PRO SE HANDBOOK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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CHAPTER I – INTRODUCTION

Welcome to the United States District Court for the Northern District of New York.

We have prepared this handbook specifically for the person who is representing him- or herself as a party to a lawsuit: the pro se litigant. This handbook is a practical and informative means of providing assistance to those individuals who are litigating claims pro se in a federal forum. **It is important that you read this entire manual before you ask the Clerk's Office specific questions about your potential lawsuit; many of your questions will undoubtedly be answered in the chapters of this handbook.**

While this handbook should be helpful for any person who is involved in litigation without the aid of an attorney, much of it is intended to inform the pro se *plaintiff*, i.e. the person who files the complaint. There are, however, also pro se *defendants*, i.e. people being sued, who will also find some important information in this handbook.

The early chapters of this handbook provide information that you should consider before filing your own lawsuit. If, after considering this information, you decide to file a case in federal court, additional information has been provided to assist you in filing your case and utilizing the appropriate rules of procedure for the United States District Court for the Northern District of New York. We have also provided you with an overview of the "ins and outs" of legal research.

This handbook should not be considered the last word, nor should it be your only resource. Rather, this handbook should be considered a procedural aid to help you should you choose to file and litigate a lawsuit.

If, after reading this manual, you still have questions about your case, you may contact the Clerk's Office. Our office is willing to assist you with certain questions you may have regarding the Local Rules of Practice as well as the Federal Rules of Civil Procedure. Please do not hesitate to contact us regarding a procedural matter. However, **employees of the**

Court cannot give legal advice.

For your convenience, the Clerk's Office for the Northern District of New York has offices in the following locations:

James T. Foley U.S. Courthouse
445 Broadway, Room 509
Albany, N.Y. 12207-2924
(518) 257-1800

U.S. Courthouse & Federal Building
15 Henry Street
Binghamton, N.Y. 13902-2723
(607) 773-2893

U.S. Courthouse & Federal Building
P.O. Box 7367,100 S. Clinton St.
Syracuse, N.Y. 13261-7367
(315) 234-8500

Alexander Pirnie Federal Building
10 Broad Street
Utica, N.Y. 13501-1233
(315) 793-8151

Additionally, this manual, together with blank forms for the most common types of actions and a glossary of common legal terms, is available on the Internet at the following address:

http://www.nynd.uscourts.gov

CHAPTER II – REPRESENTATION BY AN ATTORNEY

This handbook was developed to address the needs of the litigant who is filing a lawsuit without the aid of an attorney. However, there may be alternatives to representing yourself if you are unable to afford to hire counsel.

A. OBTAINING AN ATTORNEY ON A CONTINGENCY BASIS OR PRO BONO

Some attorneys may be willing to accept your case on what is called a contingency basis, which means the attorney would receive a fee based upon a percentage of your recovery if you win your case, and the attorney would get nothing if you do not prevail. You should note that attorneys are careful when screening cases before agreeing to accept them on a

contingency basis, and may reject your case. However, if you would like assistance finding an attorney who may consider taking your case on a contingency basis, there are lawyer referral services that may be willing to help you. For a list of the Lawyer Referral Services located within the Northern District of New York, visit http://www.nynd.uscourts.gov/prose.cfm.

In addition, there are attorneys and organizations, such as legal aid societies, that may be willing to represent you "pro bono," that is, free of charge. For a list of the Legal Aid Offices located within the Northern District of New York, visit http://www.nynd.uscourts.gov/prose.cfm.

For **federal** inmates, a list of public interest firms that you should contact in an effort to secure representation on your own appears on page 5. For **state** inmates, there are several offices of Prisoners' Legal Services throughout the state. A list of the Prisoners' Legal Services is provided at the conclusion of this chapter on page 5.

B. APPOINTMENT OF COUNSEL BY THE COURT

If a pro se litigant's income and financial resources are low enough, the Court may determine that the person is "indigent." Typically the Court would recognize that a litigant is indigent by granting the litigant's *in forma pauperis* application. For more information regarding the *in forma pauperis* application and the effects of being permitted to proceed *in forma pauperis*, please refer to Chapter V, Section B on page 21 of his handbook.

A litigant who has been permitted to proceed *in forma pauperis* may request, by submitting a written motion, that the Court appoint counsel on his or her behalf **if he or she is otherwise unable to obtain counsel**. Before you submit such a motion, you must try to obtain counsel on your own. You should know that there are many more litigants seeking the appointment of counsel than there are attorneys willing to volunteer their services. Furthermore, while in a **criminal** case, a defendant is **entitled** to legal counsel by the United

States Constitution and one is provided if the criminal defendant is indigent, a party to a **civil** case is **not entitled** to an attorney, even if he or she is indigent.

The Court considers requests for counsel in light of a number of factors set forth by the Second Circuit Court of Appeals. First, the Court must determine whether the party's legal position in the lawsuit is of substance. If so, the Court will then consider several other factors, including how complex the legal issues are in the particular case, and the indigent party's ability to investigate and present his or her case. *See Terminate Control Corp. v. Horowitz*, 28 F.3d 1335 (2d Cir. 1994), L.R. 83.3 (c).

If you are granted permission to proceed *in forma pauperis* and you decide to make a motion for the appointment of counsel, you must include with your motion details of your efforts to obtain counsel by means other than court appointment. In addition, you must include letters you received from the attorneys that you contacted regarding your case. **Failure to include documentation that substantiates your attempts to obtain counsel on your own will result in the denial of your motion for appointment of counsel.**

You should also know that an attorney may be appointed to serve in any number of different capacities. For example, an attorney may be appointed for the limited purpose of preparing a confidential report analyzing the merits of the claim(s) raised by the plaintiff. If a case proceeds to trial, an attorney may be appointed as trial counsel to conduct the trial of an action, as support counsel to assist another attorney, or merely as standby trial counsel to assist the pro se party in conducting the trial. In some cases, an attorney may be appointed as the pro se party's attorney for both pre-trial matters as well as the actual trial of the lawsuit. The capacity in which an attorney is appointed for a party is entirely within the discretion of the Court.

C. PUBLIC INTEREST ORGANIZATIONS FOR INMATES TO CONTACT IN ORDER TO OBTAIN PRO BONO COUNSEL

(1) **Federal inmates** should contact the following public interest firms regarding possible pro bono representation:

(a) Community Law Offices
230 East 106th Street
New York, NY 10029
(212) 426-3000

(b) New York Civil Liberties Union
125 Broad Street, 17th Floor
New York, NY 10004
(212) 344-3005

(2) **State inmates** should contact the following offices regarding possible pro bono representation:

OFFICES OF PRISONERS' LEGAL SERVICES FOR THE STATE OF NEW YORK

(a) Statler Towers 1360
107 Delaware Avenue
Buffalo, NY 14202
(716) 854-1007

(b) 118 Prospect Street, Suite 307
Ithaca, NY 14850
(607) 273-2283

(c) 121 Bridge Street
Plattsburgh, NY 12901
(518) 561-3088

(d) 105 Chambers Street
New York, NY 10007
(212) 513-7373

D. SANCTIONS AND HOW THEY APPLY TO THE PRO SE LITIGANT

There is no doubt that representing yourself in a lawsuit carries certain risks and responsibilities. If you decide to proceed pro se, you will be responsible for learning about and following all the procedures that govern the court process.

The Court may penalize a party or attorney for failing to comply with a law, rule or order at any point while a lawsuit is pending. Such penalties are called sanctions, and pro se litigants are subject to the same sanctions as licensed attorneys. For example, when a party to a lawsuit presents a document to the Court, that party is verifying the accuracy and reasonableness of that document. Federal Rule of Civil Procedure 11 states that if such a submission is false, improper or frivolous, the party may be liable for monetary or other sanctions.

Rule 11 provides in pertinent part, as follows:

> (b) Representations to Court. By presenting to the court ... a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, – (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may ... impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

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> (2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.... [T]he sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or ... an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

As Rule 11 states, sanctions imposed by a Court could consist of, among other things, a monetary penalty or an award of the prevailing party's attorney fees, which could be a substantial sum. The Court may also prevent or "enjoin" a party from filing any future lawsuits until sanctions from an earlier lawsuit have been paid. Sanctions can be imposed on individuals who are incarcerated. *See Young v. Corbin*, No. 87-CV-433, slip op. at 8 (N.D.N.Y. June 23, 1995) (McAvoy, C.J.) (upholding sanctions against inmate who filed pro se lawsuit).

