

## **Summary of the Proposed Amendments to the Local Rules of Civil and Criminal Procedure of the Western District of New York to be Effective January 1, 2023.**

The Western District of New York's Local Rules Committee, which is comprised of Court personnel and members of the bar of this Court, convenes on an annual basis to ensure that the Local Rules conform to the Federal Rules amendments and current practices of this Court, as well as to address any Local Rule concerns raised by our bar. The committee proposes amendments to the Court for consideration. This year's proposed amendments to the Local Rules of Civil and Criminal Procedure are set forth below.

### **1. Proposed amendments to the citations to the Local Rules of Civil and Criminal Procedure: Loc. R. Civ. P. 1.1 and Loc. R. Crim. P. 1(a).**

Rule 1.1 of the Local Rules of Civil Procedure provide, in relevant part: "The Local Rules of Civil Procedure shall be cited as 'L.R.Civ.P.'" Similarly, Rule 1(a) of the Local Rules of Criminal Procedure provide, in relevant part: "The Local Rules of Criminal Procedure shall be cited as 'L.R.Crim.P.'"

The citation provided in the Bluebook for the Federal Rules of Civil Procedure is "Fed. R. Civ. P." The Bluebook: A Uniform System of Citation, B.12.1.3, at 20 (Columbia Law Review Ass'n et al. eds., 21st ed. 2020).

The District Judges suggest amending Loc. R. Civ. P. 1.1 and Loc. R. Crim. P. 1(a) to conform the Local Rule citations to that of the Federal Rules. In addition, this format will allow for easier Word processing formatting.

### **Redline versions of proposed amendments:**

#### **Proposed Amendment to the citation to the Local Rules of Civil Procedure.**

#### **RULE 1.1 TITLE**

... The Local Rules of Civil Procedure shall be cited as "Loc..R..Civ..P."

**Proposed Amendment to the citation to the Local Rules of Criminal Procedure.**

**RULE 1  
APPLICABILITY**

- (a) **Scope.** . . . The Local Rules of Criminal Procedure shall be cited as “Loc. R. Crim. P.”

**Final versions of proposed amendments:**

**RULE 1.1  
TITLE**

. . . The Local Rules of Civil Procedure shall be cited as “Loc. R. Civ. P.”

**RULE 1  
APPLICABILITY**

- (a) **Scope.** . . . The Local Rules of Criminal Procedure shall be cited as “Loc. R. Crim. P.”

**2. Proposed Amendment to Local Rule of Civil Procedure 1.1 and Local Rule of Criminal Procedure 1(a) regarding the citation to the Federal Rules of Civil and Criminal Procedure to comply with the Bluebook citation.**

Local Rule 1.1 of the Rules of Civil Procedure provides:

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.

Local Rule 1(a) of the Rules Criminal Procedures similarly provides:

These rules are the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. They supplement the Federal Rules of Criminal Procedure (“Fed.R.Cr.P.”) and are numbered to conform therewith.

The citation provided in the Bluebook for the Federal Rules of Civil Procedure is “Fed. R. Civ. P.” The Bluebook: A Uniform System of Citation, B.12.1.3, at 20 (Columbia Law Review Ass’n et al. eds., 21st ed. 2020).

The District Court Judges suggest that the Local Civil and Criminal Rules be amended to conform to the citations for the Federal Rules of Civil and Criminal Procedure as provided in the Bluebook.

**Redline versions of proposed amendments:**

**Redline version of Local Rule 1.1 of the Rules of Civil Procedure:**

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.

**Redline version of Local Rule 1(a) of the Rules of Criminal Procedure:**

These rules are the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. They

supplement the Federal Rules of Criminal Procedure (“Fed. R. Cr. P.”) and are numbered to conform therewith.

**Final versions of proposed amendments:**

**Final version of Local Rule 1.1 of the Rules of Civil Procedure:**

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.

**Final version of Local Rule 1(a) of the Rules of Criminal Procedure:**

These rules are the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. They supplement the Federal Rules of Criminal Procedure (“Fed. R. Cr. P.”) and are numbered to conform therewith.

**3. Proposed Amendment to Local Rule of Civil Procedure 4 to fix double negative:**

Rule 4 includes an unnecessary double negative, which may be a little confusing — especially to *pro se* litigants.

**Redline version of proposed amendment:**

**RULE 4**

**SUMMONS**

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

[...]

**Final version of proposed amendment:**

**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:

[...]

