UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE
(Effective January 1, 2025)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE ADOPTION OF LOCAL RULES OF CIVIL PROCEDURE

FOR THE

WESTERN DISTRICT OF NEW YORK

These Rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that these Rules, as amended, shall apply to all actions commenced on or after January 1, 2025, and, insofar as just and practicable, all actions then pending.

Elizabeth A. Wolford
Chief United States District Judge

Lawrence J. Vilardo
United States District Judge

John L. Sinatra, Jr.
United States District Judge

Meredith A. Vacca
United States District Judge

David G. Larimer
Senior United States District Judge

Charles J. Siragusa
Senior United States District Judge

Richard J. Arcara
Senior United States District Judge

William M. Skretny
Senior United States District Judge

Frank P. Geraci, Jr.
Senior United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT JUDGES

Elizabeth A. Wolford, Chief Judge	U.S. Courthouse, Rochester, NY
Lawrence J. Vilardo	U.S. Courthouse, Buffalo, NY
John L. Sinatra, Jr.	U.S. Courthouse, Buffalo, NY
Meredith A. Vacca	U.S. Courthouse, Rochester, NY
David G. Larimer, Senior Judge	U.S. Courthouse, Rochester, NY
Charles J. Siragusa, Senior Judge	U.S. Courthouse, Rochester, NY
Richard J. Arcara, Senior Judge	U.S. Courthouse, Buffalo, NY
William M. Skretny, Senior Judge	U.S. Courthouse, Buffalo, NY
Frank P. Geraci, Senior Judge	U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

Carl L. Bucki, Chief Judge	U.S. Courthouse, Buffalo, NY
Michael J. Kaplan	U.S. Courthouse, Buffalo, NY
Paul R. Warren	U.S. Courthouse, Rochester, NY

UNITED STATES MAGISTRATE JUDGES

H. Kenneth Schroeder, Jr.	U.S. Courthouse, Buffalo, NY
Marian W. Payson	U.S. Courthouse, Rochester, NY
Jeremiah J. McCarthy	U.S. Courthouse, Buffalo, NY
Michael J. Roemer	U.S. Courthouse, Buffalo, NY
Mark W. Pedersen	U.S. Courthouse, Rochester, NY
Leslie G. Foschio	U.S. Courthouse, Buffalo, NY
Jonathan W. Feldman	U.S. Courthouse, Rochester, NY

CLERK OF UNITED STATES DISTRICT COURT

Mary C. Loewenguth	Buffalo, NY

CLERK OF UNITED STATES BANKRUPTCY COURT
Lisa Bertino-Beaser — Buffalo, NY

UNITED STATES ATTORNEY
Trini E. Ross — Buffalo, NY

FEDERAL PUBLIC DEFENDER
Marianne Mariano — Buffalo, NY

CHIEF PROBATION OFFICER
Timothy C. Englerth — Rochester, NY

UNITED STATES MARSHAL
Charles F. Salina — Rochester, NY

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE
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RULE 1.1

TITLE

These rules are the Local Rules of Civil Procedure for the United States District Court for the Western District of New York. They supplement the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and are numbered to conform therewith. The Local Rules of Civil Procedure shall be cited as "Loc. R. Civ. P."

RULE 1.2

THE "COURT"

Wherever these Rules refer to the "Court", "Judge", or similar term, the term includes a Magistrate Judge, unless the context requires otherwise.

RULE 1.3

AVAILABILITY OF LOCAL RULES

Copies of these Local Rules and all Court documents referenced herein are available at the Clerk's Offices in Buffalo and Rochester, and on the Court's webpage at http:\\www.nywd.uscourts.gov. The following documents may be modified from time to time, at the Court's discretion. Counsel and *pro se* litigants are expected to comply with the most current Rules, plans and procedures.

- Administration of District Court Fund
- Alternative Dispute Resolution Plan
- Amended Plan for the Disposition of *Pro Se* Cases
- Administrative Procedures Guide for Electronic Filing
- District Court Schedule of Fees
- Guidelines for Bills of Costs
- Judge's Individual Rules
- Jury Plan
- Standing Orders

Persons, other than litigants permitted to proceed *in forma pauperis*, who wish to obtain a copy of these Local Rules and/or other documents by mail must provide a self-addressed envelope at least 9" x 12" in size with sufficient postage affixed.

RULE 3

CIVIL COVER SHEET

A completed civil cover sheet on a form available on the Court's website, http://www.nywd.uscourts.gov, or from the Clerk's Office, 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.

RULE 4

SUMMONS

In conformity with Fed. R. Civ. P. 4(c), in all civil actions filed in this Court, service shall be made by the United States Marshal Service in the following circumstances:

(a) service of process on behalf of the United States;

(b) service of process on behalf of litigants proceeding *pro se* who are authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915;

(c) service of process on behalf of litigants authorized to proceed as seamen under 28 U.S.C. § 1916;

(d) service of writs of seizure, attachment, forfeiture, or execution; or

(e) service of process pursuant to a specific order of this Court.

Proof of service shall be filed with the Clerk of Court.

RULE 5.1

FILING AND SERVING PAPERS

(a) **Filing Procedures**. All civil cases filed in this Court are assigned to the Electronic Case Filing System ("ECF"). The procedures for electronic filing and any exceptions to the electronic filing requirements are set forth in the Administrative Procedures Guide for Electronic Filing which is available on the Court's website, http://www.nywd.uscourts.gov. All pleadings and other papers shall be filed and served in accordance with the Federal Rules of Civil Procedure and the Administrative Procedures Guide for Electronic Filing.

(b) **Filing Fees**. A party commencing an action or removing an action from a state court must pay to the Clerk of Court the statutory filing fee, found in the District Court Schedule of Fees available on the Court's website, http://www.nywd.uscourts.gov, before the case will be docketed and process issued. Indigent litigants should refer to Loc. R. Civ. P. 5.2(c) for information on obtaining relief from this requirement.

(c) **Case Assignment**. Upon filing, civil cases are assigned to a Judge in either Buffalo (typically, cases arising in Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming counties), or Rochester (typically, cases arising in Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates counties). The Court may transfer cases within the District, *sua sponte*. Parties requesting transfer of a case from Buffalo to Rochester, or vice versa, shall file a written motion requesting such relief, returnable before the Judge to whom the case is originally assigned.

(d) **Date-Stamped Copies**. Parties requesting date-stamped copies of filed documents must provide a paper copy for date-stamping, and a self-addressed, adequately-sized envelope with proper postage affixed.

(e) **Related Cases**. Each attorney appearing in a civil case has a continuing duty to notify the Clerk promptly when the attorney has reason to believe that said case is related to some other pending civil or criminal action(s) because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, such that its assignment to the same Judge would avoid unnecessary duplication of judicial effort. This includes civil forfeiture cases that are related to a pending criminal action. As soon as the attorney becomes aware of such a relationship in two or more cases where the relationship was not already identified on the civil cover sheet, the attorney shall notify the Clerk of Court and the assigned Judges by filing a letter on the docket of the pertinent cases advising of the relevant facts.

(f) **Title 11**. Pursuant to 28 U.S.C. § 157(a) any and all cases under Title 11 and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the Bankruptcy Judges for this district. If a Bankruptcy Judge or District Judge determines that entry of a final order or judgment by a Bankruptcy Judge would not be consistent with Article III of the United States Constitution in a particular proceeding

referred under this Local Rule and determined to be a core matter, the Bankruptcy Judge shall, unless otherwise ordered by the District Court, hear the proceeding and submit proposed findings of fact and conclusions of law to the District Court. The District Court may treat any order of the Bankruptcy Court as proposed findings of fact and conclusions of law in the event the District Court concludes that the Bankruptcy Judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

(g) **Service by Overnight Delivery**. All papers, other than a subpoena or a summons and complaint, may be served on counsel of record by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery shall be complete upon deposit of the paper(s), enclosed in a properly addressed wrapper, into the custody of the overnight delivery service, prior to the latest time designated by the service for overnight delivery. Overnight delivery service shall be deemed service by mail for purposes of Fed. R. Civ. P. 5 and 6. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the Court's jurisdiction.

(h) **Letters**. Letters addressed to Judges who accept letters, including letter motions required by Loc. R. Civ. P. 5.5(d)(5), (6) and 7(a)(2)(C) or permitted by the assigned Judge's individual practices and rules, may be filed electronically.

RULE 5.2

PRO SE ACTIONS

(a) **Filing Complaints**. A *pro se* plaintiff who is filing an action based on social security, employment discrimination, or non-prisoner or prisoner civil rights claims, should file the complaint on the Court's standard form for that type of action, available on the Court's website, http://www.nywd.uscourts.gov, or in the Clerk's Office. A complaint that is not filed on the appropriate Court form may be returned to the plaintiff for refiling on the proper form, if a Judge so directs.

(b) **Filing Habeas Petitions**. Habeas corpus petitions under 28 U.S.C. §§ 2241, 2254 and 2255 should be filed on the applicable petition form, available on the Court's website, http://www.nywd.uscourts.gov, or in the Clerk's Office. Section 2255 cases are to be filed without charge. A petition that is not filed on the appropriate Court form may be returned to the petitioner for refiling on the proper form, if a Judge so directs.

(c) **In Forma Pauperis Applications**. An indigent *pro se* litigant may seek *in forma pauperis* status to file their action without payment of the filing fee. To do so, the litigant must complete the *in forma pauperis* motion and affirmation form available on the Court's website, http://www.nywd.uscourts.gov, or in the Clerk's Office, and file it along with the complaint or petition. The case will be given a civil docket number and the *in forma pauperis* motion will be submitted to a Judge. If the Judge denies *in forma pauperis* status, the litigant will be notified by written order that the case will be dismissed, without prejudice, unless he or she pays the filing fee by the date specified in the order.

(d) **Service**. A party appearing *pro se* must furnish the Court with a current address at which papers may be served on the litigant. The Court will assume that the litigant has received papers sent to the address they provide. The Court must have a current address at all times. Thus, a *pro se* litigant must inform the Court immediately, in writing, of any change of address. Failure to do so may result in dismissal of the case, with prejudice.

(e) **Case Assignment**. The Clerk of Court shall, upon filing, randomly assign each *pro se* case to a District Judge. All cases filed by a *pro se* plaintiff/petitioner shall be assigned to the same District Judge and Magistrate Judge to whom the last case previously filed by the same plaintiff/petitioner had been assigned. This Rule does not apply to newly filed cases wherein prior cases filed by the same *pro se* plaintiff/petitioner were assigned to a Senior Judge who has since declined to accept additional *pro se* cases.

(f) **Filing Discovery Materials.** Notwithstanding the provisions of Fed. R. Civ. P. 5(d)(1), all discovery materials in cases with incarcerated *pro se* litigants shall be filed with the Court.

(1) "Discovery materials" include:

(A) initial or mandatory disclosures by Fed. R. Civ. P. 26(a)(1) or an order of the Court;

(B) disclosure of the identity of an expert witness and the expert's report as set forth in Fed. R. Civ. P. 26(a)(2)(A)-(B);

(C) notices of deposition by oral and written examination and transcripts of said examinations as set forth in Fed. R. Civ. P. 30-31;

(D) interrogatories and responses to interrogatories as set forth in Fed. R. Civ. P. 33, including all documents produced in response to an interrogatory;

(E) requests for production of documents and tangible things or entry upon land for inspection, and responses to said requests for production of documents, tangible things or entry upon land for inspection, including the documents or "electronically stored information" produced in response to said requests for production of documents and tangible things, as set forth in Fed. R. Civ. P. 34;

(F) a copy of the examiner report(s) as set forth in Fed. R. Civ. P. 35;

(G) requests for admissions and responses to requests for admissions as set forth in Fed. R. Civ. P. 36; and

(H) all other discovery as ordered by the Court.

(2) Subpoenas served under Fed. R. Civ. P. 45 and objections to a subpoena should not be filed unless they are filed as exhibits to a motion. However, discovery materials produced pursuant to a subpoena should be filed.

(3) Discovery materials, as defined above, will automatically be restricted to Court staff and parties in the action.

(g) **Motions or Papers in Multiple Cases**. Where a *pro se* litigant has more than one (1) action pending, any motion or other papers purporting to relate to more than one (1) action will not be accepted for filing, except upon a finding of good cause. A motion or other papers shall be directed to the issues raised in one (1) action only, and shall be filed only in that action.

(h) **Briefing Schedules**. After a motion is filed and served in a *pro se* case, the Court will issue an order setting deadlines for filing and service of opposing papers, and for filing and service of reply papers if the moving party has stated an intent to reply. Oral argument will be scheduled solely at the discretion of the Court.