CHAPTER III – THE SEVEN QUESTIONS TO ANSWER BEFORE FILING A LAWSUIT

There are seven important questions you should consider *before* you file a case in federal court. This list is not exhaustive – there may well be other important considerations that are not listed here. However, these seven questions are essential to every lawsuit filed in federal court.

You should also be aware that even if you answer "yes" to all seven of these questions, and you believe you should prevail in your lawsuit, there is always a possibility that you may not ultimately prevail.

The Seven Questions to Consider Before Filing a Lawsuit:

1. Have I suffered a real injury or wrong?
2. Does the federal district court have jurisdiction to hear my claim?
3. Is the Northern District the proper venue for my action?
4. Will my claim be timely if I file it now?
5. Am I able to determine and name the proper defendants for my action?
6. Will I be able to establish sufficient facts to support my claims?
7. Have I exhausted all other available remedies that I am required to exhaust?

1. Have I suffered a real injury or wrong?

You cannot sue someone just because you are angry at him or her, nor can you sue someone simply because he or she has committed some illegal act. In order to maintain a lawsuit against someone, the person you are suing must have caused you to be harmed or wronged in some real, concrete way.

A plaintiff must be asserting his or her own personal legal interests. Typically a person may not sue to assert the rights of a third party. In other words, a litigant normally must assert that he himself has suffered the injury, or that a distinct group of which he is a part has suffered the injury. A court generally will not address a "generalized grievance," which is an injury that is shared in "substantially equal measure by all or a large class of citizens." *See U.S. v. Hayes*, 515 U.S. 737 (1995).

Finally, the plaintiff must have actually suffered the harm already, or else the plaintiff must be about to suffer the harm "imminently," meaning the plaintiff will actually suffer the harm in the immediate future.

2. Does the federal district court have jurisdiction to hear my claim?

In general, a court must have the power to decide a particular case; this is called jurisdiction.

There are two court systems in the United States: the state court system and the federal court system. In New York State, the Supreme Courts are the courts of "general

jurisdiction," which means they can hear and decide almost any kind of legal controversy between two parties.

Federal courts, on the other hand, only have jurisdiction over certain limited types of cases and controversies. A federal court has jurisdiction when the United States is a defendant in the action. Additionally, federal court jurisdiction may be based on either a federal question or diversity of citizenship. A federal question case is one that alleges that a federal law (either a statute or a provision of the United States Constitution) has been violated. Examples of claims that claims that fall under the court's federal question jurisdiction are civil rights claims under 42 U.S.C. § 1983 and employment discrimination claims under Title VII of the Civil Rights Act of 1964. A case's federal jurisdiction is based on diversity of citizenship when the parties reside in different states, or a state and a foreign country. In order for a federal court to exercise jurisdiction over a case based on diversity of citizenship, the amount that the parties are disputing must be more than $75,000.

If there is no federal statute governing your situation, and you and any of the defendants are citizens of the same state and/or the amount in controversy is less than $75,000, a state court may be the proper place to bring your case.

3. Is the Northern District the proper venue for my action?

If you decide that your claim may be brought in a federal court because there is either a federal question, or there is diversity of citizenship and the amount in controversy is more than $75,000, you must then determine in *which* federal court to file. In order to decide a case, a court must have some logical relationship either to the litigants or to the subject matter of the dispute; this is called venue.

There are four United States District Courts in New York State: Eastern, Southern, Western and Northern. Generally, you may only file an action in the Northern District of New

York if the actions or inactions that you believe violated your rights occurred within the boundaries of this District. Below is a list of the counties that are located within the Northern District to help you determine whether you should file your lawsuit in this District or another District Court.

COUNTIES WITHIN THE NORTHERN DISTRICT OF NEW YORK

Albany	Essex	Madison	Saratoga
Broome	Franklin	Montgomery	Schenectady
Cayuga	Fulton	Oneida	Schoharie
Chenango	Greene	Onondaga	Tioga
Clinton	Hamilton	Oswego	Tompkins
Columbia	Herkimer	Otsego	Ulster
Cortland	Jefferson	Rensselaer	Warren
Delaware	Lewis	St. Lawrence	Washington

4. Will my claim be timely if I file it now?

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This time bar is called the statute of limitations, and the length of the statute of limitations varies depending on the type of claim. Some examples are as follows:

(a)	Civil rights claims brought under 42 U.S.C. § 1983:	3 years
(b)	Car accident or other personal injury:	3 years
(c)	Contract dispute:	6 years

Whether your claim is barred by the statute of limitations is a legal question which may require you to do some legal research. You should make sure your claim is not time barred before you file a lawsuit.

5. Am I able to determine and name the proper defendants for my action?

When determining whom you should name as a defendant in your lawsuit, there are several factors you should consider.

First, you must allege that **each** person or entity you are suing engaged in wrongful conduct that caused you harm. Thus, you should only name a defendant if you are able to

describe his or her actions or inactions that you believe were wrongful and how you believe those actions harmed you.

Second, you must list individuals by their names whenever possible. Avoid suing groups of people such as "the personnel department" or "the medical staff." Also, you should know that service of process cannot be effectuated on "John Doe" or "Jane Doe" defendants. If one of your defendants cannot be served, you will not be able to prevail in your lawsuit against that person. It is your responsibility, and not the duty of the Court, to ascertain the identities and addresses of those individuals whom you believe caused you to be injured.

Third, you should be aware that some people cannot be held liable for actions they take while performing the duties of their jobs. This is called immunity. For example, when a judge decides a case, he or she is immune from lawsuits for actions taken in the process of deciding that case. However, if a judge has operated a car illegally and caused you to be harmed, you can sue the judge for the damages you sustained because driving a car does not fall under the duties of being a judge. Similarly, prosecutors are immune from liability for actions they take in prosecuting or failing to prosecute individuals.

There may also be other legal defenses that a person can assert which will protect him or her from liability.

6. Will I be able to establish sufficient facts to support my claims?

In a lawsuit, the burden is on the plaintiff to prove that the defendants violated the plaintiff's rights. Therefore, in order to win a case, a plaintiff must be able to present facts that support his or her claims. Asserting the mere conclusion that the defendant(s) caused you harm or violated your rights will be insufficient.

Before you begin a lawsuit, be sure you can allege sufficient facts to support your claim that the defendant(s) violated your rights. Such facts should include who each

defendant is, specifically what he or she did or did not do that you believe was wrongful, when the incident took place, and where the incident happened. You should also be able to identify how each defendant's actions or inactions caused you harm.

In order to prove your case, you must be able to provide evidence that supports the facts you allege. In addition, you need to be able to identify any witnesses whom you believe observed the incident. You may also be called upon to present actual articles of evidence such as a memorandum, police report, medical records or other proof.

7. Have I exhausted all other available remedies that I am required to exhaust?

You should be aware that, in some instances, it is necessary for you to pursue certain remedies **before** you can properly pursue a claim in federal court. There are four areas in particular where this is likely to arise: (i) if you are appealing a federal agency's decision, (ii) if you wish to sue a current or former employer for employment discrimination, (iii) if you are seeking a writ of habeas corpus in federal court (iv) if you are a prisoner and you seek to challenge prison conditions under 42 U.S.C. § 1983.

(i) Administrative Grievance Procedures: People frequently want to appeal the decision of a governmental agency that affects them. For example, a person may want to appeal the decision of the Social Security Administration to deny him or her social security benefits.

If you want to appeal the denial of a benefit that is provided through an agency of the United States government, you must pursue **all** of the administrative procedures established by the agency for appealing its rulings **before** you file a lawsuit. **Only after** you have exhausted your administrative remedies, and you still believe you are entitled to a benefit that you have not received, may you initiate a lawsuit.

(ii) Employment Discrimination Claims: A person who believes he or she has been illegally discriminated against by an employer may wish to bring a lawsuit against that employer under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act or the Equal Pay Act. However, before a person can bring such a lawsuit, he or she must first file a complaint with either the Equal Employment Opportunity Commission ("EEOC") or the New York State Division of Human Rights ("NYSDHR"), and obtain from the EEOC or NYSDHR what is called a "right-to-sue letter." Only if a person properly files a complaint with the EEOC or NYSDHR, and receives a right-to-sue letter from the agency, may he or she then file a complaint in federal court based on the allegations the person has made in their complaint to the EEOC or NYSDHR. A copy of the right-to-sue letter should be attached to the complaint the person files with the court.

