

Executive Summary of the Amendments to the Local Rules of Civil and Criminal Procedure of the Western District of New York to be effective January 1, 2025

1. Amendment to Local Rule of Civil Procedure 5.1(e) and Local Rule of Criminal Procedure 7 regarding the process for identifying related cases in criminal and civil cases.

The proposed amendments to these Local Rules are meant to aid in identifying related cases in both the civil and criminal context for purposes of assignment, requiring attorneys to file a letter on the docket identifying the cases. In the civil context, the amendment makes clear that no letter need be docketed if the case(s) has already been noted as related on the civil cover sheet. In the criminal context the amendment requires the United States Attorney's Office to indicate any related cases on the Criminal Case Related Form upon the filing of the indictment, information, or criminal complaint.

Redlined version of Loc. R. Civ. P. 5.1(e):

RULE 5.1

FILING AND SERVING PAPERS

...

- (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 ~~by letter of the relevant facts, and the Clerk of the Court will transmit that notification to the Judges to whom the cases have been assigned~~ and the assigned Judges by filing a letter on the docket of the pertinent cases advising of the relevant facts.

Final version:

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Redlined version of Loc. R. Crim. P. 7:

RULE 7

CASE ASSIGNMENT

- (a) Upon filing of the indictment or information, each criminal case is 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 assignment within these areas shall ordinarily be by random selection. The Court may transfer cases **among Judges and/or** 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.
- (b) **When a criminal case is related to one or more pending criminal cases, the United States Attorney's Office shall so indicate upon the filing of the indictment, information, or criminal complaint, on the Criminal Case Related Form. A criminal case shall be presumed to be related to another case when: (1) the facts of each arise out of the same charged**

criminal scheme(s), transaction(s), or event(s), even if the cases involve different defendants; (2) the same criminal conduct is charged in an indictment and a violation of probation or supervised release; (3) a district judge has previously handled some aspect of the case at the criminal complaint stage, such as through an appeal from a bail determination by a magistrate judge or review of a report and recommendation concerning competency; or (4) the criminal case is related to a pending civil forfeiture case. However, for purposes of this rule, a case is not presumptively related to prior wiretap applications, motions in connection with grand jury proceedings, or search warrant applications.

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- (b) When a criminal case is related to one or more pending criminal cases, the United States Attorney's Office shall so indicate upon the filing of the indictment, information, or criminal complaint, on the Criminal Case Related Form. A criminal case shall be presumed to be related to another case when: (1) the facts of each arise out of the same charged criminal scheme(s), transaction(s), or event(s), even if the cases involve different defendants; (2) the same criminal conduct is charged in an indictment and a violation of probation or supervised release; (3) a district judge has previously handled some aspect of the case at the criminal complaint stage, such as through an appeal from a bail determination by a magistrate judge or review of a report and recommendation concerning competency; or (4) the criminal case is

related to a pending civil forfeiture case. However, for purposes of this rule, a case is not presumptively related to prior wiretap applications, motions in connection with grand jury proceedings, or search warrant applications.

2. Amendment to Local Rule of Civil Procedure 15 to require the filing of an amended pleading with a motion for joinder under Fed. R. Civ. P. 20.

A District Judge recently had a case where a party filed a motion for joinder under Rule 20 and the issue came up as to whether the party was also required to submit a proposed amended pleading with that motion. Upon review, the current Local Rules seem to limit the requirement of providing an amended pleading to Rule 15 motions (motion to amend the pleadings). A review of the Local Rules for the N.D.N.Y. explicitly address that motions for joinder are also subject to that requirement (i.e., “15.1(a) Motions to Amend or Supplement Pleadings or for Joinder or Interpleader. A party moving to amend a pleading pursuant to Fed. R. Civ. P. 14, 15, 19–22 must attach an unsigned copy of the proposed amended pleading to its motion papers.”). The proposed amendment is suggested to address a potential gap in our Local Rules.

Redlined version:

RULE 15

A MOVANT SEEKING TO AMEND OR SUPPLEMENT A PLEADING 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.

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TO JOIN OR INTERPLEAD PARTIES**

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3. Amendment to Local Rule of Civil Procedure 41(a) to correct a grammatical error.

The proposed amendment will remove the grammatically incorrect use of a plural pronoun for a singular subject.

Redlined version:

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. ~~The Judge, in their discretion, may extend the time for filing.~~ As a matter of discretion, the judge may extend the time for filing.

Final version:

RULE 41

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- (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.

4. Amendments to Local Rules of Civil Procedure 83.1(g) and 83.2(d) regarding updating attorney information in accordance with the Court's upgrade from CM/ECF to NextGen.

In 2021, the Court upgraded CM/ECF to the NextGen version and since then attorneys have used a centralized sign-on that is managed by PACER. The Committee proposes that it update the Local Rules about how attorneys change their address to match the current system.

Redlined version:

RULE 83.1

ATTORNEY ADMISSION TO PRACTICE

...

(g) Changes to Attorney Information. All attorneys admitted as a Member of the bar of this Court must ~~advise the Clerk of Court in writing of~~ 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.

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Redlined version:

RULE 83.2

ATTORNEYS OF RECORD—APPEARANCE AND WITHDRAWAL

(d) Attorney Changing Firms. An attorney who changes law firms after appearing in a matter, and who will continue to represent a party, shall ~~mail to the clerk's office a change of address form and file a Notice of Change of Address with respect to the case~~ 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.

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5. Amendments to Loc. R. Civ. P. 83.2(b) & (c)(2).

The United States Attorney's Office requested a modification to the Local Rules that would assist with its Social Security docket. Currently Loc. R. Civ. P. 83.2(b) and (c) require written notice and/or affirmations filed on the docket. The U.S. Attorney's Office requested that notices of appearance and substitution be accomplished by a drop down menu in CM/ECF to simplify the process.

A subcommittee considered this issue and suggested that because there are often multiple attorneys appearing on behalf of the government (not just in Social Security cases) and because it is cumbersome to file multiple written notices of appearance and/or substitution, it proposed the below amendment, which no longer requires United States Attorneys, Assistant United States Attorneys, and Special Assistant United States Attorneys to file a PDF when they are substituted as counsel. Instead, when entering a notice of appearance, the aforementioned attorneys would type his or her name into CM/ECF and then the system will prompt the attorney to type in the name of the individual he or she is replacing. Thereafter, the Clerk of the Court effectuates the substitution.

Redlined version:

RULE 83.2

ATTORNEYS OF RECORD—APPEARANCE AND WITHDRAWAL

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- (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 ~~written~~ 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:

...

- (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.

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ATTORNEYS OF RECORD—APPEARANCE AND WITHDRAWAL

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- (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.

6. Amendment to Local Rule of Criminal Procedure 44 regarding substitution of counsel.

This proposed amendment was suggested to mirror the proposed amendment for Loc. R. Civ. P. 82.3(c) because there are often multiple attorneys representing the government in a criminal case. Rather than requiring the government attorneys to file a written notice of substitution each time a new attorney appears on a case, this amendment would permit the government attorneys to be substituted by making an entry on the docket.

Redlined version:

RULE 44

ATTORNEY ADMISSION, APPEARANCE, AND STUDENT PRACTICE

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

Final version:

RULE 44

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