(i) **General Requirements**. All *pro se* litigants shall become familiar with, follow, and comply with the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure, including those rules with special provisions for *pro se* litigants such as Loc. R. Civ. P. 1.3, 5.2, 5.5, 11, 16 and 54. Failure to comply with the Federal Rules of Civil Procedure and Local Rules of Civil Procedure may result in the dismissal of the case, with prejudice.

RULE 5.3

SEALING OF COMPLAINTS AND DOCUMENTS IN CIVIL CASES

(a) **Applicability.** It is generally presumed that cases, parties, complaints, and documents are publicly accessible. This rule applies when a party seeks to overcome the presumption of public access by obtaining a sealing order. A party seeking to have a case, party, complaint, document, or portion of a document filed under seal bears the burden of demonstrating that such material should be sealed under applicable law.

This Rule does not apply when sealing is required by statute, rule, or court order. It also does not apply to routine motions made by the government in criminal cases. Additional guidance on sealing is contained in § 2(R) of the Administrative Procedures Guide for Electronic Filing, which is available at http://www.nywd.uscourts.gov.

(b) **Sealing a Case, Party, or Complaint.** A party seeking to have a case, party, or complaint sealed must deliver to the Clerk's Office hard copies of the documents listed below, each in fileable form. If any document or total number of documents exceeds 5 pages, the party must also provide the Clerk's Office with an optical disc (CD or DVD) containing each document submitted for filing. A complaint presented for filing with a motion to seal in compliance with this Rule will be opened as a sealed case pending resolution of the motion to seal.

(1) The complaint;

(2) a notice of motion to seal;

(3) an affidavit, declaration, or affirmation that identifies the factual basis for sealing the case, party, or complaint, and specifies the duration of the requested order;

(4) a memorandum of law setting forth (1) the applicable legal authority, (2) the reasons why the case, party, or complaint should be sealed, and (3) the rationale for the proposed duration of the requested order;

(5) a proposed order granting the motion to seal that contains specific findings demonstrating that sealing is warranted under applicable law and specifies the duration for which the case, party, or complaint will remain under seal.

(c) **Sealing a Document on Notice.** A party seeking to have a document or portion of a document filed under seal on notice must satisfy each of the following requirements:

(1) Electronically file, or deliver to the Clerk's Office for filing, a notice of motion to seal on the public docket.

(2) Deliver to the chambers of the assigned judge (or to the Clerk's Office, if so directed by the assigned judge) the following items:

(A) Hard copies of the document for which sealing is sought, together with an optical disc (CD or DVD) if the document or total number of documents exceeds 5 pages;

(B) An affidavit, declaration, or affirmation that identifies (1) the nature of the document for which sealing is sought, (2) the specific portions of the document for which sealing is sought (if not the entirety), and (3) the proposed duration of the requested order;

(C) A memorandum of law setting forth (1) the applicable legal authority, (2) the reasons why the document should be sealed, and (3) the rationale for the proposed duration of the requested order;

(D) A proposed order granting the motion to seal that specifies the material to be sealed, contains specific findings demonstrating that sealing is warranted under applicable law, and specifies the duration for which the document will remain under seal;

(E) An envelope large enough to accommodate the proposed sealed document, to which is affixed a label bearing the case name, case number, and the words "Sealed per Order of Judge [name of Judge]."

(3) Deliver to all counsel of record copies of the items set forth in subsection (c)(2)(A)–(D) of this Rule.

(d) **Sealing a Document Without Notice (*Ex Parte*)** A party seeking to have a document filed under seal without notice (*ex parte*) must submit to the assigned judge's chambers (or to the Clerk's Office, if so directed by the assigned judge) an affidavit, declaration, or affirmation setting forth the extraordinary circumstances that warrant relief from the requirements in subsections (c)(1) and (c)(3) of this Rule, together with the items required by subsections (c)(2)(A)–(E) of this Rule.

(e) **Sealing Orders.** The Court has wide latitude in fashioning sealing orders. Sealing orders may seal all, some, or none of the material submitted.

(f) **Delivery of Documents.** In the absence of consent of counsel (e.g., consent to electronic service) or permission of the assigned judge otherwise, any document required to be delivered under this Rule must be delivered in hard copy by hand delivery, first-class mail, or other courier service.

(g) **Incorporation of a Sealed or Pending-Seal Document in Other Filings.** A document sealed in whole or in part under this Rule, or sought to be sealed in whole or in part under this Rule, may be used in other filings.

(1) If a document that has been sealed in its entirety, or for which such sealing has been sought, is included in another filing, a single designation page for each such document must be filed (e.g., "Sealed Affidavit" or "Sealed Exhibit Number ___"). Where sealing is sought but ultimately denied, the document designated under this provision will be deemed withdrawn without prejudice, unless an unsealed version of the document is filed within 14 days of the entry date of the order denying the motion to seal.

(2) If a document that has been only partially sealed, or for which such partial sealing has been sought, is included in another filing, a redacted version of the document must be filed. Where partial sealing is sought but ultimately denied, the document designated under this provision will be deemed withdrawn without prejudice, unless an unredacted version of the document is filed within 14 days of the entry date of the order denying the motion to partially seal.

(3) Unless the Court orders otherwise, the filing date of any document filed in compliance with subsection (g)(1) or (g)(2) of this Rule constitutes the operative filing date for purposes of calculating timeliness under any applicable rule, statute, or court-ordered deadline.

(h) **Unsealing.** A party seeking to have a case, party, complaint, document, or portion of a document unsealed must do so by motion on notice.

RULE 5.4

PAYMENT OF FEES IN ADVANCE

The Clerk of Court is not required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for that service is paid in advance. *See* District Court Fee Schedule available on the Court's website, http://www.nywd.uscourts.gov.

RULE 5.5

PROCEDURES IN SOCIAL SECURITY CASES

(a) **Applicability**. This Rule governs an action under 42 U.S.C. § 405(g) for review on the record of a final decision of the Commissioner of Social Security that presents only an individual claim. This Rule shall apply to actions filed on or after December 1, 2022

(b) **Initial Process.** The filing and service of the complaint is governed by Rules 2 and 3 of the Supplemental Rules for Social Security actions brought under 42 U.S.C. 405(g).

(c) **Response to Complaint.** The defendant's response to the complaint is governed by Rule 4 of the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

(d) **Merits Briefing.** The filing of the parties' briefing is governed by Rules 5, 6, 7, and 8 of the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

(1) **Plaintiff's Brief.** The brief shall contain the following items, under the appropriate headings and in the order here indicated:

(A) A statement of the issues presented for review, set forth in separately numbered paragraphs.

(B) **A statement of the case**. This statement should briefly summarize the course of the proceeding and its disposition at the administrative level and should set forth a general statement of the facts. The statement of the facts shall include the plaintiff's age, education, work experience, if relevant, and a summary of other evidence of record. Each statement of fact shall be supported by reference to the page in the record where the evidence may be found.

(C) **An argument**. The argument shall be preceded by a summary. The argument shall be divided into sections separately addressing each issue and must set forth plaintiff's contentions with respect to the issues presented and reasons therefor. Each contention must be supported by specific

reference to the portion of the record relied upon and by citations to statutes, regulations, and cases supporting the plaintiff's position. Cases from other districts and circuits should be cited only in conjunction with relevant cases from this jurisdiction, or if authority on point from this jurisdiction does not exist.

(D) **A short conclusion stating the relief sought**. The issues before the Court are limited to the issues properly raised in the briefs.

(2) **Defendant's Brief.** The brief shall conform to the requirements set forth above for the plaintiff's brief, except that a statement of the issues and a statement of the case need not be included unless the defendant is dissatisfied with the plaintiff's recitation of the same.

(3) **Opening Brief and Reply Brief Page Limits.** Opening briefs under this rule shall not exceed thirty (30) pages in length. Reply briefs shall not exceed ten (10) pages in length.

(4) **Motions for Enlargement of Time.** Requests for enlargements of time shall be filed by letter motion and shall state whether consent of opposing counsel has been obtained.

(5) **Modification of the Page Limitations.** Motions for modification of the page limitations shall be filed by letter motion.

(e) **Oral Argument.** There will be no oral argument in cases that fall within the scope of this rule unless otherwise ordered by the Court. If oral argument is scheduled, unless otherwise ordered by the Court, oral argument shall be held telephonically.

(f) **Petitions under the Equal Access to Justice Act ("EAJA").** Prior to the filing of a petition under 28 U.S.C. § 2412 in an action under this rule, the plaintiff is encouraged to contact the defendant to attempt to reach an agreement by stipulation. Unless stipulated, any petition for fees and expenses under 28 U.S.C. § 2412 in an action under this rule shall not be filed before the judgment at issue is final and not appealable. The judgment is final and not appealable sixty (60) days after entry of judgment. The plaintiff shall file the EAJA petition within thirty (30) days of final judgment. The petition shall contain an explanation of the plaintiff's efforts to reach an agreement by stipulation. The defendant shall have thirty (30) days to respond to a petition under 28 U.S.C. § 2412 in an action under this rule.

(g) **Petitions for Attorney's Fees under 42 U.S.C. § 406(b).**

(1) **Timing of Petition.** The plaintiff's counsel may file a petition for attorney's fees under 42 U.S.C. § 406(b) in accordance with the time frame set forth in Fed. R. Civ. P. 54(d)(2)(B) and *Sinkler v. Berryhill*, 932 F.3d 83 (2d Cir. 2019). Unless otherwise established, the Court will assume that counsel representing the plaintiff in federal court received notice of the benefits calculation at the same time as the plaintiff. Should information come to the attention of either party after the entry

of an order approving fees under 42 U.S.C. § 406(b) suggesting that the information used to calculate the appropriate fee was incorrect or incomplete, a motion may be brought under Rule 60(b)(1), (2) or (6) of the Federal Rules of Civil Procedure seeking a correction of the fee approved.

(2) **Service of Petition.** The plaintiff's counsel must serve a petition for fees on the defendant and must attest that counsel has informed the plaintiff of the request.

(3) **Contents of Petition.** The petition for fees must include:

(A) A copy of the final notice of award showing the amount of retroactive benefits payable to the plaintiff (and to any auxiliaries, if applicable), including the amount withheld for attorney's fees, and, if the date that counsel received the notice is different from the date provided on the notice, evidence of the date counsel received the notice;

(B) An itemization of the time expended by counsel representing the plaintiff in federal court, including a statement as to the effective hourly rate (as calculated by dividing the total amount requested by the number of hours expended);

(C) A copy of any fee agreement between plaintiff and counsel;

(D) Statements as to whether counsel:

(i) was awarded attorney's fees under the EAJA in connection with the case and, if so, the amount of such fees; and

(ii) will return the lesser of the EAJA and 42 U.S.C. § 406(b) awards to the plaintiff upon receipt of the 42 U.S.C. § 406(b) fee award; and

(E) Any other information the Court would reasonably need to assess the petition.

(4) **Response.** Within thirty (30) days of service of the petition, the defendant shall file a response or notice of no response to the petition.

(h) All attorney's fee and remand stipulations should be filed electronically via CM/ECF without judicial signature blocks.

RULE 5.6

FILING OF MISCELLANEOUS CASES AND IRREGULAR DOCUMENTS

(a) The Clerk of Court shall accept for filing as Miscellaneous Cases (as further described in the Judicial Conference Schedule of Fees, 28 U.S.C. § 1914) the following materials:

(1) Motion to Quash Subpoena
(2) Notification to the Court of Appointment of Receiver
(3) Motion to Perpetuate Testimony
(4) Registration of Foreign Judgment from Courts of Competent Jurisdiction
(5) Motion to Withdraw Reference to Bankruptcy Court
(6) Motion to Enforce Internal Revenue Service Summons
(7) Motion to Enforce Subpoena
(8) Letters Rogatory
(9) Application to Enter Premises
(10) Federal Lien Against Property Filed by a Government Agency

(b) All other documents submitted for filing as a Miscellaneous Case, or any other document which the Clerk of Court believes appears irregular or otherwise inappropriate for filing, shall be forwarded to the Chief Judge or their designee for a determination as to whether the document should be filed. Examples of such documents include the following:

(1) Documents purporting to renounce or establish citizenship
(2) Non-consensual liens
(3) Apostilles
(4) Registration of Judgments from "common law" courts
(5) Documents with captions that do not properly identify this Court.

(c) As required by Fed. R. Civ. P. 5(d)(4), the Clerk's Office will accept the document(s) upon presentation. Court staff will not mark the document(s) as filed or received unless and until approval is granted, at which time the document will be filed and the filing fee will be collected or the documents will be entered on a pending action. Documents that are ultimately rejected by the Court shall be returned to the party submitting them in their original form without any Court stamp or markings.

RULE 7

MOTION PRACTICE

(a) **Submissions**.

(1) **Notice of Motion**. A notice of motion is required for all motions, and must state: the relief sought, the grounds for the request, the papers submitted in support, and the return date for the motion, if known. A moving party who intends to file and serve reply papers must so state in the notice of motion. Failure to file or serve a notice of motion unless otherwise ordered or excused by the Court may be grounds for denial or for striking of the motion, without prejudice. Reply papers filed without prior notice or authorization may be stricken.