(iii) Petition for Writ of Habeas Corpus under 28 U.S.C. §§ 2254 or 2241: A person who is incarcerated or is otherwise "in custody" pursuant to a judgment of conviction rendered in a state court order may wish to challenge the **fact** or **duration** of this confinement. Such a challenge would be brought as a petition for a writ of habeas corpus under 28 U.S.C. § 2254, and it would be brought against the person who holds the inmate in custody, i.e., the prison's superintendent. If the person can successfully prove that a constitutional right was violated, and that if that right had not been violated the person would not have been incarcerated at all (the "fact of incarceration") or the duration of the incarceration would have been shorter, the Court will grant a writ of habeas corpus.

However, before a petition under 28 U.S.C. § 2254 can properly be filed in the federal court, the petitioner must pursue and exhaust **all** available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your rights of

appeal under New York law, in New York State courts. You may also be required to file one or more collateral proceedings under New York Law, such as a motion to vacate the judgment of conviction pursuant to Section 440.10 of New York's Criminal Procedure Law, or seek a writ of error *coram nobis*, in order to exhaust your claims.

A petitioner must exhaust all administrative remedies before filing a habeas action pursuant to 28 U.S.C. § 2241.

You should also realize that there are time limits that apply to petitioners seeking a writ of habeas corpus. Habeas petitions brought under 28 U.S.C. § 2254 may be filed no later than one year after the completion of state court direct review, with certain limited exceptions. *See* 28 U.S.C. § 2244(d)(2). The time during which a properly filed state court application for collateral review is pending is excluded from the one-year period. *See* 28 U.S.C. § 2244(d)(2); *Reyes v. Keane*, 90 F.3d 676, 678 (2nd Cir. 1996). Therefore, if you are contemplating filing a habeas petition, you should be sure to file your action in a timely fashion.

(iv) Prisoner Challenges to Prison Conditions Under 42 U.S.C. §1983 and *Bivens*: The Prisoner Litigation Reform Act (PLRA) was passed by Congress in 1995. The PLRA requires that prisoners exhaust all available administrative remedies before they file a lawsuit under 42 U.S.C. § 1983 to challenge the conditions of their confinement or allege other civil rights violations. This means that, if you are a prisoner, you must utilize your facility's grievance procedures first in an attempt to resolve your problem. Generally, you may only file a lawsuit under section 1983 if you have already pursued your grievance through each stage of the facility's grievance process but still not obtained redress.

A section 1983 action is brought against state actors. If a prisoner wishes to bring an action for a violation of constitutional rights by a federal actor, he or she would instead file

what is called a "*Bivens*" action. *See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). A *Bivens* action, though not precisely parallel, is much like a section 1983 action, and a prisoner must also exhaust administrative remedies before bringing a *Bivens* action.

In conclusion, it is important that you consider all of these questions before you file a case. After all of these factors have been considered, you must still follow the procedures set out by the particular court with which you decide to file your case. Many of the specific procedural rules for the Northern District of New York are set forth in the Local Rules, and in Chapter IV of this handbook we will discuss the rules and procedures for filing lawsuits in the United States District Court for the Northern District of New York. If your case needs to be filed in any other court, you should contact the Clerk's Office of that court for information regarding local rules and procedures for filing your case.

CHAPTER IV – RULES AND PROCEDURES FOR FILING A CASE IN THE NORTHERN DISTRICT OF NEW YORK

If you are a party to a lawsuit, you are subject to the specific rules of procedure for the Court in which your case is filed. Federal courts are governed by the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") as well as other rules of procedure regarding specific areas such as evidence, appeals, etc.

In the United States District Court for the Northern District of New York, all procedures are governed not only by the Federal Rules but also by the Local Rules of Practice and the District's General Orders. The numbering system of the Northern District's Local Rules coincides with the numbering system of the Federal Rules for easy reference.

Copies of the Federal and Local Rules of Civil Procedure can be found at County

Court House libraries, law schools, and correctional institutions throughout the state. Additionally, the Federal Rules of Procedure are available at http://www.law.cornell.edu/rules/frcp/overview.htm, and the Local Rules for the Northern District of New York are available at http://www.nynd.uscourts.gov/localrul.htm.

You can also obtain a personal copy of the Northern District's Local Rules, or of this handbook, if you come in person to any of the Clerk's Offices listed in Chapter I of this handbook. The Clerk's Office can mail you a free copy of this handbook upon request. The Clerk's Office can also mail you a copy of the Northern District's Local Rules if you send a check or money order for $3.60 to the Clerk of the Court.

It is important to remember that, as a pro se litigant, **you are responsible for becoming familiar with and following the Court's Local Rules and procedures.** Therefore, before you begin drafting your complaint or take any other action, you should read the Federal and Local Rules and become familiar with them. Not only may you be subject to sanctions for failing to follow the Rules, but the Rules will also help answer many questions that you may have as you begin and proceed with a lawsuit.

CHAPTER V – GETTING STARTED: THE COMPLAINT AND HOW TO FILE IT

In order to begin a lawsuit in Federal Court, a plaintiff must submit to the Clerk of the Court the following documents:

1. A civil cover sheet
2. 2 copies of a complaint, plus one additional copy for each defendant named in the complaint
3. Either a filing fee or an application to proceed *in forma pauperis*. Note: An inmate who wishes to proceed *in forma pauperis* must have his or her application certified by the proper prison official and must also submit an inmate authorization form along with his or her application
4. A summons for each defendant

5. If you are seeking permission to proceed *in forma pauperis* and you wish the U.S. Marshals to serve your summons and complaint for you, you must also submit one completed USM-285 form for each defendant

Each of these will be discussed in more detail in this Chapter. This list is not exhaustive; you should be aware that certain types of actions may require the plaintiff to submit additional documents before the action may properly be filed.

All papers filed with the Court must meet the requirements that are set forth in Federal Rules 8 and 10, and Local Rule 10.1. Local Rule 10.1 requires, among other things, that the paper be 8 ½ x 11 inches, and of good quality. It also requires that **all documents be plainly and legibly written, typewritten, printed or reproduced**, in black ink. If the papers are typewritten, they must be in at least 12 point font, with any footnotes in at least 10 point font, and the text must be double-spaced. The pages must be consecutively numbered, and must be fastened together.

Please review the full text of Local Rule 10.1 and Federal Rules 8 and 10 before you start drafting your complaint. The Clerk's Office has prepared form complaints for the most common types of actions, such as civil rights claims under 42 U.S.C. § 1983, employment discrimination claims, and petitions for a writ of habeas corpus. The form complaints can be found on the Court's website and in most prison law libraries, and can also be obtained at the Clerk's Office. You may wish to use a form in preparing your complaint.

A. THE COMPLAINT

(1) Caption: Every document that you file with the Court, including the complaint, should have a caption at the top of the first page. The format for a caption is as follows:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

(YOUR FULL NAME)

Plaintiff,

v.

(LIST EACH AND EVERY PERSON YOU WISH TO SUE, BY NAME)

Defendant(s).

Civil Action No._____
(Judge's initials)

Complaint

When you first submit a complaint your lawsuit will not yet be assigned a civil action number, so you can leave that space blank in the caption. The Clerk will assign your case a number if your complaint is accepted for filing. Once your action is assigned a civil action number, that number must appear on each and every document pertaining to your lawsuit that you file with the Court. Likewise, if your complaint is accepted for filing, the Clerk will typically assign one district judge and one magistrate judge to your case. All documents must include the initials of both judges, once they have been assigned.

(2) Body: The main portion of your complaint is called the "body." Fed.R.Civ.P. 10 requires that **each paragraph in the body of the complaint be consecutively numbered**. Your first paragraph should state the basis for the Court's jurisdiction over your claim. *See* Chapter III, question 2 on page 8. Your second paragraph should state why the Northern District is the proper venue for your action. *See* Chapter III, question 3 on page 9.

Next you should include one paragraph for each party to the action; in each of those paragraphs you should state the name, title and address of each party. **If at any time your own address changes you must immediately notify the Court in writing. If your complaint has been accepted by the Court and served on the defendant(s), you must**

also immediately serve the defendant(s) with a written notice of your change of address.

