

**SUMMARY OF THE AMENDMENTS TO THE LOCAL RULES OF CIVIL AND
CRIMINAL PROCEDURE OF THE WESTERN DISTRICT OF NEW YORK
EFFECTIVE JANUARY 1, 2020**

Local Rules of Civil Procedure

- 1. L.R. Civ. P. 5.5 (procedures in Social Security cases)** – The amendments are intended to address recent case law developments impacting petitions for attorneys’ fees under 42 U.S.C. §406(b). Specifically, as a result of Sinkler v. Berryhill, 932 F.3d 83, 91 (2d Cir. 2019), the amendment applies the deadline of Fed. R. Civ. P. 54(d)(2)(B) to such petitions, and as a result of Culbertson v. Berryhill, ___ U.S. ___, 139 S. Ct. 517 (2019), the amendment eliminates L.R. Civ. P. 5.5(g)(3)(D)(i) and (ii), which previously required an attorney to disclose whether §406(a) fees have been sought.
- 2. L.R. Civ. P. 83.1 (attorney admission)** – To better align the admission practices of this Court with the practices of other courts, the amendment requires a personal appearance for all admissions, other than *pro hac vice*. Additionally, the amendment addresses several non-substantive changes to the admission forms used by the Clerk’s Office.
- 3. L.R. Civ. P. 83.2(c) and (d) (attorney withdrawal and substitution)** – In accordance with the practice of many other courts, the amendment limits the instances where counsel may withdraw or substitute without Court approval, especially where it may impact scheduled proceedings. Under the amendment, a stipulation will suffice to effectuate a substitution only where counsel can certify that a successor attorney has or will simultaneously file a notice of appearance, no evidentiary hearing or trial date has been scheduled, and the

withdrawal/substitution will not cause delay or require amendment of case management order deadlines.

4. L.R. Civ. P. 83.8 (*pro bono* service) – Consistent with the Court’s inherent authority and 28 U.S.C. §1915(e)(1), the newly enacted Local Rule provides a formalized framework to make appointments more equitable and transparent to the bar. To accomplish this, the Local Rule creates a panel of volunteer attorneys willing to accept limited or full scope appointments. If no attorney from the volunteer panel is available, the Court will randomly select an attorney from an assignment wheel comprised of admitted attorneys with an office in this District who have entered an appearance in at least one civil or criminal case within the last two years of the appointment, subject to certain exclusions - *e.g.*, government or legal aid attorneys. The Local Rule provides attorneys with an opportunity to withdraw from an impending appointment and provides specific grounds for automatic relief from an appointment.

To facilitate opportunities for newer attorneys, the Local Rule creates a senior *pro bono* panel of selected attorneys to act as co-counsel to less experienced attorneys. To encourage participation from all members of the bar of this Court, the Erie County Bar Association Volunteer Lawyers Project and the Volunteer Legal Services Project of Monroe County, Inc. have agreed to treat attorneys appointed under the Local Rule as volunteers to those organizations and afford them all of the accompanying benefits, including primary malpractice coverage and CLE credit for *pro bono* work.

Local Rules of Criminal Procedure

- 1. L.R. Crim. P. 32 (presentence report)** – Triggered by the recent opinion in United States v. McIlwain, 931 F.3d 1176 (D.C. Cir. 2019) and consistent with current practice, the amendment prohibits the disclosure of the United States Probation Office’s sentencing recommendation to the parties unless authorized by the sentencing judge.

- 2. L.R. Crim. P. 44(a) (attorney admission, appearance, withdrawal)** – The amendment strikes the incorporation of L.R. Civ. P. 83.2, since the procedure for withdrawal/substitution by counsel in civil cases is not applicable to criminal cases.