(2) **Memorandum of Law**.

(A) **Required**. Absent leave of Court or as otherwise specified, upon any motion filed pursuant to Fed. R. Civ. P. 12, 56 or 65(a), the moving party shall file and serve a memorandum of law and the opposing party shall file and serve an answering memorandum. Failure to comply with this requirement may constitute grounds for resolving the motion against the non-complying party. The moving party may file a reply memorandum, but is not required to do so.

(B) **Discretionary**. Nothing in these Local Rules precludes a moving party from filing a memorandum in support of a motion made other than pursuant to Fed. R. Civ. P. 12, 56 or 65(a). The Court, in its discretion, may require written memoranda on such other motions.

(C) **Page Limits**. Memoranda in support of or in opposition to any motion shall not exceed twenty-five (25) pages in length, and reply memoranda shall not exceed ten (10) pages in length. Tables of contents and tables of authorities are not included in the page limitations. A party seeking to exceed the page limit must make application by letter to the Judge hearing the motion, with copies to all counsel, at least seven (7) days before the date on which the memorandum must be filed.

(3) **Affidavit, Declaration, or Affirmation**. An affidavit, declaration, or affirmation must not contain legal arguments, but must contain factual and procedural background relevant to the motion it supports. Except for motions brought under Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction), 12(b)(6) (failure to state a claim), 12(c) (judgment on the pleadings), and 12(f) (to strike), motions and opposition to motions shall be supported by at least one (1) affidavit, declaration or affirmation, and by such other evidence (i.e., deposition testimony, interrogatory answers, admissions, and documents) as appropriate to resolve the particular motion. Failure to comply with this requirement may constitute grounds for resolving the motion against the non-complying party.

(4) **Supporting Material**. A party seeking or opposing any relief under the Federal Rules of Civil Procedure shall file only the portion(s) of a deposition, interrogatory, request for documents, request for admission, or other supporting material that is pertinent to the application.

(5) **Summary Judgment**. *See* Loc. R. Civ. P. 56 for additional provisions specific to summary judgment motions.

(6) **Sur-Reply**. Absent permission of the Judge hearing the motion, sur-reply papers are not permitted.

(7) **Courtesy Copy**. Immediately after filing a motion for an expedited hearing (Loc. R. Civ. P. 7(d)(1)), or motion for a temporary restraining order (Loc. R. Civ. P. 65(a)), the moving party must deliver a courtesy copy of the motion papers to the chambers of the assigned Judge. The Court may, in its discretion, request courtesy copies on any other motion.

(8) **Service of Unpublished Decisions**. In cases involving a *pro se* litigant, counsel shall, when serving a memorandum of law (or other submissions to the Court), provide the *pro se* litigant (but not other counsel or the Court) with printed copies of decisions cited therein that are unreported or reported exclusively on computerized databases.

(b) **Briefing Schedules**.

(1) **Court Order**. After a motion is filed, the Court may issue an order setting deadlines for filing and service of opposing papers, and for filing and service of reply papers if the moving party has stated an intent to reply.

(2) **Absent Court Order**. If the Court does not set deadlines by order, the following schedules shall apply:

(A) **Summary Judgment Motions**. The opposing party shall have twenty-eight (28) days after service of the motion to file and serve responding papers, and the moving party shall have fourteen (14) days after service of the responding papers to file and serve reply papers. If the party opposing the original motion files a cross-motion, the moving party shall have twenty-

eight (28) days after service of the cross-motion to file and serve responding papers in opposition to the cross-motion, and the party filing the cross-motion shall have fourteen (14) days after service of the responding papers to file and serve reply papers in support of the cross-motion.

(B) **All Other Motions**. The opposing party shall have fourteen (14) days after service of the motion to file and serve responding papers, and the moving party shall have seven (7) days after service of the responding papers to file and serve reply papers.

(c) **Oral Argument**. The parties shall appear for oral argument on all motions they make returnable before a Judge on the scheduled return date for the motion. In its discretion, the Court may notify the parties that oral argument shall not be heard on any given motion. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument.

(d) **Procedures for Specific Motions**.

(1) **Motion for an Expedited Hearing**. A party seeking to shorten the schedule prescribed in subparagraph (b) must make a separate motion for an expedited hearing, setting forth the reasons why an expedited hearing is required. The motion must be accompanied by:

(A) the motion the party is seeking to have heard on an expedited basis, together with supporting affidavits and memorandum of law; and

(B) a proposed order granting an expedited hearing, with dates for serving the motion, filing responsive papers, and for a hearing left blank to be filled in by the Court.

A motion for an expedited hearing may, for good cause shown, be made *ex parte*. Papers in support of an *ex parte* application shall state the attempts made to resolve the dispute through a motion on notice and/or state why notice of the motion may not be given.

Immediately after filing the motion for an expedited hearing (and accompanying documents), counsel for the moving party shall personally deliver courtesy copies of the motion papers to chambers and await further instructions from the Court. If the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement.

(2) **Motion to Settle an Order**. When counsel are unable to agree on the form of a proposed order, the prevailing party may move, upon seven (7) days' notice to all parties, to settle the order. The Court may award costs and attorney's fees against an attorney if it determines that the attorney's unreasonable conduct necessitated bringing the motion.

(3) **Discovery Motion**. No motion for discovery and/or production of documents under Fed. R. Civ. P. 37 shall be heard unless accompanied by an affidavit showing that sincere attempts to resolve the discovery dispute have been made. Such affidavit shall detail the times and places of the parties' meetings or discussions concerning the discovery dispute and the names of all parties participating therein, and all related correspondence must be attached.

(4) **Motion to Expand Record On Appeal**. A party who seeks to include material that was not previously filed in a record on appeal must obtain a Court order directing the Clerk of Court to file the material. The order can be sought by motion or by stipulation of all counsel/parties.

RULE 7.1

BUSINESS ORGANIZATON PARTY DISCLOSURES

In all cases, business organization parties (including corporations, LLCs, and partnerships) must identify any person (including but not limited to members, shareholders, partners, or individuals with direct decision making authority/in leadership positions) whose identities the party has reason to believe may bear on the Court's decision whether to recuse, on motion or *sua sponte*, including by reason of financial interest in the outcome of the litigation or involvement in the events that form the basis for any claim. Such identification must be made within the timeframe for corporate disclosure statements set forth in Federal Rule of Civil Procedure 7.1(b).

RULE 9

REQUIREMENT TO FILE A RICO CASE STATEMENT

Any party asserting a claim, cross-claim, or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, shall file and serve a "RICO Case Statement" under separate cover. This statement shall be filed contemporaneously with the papers first asserting the party's RICO claim, cross-claim or counterclaim, unless the Court grants an extension of time for filing. A party's failure to file a RICO Case Statement may result in dismissal of the party's RICO claim, cross-claim, or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Fed. R. Civ. P. 11. In particular, the RICO Case Statement shall be in a form which uses the letters and numbers as set forth below, and shall state in detail and with specificity the following information:

(a) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).

(b) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(c) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(d) List the alleged victims and state how each victim was allegedly injured.

(e) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(1) List the alleged predicate acts and the specific statutes which were allegedly violated;

(2) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(3) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake" shall be stated "with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(4) State whether there has been a criminal conviction for violation of each predicate act;

(5) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(6) Describe how the predicate acts form a "pattern of racketeering activity"; and

(7) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(f) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(1) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(2) Describe the structure, purpose, function and course of conduct of the enterprise;

(3) State whether any defendants are employees, officers or directors of the alleged enterprise;

(4) State whether any defendants are associated with the alleged enterprise;

(5) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and (6)If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(g) State and describe in detail whether the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(h) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(i) Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

(j) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(k) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(1) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(2) Describe the use of investment of such income.

(l) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(m) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(1) State who is employed or associated with the enterprise; and

(2) State whether the same entity is both the liable "person" and the "enterprise" under section 1962(c).

(n) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(o) Describe the alleged injury to business or property.

(p) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(q) List the damages sustained for which each defendant is allegedly liable.

(r) List all other federal causes of action, if any, and provide the relevant statute numbers.

(s) List all pendent state claims, if any.

(t) Provide any additional information that would be helpful to the Court in processing your RICO claim.

RULE 10

FORM OF PAPERS

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

(1) all text and footnotes shall be in a font size of at least 12-point type;

(2) all text in the body of the document must be double-spaced, except that text in block quotations and footnotes may be single-spaced;

(3) extensive footnotes and block quotes may not be used to circumvent page limitations;

(4) documents must have at least one-inch margins on all four sides; and

(5) pages must be consecutively numbered.

(b) **Additional Requirements for Paper Filing.** Documents presented for filing in paper form shall meet the following additional requirements:

(1) documents must be on durable white 8½" x 11" paper of good quality;

(2) all text must be plainly and legibly written, typewritten, printed or reproduced;

(3) documents must be in black or blue ink;

(4) the pages of each document must be stapled or in some other way fastened together;

(5) all documents must be single-sided; and

(6) documents presented for paper filing must contain an original signature.

The Court may reject documents that do not comply with these requirements.

RULE 11

SANCTIONS

(a) **Dismissal or Default**. Failure of counsel for any party, or a party proceeding *pro se*, to appear before the Court at a conference, to complete the necessary preparations, or to be prepared to proceed to trial at the set time may be considered an abandonment of the case or a failure to prosecute or defend diligently. An appropriate order for sanctions may be entered against the defaulting party with respect to either a specific issue or the entire case.

(b) **Imposition of Costs on Attorneys**. Upon finding that sanctions pursuant to section (a) would be inadequate or unjust to the defaulting party, the Judge may, in accordance with 28 U.S.C. § 1927, assess reasonable costs directly against counsel whose action has obstructed the effective administration of the Court's business.

(c) **Assessment of Jury Costs**. In any civil case in which a settlement is reached, or in which the Court is notified of settlement later than the close of business on the last business day before jurors are to appear for jury selection, the Court, in its discretion, may impose the Court's costs of compensating jurors for their needless appearance against one or more of the parties, or against one (1) or more counsel. Funds so collected shall be deposited by the Clerk of Court into the Treasury of the United States.

RULE 15

A MOVANT SEEKING TO AMEND OR SUPPLEMENT A PLEADNIG OR TO JOIN OR INTERPLEAD PARTIES

(a) A movant seeking to amend or supplement a pleading or to join or interplead parties pursuant to Fed. R. Civ. P. 14, 15, or 19–22 must attach an unsigned copy of the proposed amended pleading as an exhibit to the motion. The proposed amended pleading must be a complete pleading superseding the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

(b) Unless the movant is proceeding *pro se*, the amendment(s) or supplement(s) to the original pleading shall be identified in the proposed pleading through the use of a word processing "redline" function or other similar markings that are visible in both electronic and paper format.

(c) The granting of the motion does not constitute the filing of the amended pleading. Unless the order granting leave to amend or supplement contains a different deadline, the moving party must file and serve the amended pleading upon the existing parties within fourteen (14) days of entry of the order granting the motion. Service upon any new parties must be completed in accordance with Fed. R. Civ. P. 4(m). If the moving party is proceeding *pro se*, the Clerk of Court will file the amended pleading upon granting of the motion.

RULE 16

ALTERNATIVE DISPUTE RESOLUTION AND PRETRIAL CONFERENCES

(a) **Alternative Dispute Resolution**. This Court has adopted an Alternative Dispute Resolution Plan ("ADR"), as implemented by Standing Order, under which certain civil cases are referred automatically to ADR upon filing. A copy of the Plan is available on the Court's website, http://www.nywd.uscourts.gov. The Clerk of Court will provide notice to the parties when a case is automatically referred. Any civil case that is not automatically referred may be referred to ADR by order of the presiding Judge, in their discretion. The ADR process is confidential. Litigants in cases not referred automatically to ADR must consider possible agreement to the use of an ADR process.

(b) **Initial Pretrial Conference**

(1) **Purpose**. The Court shall hold an initial pretrial conference in all cases except those exempted from initial disclosure requirements under Fed. R. Civ. P. 26(a)(1)(B). The purpose of this conference is to establish a case management plan.

(2) **Party Conference**. Prior to the initial pretrial conference, counsel for all parties and any *pro se* litigants shall confer as required by Fed. R. Civ. P. 26(f), and shall file with the Court a joint, written discovery plan consistent with Fed. R. Civ. P.

26(f). If they are unable to agree to a plan, each party shall file its own proposed plan.