Once you have completed the above paragraphs, you should state your claim against the defendant(s). Fed.R.Civ.P. 8 requires that a complaint be a "**short and plain** statement of the claim showing that the pleader is entitled to relief." In other words, in short, clear, numbered paragraphs you should describe the actions or inactions of the defendant(s) that you believe violated your rights. You should also state which of your legal rights you believe the defendant(s) violated. Each paragraph should only state one act of misconduct. Furthermore, you should include sufficient **facts** to support your claims. *See* Chapter III, question 6 on page 11.

Thus, if you claim that your legal rights were violated by more than one defendant, or on more than one occasion, your complaint should include a corresponding number of paragraphs for each allegation. Each paragraph should specify (i) the alleged act of misconduct; (ii) the date on which the misconduct occurred; (iii) the names of each and every individual who participated in that misconduct; (iv) the location where the alleged misconduct occurred; and (v) the nexus between the misconduct and your legal rights.

Your complaint should be limited to a statement of facts; it should not contain legal citations or legal arguments. It is inappropriate to include legal citations or arguments in your complaint because "it is the court's function to analyze the law." *See Jochnowitz v. Russell Sage College*, No. 90-CV-1101, 1992 U.S. Dist. LEXIS 6710 (N.D.N.Y. 1992) (Munson, J.).

(3) Statement of Relief Sought: After you have stated your claims as clearly and concisely as possible, you should briefly state what "relief" you are seeking. In other words, you must state what it is that you wish the Court to do. For example, a plaintiff could be

seeking monetary compensation ("damages"), or a court order that the defendant must stop or start doing something ("injunctive relief").

(4) Signing the Complaint: Fed.R.Civ.P. 11 requires that **every plaintiff must sign and date his or her complaint**. If possible, the complaint should be signed and dated in the presence of a notary public. A complaint that is not signed will be dismissed by the Court unless the plaintiff promptly corrects the omission by submitting a signed copy of the complaint.

Remember that by signing or filing your complaint you are certifying to the Court that the statements you have made in the complaint are true, and that you are not filing the complaint for an improper purpose such as to harass the defendant(s). *See* Chapter II, Section D on page 6 for a discussion of the sanctions that may apply if your complaint is false or submitted for an improper purpose.

(5) Exhibits: While you may choose to submit one or more exhibits along with your complaint, you must set forth your complete claims in the body of your complaint and may not incorporate the exhibits by reference as a means of setting forth your claims. You do **not** need to submit as exhibits all papers that might be relevant to your complaint and/or used at trial. If you do choose to submit exhibits you must reference those exhibits, by page number, in the body of your complaint. Also, you should only submit copies of documents rather than originals, because the Court will not return your exhibits to you.

(6) Privacy Protection: Local Rule 8.1 requires litigants to redact (omit or obscure) certain information from their pleadings and from any exhibits attached to pleadings. Information that must be redacted includes: social security numbers, names of minor children, dates of birth, financial account information and home addresses.

Transcripts of the administrative record in social security proceedings and state court

records relating to habeas corpus petitions do not need to have the above personal identifiers redacted.

B. FILING FEES AND *IN FORMA PAUPERIS*

Most civil complaints must be submitted with the filing fee set forth in 28 U.S.C. § 1914(a), which is currently three hundred and fifty dollars ($350.00). You must either pay the fee in full at the time you present your complaint to the Court for filing, or, if you are unable to pay the fee, you must submit an application to proceed *in forma pauperis* along with your complaint.

If you file an application to proceed *in forma pauperis* instead of a filing fee, the Court will then consider your application and determine whether you are entitled to proceed *in forma pauperis*. *See* Local Rule 5.4. If the Court denies your *in forma pauperis* application, you must pay the full statutory filing fee within a certain period of time or your action will be dismissed.

If you are an inmate, you will still be required to pay, over time, the entire $350.00 filing fee even if you are found to be indigent. Inmates are required to submit an "inmate authorization form," which permits the agency holding the plaintiff in custody to make periodic withdrawals from the plaintiff's inmate account until the entire $350.00 fee is paid. *See* Local Rule 5.4(b).

For non-inmates, being granted permission to proceed *in forma pauperis* typically relieves the litigant of the obligation to pay the $350.00 filing fee.

In addition to delaying the payment of the filing fee for prisoners or waiving the obligation to pay the filing fee for non-prisoners, being granted permission to proceed *in forma pauperis* entitles a person to the following: 1) submit a motion for appointment of

counsel, and 2) have his or her complaint served on the defendant(s) by the U.S. Marshals. If you are not proceeding with your action *in forma pauperis*, you will be responsible for serving the summons and complaint on each defendant, in accordance with Fed.R.Civ.P. 4.

You may submit an *in forma pauperis* application at any time during the litigation, even if you have already paid the filing fee in full. However, you should note that being permitted to proceed *in forma pauperis* after you have paid the fee will not entitle you to the return of the money you have paid.

Pro se litigants proceeding *in forma pauperis* are not exempt from other fees and costs in their actions, including but not limited to copying and witness fees. Thus, pro se litigants must still provide identical copies of documents that must be served on the parties that they name in their lawsuit. If you cannot afford to pay for copies, you must handwrite copies of these documents for service on the other parties to the action.

It is important to realize that, even though you believe you cannot afford to pay for copies of documents, neither the Court nor the Clerk's Office can make copies for you free of charge. Therefore, even if you are proceeding with an action *in forma pauperis*, copies of documents in the file of your action cannot be provided to you by the Clerk's Office without a charge of $0.50 per page, which must be paid in advance. **You should always keep a copy, for your own records, of all documents that you send to the Court or the Clerk's Office.**

C. WHERE TO FILE

You must either deliver your documents to the Clerk of the Court in person, or send the documents in the mail. Prisoners should send complaints and other documents to the Syracuse office of the Clerk of the Court, addressed to the attention of the Inmate Litigation Unit. Please refer to Chapter I, page 2 for the locations and mailing addresses for the Clerk's Offices in the Northern District of New York. The Northern District does not accept any filings via facsimile.

D. ELECTRONIC CASE FILING

On January 1, 2004, the Northern District of New York implemented a new electronic case filing system (called Case Management/Electronic Case Files, or CM/ECF) that allows attorneys to file and view court documents over the Internet. General Order 22 governs the administrative procedures for electronic case filing. However, pro se parties are still required to submit and serve paper originals of all their documents. The Clerk's Office then scans the pro se party's documents into the CM/ECF system so that those documents can be viewed on-line by the attorneys who represent the opposing party or parties.

