Executive Summary of the Amendments to the Local Rules of Civil Procedure of the Western District of New York to be effective January 15, 2026

1. **Proposed amendment to Local Rule of Civil Procedure 7 to cross-reference Local Rule of Civil Procedure 5.2(h).**

Local Rule of Civil Procedure 7 sets the briefing schedules for motions. Local Rule of Civil Procedure 5.2(h) provides as follows:

> (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.

The Committee suggested amending Rule 7 to cross-reference Rule 5.2(h) so that practitioners are aware that the court will set a briefing schedule for *pro se* motions.

Redline version:

RULE 7

MOTION PRACTICE

. . .

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. With respect to *pro se* motions, the Court will set a briefing schedule as provided in Loc. R. Civ. P. 5.2(h).

Final version:

RULE 7

MOTION PRACTICE

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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. With respect to *pro se* motions, the Court will set a briefing schedule as provided in Loc. R. Civ. P. 5.2(h).

2. Proposed amendment to Local Rule of Civil Procedure 26 removing subsections (e)(4) and (e)(5) regarding providing metadata when producing E.S.I.

The Committee considered whether Loc. R. Civ. P. 26(e)(4) addressing metadata should be amended to require parties to produce metadata as of course, particularly with respect to the discovery software that incorporates that data into itself and is thus more readily available for production. The current subsection provides:

> (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.

The District Judges votes and recommend that Local Rules 26(e)(4) and (5) be deleted because they are outdated and likely conflict with the Federal Rules of Civil Procedure. Rather than legislate presumptions to apply to every case, the Local Rules should leave attorneys to discuss metadata and the form for production of electronically stored information in the Rule 26(f) conference, a Rule 16 conference, or subsequent meet and confers.

With respect to Local Rule 26(e)(4), there are two primary reasons to remove that subsection. First, the Federal Rules of Civil Procedure make no reference to metadata. In fact, Fed. R. Civ. P. 34(b)(2)(E)(ii) refers to production of documents being made in a "form or forms in which it is ordinarily maintained or in a reasonably usable form or forms." Native format, of course, includes metadata, and so our Local Rule 26(e)(4) in fact seems to conflict with the Federal Rules. This, in turn, begs the question of what "metadata" is, which is the second reason to remove Local Rule 26(e)(4). Is "metadata" the author, date created, and date last edited for a .docx file? (That information can be crucial). Or is "metadata" the "BEGIN BATES," "END BATES," and other data that accompanies a production file from software like Relativity? Defining metadata to be produced is a subject best addressed by attorneys plotting the course of their case (as Local Rule 16(b)(2)(A)(iv) anticipates), and so removing this prohibition is a better solution than seeking to wade into the murky task to try to define metadata in our local rules.

With respect to Local Rule 26(e)(5), it to likely conflicts with the Federal Rules. Fed. R. Civ. P. 34(b)(1)(C) permits the party requesting discovery to "specify the form or forms in which electronically stored information is to be produced." If the request does not specify the format, "a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms." Fed. R. Civ. P. 34(b)(2)(E)(ii). "If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends

to use." Fed. R. Civ. P. 34(b)(2)(D). Such an objection, in turn, would be governed by Fed. R. Civ. P. 26(b) and (c). Local Rule 26(e), on the other hand, pre-resolves any objections by providing that if the parties cannot agree on production format, "ESI shall be produced to the requesting party as image files (*i.e.* PDF or TIFF)." That presumption that image files are acceptable defeats the process outlined in Fed. R. Civ. P. 34 and is inconsistent with the command of Fed. R. Civ. P. 34(b)(2)(E)(ii) that if a request does not specify the form for production of ESI, it must be produced in native format or "in a reasonably usable form." Many courts addressing this issue have concluded that static images of electronic documents such as emails do not satisfy the "reasonably usable form" requirement, and that such an assumption is also inconsistent with the Sedona Principles, which recognize that some 'essential metadata' is needed in addition to static images in order to comply with FRCP 34.

Consider a scenario in which the requesting party specifies image files as the format for production, but the producing party has collected the files in native format and wishes to produce them as such. (Perhaps, for instance, they are Excel files). Under the Federal Rules, the producing party may object and state the intended form of production. If motion practice is necessary, the requesting party should have to justify why production in image file format is necessary. Under the Local Rules, however, the producing party's objection is meaningless because of Local Rule 26(e)(5)'s presumption in favor of image files. The producing party would have the burden of seeking relief from the Local Rule. As a policy matter, the producing party should not bear the burden of justifying a production format because the producing party is best able to understand the costs associated with production. That is doubly true when the intended production format is the form "in which it is ordinarily maintained." Fed. R. Civ. P. 34(b(2)(E)(ii). Local Rule 26(e)(5), however, does the opposite. It creates a presumption in favor of image files that are inconsistent with the Federal Rules of Civil Procedure.

Redline version:

RULE 26

GENERAL RULES GOVERNING DISCOVERY

. . .

(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)~~(4) 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.

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3. Proposed amendments to Local Rule of Civil Procedure 56(a) regarding statements of facts on motion for summary judgment.

Currently Local Rule 56(a)(2) provides that the party opposing summary judgment should not only respond to the statement of material facts but also may "if necessary, [include] 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." However, there is nothing in the Rules requiring a response to those additional paragraphs and the following amendments are meant to provide clarification regarding additional responses. The District Judges recommend the following amendments to address that issue.

Redline version:

RULE 56

MOTIONS FOR SUMMARY JUDGMENT

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

. . .

(2) **Opposing Statement.** ~~The papers~~ A party 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~~. 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 correspondingly numbered paragraphs in such opposing statement with citation to admissible evidence or to evidence that can be presented in admissible form at trial as required by ~~Federal Rule of Civil Procedure~~ 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. Each numbered paragraph~~ In addition, when appropriate, the opposing party's statement may also contain a short and concise statement, in numbered paragraphs, of additional material facts (i) as to which the opposing party contends there is no genuine issue to be tried; and/or (ii) that the opposing party contends are in dispute.

(3) **Responding Statement.** If the ~~moving~~ opposing party's statement ~~of~~ contains additional material facts as to which the opposing party contends there is no genuine issue to be tried, each such numbered paragraph in the opposing statement may be deemed admitted for purposes of the motion unless it is specifically controverted by ~~a~~ the moving party in correspondingly numbered ~~paragraph in~~ paragraphs in a responding statement, which shall include 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). The moving party may respond to the opposing party's statement of additional material facts as to which it is contended there exists a genuine issue to be tried in a responding statement and/or in its reply memorandum of law.

(4) **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."

Final version:

RULE 56

MOTIONS FOR SUMMARY JUDGMENT

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

. . .

(2) **Opposing Statement.** A party opposing a motion for summary judgment shall include a response to each numbered paragraph in the moving party's statement, in correspondingly numbered paragraphs. 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 correspondingly numbered paragraphs in such opposing statement with 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). In addition, when appropriate, the opposing party's statement may also contain a short and concise statement, in numbered paragraphs, of additional material facts (i) as to which the opposing party contends there is no genuine

issue to be tried; and/or (ii) that the opposing party contends are in dispute.

(3) **Responding Statement.** If the opposing party's statement contains additional material facts as to which the opposing party contends there is no genuine issue to be tried, each such numbered paragraph in the opposing statement may be deemed admitted for purposes of the motion unless it is specifically controverted by the moving party in correspondingly numbered paragraphs in a responding statement, which shall include 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). The moving party may respond to the opposing party's statement of additional material facts as to which it is contended there exists a genuine issue to be tried in a responding statement and/or in its reply memorandum of law.

(4) **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."