(A) **Electronically Stored Information**. The Court expects the parties to cooperatively reach agreement on how to preserve and conduct discovery of electronically stored information ("ESI").[1] Prior to the Fed. R. Civ. P. 26(f) conference, counsel should become knowledgeable about their clients' information management systems and their operation, including how information is stored and retrieved. In addition, counsel should make a reasonable attempt to ascertain the contents of their client's ESI, including backup, archival, and legacy data (outdated formats or media) and ESI that may not be reasonably accessible. In particular, prior to or at the Fed. R. Civ. P. 26(f) conference, the parties should confer regarding the following matters:

(i) **Preservation**. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation.

(ii) **E-mail Information**. Counsel should attempt to agree on the scope of e-mail discovery and e-mail search protocol.

(iii) **Back-up and Archival Data**. Counsel should attempt to agree on whether responsive back-up and archival data exists, the extent to which back-up and archival data is reasonably accessible, and who will bear the cost of obtaining such data.

(iv) **Format and Media**. Counsel should attempt to agree on the format and media to be used in the production of ESI, and whether production of some or all ESI in paper form is agreeable in lieu of production in electronic format.

(v) **Reasonably Accessible Information and Costs**. Counsel should attempt to determine if any responsive ESI is not reasonably accessible, *i.e.*, is accessible only by incurring undue burdens or costs.

(B) **Privileged or Trial Preparation Materials.** Counsel also should attempt to reach agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed.

[1]Except for the term "document," which is defined at Loc. R. Civ. P. 26(d)(3)(B), the Court will rely on The Sedona Conference Glossary: E-Discovery & Digital Information Management (Second Edition), for definitions of terms related to discovery of ESI.

(3) **Content of the Initial Conference**. In addition to all of the matters in Fed. R. Civ. P. 16(c)(2), counsel and unrepresented parties shall be prepared to discuss meaningfully the following:

(A) if the case is referred automatically to ADR pursuant to the Court's Alternative Dispute Resolution Plan, selection of a neutral, and timing for ADR;

(B) if the case is not referred automatically to ADR, possible stipulation to the use of a confidential ADR process;

(C) any problems currently known and reasonably anticipated to arise in connection with discovery of ESI;

(D) proposed methods to limit and/or decrease the time and expense of discovery;

(E) the use of experts during discovery and at trial;

(F) the possibility of consent to the Magistrate Judge conducting all or part of the proceedings in a case provided, however, that unless there is unanimous consent among the parties, no party shall discuss its position with the Court; and

(G) for cases in which class claims are alleged,

(i) the timing of the filing of a motion for class certification;

(ii) the appointment of interim class counsel;

(iii) the timing and scope of discovery, including discovery of Electronically Stored Information, prior to resolution of the motion for class certification, pursuant to Loc. R. Civ. P. 23(c); and

(iv) a schedule for briefing a motion for class certification.

(4) **Scheduling Order**. After the initial pretrial conference, pursuant to Fed. R. Civ. P. 16(b), the Court shall issue an order providing:

(A) deadlines for joinder of parties and amendment of pleadings;

(B) deadlines for Alternative Dispute Resolution, if applicable;

(C) if applicable, deadlines for the items described in Loc. R. Civ. P. 16(b)(3)(G);

(D) a discovery cut-off date;

(E) a deadline for filing dispositive motions;

(F) deadlines for the disclosure of expert witnesses, if applicable; and

(G) any other matter decided or agreed upon at the initial pretrial conference.

A scheduling order cannot be modified except by Court order.

(c) **Settlement Conferences**.

(1) **Applicable Cases**. Unless a case will proceed to ADR, the Court retains the discretion whether to hold a judicial settlement conference.

(2) **Party Obligations**. The plaintiff(s) shall provide the defendant(s) with a written settlement demand at least fourteen (14) days before the first settlement conference, and the defendant(s) shall respond to the demand in writing at least seven (7) days before the conference, so that the parties and their attorneys have a meaningful opportunity to consider and discuss the settlement proposals. In cases involving insurance coverage, defense counsel also shall consult with the insurance carrier prior to the conference regarding its position. Judges may, at their discretion, require a preconference, written submission from each party.

(3) **Attendance**. At the settlement conference, the attorneys shall be present and shall be prepared to state their clients' respective positions to the Court. Judges may, at their discretion, require the attendance of parties, party representatives, insurance carriers, and others whose attendance they believe may facilitate settlement, either in person or by telephone.

(4) **Further Settlement Conferences**. If a settlement is not reached at the first conference, the Court may schedule additional settlement conferences from time to time, as appropriate.

(d) **Additional Pretrial Conferences**. The Court may schedule additional pretrial conferences in its discretion, or at a party's request. Counsel and *pro se* litigants shall be prepared to provide a status update on discovery, motion practice, and the prospects for settlement.

(e) **Final Pretrial Conference**.

(1) **Timing and Content**. A final pretrial conference shall be held at the direction of the Court within thirty (30) days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(A) the possibility of settlement;

(B) motions *in limine*;

(C) the resolution of any legal or factual issues raised in the pre-trial statement of any party (see subsection 2);

(D) stipulations (which shall be in writing); and

(E) any other matters that counsel or the Court deems appropriate.

(2) **Pretrial Statement**. No later than fourteen (14) days before the date of the final pretrial conference, or by such other date as may be set by Court order, counsel for each party shall file and serve a pretrial statement which includes the following:

(A) a detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;

(B) a detailed statement of the issues of law involved and any unusual questions relative to the admissibility of evidence, together with supporting authority;

(C) proposed jury instructions and verdict form, if any, which shall also be provided to chambers in Word format;

(D) the names and addresses of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony;

(E) a brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(F) a list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(G) a list of any deposition testimony to be offered in evidence;

(H) an itemized statement of each element of special damages and other relief sought; and

(I) such additional submissions as the Court directs.

Counsel are encouraged to review the individual Rules of the assigned District Judge or Magistrate Judge for specific pretrial statement requirements.

(3) **Marking Exhibits.** Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence.

(4) **Post-Conference Order**. Following the final pretrial conference, a pretrial order may be entered as directed by the Court, and the case certified as ready for trial.

(f) **Attorneys' Binding Authority**. Each party represented by an attorney shall be represented at each Court conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

RULE 23

CLASS ACTIONS

(a) **Caption.** Any pleading purporting to commence a class action shall include the term "Class Action" next to its caption.

(b) **Contents.** After stating the jurisdictional grounds for the claims, the complaint or other pleading shall set forth, under the heading "Class Action Allegations":

(1) the portion(s) of Fed. R. Civ. P. 23 under which it is claimed the action is properly maintained as a class action; and

(2) allegations thought to justify the claim, including, but not limited to:

(A) the size (or approximate size) and definition of the class;

(B) the basis on which the party or parties claim to adequately represent the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable under Fed. R. Civ. P. 23(b)(3), allegations thought to support the findings required by that subsection.

(c) **Scheduling.** After the initial pretrial conference, pursuant to Fed. R. Civ. P. 16(b), the Court shall issue a scheduling order providing deadlines for, among other things, orderly discovery and motions. The initial order may address only discovery relevant to the motion for class certification, with a further order to issue after a determination on the certification motion.

(d) **Certification Motion.** On or before the deadline established in the scheduling order, the party seeking class certification shall move for a determination under Fed. R. Civ. P. 23(c)(1). The motion shall include, but not necessarily be limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of each party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same defendant(s) that allege the same or similar causes of actions, about which the party or counsel seeking class action certification is personally aware;

(5) a statement of any other matters that the movant deems necessary and proper to expedite a decision on the motion and resolution of the case on the merits.

Responses to certification motions shall be in accordance with the requirements of these Local Rules.

(e) **Abandonment.** Failure to move for class determination and certification on or before the deadline established in the scheduling order shall constitute an intentional abandonment and waiver of all class action allegations contained in the pleading, and the action shall proceed thereafter as an individual, non-class action. If any motion for class determination or certification is filed after the deadline, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon a finding of excusable neglect and good cause.

(f) **Notice.** If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(g) **Amendments.** No class action allegation of a certified class shall be withdrawn, deleted, or otherwise amended without Court approval.

(h) **Applicability.** The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim brought for or against a class.

RULE 26

GENERAL RULES GOVERNING DISCOVERY

(a) **Rule 26(f) Discovery Conference**. The parties shall confer about all of the matters contemplated by Fed. R. Civ. P. 26(f) and Loc. R. Civ. P. 16(a)(3), unless the case is excepted from this requirement by Loc. R. Civ. P. 16(b)(1).

(b) **Form of Interrogatories, Requests to Produce or Inspect, and Requests for Admission**. The parties shall sequentially number each interrogatory or discovery request. In addition to service pursuant to Fed. R. Civ. P. 5, the party to whom interrogatories or discovery

requests are directed shall, whenever practicable, be supplied with an electronic courtesy copy of the served document in a word processing format. In answering or objecting to interrogatories or discovery requests the responding party shall first state verbatim the propounded interrogatory or request, and immediately thereafter the answer or objection.

(c) **Uniform Definitions for all Discovery Requests**.

(1) The full text of the definitions and rules of construction set forth in subsections (3) and (4) is deemed incorporated by reference into all discovery requests. No discovery request shall use broader definitions or rules of construction than those set forth in subsections (3) and (4). This rule shall not preclude (a) the definition of other terms specific to the particular litigation, (b) the use of abbreviations, or (c) a more narrow definition of a term defined in subsection (3).

(2) This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

(3) The following definitions apply to all discovery requests:

(A) **Communication**. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(B) **Document**. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

(C) **Identify (with respect to persons)**. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subsubsection, only the person's name need be listed in response to subsequent discovery requesting the identification of that person.

(D) **Identify (with respect to documents)**. When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipients(s).

(E) **Parties**. The terms "plaintiff" and "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(F) **Person**. The term "person" is defined as any natural person or any business, legal or governmental entity, or association.

(G) **Concerning**. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

(4) The following rules of construction apply to all discovery requests:

(A) **And/Or**. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

(B) **Number**. The use of the singular form of any word includes the plural and vice versa.

(d) **Assertion of Claim of Privilege**.

(1) Where a party asserts a claim of privilege in objecting to any means of discovery or disclosure, and withholds otherwise responsive information based on that assertion:

(A) the party asserting the privilege shall identify the nature of the privilege (including work product) being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked; and

(B) shall provide the following information, unless to divulge such information would cause disclosure of the allegedly privileged information:

(i) for documents: (a) the type of document, *i.e.*, letter or memorandum; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other;

(ii) for oral communications: (a) the names of the person making the communication and the person(s) present while the communication was made and, where not apparent, the relationship of the person making the communication to the person(s) present; (b) the date and place of communication; and (c) its general subject matter.

(2) Where the claim of privilege is asserted in response to discovery or disclosure other than at a deposition, the information set forth in subsection (1) shall be furnished in writing when the party responds to such discovery or disclosure, unless otherwise ordered by the Court.

(3) Where the claim of privilege is asserted during a deposition, the information set forth in subsection (1) shall be furnished: (a) at the deposition, to the extent it is readily available from the witness being deposed or otherwise, and (b) to the extent it not readily available, in writing within fourteen (14) days after the privilege is asserted, unless otherwise ordered by the Court.

(4) Efficient means of providing information regarding claims of privilege are encouraged, and parties are encouraged to agree upon measures that further this end. For example, when asserting privilege on the same basis with respect to multiple documents, it is presumptively proper to provide the information required by this rule by group or category. A party receiving a privilege log that groups documents or otherwise departs from a document-by-document or communication-by-communication listing may not object solely on that basis, but may object if the substantive information required by this rule has not been provided in a comprehensible form.

(e) **Electronically Stored Information**. Discovery of relevant electronically stored information shall proceed as follows:

(1) After receiving requests for document production, the parties shall search their documents, including ESI other than ESI that has been identified as not reasonably accessible, and produce relevant responsive ESI in accordance with Fed. R. Civ. P. 26(b)(2).

(2) Searches and production of ESI identified as not reasonably accessible shall not be required to be conducted until the initial disclosure of reasonably accessible ESI has been completed. Requests for information expected to be found in ESI that is not reasonably accessible must be narrowly focused with some basis in fact supporting the request, and good cause must be provided. The party seeking such discovery may be required to pay all or a portion of the costs of search, retrieval, review, and production of the information, upon application to the Court.

(3) **Search Methodology**. If a party intends to employ an electronic search to locate relevant ESI, the parties shall discuss and attempt to reach agreement as to the method of searching, and the words, terms, and phrases to be searched and any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the ESI. The parties shall also attempt to reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize undue expense, the parties may consider limiting the scope of the electronic search (*i.e.*, time frames, fields, document types).

(4) **Metadata**. Except as otherwise provided, metadata, especially substantive metadata, need not be routinely produced, except upon agreement of the requesting and producing litigants, or upon a showing of good cause in a motion filed by the requesting party.

(5) **Format**. If the parties have not agreed or cannot agree to the format for document production, ESI shall be produced to the requesting party as image files (*i.e.* PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, *i.e.*, the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of ESI in its native format.