#### **4. Proposed amendments to Local Rule of Civil Procedure 5.3 regarding sealing.**

It came to the District Judges' attention that many attorneys found the sealing procedures contained in Local Rule of Civil Procedure 5.3 to be confusing. The Local Rules Committee undertook an extensive revision of this Rule in effort to provide clarity regarding its requirements. Due to the extent of the revisions, there is no redline version.

### **RULE 5.3**

#### **SEALING OF CASES, PARTIES, COMPLAINTS, AND DOCUMENTS**

- (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.



## **5. Proposed amendments to Local Rule of Civil Procedure 5.5.**

On April 11, 2022, the Supreme Court adopted new Supplemental Rules for Social Security Actions Under 42 U.S.C. § 405(g) (the “Supplemental Rules”), which, will take effect on December 1, 2022, if Congress takes no action on them.

The Supplemental Rules establish a set of nationally uniform procedures for Social Security appeals that are designed to eliminate the lack of uniformity in handling Social Security cases among the courts within the country.

The Supplemental Rules are very similar to Local Rule 5.5, except that they provide for shorter deadlines for the SSA’s submission of the answer (administrative transcript) and the parties’ briefing. All proposed additional language is highlighted in yellow.

The changes to paragraphs (a), (b), (c), and (d) are made to comply with the shorter filing deadlines set by the Supplemental Rules and to eliminate the redundant language used in Local Rule 5.5 by simply referring to the corresponding provisions of the Supplemental Rules.

No changes are proposed to the provisions of Local Rule 5.5 that are not addressed by the Supplemental Rules, which include the contents of the parties’ briefs, page limitations, motions for enlargement of time or modification of the page limit, oral argument, or attorney’s fees petitions under 406(b). The only addition to paragraph (f) (Petitions for Attorney’s fees under the EAJA) is made to eliminate the confusion between the parties about the plaintiff’s deadline to submit his/her EAJA fee petition.

The proposed paragraph (h) is added to create a uniform procedure for submission of the parties’ attorney’s fees and remand stipulation, which would streamline the process and eliminate their adherence to individual preferences of the judges that vary significantly.

**Edited version of proposed amendment:**

**RULE 5.5**

**PROCEDURES IN SOCIAL SECURITY CASES**

- (a) **Applicability.** ~~These Rules shall apply to actions under the Social Security Act brought by an individual plaintiff seeking federal court review of a final administrative decision of the Commissioner of Social Security (defendant) pursuant to 42 U.S.C. § 405(g). These Rules shall also apply to a claim brought under other sections of the Social Security Act that incorporate the judicial review procedures in 42 U.S.C. § 405(g) by reference. These Rules shall not apply to any other action, for example (1) actions that include claims against the Commissioner of Social Security in addition to, or other than, those brought pursuant to 42 U.S.C. § 405(g); (2) actions that include multiple plaintiffs or a class action; or (3) actions that include defendants other than the Commissioner of Social Security.~~ 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.** ~~When a complaint that falls within the scope of this rule is filed in the District Court Clerk's Office, the Court shall issue a Notice of Electronic Filing ("NEF") using the ECF system, notifying the New York Regional Social Security Administration Office of General Counsel and the United States Attorney's Office of the case. The complaint shall state the plaintiff's full Social Security number. If the plaintiff's application for Social Security benefits was filed on another person's wage record, that person's Social Security number shall also be included in the complaint. If the application was filed on behalf of a minor child, the child's Social Security number shall also be included in the complaint. If a complaint is filed in compliance with this rule, defendant shall treat the NEF as proper service. 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 shall have ninety (90) days after service of the complaint in which to file the certified transcript of administrative proceedings, which shall constitute the defendant's answer, or otherwise move against the 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.** ~~Unless otherwise ordered by the Court, the plaintiff shall serve and file a brief on the merits within sixty (60) days of the date on which the defendant files the certified transcript of administrative proceedings.~~ 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 the 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 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.** ~~Within sixty (60) days after service of plaintiff's brief, the defendant shall serve and file a brief that identifies and responds to each issue raised by plaintiff. Defendant's~~ 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) **Reply Brief.** Within twenty one (21) days after service of defendant's brief, plaintiff shall file a reply brief, if any.~~

~~(4)~~(3) **Opening Brief and Reply Brief Page Limits.** Opening briefs under this rule shall not exceed thirty (30) pages in length. Reply briefs shall papers will not exceed ten (10) pages in length.

~~(5)~~(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.

~~(6)~~(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 and 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 the 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.

**Final version of proposed amendment:**

**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 the 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 the 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.

