

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, 2021

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. L.R. Civ. P. 7(a)(3) (Affidavit). The proposed amendment clarifies that declarations and affirmations are permissible to support motions. *See* 28 U.S.C. §1746:

“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.”

2. L.R. Civ. P. 10(a)(4)/ L.R. Crim P. 49(d)(4) (Margins). The proposed amendment to the Local Rules of Civil and Criminal Procedure permits shorter and easier-to-read line lengths:

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

3. L.R. Civ. P. 79/L.R. Crim. P. 26 (Exhibits). The proposed addition of the following subsections to the Local Rules of Civil and Criminal Procedure are intended to make it

easier for the court and appellate counsel to identify the trial exhibits, especially in instances where appellate counsel was not trial counsel:

L.R. Civ. P.

“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.”

L.R. Crim. P.

“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 after the verdict is rendered.”

4. L.R. Civ. P. 83.2(c) (Attorney Withdrawal/Substitution). The addition of the following subsection is proposed to address the common circumstance of an attorney of record leaving a firm, but the party continuing to be represented by other attorneys of record from the same firm:

“(3) 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.”

Subsection (c)(3) of the current iteration of the Rule would be re-designated as subsection (c)(4).

5. L.R. Civ. P. 83.2(d) (Attorney Changing Firms). The following amendment is proposed to conform the Local Rule with the procedures of the Clerk's Office:

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

6. L.R. Civ. P. 83.5(a)/ L.R. Crim. P. 53(a) (Cameras and Recording Devices).

The following amendment to the Local Rules of Civil and Criminal Procedure are proposed to clarify that recording a court proceeding is prohibited, regardless of whether that proceeding occurs in person or remotely:

“(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.”