(6) **Costs**. Generally, the costs of discovery, other than the costs associated with ESI that is not reasonably accessible, shall be borne by each party. However, the Court will apportion the costs of discovery or presentation of ESI, including discovery of ESI that is not reasonably accessible, upon a showing of good cause, or unequal burdens, or unreasonable request.

(f) **Non-filing of Discovery Materials**. Parties shall comply with Fed. R. Civ. P. 5(d)(1), except that in cases involving an incarcerated *pro se* litigant, all discovery materials must be filed with the Court pursuant to Loc. R. Civ. P. 5.2(f).

(g) **Cooperation Among Counsel in the Discovery Context**. *See* the Civility Principles and Guidelines of the United States District Court for the Western District of New York which can be found on the Court's website, http://www.nywd.uscourts.gov.

RULE 29

STIPULATIONS

All stipulations, except stipulations made in open court and recorded by the court reporter, shall be in writing and signed by each attorney and/or *pro se* litigant. The parties shall determine who will be responsible for filing, and a copy of the stipulation, with signatures conformed (*i.e.*, "s/Jane Doe," "s/John Smith"), shall be filed electronically. The Court will act on the filed stipulation, as necessary and appropriate.

RULE 30

DEPOSITIONS

(a) **Fair Notice**. Absent agreement of the parties or Court order, each notice to take the deposition of a party or other witness shall be served at least twenty-one (21) days prior to the date set for examination.

(b) **Production of Documents in Connection with Depositions**. Consistent with the requirements of Fed. R. Civ. P. 30 and 34, a party seeking production of documents of another party or witness in connection with a deposition shall schedule the deposition to

allow for production of the documents at least seven (7) calendar days prior to the deposition. Upon receipt of the documents, the party noticing the deposition shall immediately inform counsel for all other noticed parties that the requested documents have been produced and shall make the documents available for their inspection and reproduction. If timely requested documents are not produced at least seven (7) days prior to the deposition, the party noticing the deposition may either adjourn the deposition until a minimum of seven (7) days after the documents are produced or, without waiving the right to access to the documents, proceed with the deposition on the originally scheduled date.

(c) **Procedures for Video Depositions**. A Court order is required before taking a deposition by other than stenographic means (*i.e.,* without the use of a stenographic record). However, a prior order is not required to record a deposition both on video and stenographically. In the latter circumstance, the following procedures apply:

(1) The deposition notice shall state that the deposition will be recorded both stenographically and on video. At the deposition, the camera operator shall be identified. An employee of the attorney who noticed the deposition may act as the camera operator.

(2) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(3) Prior to trial, counsel for the party seeking to use the video deposition shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(4) The party seeking to use the video deposition at trial shall submit unresolved objections to the Court by way of a motion *in limine*. The motion may be made at any time after the deposition, but shall be made no later than seven (7) days before trial or any earlier deadline established by Court order. The objected-to portion(s) of the transcript shall be annexed to the motion papers.

(5) In accordance with the Court's ruling on objections, the party seeking to use the video deposition shall notify opposing counsel of the transcript pages and line numbers the party plans to delete from the video. The party seeking to use the video shall then edit the video accordingly, and shall bear the expenses of editing. If the Court overrules an objection made during the deposition, the objection need not be deleted. If requested, the Court will give an instruction at the time the video is shown regarding objections heard on the video.

(6) At least three (3) days before showing the video, the party seeking to use the video deposition at trial shall deliver a copy of the edited video to opposing counsel. Opposing counsel may then object only if the edited version does not comply with the Court's ruling and counsels' agreement, or if the video's quality is such that it will be difficult for the jury to understand. Such objections, if any, must be made

in writing and served at least twenty-four (24) hours before the video is to be shown.

(7) The party seeking to use the video deposition should attempt to utilize a storage format compatible with the Court's display equipment. A party utilizing an incompatible format must provide the equipment necessary to display the video in Court.

(8) *See* Loc. R. Civ. P. 54(c) for prerequisites to the receipt of video expenses as a component of taxable costs.

RULE 41

DISMISSAL OF ACTIONS AND APPROVAL OF CERTAIN SETTLEMENTS

(a) **Voluntary Dismissal Upon Settlement**. When a case is settled, the parties shall, within fourteen (14) days thereafter, file a stipulation of dismissal or other appropriate document (*i.e.*, consent decree). If such document is not timely filed, the Judge may enter an order dismissing the case as settled, without costs, and on the merits. As a matter of discretion, the judge may extend the time for filing.

(1) **Settlements of Actions on Behalf of Infants or Incompetents**.

(A) An action by or on behalf of an infant or an incompetent shall not be settled or compromised, voluntarily discontinued, dismissed, or terminated without application to and leave of Court. The proceeding upon application to settle or compromise such an action shall conform, as nearly as possible, to Sections 1207 and 1208 of New York's Civil Practice Law and Rules. The Judge may, for cause shown, dispense with any New York State requirement.

(B) The Judge shall determine whether the application requires a hearing and whether the infant or incompetent, together with their legal representative, must appear at the hearing.

(C) The Judge 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 such fee and disbursements after due inquiry as to all charges against the fund.

(D) The Judge shall order the balance of the proceeds of the settlement or recovery to be distributed pursuant to Section 1206 of New York's Civil Practice Law and Rules, or upon good cause shown, pursuant to such plan as the Judge deems necessary to protect the interests of the infant or incompetent.

(2) **Settlements of Actions Brought on Behalf of Decedents' Estates**.

(A) Actions brought on behalf of decedents' estates shall not be settled or compromised, or voluntarily discontinued, dismissed, or terminated, without application to and leave of Court. The application to settle or compromise shall include a signed affidavit or petition by the estate representative and a signed affidavit by the representative's attorney addressing the following:

(i) the circumstances giving rise to the claim;

(ii) the nature and extent of the damages;

(iii) the terms of the proposed settlement, including the attorney's fees and disbursements to be paid out of the settlement;

(iv) the circumstances of any other claims or settlements arising out of the same occurrence; and

(v) the reasons why the proposed settlement is believed to be in the best interests of the estate and distributees.

(B) Counsel shall submit a proposed order approving the settlement.

(C) The Judge shall determine whether a hearing is necessary.

(D) Upon approving the settlement attorney's fees, and disbursements, the Judge shall direct the estate representative to apply to the appropriate Surrogate of the State of New York, or analogous jurist of another state, for an order of distribution of the net proceeds of the settlement pursuant to Section 5-4.4 of New York's Estate Powers and Trusts Law or the analogous provision of the appropriate state's law.

(b) **Involuntary Dismissal.** If a civil case has been pending for more than six (6) months and is not in compliance with the directions of the Judge or a Magistrate Judge, or if no action has been taken by the parties in six (6) months, the Court may issue a written order to the parties to show cause within thirty (30) days why the case should not be dismissed for failure to comply with the Court's directives or to prosecute. The parties shall respond to the order by filing sworn affidavits explaining in detail why the action should not be dismissed. They need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be accepted. If the parties fail to respond, the Judge may issue an order dismissing the case, or imposing sanctions, or issuing such further directives as justice requires.

RULE 47

JURY TRIALS - CIVIL ACTIONS

(a) Random selection of petit jurors is made pursuant to the Jury Plan for the Western District of New York as approved by the Second Circuit Judicial Council. A copy of the Jury Plan is available on the Court's website, http://www.nywd.uscourts.gov.

(b) The Judge in a civil case shall examine prospective jurors on *voir dire*. Counsel may submit proposed questions in writing to the Judge or Magistrate Judge prior to or during the *voir dire* examination. The Judge or Magistrate Judge, in their discretion, may permit counsel to submit questions orally or conduct *voir dire*.

(c) Where a jury trial has been properly demanded, the Court shall determine whether the jury will be selected by the panel method or the struck method.

(d) The procedure for selecting the jury pursuant to the panel method shall be as follows:

(1) The deputy will at random call names from the available panel and direct those persons to be seated in the jury box in the order in which they are called. The total number to be seated shall be determined by the Court.

(2) The Court will conduct *voir dire*. If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges, pursuant to 28 U.S.C. § 1870. These challenges shall be exercised in three (3) rounds, one (1) challenge for each side in each round. If a challenge is not exercised by either party for that round, it is waived. After each round of challenges is exercised, the Clerk of Court shall call names from the panel to replace the challenged jurors. After new jurors are seated, the procedure in Loc. R. Civ. P. 47(d)(2)-(5) shall be repeated. At any time before the panel is sworn, a party may exercise a challenge as to any juror seated in the box.

(6) After all parties have exercised all of their challenges, the jury shall be sworn.

(e) The procedure for selecting a jury pursuant to the struck method shall be as follows:

(1) The deputy will call at random from the panel a number of prospective jurors equal to the total number of all jurors and all peremptory challenges for all parties in the action. Those persons will be seated in the jury box in the order they are called.

(2) The Court will conduct *voir dire*. If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges pursuant to 18 U.S.C. § 1870. These challenges shall be exercised in rounds, one (1) challenge for each side in each round. No further jurors will be called to replace those jurors excused by peremptory challenges. At the conclusion of the parties' rounds, the Court shall announce those jurors who shall constitute the jury, and they shall be sworn.

(f) In a case with multiple defendants or plaintiffs, the attorneys for defendants or plaintiffs shall confer and jointly exercise their peremptory challenges. No additional peremptory challenges shall be provided solely because the case involves more than one (1) defendant or plaintiff.

RULE 54

COSTS

(a) Within thirty (30) days after entry of final judgment, a party entitled to recover costs shall submit to the Clerk of Court a verified Bill of Costs on the form provided by the Court.

(b) The opposing party must file any memorandum in opposition to any costs within twenty-one (21) days of service of the Bill of Costs.

(c) The prevailing party must file any reply to the objection within twenty-one (21) days of service of the opposing memorandum.

(d) Subject to the provisions of Fed. R. Civ. P. 54(d)(1), the expense in obtaining all or any part of a transcript for the Court's use when ordered by it, and the expense in obtaining all or any part of a transcript for purposes of a new trial, for amended findings, or for appeal, shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference of the United States.

(e) If a party proceeds to record a deposition stenographically and on video pursuant to Loc. R. Civ. P. 30, the additional costs incurred for video recording will not be taxed by the Clerk of Court without a prior order from the Court or agreement of the parties.

(f) Unless otherwise ordered by the District Court, or the Circuit Court of Appeals pursuant to Federal Rule of Appellate Procedure 8, the filing of an appeal shall not stay the taxation of costs, entry of judgment thereon, or enforcement of the judgment.

(g) Parties should consult the Court's "Guidelines for Bills of Costs" located on the Court's website, http://www.nywd.uscourts.gov. Upon the filing of a Bill of Costs in any action involving a *pro se* litigant, the Clerk of Court shall forward the *pro se* litigant a copy of these Guidelines.

RULE 55

DEFAULT JUDGMENT

The procedure for Default Judgment under Fed. R. Civ. P. 55 is a two-step process: (a) entry of default by the Clerk of Court (Fed. R. Civ. P. 55(a)); and (b) entry of default judgment, by the Clerk of Court when the claim is for a sum certain pursuant to Fed. R. Civ. P. 55(b)(1) and by the Court in all other instances pursuant to Fed. R. Civ. P. 55(b)(2):

(a) **Entry of Default**.

The documents required for obtaining entry of default are:

(1) Request for Clerk's Entry of Default;

(2) Affidavit (or Declaration) in Support of Request of Entry of Default;

(3) Proposed form for Clerk's Entry of Default; and

(4) A Certificate of Service indicating that these documents were served upon defendant.

(b) **Default Judgment.**

(1) **By the Clerk of Court.** A party entitled to a default judgment when the claim is for a sum certain, pursuant to Fed. R. Civ. P. 55(b)(1), shall submit to the Clerk of Court:

(A) Request for Entry of Default Judgment for Sum Certain;

(B) an affidavit by the party seeking default judgment or the party's attorney showing that:

(i) the party against whom judgment is sought is not an infant or an incompetent person;

(ii) the party has defaulted in appearance in the action;

(iii) the amount shown by the statement is justly due and owing and no part thereof has been paid except as therein set forth; and

(iv) the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein;

(C) a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed;

(D) a proposed judgment containing the last known address of each judgment creditor and judgment debtor and, if any such address is unknown, an affidavit by the party seeking default judgment or the party's attorney stating that the affiant has no knowledge of the address; and

(E) a Certificate of Service indicating that these documents were served upon the defendant.

Upon confirming the submission is in compliance with the Federal and Local Rules, the Clerk of Court shall enter judgment for principal, interest, and costs.

(2) **By the Court**. An application to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), shall reference and include the docket numbers of the Clerk's Entry of Default and the pleading to which no response has been made.