**6. Adding a new Local Rule of Civil Procedure 7.1 regarding business organization party disclosures.**

The Supreme Court adopted amendments to Fed. R. Civ. P. 7.1 on April 11, 2022, and absent Congressional action, the amendments have an effective date of December 1, 2022.

At the May 18, 2022, meeting for the Judges of the Western District of New York, the Judges determined that LLCs and partnerships need to disclose their equity owners to ensure that judges can recuse themselves should there exist a conflict. Chief Judge Wolford drafted a General Order requiring corporations, LLCs, and partnerships to identify “any members, shareholders, partners, or individuals in leadership positions whose identities may reasonably bear on the Court’s decision whether to recuse, on motion or *sua sponte*.” (General Order No. 157.)

General Order 157 mimics language contained in the Supreme Court’s proposed amendment to Fed. R. Civ. P. 7.1. The General Order also includes a directive that if a party has a reason to know that one of its officers/members/etc. would cause a conflict of interest, he or she is required to inform the Court. This is the one part of the General Order that is not included in the Supreme Court’s proposed amendment. The District Judges propose the following Rule, which combines language of Fed. R. Civ. P. 7.1 and General Order 157.

**Redline version of proposed new Rule:**

**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).

**Final version of proposed new Rule:**

**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).

**7. Proposed amendments to Loc. R. Civ. P. 16(b)(4)(B) and 16(c)(1):**

Under the heading “Scheduling Order,” Loc. R. Civ. P. 16(b)(4)(B) provides that the scheduling order should include “a date for a first judicial settlement conference, or, if the case will proceed to ADR, deadlines for an initial ADR session and the conclusion of ADR.”

Similarly, under the heading “Settlement Conference,” Loc. R. Civ. P. 16(c)(1) provides that “[u]nless a case will proceed to ADR, the Court’s scheduling order will include a date for a first judicial settlement conference.”

The proposed amendments align with those made in the W.D.N.Y.’s Alternative Dispute Resolution Plan (Effective January 1, 2022) (“ADR Plan”).

**Redline version of proposed amendment:**

**RULE 16**

**ALTERNATIVE DISPUTE RESOLUTION AND PRETRIAL CONFERENCES**

**(b) Initial Pretrial Conference**

...

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

...

(B) ~~Unless a case will proceed to ADR, the Court’s scheduling order will include a date for a first judicial settlement conference.~~ **Deadlines for Alternative Dispute Resolution, if applicable;**

**(c) Settlement Conferences.**

(1) **Applicable Cases.** Unless a case will proceed to ADR, the **Court retains the discretion whether to hold a** ~~Court’s scheduling order will include a date for a first~~ judicial settlement conference.

**Final version of proposed amendment:**

Amendment to Loc. R. Civ. P. 16(b)(4)(B):

**RULE 16**

**ALTERNATIVE DISPUTE RESOLUTION AND PRETRIAL CONFERENCES**

(b) **Initial Pretrial Conference**

...

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

...

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

(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.

## 8. Proposed Amendment to Loc. R. Civ. P. 83.2(c).

The proposed amendments are meant to clarify the attorney substitution and withdrawal rules because attorneys and the Clerk’s Office staff were confused regarding which method of withdrawal or substitution applied to the situation as provided in the Rule. The Local Rules Committee determined that the addition of subheadings to each subsection (1–4) would be helpful to clarify the Rule.

In addition, the reference to a “Case Management Order” in subsection (c)(1)(C) of this Rule does not appear to comport with the language in Loc. R. Civ. P. 16(b)(4), which provides for the issuance of a “Scheduling Order.” The Judges do not issue a “Case Management Order” but rather a “Scheduling Order.” For this reason, the District Judges suggest that subsection (c)(1)(C) be amended to remove the reference to a “Case Management Order” and replace it with “Scheduling Order.”

### Redline version of proposed amendment:

#### RULE 83.2 ATTORNEYS OF RECORD - APPEARANCE AND WITHDRAWAL

...

- (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 ~~Case Management~~ **Scheduling** Order.
  - (2) **Alternative: By Notice – Same Firm.** 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.

- (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.

**Final version of proposed amendment:**

**RULE 83.2  
ATTORNEYS OF RECORD - APPEARANCE AND WITHDRAWAL**

...

- (d) **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:
- (5) **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.
- (6) **Alternative: By Notice – Same Firm.** 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.
- (7) **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:
- (D) That the formerly affiliated attorney is no longer affiliated with the law firm that represents the party;
  - (E) That the formerly affiliated attorney should be removed from the docket as counsel of record for the party; and
  - (F) That the attorney who remains affiliated with the law firm that represents the party remains counsel of record for that party.
- (8) **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.