. The application shall disclose whether the adverse party consents or objects. Non-exhaustive examples of circumstances that may, absent undue prejudice to the adverse party, support a finding of good cause include:

(1) a claim construction by the Court different from that proposed by the party seeking amendment;

(2) recent discovery of material prior art not previously discovered despite an earlier diligent search; and

(3) recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contention.

(b) The duty to supplement discovery responses under Fed. R. Civ. P. 26(e) does not excuse the need to obtain leave of Court to amend contentions.

Rule 4 Claim Construction Proceedings

4.1 Inapplicability To Design and Variety of Plant Patents

Unless otherwise requested by a party and determined by the Court to be warranted, the provisions of this Local Patent Rule 4 shall not apply to design or variety of plant patents.

4.2 Exchange of Proposed Terms for Construction

(a) Not later than sixty (60) days after the initial Rule 16 Conference, each party shall serve on each other party a list of claim terms which that party contends should be construed by the Court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112 (f).

(b) The parties shall thereafter meet and confer for the purpose of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

4.3 Exchange of Preliminary Claim Constructions and Extrinsic Evidence

(a) Not later than twenty-one (21) days after the exchange of lists pursuant to Local Patent Rule 4.2, the parties shall simultaneously exchange preliminary proposed constructions of each term identified by any party for claim construction. Each such Preliminary Claim Construction shall also, for each term which any party contends is governed by 35 U.S.C. § 112 (f), identify the structure(s), act(s), or material(s) corresponding to that term's function.

(b) At the same time the parties exchange their respective Preliminary Claim Constructions, each party shall also identify all references from the specification or prosecution history that support its preliminary proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of all witnesses including expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to all witnesses including experts, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4.4 Joint Claim Construction and Prehearing Statement

(a) Not later than twenty-one (21) days after the exchange of Preliminary Claim Constructions under Local Patent Rule 4.3(a), the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(1) The construction of those terms on which the parties agree;

(2) Each party's proposed construction of each disputed term, together with an identification of all references from the intrinsic evidence that support that construction, and an identification of any extrinsic evidence known to the party upon which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of all witnesses including experts;

(3) A prioritization of the disputed terms, based upon their significance to the resolution of the case and the Court's construction of those terms and whether they will be case or claim dispositive or substantially conducive to promoting settlement, together with a statement of the significance of each term to the claims and defenses in the case;

(4) The anticipated length of time necessary for the Claim Construction Hearing; and

(5) Whether any party proposes to call any live witnesses to testify at the Claim Construction Hearing, the identity of each such witness and, for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.

(b) No more than ten (10) patent terms or phrases may be presented to the Court for construction, absent prior leave of Court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon which ten (10) terms are to be presented to the Court for construction, then five (5) shall be allocated to all plaintiffs, jointly, and five (5) to all defendants.

4.5 Completion of Claim Construction Discovery

Not later than thirty (30) days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any fact and expert witnesses, identified in the Preliminary Claim Construction Statement (Local Patent Rule 4.3) or Joint Claim Construction and Prehearing Statement (Local Patent Rule 4.4).

4.6 Claim Construction Submissions

(a) Not later than forty-five (45) days after serving and filing the Joint Claim Construction and Prehearing Statement, the parties shall contemporaneously file and serve their opening Markman briefs and any evidence supporting claim construction, including experts' certifications or declarations ("Opening Markman Submissions").

(b) Not later than thirty (30) days after the filing of the Opening Markman Submissions, the parties shall contemporaneously file and serve Responding Markman Submissions and any evidence supporting claim construction, including any responding experts' certifications or declarations.

(c) The parties' Markman opening and responsive briefs are subject to the page limits set forth in Local Rule 7.1(b)(1), absent Court permission to exceed those limitations, granted in advance of filing.

4.7 Claim Construction Hearing

Within fourteen (14) days following submission of the briefs and evidence specified in Local Patent Rule 4.6, counsel shall confer and propose to the Court a schedule for a Claim Construction Hearing, to the extent the parties believe, and the Court deems it necessary to conduct such a hearing for construction of the claims at issue.

Rule 5 Post Claim Construction Procedures

5.1 For Cases Not Involving Separate Claim Construction Proceedings

For the purpose of this Local Patent Rule 5, in the case where there is no Claim Construction Proceeding, then any date herein which is otherwise measured from entry of the Court's claim construction order or from the Court's decision on claim construction shall be measured instead from 30 days from the date of service of materials under Local Patent Rule 3, namely the Accused Non-Infringement, Invalidity and Unenforceability Contentions.

5.2 Advice of Counsel

(a) Unless otherwise ordered by the Court, not later than thirty (30) days after entry of the Court's claim construction order, or upon such other date as is set by the Court, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall:

(1) Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client privilege and work product protection have been waived;

(2) Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client privilege and work product protection have been waived; and

(3) Serve a privilege log identifying any documents other than those identified in subpart (1) above, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice which the party is withholding on the grounds of attorney-client privilege or work product protection.

(b) After advice of counsel information becomes discoverable pursuant to Local Patent Rule 5.2(a) a party claiming willful infringement may take the depositions of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.

(c) A party who does not comply with the requirements of this Local Patent Rule 5.2 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or an order of the Court.

5.3 Opening Expert Reports

A party expecting to offer expert testimony on issues other than claim construction on which it bears the burden of proof, including damages, shall disclose and serve upon all parties the name, address, and curriculum vitae of any expert witness expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B), within sixty (60) days following the issuance of the Court's decision on claim construction.

5.4 Responsive Expert Reports

A party expected to offer responsive expert testimony on issues on which the opposing party bears the burden of proof shall disclose and serve upon all parties the name, address, and curriculum vitae, of any expert witnesses expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B) within thirty (30) days following disclosure and service of the opposing party's expert report in accordance with Local Patent Rule 5.3.

5.5 Completion of Discovery

All discovery in the case, including expert depositions, must be completed within one hundred twenty (120) days following the issuance of the Court's decision on claim construction.

5.6 Deadline for Filing Dispositive Motions

All dispositive motions in the case shall be filed within thirty (30) days after the scheduled date for the end of all discovery.

APPENDIX A

TIMELINE	
Event	**Deadline**
Rule 26(f) Meeting	21 days prior to Rule 16 conference
Filing of Civil Case Management Plan	14 days prior to Rule 16 conference
Rule 16 Conference	120 Days after filing/removal of the action
Patentee Infringement Contentions	14 days after Rule 16 conference
Accused Non-Infringement/ Invalidity/Unenforceability Contentions	30 days after service of the disclosure of asserted claims and infringement contentions
Exchange of Claim Terms for Construction	60 days after Rule 16 conference
Exchange of Proposed Constructions	21 days after exchange of lists of proposed terms for construction
Joint Claim Construction Statement	21 days after exchange of proposed construction
Completion of Claim Construction Discovery	30 days after filing of joint statement
Opening Markman Briefs	45 days after filing of joint statement
Opposing Markman Briefs	30 days after opening Markman submissions
Advice of Counsel Disclosure	30 days after claim construction decision
Initial Expert Reports (non-claim construction)	60 days after claim construction decision
Responsive Expert Reports	30 days after service of initial expert disclosure
Completion of All Discovery	120 days after claim construction
Filing of Motions	30 days after close of fact discovery
TIMELINE SUMMARY	
Filing of Suit to Full Markman Briefing	297 Days
Claim Construction Decision to Motion Deadline	150 days