(c) Notwithstanding the above, the Court, on its own initiative, may enter default or direct the Clerk of Court to enter default.

RULE 56

MOTIONS FOR SUMMARY JUDGMENT

(a) **Statements of Facts on Motion for Summary Judgment.**

(1) **Movant's Statement.** Upon any motion for summary judgment pursuant to Fed. R. Civ. P. 56, there shall be annexed to the notice of motion a separate, **short**, and **concise** statement, in numbered paragraphs, of the **material facts** as to which the moving party contends there is no genuine issue to be tried. Each such statement must be followed by citation to admissible evidence or to evidence that can be presented in admissible form at trial as required by Fed. R. Civ. P. 56(c)(1)(A).

Citations shall identify with specificity the relevant page and paragraph or line number of the evidence cited. Failure to submit a statement in compliance with this Rule may constitute grounds for denial of the motion. This paragraph shall not apply to cases in which judicial review is based solely on the administrative record. In such cases, motions for summary judgment and oppositions thereto shall include a statement of facts with references to the administrative record.

(2) **Opposing Statement.** The papers opposing a motion for summary judgment shall include a response to each numbered paragraph in the moving party's statement, in correspondingly numbered paragraphs and, if necessary, additional paragraphs containing a **short** and **concise** statement of additional **material facts** as to which it is contended there exists a genuine issue to be tried. Each such statement must be followed by citation to admissible evidence or to evidence that can be presented in admissible form at trial as required by Federal Rule of Civil Procedure 56(c)(1)(A). Citations shall identify with specificity the relevant page and paragraph or line number of the evidence cited. Each numbered paragraph in the moving party's statement of material facts may be deemed admitted for purposes of the motion unless it is specifically controverted by a correspondingly numbered paragraph in the opposing statement.

(3) **Appendix.** All cited evidence, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents, that has not otherwise been filed in conjunction with the motion shall be filed as an appendix to the statement of facts prescribed by subsections (1) or (2), *supra*, in conformity with Fed. R. Civ. P. 56(c)(1)(A), and denominated "Plaintiff's/Defendant's Appendix to Local Rule 56 Statement of Material Facts."

(b) **Notice to *Pro Se* Litigants.** Any party moving for summary judgment against a *pro se* litigant shall file and serve with the motion papers a "Notice to *Pro Se* Litigant Regarding Rule 56 Motion For Summary Judgment" in the form provided by the Court. Failure to file and serve the form notice may result in denial of the motion, without prejudice to proper renewal. Where the *pro se* party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact.

RULE 58

SATISFACTION OF JUDGMENTS

Satisfaction of a money judgment recovered or registered in this District shall be entered by the Clerk of Court as follows:

(a) upon the payment of the judgment into the registry of the Court, but such payment may only be made pursuant to a prior Court order authorizing such payment;

(b) upon the filing of a satisfaction executed and acknowledged by:

(1) the judgment creditor; or

(2) their legal representatives or assigns, with evidence of their authority; or

(3) their attorney, if within five (5) years of the entry of the judgment or decree.

(c) upon the filing of a satisfaction executed by the United States Attorney, if the judgment creditor is the United States; or

(d) upon the registration of a certified copy of a satisfaction entered in another District.

RULE 65

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

(a) **Preliminary Injunction**. A preliminary injunction will only issue after notice and hearing, unless there is a waiver. An application for a preliminary injunction shall include:

(1) a copy of the complaint, if the case has been recently filed;

(2) the motion for a preliminary injunction;

(3) a memorandum of law in support of the motion citing legal authority showing that the moving party is entitled to the relief requested;

(4) a list of witnesses and exhibits to be presented at the preliminary injunction hearing, and a brief summary of the anticipated testimony of such witnesses; and

(5) a proposed order granting the injunctive relief.

Additionally, if the moving party seeks to have the motion heard on an expedited basis, such party shall include a motion for an expedited hearing pursuant to Loc. R. Civ. P. 7(d)(1).

(b) **Temporary Restraining Orders (TRO)**. An Order to Show Cause is not specifically authorized under the Federal Rules of Civil Procedure. Such relief is available upon motion for a TRO, pursuant to Fed. R. Civ. P. 65, and a motion for an expedited hearing, pursuant to Loc. R. Civ. P. 7(d)(1). There are two types of TROs: an *ex parte* TRO and a TRO issued upon notice to the adverse party. An *ex parte* TRO is available only in extraordinary circumstances. In most cases, the Court will require both notice to the adverse party and an opportunity to be heard before granting a TRO.

(1) ***Ex Parte* TRO**. A party seeking an *ex parte* TRO must comply with the requirements of Fed. R. Civ. P. 65(b)(1) and (2). An application for an *ex parte* TRO also shall include:

(A) a copy of the complaint, if the case has been recently filed;

(B) the motion for a TRO;

(C) a memorandum of law in support of the TRO, citing legal authority showing that the party is entitled to the relief requested; and

(D) a proposed order granting the TRO, in accordance with Fed. R. Civ. P. 65(b)(2) and (d)(1).

Immediately after filing the TRO application, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement. Because an application for a TRO rarely will be granted *ex parte*, a party moving under this subsection should be prepared to proceed pursuant to subsection (2) below, in the event that the Court finds that an *ex parte* proceeding is unwarranted.

(2) **TRO on Notice**. An application for a TRO on notice shall include:

(A) all the documents required by subsection (1)(A), (B), (C), and (D) above; and

(B) a motion for an expedited hearing pursuant to Loc. R. Civ. P. 7(d)(1).

Immediately after filing the TRO application, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall contact chambers by telephone to request a waiver of this requirement.

(c) **Security**. The parties shall be prepared to address the security requirements of Fed. R. Civ. P. 65(c) whenever applying for injunctive relief.

RULE 72

REVIEW OF MAGISTRATE JUDGE'S ACTIONS

The District Judge may designate a Magistrate Judge to conduct pre-trial procedures, and perform some or all duties conferred upon Magistrate Judges by 28 U.S.C. § 636(b). Requests for review of a Magistrate Judge's action shall be made in accordance with the Federal Rules and the following:

(a) **Nondispositive Matters**. All orders of the Magistrate Judge authorized by 28 U.S.C. § 636(b)(1)(A) shall be effective unless and until a stay is obtained or the order is otherwise reversed or vacated by the District Judge. In the event that a party files objections, the specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out in the objections.

(b) **Dispositive Motions and Prisoner Petitions**. Written objections to proposed findings of fact and recommendations for disposition submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority. A party seeking additional time to file objections must file a motion for an extension of time with the District Judge within fourteen (14) days after being served with the Magistrate Judge's recommended disposition.

(c) **Certification.** Any party filing objections to a Magistrate Judge's order or recommended disposition must include with the objections to the District Judge a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and explaining why they were not raised to the Magistrate Judge.

RULE 73

CONSENT TO A MAGISTRATE JUDGE

(a) **Consent.** In accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, a Magistrate Judge may conduct any or all proceedings in a civil action, including a jury or non-jury trial, upon the consent of all parties. Consent is voluntary, and the parties are free to withhold consent without adverse substantive consequences.

(b) **Notice, Execution, and Approval**. The Clerk of Court shall provide the parties written notice of the right to consent and the appropriate consent form(s). The completed form(s) shall be submitted to the Clerk of Court, who, upon confirming that all parties have consented, will transmit the form(s) to the assigned District Judge for approval.

(1) For cases in which the parties are represented by counsel, plaintiff's counsel is responsible for submitting to the Clerk of Court a single consent form, executed by all parties or their attorneys. The Clerk of Court will reject and return a consent form that is not signed by all of the parties or their respective counsel.

(2) For cases in which one or more of the parties is proceeding *pro se*, the Clerk of Court shall provide a separate consent form to each party. Each party is required to complete and return the form pursuant to the instructions provided.

(c) **Additional Parties.** Any party added to an action after the original parties' consent is approved by the assigned District Judge, shall be notified by the Clerk of Court of the right to consent to proceed before the Magistrate Judge. If the new party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the District Judge for further proceedings.

RULE 79

EXHIBITS

(a) All exhibits offered by any party at trial, whether or not received as evidence, shall be retained after each day of trial by the party or attorney offering the exhibits, unless the Court orders otherwise. Immediately after the case is submitted to the trier of fact, all exhibits received into evidence shall be delivered to the courtroom deputy. After a verdict is rendered, responsibility for custody of all exhibits reverts back to the parties.

(b) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file electronically any exhibits to be transmitted to the appellate court as part of the record on appeal. Documents that cannot be filed electronically, and physical exhibits other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(c) If any party receives notice from the Clerk of Court concerning the removal of paper or other physical exhibits, and fails to do so within thirty (30) days from the date of notice, the Clerk of Court may destroy or otherwise dispose of those exhibits.

(d) At the close of trial, counsel for each party shall submit a final exhibit list, specifying the date an exhibit was marked and admitted into evidence, which the Court shall file as a court exhibit.

RULE 81

REMOVED ACTIONS AND BANKRUPTCY APPEALS

(a) **Required Documents in Cases Removed from State Court**. A party removing a civil action from state court to this Court must:

(1) submit a completed civil cover sheet;

(2) pay the requisite filing fee; and

(3) file a notice of removal with the following attachments:

(A) an index identifying each document filed and/or served in the state court action; and

(B) each document filed and/or served in the state court action, individually tabbed and arranged in chronological order, except that, consistent with

Fed. R. Civ. P. 5(d)(1) and Loc. R. Civ. P. 5.2(f), discovery materials shall be filed only in *pro se* cases.

(4) The party filing the notice of removal or a designee shall declare, by affidavit or certification, that he or she has provided all other parties in the action with the notice of removal and attachments being filed with this Court.

(b) **Jury Demands in Removed Actions**. In any action removed to this Court, a party entitled to a trial by jury under Fed. R. Civ. P. 38 shall be afforded a jury trial if a demand is filed and served as provided by Fed. R. Civ. P. 81(c).

(c) **Attorney Admission.** In any case removed to this Court in which a party is represented by an attorney who is not admitted to practice before this Court, such attorney must promptly seek full or *pro hac vice* admission to practice before this Court pursuant to Loc. R. Civ. P. 83.1.

(d) **Bankruptcy Appeals.** If the appellant fails to designate the record in the manner prescribed by Federal Rule of Bankruptcy Procedure 8009, the Bankruptcy Court Clerk shall notify the District Court Clerk of the noncompliance. The District Court will provide notice and an opportunity for the appellant to respond on why the appeal should not be dismissed for noncompliance with Federal Rule of Bankruptcy Procedure 8009. The District Court may then, upon motion of the appellee or upon its own initiative, dismiss the appeal.

RULE 83.1

ATTORNEY ADMISSION TO PRACTICE

To be eligible for permanent admission to practice in this Court as a "Member of the bar of this Court", an attorney must either: (a) be a member in good standing of the bar of the United States District Court for the Southern, Eastern, or Northern Districts of New York; (b) be admitted to practice before the courts of New York State; or (c) be a member in good standing of any United States District Court and of the bar of the State in which the District Court is located.

In addition to the respective requirements set forth below, all attorneys seeking permanent admission to practice in this Court must appear in person before a Judge of this Court to be admitted. *See* Attorney Admission Procedures available at http://www.nywd.uscourts.gov for scheduling details. On the date of admission, but prior to being admitted, an attorney seeking permanent admission must pay to the Clerk of Court the Attorney Admission fee set forth in the District Court Schedule of Fees.

The respective documents required for admission shall be submitted to the Clerk of Court at least fourteen (14) days prior to the date of admission (unless shortened at the discretion of the Court). All documents and forms referenced in this Rule are available from the Clerk's Office in Buffalo and Rochester, and on the Court's webpage, http://www.nywd.uscourts.gov. Applicants who create their own documents must include all information required by the Court's documents

and forms, in the same order. Applications left on file with the Clerk of Court for longer than one year will be destroyed without further notice to the applicant.

(a) **Attorneys Admitted to Another District Court in New York.** A member in good standing of the bar of the United States District Court for the Southern, Eastern, or Northern District of New York shall appear in person as set forth above and submit the following to the Clerk of Court:

(1) a Certificate of Good Standing from the Clerk of Court of which he or she is a member (dated no earlier than six (6) months prior to submission to this Court);

(2) Attorney's Oath;

(3) Civility Principles and Guidelines Oath; and

(4) Attorney Database and Electronic Case Filing Registration Form.

(b) **Attorneys Admitted to Practice in New York State.** An attorney for whom Loc. R. Civ. P. 83.1(a) does not apply, and who is admitted to practice before the courts of New York State shall appear in person as set forth above and submit the following to the Clerk of Court:

(1) Admission Petition Form;

(2) Admission Sponsor Affidavit;

(3) Attorney's Oath;

(4) Civility Principles and Guidelines Oath; and

(5) Attorney Database and Electronic Case Filing Registration Form.