E. A BRIEF LOOK AT THE MOST COMMON DOCUMENTS IN A CIVIL ACTION IN FEDERAL COURT

The following table may be used as a quick reference regarding the most common items that must be completed and filed by a party, a brief description of each item, the Federal or Local Rules that relate to each item (if any) and when the item must be submitted to the Clerk.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Civil Cover Sheet	The document that must accompany the complaint and summons before filing can occur.	LR 3.1	Initial filing.
Complaint	Commences the action when filed by the Clerk of the Court. Names the parties, and succinctly sets forth the controversy, including allegations of fact and the relief sought. Does not include legal argument.	FRCP 3, 8 & 10 LR 8.1, 10.1	Initial filing.
In forma pauperis application	Application made under penalty of perjury which seeks waiver of filing fee. **For non-inmates**, if granted, filing fee only (not other fees such as witness or copying fees) is waived. **For inmates**, if granted, filing fee need not be paid in full at one time, however it must be paid in accordance with 28 U.S.C. § 1915. In order to have the application granted, inmates must submit an authorization form (see below).		Initial filing.
Authorization Form (Inmates Only)	Authorizes agency having custody of the inmate to calculate, encumber and/or disburse funds from inmate account in order to pay filing fee.	LR 5.4(b)	Initial filing.
USM-285 Form	Directs the U.S. Marshals Service to serve the defendant listed on the form with Summons and Complaint. You must fill out one USM-285 form for each defendant.		Initial filing.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Summons	Served on the defendant with a copy of the complaint. A "Waiver of Service of Summons" can also be served on the defendant along with a copy of the complaint. The summons informs the defendant that unless a response to the complaint is filed, a judgment may be entered in favor of the plaintiff.	FRCP 4 LR 5.1(f) *et seq.*	Initial filing.
Answer	Filed by the defendant(s), the answer is a short and plain statement of the defenses to the claims stated in the complaint. The defendant(s) must either admit or deny each specific allegation in the complaint.	FRCP 12	Within 20 days from the date of service of the complaint. The United States and federal officials have 60 days to file the answer.
Pretrial Scheduling Orders (incarcerated plaintiffs only)	Issued by the Court, a Pretrial Scheduling Order sets deadlines for pretrial motions.		Issued by the Court after an answer is filed.
Rule 16 Case Management Orders (non-incarcerated plaintiffs only)	Issued by the Court, following a Case Management Conference, which is held shortly after the action is commenced. A Rule 16 Case Management Order sets deadlines for pretrial motions. Parties must confer and file a proposed plan prior to the Case Management Conference.	FRCP 16 LR 16.1	Issued by the Court after the Case Management Conference.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Motions	Items which seek an order from the Court on some particular matter during the pendency of a case. A party who files a motion is called a "movant."	Various Federal Rules, such as 12 and 56 **LR 7.1**	At least 31 days before the "return date" of the motion, which is the date on which the motion is to be heard by the Court. Must be filed before deadline for the filing of motions expires.
Response to motions	Response to motion filed by the other party or parties.	LR 7.1(b)	At least 17 days before the return date of the motion.
Copies of Documents	When motions, stipulations, letters or any other documents are sent to the Clerk or the Court, copies of any such documents must also be sent to all other parties to the action.	LR 5.1	When papers are sent to Court or the Clerk.
Discovery	All discovery requests, and the responses thereto, must be served upon other counsel and parties. Discovery shall **NOT** be filed with the Court except: I) if the Court orders particular materials to be filed; ii) when a party is making a motion pursuant to Fed.R.Civ.P. 37 regarding particular discovery materials; or iii) materials that are to be used at trial are to be filed with the Court prior to trial	FRCP 37 LR 26.2	Discovery must be completed within Court-imposed deadlines.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Proof of Service	Whenever a document is sent to the Court, there must be a "proof of service" document included, which states that a copy of that document was sent to the other party/parties or their attorneys.	LR 5.1	Attached to the document sent to the Court or the Clerk.

CHAPTER VI – PRETRIAL PROCEEDINGS AND CASE MANAGEMENT

Upon the filing of a pro se complaint, the Court will review the pleading to determine whether it complies with the pleading requirements of the Federal Rules of Civil Procedure and to assess the sufficiency of the plaintiff's claims. Following that review, the Court will issue an order advising the plaintiff of its determinations and directing further action.

In order to help litigants resolve their civil disputes in a just, timely and cost-effective manner, the Court will issue a case management or pretrial scheduling order. These orders are not issued in habeas corpus cases.

When the pro se plaintiff is incarcerated, the Court will issue a Pretrial Scheduling Order after an answer has been filed on behalf of the defendants. The Order sets deadlines for the filing of non-dispositive motions and includes important information regarding the other aspects of pretrial proceedings. The Pretrial Order also advises the parties of their right to consent to have all further proceedings conducted by a U.S. Magistrate Judge. *See* 28 U.S.C. § 636(c).

In cases where the pro se plaintiff is not incarcerated, a Case Management Conference will be scheduled by the Court shortly after the action is commenced. This conference is sometimes referred to a as a Rule 16 Conference.

Prior to this conference, the parties will have to confer about and file a Case

Management Plan. The Case Management Plan used by the Northern District of New York is set forth in General Order 25, which you should read and become familiar with. The parties are required to jointly address the items contained in the Case Management Plan, and to file the completed Plan with the Clerk's Office not later than ten days prior to the conference date. In order to complete the Case Management Plan, you must identify and confer with the opposing party or parties about your anticipated discovery requests (see Chapter VII for more information about discovery). You and the opposing party or parties must also decide upon a proposed timetable for discovery and for trial.

Following the Rule 16 Conference, the Court will issue a Uniform Pretrial Scheduling Order.

CHAPTER VII – GATHERING INFORMATION

A. DISCOVERY: GATHERING INFORMATION FROM PARTIES

After pleadings are served, each party will typically gather information to support his or her case. (A "party" is a plaintiff or a defendant). This phase of the lawsuit is called "discovery," and is conducted in accordance with Fed.R.Civ.P. 26 through 37. The information can be in the form of oral or written statements made by the parties themselves, or by witnesses, regarding a particular event or series of events. Parties often need to gather documents also, such as medical records, business records, transcripts from prior court proceedings, etc. Sometimes parties will need to collect or examine physical objects, as well.

It is important for you to remember that typically each party in an action will seek some discovery. This means that if you file an action, you will need to both seek information from the parties you are suing, as well as provide information to them. For example, by filing an action in which your medical condition or treatment is in issue, at least some of your own

medical records will be relevant to the case and will likely be sought in discovery. You will then need to provide written consent, authorizing release of the relevant medical records to opposing counsel. You may also need to provide such a consent form if you are seeking discovery of your own medical records.

It is also important for you to know that the costs of discovery remain the responsibility of each party, regardless of whether either party has been granted permission to proceed *in forma pauperis*. *See* L.R. 5.4.

(1) Interrogatories: One of the most cost-effective ways to get a sworn statement from someone who is a party to the action is to serve interrogatories on that party. Interrogatories are written questions that must be answered, under oath, by the party on whom they are served. Fed.R.Civ.P. 33 governs interrogatories.

You should note that you are limited to twenty-five interrogatories, counting each sub-part separately, for each party. A person may serve more interrogatories on a party **only** if the Court grants the party special permission to serve more than twenty-five. Also, interrogatories may only be served on people who are parties to the litigation.

(2) Depositions: Another means of obtaining a sworn statement from a party is to conduct an oral deposition of that party. For details regarding oral depositions, please refer to Fed.R.Civ.P. 27, 28, and 30.

While oral depositions can be helpful, you should know that they are expensive. The person who is seeking to conduct a deposition will be responsible for the costs of the deposition, including having it recorded, even if he or she has been granted permission to proceed *in forma pauperis*. Since these costs can be considerable, you should first consider whether there are more cost-effective means of gathering the information you seek.

(3) Document Production: A party to a lawsuit may obtain access to documents and objects that are in another party's possession or control, in order to be able to inspect or copy them. The party wishing to make the inspection or copies must serve a request to do so on the party who has possession or control of the items, in accordance with Fed.R.Civ.P. 34. As with other discovery, the person who wishes to make copies of documents he or she inspects is responsible for the costs of doing so.

B. GATHERING INFORMATION FROM NON-PARTIES

Sometimes it will be necessary for a party to a lawsuit to gather information from people who are not parties to the lawsuit. There are various methods of seeking such information, some of the most common of which are discussed briefly below. As with obtaining discovery from parties to the lawsuit, **the person seeking the information from the non-party will be responsible for all associated costs, even if he or she is proceeding *in forma pauperis*.**

(1) Ask First: The best way to gather information or get a statement from someone who is not a party to the lawsuit is to ask him or her! Often, by simply asking the person you can avoid the effort and expense of obtaining a subpoena from the Court.

(2) Subpoenas: Subpoenas are notices, issued by a court, commanding someone to appear at a specified time and place and do some act such as give testimony or produce documents. A party must apply to the Court for a subpoena to be issued. **Subpoenas are not used for parties**; you should use the methods of discovery outlined in Fed.R.Civ.P. 26-37 to gather information from parties. Fed.R.Civ.P. 45 discusses subpoenas.

"Discovery subpoenas" are used during the discovery phase of the lawsuit, and "trial subpoenas" are used to obtain documents and witnesses for trial. You should not attempt

to obtain a trial subpoena until after a judicial officer has informed you of a firm trial date for your lawsuit.

(3) Service and Expense of Subpoenas: A subpoena must be served personally on the person(s) asked to appear in person or to produce particular documents. A subpoena may be served by any person who is at least 18 years of age, so long as the person is not a party to the action or proceeding.

Additionally, various fees (such as witness and mileage fees) must be paid to the person named in the subpoena when the subpoena is served.

(4) Opposition to Subpoenas: A motion to "quash" a subpoena is a motion made by the subpoenaed party to vacate or void the subpoena. A subpoena duces tecum (requesting production of documents) is subject to objections as well as a motion to quash. For the restrictions on subpoenas and the reasons they may be quashed or modified, refer to Fed.R.Civ.P. 45(c).