On the day of admission, the attorney seeking admission shall be accompanied by a Member of the bar of this Court, who need not be the sponsoring attorney, to move for the petitioning attorney's admission.

(c) **Attorneys Admitted to District Courts Outside New York State.** An attorney for whom Loc. R. Civ. P. 83.1(a) does not apply, and who is a member in good standing of any United States District Court and of the bar of the State in which the District Court is located shall appear in person as set forth above and submit the following to the Clerk of Court:

(1) a Certificate of Good Standing issued by the District Court of which they are a member (dated no earlier than six (6) months prior to submission to this Court); and

(2) all fully completed documents listed in subdivision (b)(1), (3)-(5) of this Local Rule.

(d) ***Pro Hac Vice* Admission.** An attorney who is not eligible for permanent admission under the foregoing provisions, or an attorney who, though eligible, does not wish to become a permanent Member of the bar of this Court, may be admitted *pro hac vice* to participate in a particular matter in which they are engaged. An applicant for admission *pro hac vice* must fully complete, and file with the Court, all documents listed in subdivision (b)(1)-(5), along with submitting to the Clerk of Court a check or money order in the amount of the *pro hac vice* fee set forth in the District Court Schedule of Fees. The Court, in its discretion, will issue an order granting or denying the petition.

(e) **Government Attorneys.** United States Attorneys, Assistant United States Attorneys, special attorneys appointed under 28 U.S.C. §§ 515 and 543, Federal Public Defenders, Assistant Federal Public Defenders, and any attorney employed by a federal agency, may practice before this Court on any matter within the scope of their employment by submitting to the Clerk of Court an Electronic Case Filing Registration Form and filing a notice of appearance as required by Loc. R. Civ. P. 83.2(b).

(f) **Admission to Practice in Bankruptcy Matters.** Only attorneys admitted to practice in this District under subparagraphs (a)-(d) of this Rule may practice in bankruptcy matters before the District Judges or the Bankruptcy Judges of this District. The attorney shall certify knowledge of such sources and provisions of bankruptcy law and rules as the Bankruptcy Court shall require by local rule approved by this Court. The "local counsel" requirement of Loc. R. Civ. P. 83.2 shall not apply in bankruptcy matters unless otherwise directed by a District Judge or Bankruptcy Judge. This provision shall not apply to a student admitted under the Student Practice Rule of the Bankruptcy Court.

(g) **Changes to Attorney Information.** All attorneys admitted as a Member of the bar of this Court must update PACER with any change in name, firm affiliation, office address, email address, or telephone number within thirty (30) days of such change. Additionally, counsel must file a Notice of Change of Address with respect to each pending case.

(h) **Fees for Admission.** A District Court Fund ("Fund") is to be maintained from a portion of the admission fees paid by attorneys seeking admission to this Court, and from the fees paid by attorneys admitted *pro hac vice*. Detailed information regarding the Fund can be found in the Amended Plan for the Administration of the District Court Fund available on the Court's website, http://www.nywd.uscourts.gov.

(i) **Withdrawal from Admission to Other Courts.** Any Member of the bar of this Court who, for non-disciplinary reasons, withdraws, resigns, retires, or fails to renew his or her admission to the bar of any state or district court, and, as a result of such withdrawal, resignation, retirement or non-renewal, would no longer qualify for admission to practice in this Court (either under the admission requirements in place at the time of the attorney's initial admission or the current admission requirements of this Court), shall notify the Clerk of Court, in writing, within thirty (30) days of such action. If the Clerk of Court receives notice from the bar of any state or district court that an attorney admitted to practice in this Court has withdrawn, resigned, retired, or failed to renew his or her admission to such bar or court, the Clerk may request confirmation from the attorney, in writing within thirty (30) days, that he or she continues to meet either the admission requirements of this Court in place at the time of the attorney's initial admission or the

current admission requirements of this Court, failing which the attorney's name will be struck from the roll of Members of the bar of this Court by the Clerk of Court.

RULE 83.2

ATTORNEYS OF RECORD—APPEARANCE AND WITHDRAWAL

Except as provided by Loc. R. Civ. P. 83.1 and this Rule, only Members in good standing of the bar of this Court may appear as attorneys of record.

(a) **Appearance by Attorneys from Outside this District.**

(1) An attorney who is not a Member of the bar of this Court may appear in an action only if they apply to become *pro hac vice* counsel pursuant to Loc. R. Civ. P. 83.1. *Pro hac vice* attorneys who do not maintain an office in this District must obtain local counsel. "Local counsel" under these Local Rules is defined as a Member of the bar of this Court who maintains an office in this District, with whom the Court and opposing counsel may readily meet and communicate regarding the conduct of this case. A *pro hac vice* attorney who wishes to be relieved of the local counsel requirement must make a motion for waiver within thirty (30) days of their initial filing. Waiver may be granted in the Court's discretion.

(2) Attorneys appearing on behalf of the United States or a department or agency thereof, and Members of the bar of this Court in good standing but not maintaining an office in the District, may appear without local counsel unless otherwise directed by the Court.

(3) An attorney who is not a Member of the bar of this Court may sign pleadings in accordance with Fed. R. Civ. P. 11 and 26(g).

(b) **Notice of Appearance.** No notice of appearance is required of an attorney whose name and address appear at the end of a complaint, notice of removal, pre-answer motion, or answer. In all other circumstances, an attorney appearing for a party in a civil case shall promptly file a notice of appearance.

(c) **Attorney Withdrawal/Substitution.** An attorney who has appeared as counsel of record in a civil matter may withdraw or be substituted by successor counsel in accordance with the following procedure:

(1) **By Stipulation with Notice of Appearance by Successor Counsel**. An attorney may withdraw or be substituted by successor counsel by stipulation endorsed by the client, all counsel of record, and any unrepresented parties in the case, provided:

(A) A notice of appearance of successor counsel either has been or is contemporaneously filed with the notice of withdrawal;

(B) No evidentiary hearing or trial date has been scheduled in the case; and

(C) The withdrawing and successor attorneys certify to the satisfaction of these conditions, and that the withdrawal/substitution of new counsel will not require an amendment of the Scheduling Order.

(2) **Alternative: By Notice – Same Firm.**

(A) If the new attorney of record is associated with the same law firm as the former attorney of record, counsel may, in lieu of a Stipulation of Withdrawal/Substitution, submit a notice of appearance affirming that the client has knowledge of and is in agreement with the change.

(B) The United States Attorney, Assistant United States Attorneys, and Special Assistant United States Attorneys may be substituted by making an entry on the docket.

(3) **Alternative: By Notice – Same Firm – Two or More Attorneys – Attorney Departing Firm.** If two or more attorneys presently or formerly affiliated with the same law firm are counsel of record for a party, and one of those attorneys is no longer affiliated with the law firm that represents the party, an attorney who remains affiliated with the law firm that represents the party may file a Notice of Withdrawal of Attorney affirming:

(A) that the formerly affiliated attorney is no longer affiliated with the law firm that represents the party;

(B) that the formerly affiliated attorney should be removed from the docket as counsel of record for the party; and

(C) that the attorney who remains affiliated with the law firm that represents the party remains counsel of record for that party.

(4) **By Motion.** In all other instances, an attorney who seeks to withdraw or be substituted as successor counsel shall file a motion, which must be served upon the client and all other counsel of record. If privileged or otherwise confidential information is reasonably necessary to support the application, such information may be submitted *in camera* to the Court, with a copy to the client only. If the Court takes no action on an unopposed motion for withdrawal or substitution with thirty (30) days of its filing, the motion will be deemed granted.

(d) **Attorney Changing Firms.** An attorney who changes law firms after appearing in a matter, and who will continue to represent a party, shall update PACER with the correct address, email address, and telephone number. If the attorney changing firms will not continue to represent a party, and no other attorney from that law firm remains as counsel of record for that party, the withdrawal/substitution of counsel procedure outlined in subsection (c) shall be followed.

RULE 83.3

DISCIPLINE OF ATTORNEYS

(a) Attorneys practicing in this Court shall faithfully adhere to the New York Rules of Professional Conduct. In interpreting the New York Rules of Professional Conduct, absent binding authority from the United States Supreme Court or the United States Court of Appeals for the Second Circuit or significant federal interests, this Court, in the interests of comity and predictability, will give due regard to decisions of the New York Court of Appeals and other New York State courts.

(b) All grievances and complaints about attorneys admitted to practice in this District shall be made to the Chief Judge of the District.

(1) In addition to any other sanctions imposed under these Local Rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after a hearing. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise, or assist as to grievances or complaints from any source and as to applications by attorneys for relief from discipline. Other than provided by subparagraph (c) of this Rule, no censure, suspension, or disbarment shall be applied without notice and an opportunity to be heard and the approval of a majority of the District Judges of the Court in both active and senior service, except that any Judge of this Court may, for cause, revoke an admission *pro hac vice* that he or she previously granted. Complaints or grievances, and any related documents, shall be treated as confidential. Discipline shall be imposed only upon suitable 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.

(2) A duly constituted disciplinary authority of an Appellate Division of the Supreme Court of the State of New York may request expedited disclosure of records or documents that are confidential for use in an investigation or proceeding pending before the disciplinary authority. The request shall be made in writing and submitted to the Chief Judge of the District. 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 or may refer the request for a response by a majority of the District Judges of the Court in both active and senior service. 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.

(c)

(1) Any Member of the bar of this Court who is convicted of a felony, as defined in subsection (c)(3), must submit the record of conviction to the Clerk of Court within thirty (30) days thereafter. When the Court is informed of the conviction, by the Member or otherwise, the Chief Judge will issue an order suspending that attorney from practice before this Court. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of suspension must be filed with the Clerk of Court within thirty (30) days from issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the suspension when it is in the interest of justice to do so.

(2) When the Court is informed that a judgment of conviction for a felony, as defined in subsection (c)(3), is final, the Chief Judge will order that the attorney's name be struck from the roll of Members of the bar of this Court. "Final" for purposes of this subsection means either that the time within which to appeal has lapsed or that the judgment of conviction for a felony has been affirmed on direct appeal. The order of disbarment shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of disbarment must be filed with the Clerk of Court within thirty (30) days from issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the disbarment when it is in the interest of justice to do so.

(3) For purposes of this subsection, the term felony shall mean any criminal offense classified as a felony under federal law; any criminal offense classified as a felony under New York law; or any criminal offense committed in any other state, commonwealth, or territory of the United States and classified as a felony therein which, if committed within New York State, would constitute a felony in New York State.

(d) Any Member of the bar of this Court who has been suspended, disbarred, or disciplined in any way by any district or circuit court or the court of any state, commonwealth, or territory, or who has resigned from the bar of any such court while an investigation into allegations of misconduct by the attorney was pending, must notify the Clerk of Court of such action, in writing, within thirty (30) days thereafter, and must submit with the notification a copy of any order issued in the other jurisdiction.

Only upon receipt of a copy of an order imposing discipline, the Chief Judge will issue an order disciplining the attorney to the same extent as imposed in the other jurisdiction. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order, along with the record of the underlying disciplinary proceeding, must be filed with the Clerk of Court within thirty (30) days from issuance of the order. A majority of the active and senior District Judges may set aside the order when an examination of the record resulting in that discipline discloses, by clear and convincing evidence, that:

(1) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) 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; or

(3) this Court's imposition of the same discipline would result in grave injustice.

(e) A disbarred or suspended attorney who seeks reinstatement to practice before this Court must file a motion with the Clerk's Office returnable before the Chief Judge. The motion shall attach all orders from any court regarding disbarment or suspension of the attorney and any order reinstating the attorney to the practice of law.

(f) Within 10 days of the date of entry of an order of suspension or disbarment, the affected attorney shall notify, by certified mail and, where practical, electronic mail, each client of the attorney, counsel for each party in any pending matter, and the judge in any pending matter. The notice shall state that the attorney is unable to act as counsel due to disbarment or suspension. A notice to an attorney's client shall advise the client to obtain new counsel. A notice to counsel for a party in a pending action or to the Judge shall include the name and address of the attorney's client. Within 45 days after the date of service of the order of disbarment or suspension, the attorney shall file with the Clerk of Court an affidavit showing a current mailing address for the attorney and that the attorney has complied with the order and these Rules.