CHAPTER VIII – LEGAL RESEARCH: AN OVERVIEW

It is not the purpose of this chapter to teach the pro se litigant all of the intricacies of legal research and writing, nor is it our goal to sort out the complexities of applying the law to the facts of a particular case. In fact, the law prohibits personnel employed by the Court, including its attorneys, from providing information regarding the application of the law to the facts of any case. Instead, we are providing information that is basic to a law library as a guideline for conducting your own research.

While you should not be making legal arguments or using legal citations in your complaint, you may need to file documents that make legal arguments at some point during your case. One example of a time when a plaintiff will need to make legal arguments and

use legal citations is when the defendant(s) have filed a motion to dismiss a complaint pursuant to Fed.R.Civ.P. 12(b)(6) for failing to state a cause of action, and the plaintiff wishes to oppose that motion so the case will go forward. As part of the plaintiff's opposition, he or she would submit a memorandum of law which sets forth the legal reasons the plaintiff believes his or her complaint should not be dismissed.

Just as there are certain standards of procedure for filing documents with the Clerk's Office, there are certain standards for citing authority when applying the law to the facts of a case. The most common source people turn to in determining how to write correct citations is *A Uniform System of Citation*, (Seventeenth Edition), published and distributed by The Harvard Law Review Association. It is more commonly referred to as "The Bluebook." All of the information required for proper citation format can be found in this one text. This book is available in most law libraries.

“Authority” is the information used by a party to persuade a Court to find in favor of that party's side. Legal authority is divided into two classes – primary and secondary.

A. PRIMARY AUTHORITY

Primary authority is the most accepted form of authority cited and should be used before any other authority. There are two sources of primary authority: "statutory authority" and "case authority."

Statutory authority consists of Constitutions, codes, statutes and ordinances of either the United States, individual states, counties or municipalities.

Case authority is comprised of court decisions, preferably from the same jurisdiction where the case is filed (in the Northern District, that includes the Second Circuit Court of Appeals and District Court cases from the Northern District of New York). When a particular

case is decided by a judge, it becomes "precedent," which means that it becomes an example or authority to be used at a later time for an identical or similar case, or where a similar question of law exists.

Cases are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court, the Courts of Appeals and the District Courts. Digest systems gather case decisions by subject matter on various points of law. There are many different digests, and they can be found in most law libraries. For example, a person who wishes to bring a civil rights action in federal court can consult digests that contain many cases dealing with the subject of civil rights.

In conducting research, you should try to find cases that have already been decided (precedent) which support the position you are taking in your case.

B. SECONDARY AUTHORITY

Secondary authority is found in legal encyclopedias, legal texts, treatises and law review articles. It should not be cited except where no primary authority is located by the party conducting the research. Secondary authority can also be used to obtain a broad overview of the area of law and also as a tool for finding primary authority.

There are various types of secondary authority, including the following:

Legal encyclopedias contain detailed information about various topics.

Treatises are texts written about a certain topic of law by an expert in the field.

Law review articles are published by most accredited law schools and sometimes provide a broad overview of a particular subject matter.

The *Index to Legal Periodicals* provides reviews of books in the law, as well as comments regarding cases listed in the "Table of Cases."

American Law Reports Annotated (A.L.R.) is a collection of cases on more narrow issues of law.

Restatements are publications compiled from statutes and decisions which discuss the law of a particular field.

Shepard's Citations is a large set of law books that provides a means by which any reported case may be checked to see when and how another court has referred to or interpreted the first decision. Looking to see if another court has cited a reported case is commonly referred to as "Shepardizing." **All cases must be checked to make sure another court has not reversed or overruled the case you wish to use to support your position.**

C. BASIC RULES FOR CONDUCTING LEGAL RESEARCH

(1) Give priority to cases from your own jurisdiction (i.e., Second Circuit, Northern District of New York).

(2) Search for the most recent ruling on a subject matter.

(3) Use the pocket part if your book contains one. A pocket part is a set of pages inserted in a pocket at the back of the book that includes updates to the information contained in the book.

(4) All legal citations are written with the volume number first, an abbreviation of the Reporter's name, and the page number. For example, “924 F.2d 345" refers to volume 924 of the Federal Reporter, second series, page 345.

(5) Shepardizing your citations helps you avoid relying on overruled cases.

CHAPTER IX – MOTIONS

A motion is an application by a party (the “movant”) made to the Court, requesting a ruling or order in favor of the movant. Motions may be used to seek various types of relief while an action is pending, such as a motion to amend or a motion to compel discovery. However, motions should only be filed when necessary; multiple or frivolous motions can result in sanctions from the Court. *See* Chapter III Section D on page 6.

Local Rule 7.1 sets forth the procedure for filing a motion in the Northern District; **motions must be filed in conformity with Local Rule 7.1 or else they will be denied**. Please read and become familiar with all of Local Rule 7.1 before you begin writing a motion.

Please also note that, as with every document you submit to the Court for filing, each

of these documents **must be signed and served on opposing counsel**.

A. DOCUMENTS REQUIRED TO FILE A MOTION

(1) Notice Of Motion: The notice of motion is a concise document identifying (a) the type of motion; (b) the return date (which is the date on which the motion is to be heard by the Court); (c) the time the motion is to be heard; and (d) the street address of the courthouse at which the motion is to be heard. When you make a motion, you choose the return date yourself. In choosing a return date, remember that you must file your papers with the Court and serve them on all parties **at least thirty-one (31) days before the return date that you select**. *See* L.R. 7.1(b).

(2) Affidavit or Affirmation: An affidavit is a sworn declaration of the facts and procedural background pertinent to the motion, set forth in concise, paragraph form, sworn to be true before a notary public. Affidavits submitted with a motion should contain **only** the procedural history of the case and the factual basis of the claim. While an affidavit is required for most motions, an affidavit is not required, unless the Court otherwise directs, for motions filed pursuant to Fed.R.Civ.P. 12(b)(6), 12(c) or 12(f). *See* L.R. 7.1(a)(2).

If you do not have access to a notary public, you may submit an affirmation. An affirmation is essentially the same as an affidavit except that, instead of being notarized, the party who signs the affirmation includes a short statement affirming that the statements made in the affirmation are true.

(3) Memorandum of Law: A memorandum of law is a document prepared by a party arguing his or her position on a legal matter in a case. It should contain a brief summary of the significant facts of the case; pertinent laws, including case law; and an argument as to how the law applies to the facts of the case. A memorandum should also refer to specific sections of any affidavits or exhibits that have been filed along with the motion. A

memorandum of law may not exceed twenty-five (25) pages in length.

As with affidavits, there are certain motions for which a memorandum of law is not required, unless the Court directs otherwise. The motions for which no memorandum of law is required are those made pursuant to Fed.R.Civ.P. 12(e), 15, 17, 25 or 37. *See* L.R. 7.1(a)(1).

(4) Other Documents that May be Required: Often some other document or documents may be required for a particular type of motion. Two of the most common types of motions that require other documents or information are motions to amend and motions to compel.

A motion to amend is filed when a party wishes to amend his or her pleading. For example, a person may want to amend his or her complaint to add a new party, identify a party previously named only as "John Doe," or add a new cause of action. A motion to amend must be accompanied by the proposed amended pleading, which must be a complete pleading.

A motion to compel is typically used when a party has refused to comply with a discovery request, or when the movant believes the response that was provided to a discovery request is incomplete or insufficient. Before a party may file a motion to compel, the parties must make a good faith effort to resolve the dispute themselves. If they cannot resolve the dispute and a party wishes to file a motion to compel, he or she must provide the Court with both the discovery request itself and the response that is being challenged.

B. TIME CONSIDERATIONS

(1) Moving Papers: Local Rule 7.1 addresses the time frame in which motion papers must be filed. As noted above, the moving party must file the required papers with the Clerk's Office and serve them on the other parties at least thirty-one (31) days before the

return date. (If the return date on the notice of motion is incorrect, the Clerk's Office will set an appropriate date and notify the parties of the new date). Of course, parties must be sure to file all motions within the time limits previously established by the Court.

(2) Response Papers: Parties responding to the motion must file their papers with the Clerk's Office, and serve them on the other party, at least seventeen (17) days before the return date. (For response to cross-motions, see (4) below).

(3) Reply Papers: A movant who wishes to file papers in response to the papers filed in opposition to his or her motion must obtain permission from the Court to file "reply" papers. Such permission will only be granted upon a showing of necessity. If Court permission is granted, reply papers must be filed with the Clerk and served on the opposing parties not less than eleven (11) days before the return date of the motion.