RULE 83.4

CONTEMPT

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b)(1) and 37(b)(2)(A), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit upon which such notice of motion or order to show cause is based shall set forth with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. Reasonable attorney's fees necessitated by the contempt proceeding may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the attorney; otherwise, service shall be made personally, in the manner provided in Fed. R. Civ. P. 4 for the service of a summons. If an order to show cause is sought, such order may upon good cause shown embody a direction to the United States Marshal to arrest the alleged contemnor and hold him or her in bail in an amount fixed by the order, conditioned upon his or her appearance at the hearing and upon his or her holding himself or herself amenable thereafter to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, they shall upon demand be entitled to have oral evidence taken on the issues, either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, they shall make a written demand therefor on or before the return day or adjourned day of the application; otherwise, they will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered:

(1) reciting or referring to the verdict or findings of fact upon 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 such fine shall be payable;

(4) stating any other conditions, the performance of which will operate to purge the contempt; and

(5) directing the arrest of the contemnor by the United States Marshal, and their confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be 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. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six (6) 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) In the event the alleged contemnor shall be found not guilty of the charges made against them, they shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for their costs and disbursements and a reasonable counsel fee.

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) Except as provided by order of the Chief Judge or by subparagraph (b), no person, other than Court officials engaged in the conduct of Court business and/or responsible for the security or maintenance of Court facilities, shall record any proceeding or bring any camera, transmitter, receiver, recording device, cellular telephone, or other personal electronic device into the District's Courthouses.

(b) Any Judge presiding over a ceremonial proceeding (*i.e.*, naturalization ceremony, mock trial, judge's investiture) may, in their discretion, allow the use of cameras and other equipment during the proceeding.

RULE 83.6

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a Member of the bar of this Court;

(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; and

(5) indicate in writing their consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk of Court or be terminated by the Judge presiding in the case in which the student appears without

notice, hearing, or cause. The termination of certification by action of a Judge shall not be considered a reflection on the character or ability of the student;

(4) be introduced to the Court by an attorney admitted to practice before this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind for their services from the person on whose behalf they 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 their services;

(6) certify in writing that they are familiar with and will comply with New York Rules of Professional Conduct as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court; and

(7) certify in writing that they are familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(d) The law student, supervised in accordance with these rules, may:

(1) appear as counsel in Court or at other proceedings when written consent of the client (on the form available in the Clerk's Office), or written consent of the United States Attorney when the client is the United States (or an officer or agency thereof) or of the Attorney General of New York when the client is the State of New York (or an officer or agency thereof) and the supervising attorney's name has been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits; and

(2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with the matter in which he or she has met the conditions of (d)(1) above; each such document shall also be signed by the supervising attorney.

(e) Forms for designating compliance with this rule shall be available in the Clerk's Office and on the Court's website, http://www.nywd.uscourts.gov. Completed forms shall be filed with the Clerk of Court.

(f) Practice by students pursuant to this rule shall not be deemed to constitute the practice of law within the meaning of the rules for admission to the bar of any jurisdiction.

RULE 83.7

INTERNS

(a) A law student may serve as an intern to a District Judge or Magistrate Judge of this Court.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as an intern to a Judge;

(4) if required by the Judge, certify in writing that they will abstain from revealing any information and making any comments at any time, except to their faculty advisor or to Court personnel as specifically permitted by the Judge to whom they are assigned, concerning any proceeding pending or impending in this Court while they are serving as an intern. A copy of such certification shall be filed with the Clerk of Court.

(c) A Judge supervising an intern may terminate or limit the intern's duties at any time without notice, hearing, or cause. Such termination or limitation shall not be considered a reflection on the character or ability of the intern unless otherwise specified.

(d) An attorney in a pending proceeding may at any time request that an intern not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the intern's contact with the proceeding.

(e) For the purposes of Canons 3A(4) and 3A(6) of the Code of Judicial Conduct for United States Judges, an intern is deemed to be a member of the Court's personnel.

(f) Forms designating compliance with this rule shall be available in the Clerk's Office.

RULE 83.8

PRO BONO SERVICE

The interests of justice and judicial economy are facilitated when counsel can be appointed to represent indigent *pro se* litigants. Participation in the Court's *Pro Bono* Program not only bestows a service to the community by ensuring equal access to the courts through the provision of legal counsel to indigent litigants, but also greatly assists the Court in the adjudication of *pro se* cases. The New York Rules of Professional Conduct, which apply to all attorneys admitted to this Court, state that attorneys are "strongly encouraged" to provide *pro bono* legal services. While the Court recognizes that there are many *pro bono* services provided by volunteer attorneys throughout the community, the Court relies upon the generous cooperation and service from the attorneys admitted to practice before it to further these interests.

(a) **Formation of the Volunteer Panel, Assignment Wheel, and Senior Pro Bono Panel.**

The Clerk of Court will establish a "Volunteer Panel" and an "Assignment Wheel" which shall be used to assign Members of the bar of this Court to provide *pro bono* representation to indigent litigants in civil cases according to the criteria and procedures set forth in this Rule. The Court will also select attorneys to serve on a "Senior *Pro Bono* Panel" to assist attorneys appointed from the Volunteer Panel and Assignment Wheel. The Senior *Pro Bono* Panel will be selected from attorneys who, upon request of the Court, or otherwise, have volunteered to serve. A list of Senior *Pro Bono* Panel attorneys shall be maintained by the Clerk of Court.

(1) **Volunteer Panel.**

The Clerk of Court will establish a panel of *pro bono* volunteer attorneys, which shall be comprised of attorneys who are Members of the bar of this Court and who contact the Clerk's Office in writing to request to be included on the Volunteer Panel. An attorney who volunteers to be placed on the Volunteer Panel may elect to volunteer for either full-scope or limited-scope appointments, or both.

In a full-scope appointment, the attorney will represent the litigant in all aspects of the case before the Court (excluding any appellate practice unless the attorney agrees to provide appellate representation).

In a limited-scope appointment, the attorney will represent the litigant only for the purpose or purposes identified by the Court in the Order of Appointment (unless the attorney reaches an agreement with the litigant to provide additional representation beyond that set forth in the Order of Appointment).

Any attorney who has been placed on the Volunteer Panel may request in writing to be removed from that panel at any time, in which case the attorney shall be removed from that panel, but shall be placed on the Assignment Wheel and any pending appointments will remain in effect. The Court may remove an attorney from the Volunteer Panel for good cause.

(2) **Assignment Wheel.**

Any Member of the bar of this Court who has appeared as counsel of record in at least one civil or criminal action in the District within the last two (2) calendar years of the appointment, shall be included in the Assignment Wheel except for (a) an attorney whose office address is outside the District; (b) an attorney who is employed full-time as an attorney for an agency or branch of the United States, a State, or a municipality; (c) an attorney who is employed full-time as an attorney by a not-for-profit legal aid organization; (d) an attorney who has notified the Clerk of Court in writing that he or she has retired from the practice of law; (e) an attorney who has notified the Clerk of Court in writing that he or she has been suspended or resigned from the bar of this Court; or (f) an attorney who is on the Volunteer Panel or Senior *Pro Bono* Panel. Assignments made to attorneys from the Assignment Wheel may be either full-scope or limited-scope appointments.

(3) **Senior *Pro Bono* Panel.**

The Court recognizes that attorneys with limited experience can still provide valuable assistance to indigent litigants. To assist such attorneys, the Court has established a Senior *Pro Bono* Panel of experienced federal court practitioners to provide guidance and assistance in appropriate cases. In instances where an appointed attorney desires the assistance of an attorney with greater experience, the attorney is encouraged first to seek out assistance from an appropriate attorney within his or her firm, where applicable, who may enter an appearance as co-counsel. An attorney entering an appearance as co-counsel under these circumstances will receive the same benefits under the Rule as the initially appointed attorney.

In the event that an appointed attorney is unable to enlist the assistance of co-counsel from within his or her firm, he or she may request the appointing Judge to (or the appointing Judge may *sua sponte*) appoint a member of the Senior *Pro Bono* Panel as co-counsel to that attorney. When a Senior *Pro Bono* Panel attorney is appointed, this attorney will act in a mentoring role to the initially appointed attorney, but will also be listed as counsel of record. Attorneys selected by the Court to be members of the Senior *Pro Bono* Panel, and who agree to serve, will not be included on the Volunteer Panel or Assignment Wheel unless otherwise requested.

(b) **Appointment of Counsel.**

(1) *Pro bono* counsel may be appointed by either the District Judge or the Magistrate Judge ("presiding Judge") upon motion or *sua sponte* when the presiding Judge determines that appointment of counsel for an indigent litigant will serve the interests of justice. Newly filed cases in which any party is unrepresented may be evaluated by the presiding Judge for appointment of *pro bono* counsel under this Rule at an early stage.

(2) The presiding Judge may appoint counsel for a specific limited purpose, such as for participating in mediation pursuant to the Court's Alternative Dispute Resolution Plan, amending pleadings, conducting discovery, drafting or responding to motions, or for any other purpose the presiding Judge determines will serve the interests of justice.

(3) Because of their common goal of providing access to justice, the Erie County Bar Association Volunteer Lawyers Project and JustCause, formerly the Volunteer Legal Services Project of Monroe County, Inc., have agreed that, when possible, attorneys appointed under this Rule shall be considered volunteers to those organizations and afforded all accompanying benefits. The parameters of involvement for those organizations will be detailed in the Order of Appointment.

(c) **Appointment Procedure.**

(1) Upon determining that *pro bono* counsel should be appointed, the presiding Judge may appoint an attorney from the Volunteer Panel or, if no attorney from the Volunteer Panel is available, may appoint an attorney selected from the Assignment Wheel. In either case, the Court will send a "Notice Letter" to the selected attorney advising of the impending appointment.

(2) If the selected attorney does not seek relief from the appointment pursuant to subdivision (D) of this Rule, a "Notice of Appointment and Acknowledgment" will be mailed to the *pro se* litigant. If an executed Notice of Appointment and Acknowledgment is not received by the Court within twenty-one (21) business days of the date issued, no appointment will be made. Upon timely receipt of an executed Notice of Appointment and Acknowledgment, an Order of Appointment will be issued.

(d) **Relief from Appointments.**

(1) In the interests of justice and judicial economy to provide legal counsel to indigent litigants, and consistent with the New York Rules of Professional Conduct, attorneys are strongly encouraged to accept *pro bono* assignments under this program. If an attorney determines that it is necessary to seek relief from an impending appointment, such requests for relief shall be made by letter addressed to the presiding Judge within fourteen (14) business days of the date of the Notice Letter. Counsel will be deemed to have consented to the impending appointment unless relief from the impending appointment is requested within that time period. An Order of Appointment will be issued if no request for relief is made and an executed Notice of Appointment and Acknowledgment is timely returned by the *pro se* litigant. Any application to withdraw as counsel after an Order of Appointment is issued shall be made pursuant to the procedure set forth in Loc. R. Civ. P. 83.2(c).

(2) Automatic relief from an appointment shall be granted, upon request, to any attorney who (a) has a conflict of interest as defined in the New York Rules of Professional Conduct (Rules 1.7-1.12); (b) is exempt from inclusion in the Assignment Wheel pursuant to subsections (A)(2)(a)-(f) of this Rule; (c) has

appeared in a *pro bono* capacity in an assigned case currently pending before this Court; (d) has served in a *pro bono* capacity in any case in this district that has concluded within two years (for full-scope appointments) or one year (for limited-scope appointments); or (e) is an active member of the Criminal Justice Act Panel. Applications for automatic relief from an impending appointment should be made as soon as practicable, but no later than fourteen (14) business days of the date of the Notice Letter.

(e) **Scope and Duration of the Appointment.**

(1) Unless the Court grants a motion to withdraw pursuant to Loc. R. Civ. P. 83.2(c), any appointment under this Rule shall be limited to only those matters set forth in the Appointment Order and the appointed attorney shall represent the party in the action until a final judgment is entered (or some other order is entered terminating the action), or the issue(s) designated by the Court have been resolved.

(2) Only in the case of a limited scope appointment, counsel shall file a notice of termination of limited representation, upon fulfillment of the appointment. Upon receipt of such notice, the Clerk of Court shall automatically terminate pro bono counsel from the case and terminate pro bono counsel's receipt of ECF notifications related to the case. Any attorney appointed for a limited purpose may, with the concurrence of the litigant, apply at any time for an order expanding the appointment.

(f) **Expenses.**

(1) An attorney appointed pursuant to this Rule, who, for any reason is unsuccessful in recovering costs, may apply to the Court for reimbursement of expenses incident to the representation. Reimbursement will be permitted to the extent possible in light of available resources and pursuant to the Guidelines Governing Reimbursement from the District Court Fund of Expenses Incurred by Court Appointed Counsel ("Guidelines") available on the Court's website, http://www.nywd.uscourts.gov. Certain expenses require pre-approval as set forth in the Guidelines.

(2) The Court considers any attorney appointed under this Rule to be a volunteer on behalf of a governmental entity for purposes of the Volunteer Protection Act of 1997, 42 U.S.C. §§ 14501-05, as long as such attorney does not receive an award of compensation for services in excess of $500 per year (other than reasonable reimbursement or allowance, approved by the Court under this Rule, for expenses actually incurred).

RULE 83.9

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modification as may be necessary to meet emergencies or to avoid injustice or great hardship.

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