(4) Cross-motions: A cross-motion is a motion made by the responding party against the original movant. A cross-motion requests not only that the original motion be denied, but also that the Court rule in favor of the party filing the cross-motion (the "cross-movant") in some way. A cross-motion must be filed with the Clerk and served on all parties at least seventeen (17) days before the return date of the original motion. Any papers responding to the cross-motion must be filed with the Clerk and served on all parties at least eleven (11) days prior to the original motion date.

CHAPTER X – ENDING A CASE BEFORE TRIAL

Today, most cases never actually go to trial. There are various ways that a case can end before trial, some of the most common of which are discussed below.

A. *SUA SPONTE* DISMISSAL BY THE COURT

If a plaintiff has filed an application to proceed *in forma pauperis*, Title 28, section 1915 of the United States Code governs his or her case. 28 U.S.C. § 1915(d) states that a

judge shall dismiss a case if at any time the Court determines that: 1) the plaintiff's allegations of poverty are untrue, 2) the action is frivolous or malicious, 3) the plaintiff has failed to state a claim upon which relief can be granted, or 4) the plaintiff is seeking monetary relief against a defendant who is immune from such relief.

B. 12(b)(6) MOTION TO DISMISS AND 12(c) MOTION FOR JUDGMENT ON THE PLEADINGS

A Fed.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted is very similar to a Fed.R.Civ.P. 12(c) motion for judgment on the pleadings. Both motions argue that, even if all the facts the plaintiff has alleged are true, the plaintiff has not stated a valid claim under the law. The essential difference is the time at which each is made: a 12(b)(6) motion to dismiss is made by the defendant after the complaint has been served but before the defendant has submitted an answer; a 12(c) motion is made after the defendant has already filed an answer.

C. MOTION FOR SUMMARY JUDGMENT

Either the plaintiff or the defendant may move for summary judgment pursuant to Fed.R.Civ.P. 56. In a motion for summary judgment, the moving party argues that there is no question of material fact, or in other words, that the parties agree on the important points of what happened. Since a trial is only needed if there are material facts in dispute, if the parties agree on the facts the Court may apply the law to the facts of the case and render judgment without a trial. The plaintiff may wish to make a motion for summary judgment him or herself, or may be called upon to respond to a motion for summary judgment made by the defendant(s).

Local Rule 7.1 requires that a special statement of material facts be filed along with a motion for summary judgment. The Local Rule 7.1 statement of material facts is a

separate document, containing a short and concise statement, in numbered paragraphs, of the significant facts as to which the moving party contends there is no dispute. In preparing a statement of material facts, the movant should cite to exhibits or other documents for support whenever possible.

The party opposing a motion for summary judgment must also include a Local Rule 7.1 statement, responding to the movant's 7.1 statement. The opposing statement should be a short and concise statement of the facts over which a dispute exists. **If the opposing party fails to contest any of the facts contained in the movant's statement of material facts, those facts are deemed admitted**. *See* Local Rule 7.1(f).

If the opposing party moves for summary judgment and you do not respond in opposition, summary judgment, if appropriate, will be entered against you. If partial summary judgment is granted against you, the portions of your case as to which summary judgment was granted will be dismissed; there will be no trial as to these portions of your complaint. If summary judgment is granted as to your entire complaint, your case will be dismissed and there will not be any trial concerning any of the claims asserted in your complaint.

D. ALTERNATIVE DISPUTE RESOLUTION

If the plaintiff is not a prisoner, the Court may direct the parties to participate in Alternative Dispute Resolution, or ADR. The types of ADR that are used in the Northern District of New York are Arbitration, Mediation, and Early Neutral Evaluation. While these forms of ADR do not render binding judgments on the parties, they often help to clarify the issues and may assist the parties in reaching a settlement before trial. Please refer to Local Rules 83.7 through 86.1 for more information on ADR in this Court.

E. SETTLEMENT

Parties will sometimes reach an agreement on their own as to how to end their case. Typically a defendant will agree to give something to the plaintiff in exchange for the plaintiff ending the suit against the defendant. A settlement can happen any time after initiation of a lawsuit. The process of negotiating a settlement does not involve the Court.

F. FAILURE TO PROSECUTE AND DEFAULT JUDGMENT

A case will only continue to go forward if the plaintiff is actively pursuing his or her lawsuit. Fed.R.Civ.P. 41(b) permits courts to dismiss actions when the plaintiff fails to "prosecute," or pursue the case. Additionally, Local Rule 41.2(a) provides that the failure of a plaintiff to take any action in his case for four months shall be presumptive evidence of lack of prosecution. Therefore, if a plaintiff fails to take any action in his or her case for a period of four months or more, the case is subject to dismissal by the Court.

A plaintiff can fail to prosecute his or her case in different ways. For example, if a plaintiff fails to provide the Court with an updated address after he or she has moved, or if a plaintiff fails to serve the summons and complaint on the defendant, the case may be dismissed for failure to prosecute. A case may also be dismissed if the plaintiff fails to comply with a Court order.

On the other hand, a defendant may fail to defend him or herself in a case, which can occasionally lead to a default judgment against the defendant, in favor of the plaintiff. Fed.R.Civ.P. 55 and the corresponding Local Rules govern default judgments. You should note, however, that it is well-settled in the Second Circuit that default judgments are not favored, and there is a strong preference for resolving disputes on their merits. *See Brien v. Kullman Indus., Inc.*, 71 F.3d 1073, 1077 (2d Cir. 1995).

CHAPTER XI – TRIAL

The Federal and Local Rules of the Northern District of New York cover all phases of trial preparation from the pretrial conference to the conclusion of a case. The following information is not meant to be all inclusive and you should always consult the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of New York to ascertain what the Court requires of all parties when preparing for trial and trying a lawsuit. In addition, you should become familiar with the Federal Rules of Evidence, which govern the admission of evidence at trial.

A. FINAL PRETRIAL CONFERENCE AND ORDER

Prior to the actual trial, a pretrial conference is usually held between a judicial officer and a party (or his/her counsel) to determine (1) what exhibits and witnesses each side might use during the trial; (2) the approximate length of time that will be necessary for the trial and (3) the "ground rules" the Court will utilize before, during and after the trial. After this conference, an order is usually prepared which sets out the above. *See* Attachment 4 to Appendix A of the Local Rules.

B. THE TRIAL – THE ROLE OF THE JUDGE AND JURY

A trial is defined as "a judicial examination of issues between parties to an action." If your case proceeds to trial, the parties will each get the opportunity to present their side of the case, and the judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are presented. In a jury trial, he or she also instructs the jury, which will be called upon at the conclusion of the jury trial to make decisions regarding factual matters in dispute. A judgment will then be entered based on the

verdict reached by the jury. L.R. 58.1.

If the parties have not requested a trial by jury pursuant to L.R. 38.1, the judge becomes the trier of both law and fact. At the end of the trial, the judge enters "Findings of Fact" and "Conclusions of Law," sometimes in writing, based on the evidence and arguments presented. A judgment is then entered based on those findings of fact and conclusions of law.

C. SELECTION OF THE JURY

A jury trial begins with the judge choosing prospective jurors to be called for voir dire (examination). *See* L.R. 47.1 and General Order No. 24. The Court will determine the number of jurors, which is currently at least six (6) and no more than twelve (12). L.R. 48.1.

Peremptory challenges: Each party will be given a number of peremptory challenges which enable the party to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the party when he or she feels a prospective juror would be detrimental to his or her case.

Challenge for Cause: The plaintiff or defendant may also challenge a prospective juror "for cause" when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties or will not accept the law as given to him/her by the Court.

D. OPENING STATEMENTS

After the jury is sworn in or "empaneled," each side may present an opening statement. The plaintiff has the burden of proving that he or she was wronged and suffered damages from that wrong and that the defendant caused those damages. The plaintiff is allowed to present the opening statement first. This may be followed by a statement by the defendant. The Court will determine the time to be allotted for opening and closing arguments. *See* L.R. 39.1.

E. TESTIMONY OF WITNESSES

After opening statements are given, testimony of witnesses and documents are presented to the jury or the Court. The plaintiff presents his/her case first. After the initial examination of a witness (also known as "direct examination"), cross-examination is conducted by the other side. After a party has cross-examined a witness, the opposing side has the opportunity to "redirect" examination in order to re-question the witness on the points covered by the cross-examination.

If a witness testifies as to one fact, and a statement or document in the case file contradicts that testimony, the document can then be used to question the witness on the accuracy of the witness' statements. If the evidence shows that the testimony of the witness is false, the witness is considered "impeached" by the cross-examination.

F. MOTIONS DURING THE COURSE OF THE TRIAL

Before the closing arguments and up until the time the case is sent to the jury for deliberation, the following motions may be made:

(1) Motion in Limine: This motion is typically made prior to the jury selection. It requests that the judge not allow certain facts to be admitted into evidence, such as insurance policies, criminal records or other matters which are either not relevant to the particular case or which might unfairly influence the jury. Either party may file a motion in limine.

(2) Motion for Judgment as a Matter of Law: This motion is usually made by the defendant at the close of evidence presented by the plaintiff. It is based on the premise that the plaintiff has failed to prove his or her case. If this motion is granted, the trial is concluded in the movant’s favor. If the Court denies the motion, the trial continues with presentation of the defendant's side.

(3) Motion for Mistrial: Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible (such as those determined to be inadmissible in a prior motion in limine) are presented by any witness, either purposely or unintentionally, in the presence of the jury. If the judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.

(4) Objections: During the examination of a witness, one side may "object" to the questioning or testimony of a witness, or presentation of evidence, if the litigant believes that the testimony or evidence about to be given should be excluded. If the objection is *sustained* by the judge, that particular testimony or evidence is excluded. If the objection is *overruled* by the judge, the testimony or evidence may be given despite the objection.

G. REBUTTAL TESTIMONY

After each side has presented its evidence, the plaintiff may be allowed by the judge to present some rebuttal testimony.

H. CLOSING ARGUMENTS

Closing arguments to the jury set out the facts that each side has presented and the reasons why each party believes the jury should find in favor of him or her. Time limits are sometimes set by the Court for closing arguments, and each side must adhere to the specified time. *See* L.R. 39.1.

I. CHARGE TO THE JURY

After each side presents testimony and evidence, the judge delivers the "charge" to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge for consideration. After the judge has considered all proposed instructions, the jury is given appropriate instructions which set forth the jury's responsibility

to decide the facts in light of the applicable rules of law. The jury then returns a verdict in favor of either the plaintiff or the defendant and assesses damages to be awarded, if any.

J. MISTRIAL

If a jury is unable to reach a verdict and the judge declares a mistrial, the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a "hung jury."

K. JUDGMENT AND COSTS

Following the entry of the jury's verdict, judgment in favor of the prevailing party is entered forthwith by the Clerk.

If costs are awarded to the prevailing party, it is necessary to prepare a “bill of costs” for the approval of the Court. A bill of costs sets forth those costs that were incurred in the suit. *See* L.R. 54.1. A prevailing party may serve a bill of costs within thirty (30) days after entry of a judgment. If attorney's fees are awarded, an application for attorney's fees must be made by motion filed no later than fourteen (14) days after entry of judgment. *See* Fed.R.Civ.P. 54(d)(2).

L. SATISFACTION OF JUDGMENT

Satisfaction of a money judgment will be entered by the Clerk's Office upon the specific conditions set forth in L.R. 58.2.

M. POST-TRIAL MOTIONS AND APPEALS

If you are unhappy with the ultimate disposition of your action, you may choose to file post-trial motions relating to your case. Additionally, you may choose to appeal the outcome of your lawsuit to the Second Circuit within thirty days of the disposition.

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF NEW YORK

Notice

Court records indicate you have elected to pursue or defend an action in this Court without the assistance of an attorney. Although the Court Clerk's Office is here to assist you with your filings, it is important to note that, by statute, **Clerk's Office personnel are prohibited from giving legal advice.**[1]

Clerk's Office Personnel are not allowed to:

- Discuss the merits of your case or any specific claim or defense;
- Discuss the application of statutes, rules or case law to individual claims or defenses;
- Express an opinion on the validity of a claim or defense or the proper forum or jurisdiction in which you should bring your claims;
- Discuss the "best" procedure to accomplish a particular objective;
- Transmit any information to a Judicial Officer except as provided in the applicable statutes and local rules;
- Interpret the meaning or effect of any order, judgment or rules of the Court.

Clerk's Office personnel are allowed to:

- Give you basic case information contained within the public case file (for example, public documents filed and the dates they were filed, public scheduling notices, etc.);
- Show you the various Local Rules, General Orders or other publicly available statements of Court operations without giving you an interpretation of their meaning or effect;
- Provide you with Court-approved forms and guidance materials (for example, Pro Se Manual, Local Rules, General Orders, etc.). Court personnel can also provide guidance in filling out the form but cannot tell you what information you should provide on the form;
- Provide you with information regarding general deadlines and due dates without specific reference to your case. You are responsible for deadlines and due dates applicable to your case.

---

[1] Section 955 of Title 28 of the United States Code specifically precludes the Clerk and his deputies from practicing law in any Court of the United States.

IMPORTANT REMINDERS

- When you submit papers to the Court, you must also serve a copy on every party in the action. Local Rule ("L.R.") 5.1(a).
- You must immediately notify the Court of any change of address. L.R. 10.1(b)(2). Your failure to notify the Court of a change of address may result in the involuntary dismissal of your case for failure to prosecute. Fed. R. Civ. P. 41(b); L.R. 41.2(b).
- Unless the Court specifically directs otherwise, you should not file discovery materials (for example, interrogatories and document requests) with the Court except as necessary to support a motion. L.R. 26.2.
- If your opponent files a motion and you fail to oppose it, and the moving party has met its burden, the Court may consider your failure to oppose the motion as your consent to the relief requested in that motion. L.R. 7.1(b)(3).
- If your opponent files a motion for summary judgment, it shall contain a Statement of Material Facts. Among other things, you must respond to this Statement of Material Facts by admitting and/or denying each fact asserted therein supported with a record citation. If you do not so respond, the Court will deem that you have admitted your opponent's Statement of Material Facts, which could result in the Court viewing the facts very favorably to the opposing party. L.R. 7.1(a)(3).
- Personal Privacy Protection: It is the obligation of parties to redact, or file under seal, documents which include social security numbers, names of minor children, dates of birth, financial account numbers, home addresses, drivers license numbers, medical records, employment history, and individual financial information. L.R. 8.1

ENCLOSURES

- Copy of the Local Rules of Practice for the Northern District of New York
- Copy of the Pro Se Handbook for the Northern District of New York
- Copy of the County Lawyer Referral Guide
- Forms are available on our website - www.nynd.uscourts.gov

Thank you

****

Acknowledgment of Receipt: _____
Party Signature

_____ _____
Date Deputy Clerk

****

If not handed out at Public Counter - Date this Notice was Mailed _____

INSTRUCTIONS FOR FILING A COMPLAINT

To bring an action in the U.S. District Court for the Northern District of New York, you must file one original complaint and provide the Clerk with a copy of your complaint for each defendant named. All copies of the original complaint must be identical. You also should keep a copy for your own records.

There is a **$350.00 filing fee** required in order to maintain an action in federal court. If you are unable to pay the filing fee and cost of service of this case, you may request that the Court allow you to proceed "in forma pauperis." If there is more than one plaintiff to an action, each plaintiff named must file a separate "Application to Proceed In Forma Pauperis." **The Clerk cannot accept for filing a complaint that is not accompanied by either the full filing fee or a completed in forma pauperis application.**

- ➔ You may file this complaint with our Court only if one or more of the defendants is located within this district.
- ➔ You are required to furnish the correct name and address of each person you have named as defendant.
- ➔ You must file a separate complaint for each claim **unless** all of your claims relate to the same incident or issue.
- ➔ You must include allegations of wrongful conduct as to all defendants named in your complaint.
- ➔ Your complaint must be legibly handwritten or typed.
- ➔ You are required to give facts supporting each of your claims against each of the defendants in your complaint, and you must sign this document and declare under penalty of perjury that the facts are correct. All plaintiffs must sign the complaint individually.
- ➔ Your complaint should not contain legal arguments or case citations.
- ➔ You will also have to fill out other documents, such as a summons, a civil cover sheet, USM-285 forms, etc., in order to maintain an action in this district.

If you need additional space to answer a question, you may use additional sheets of paper. When these forms are completed, mail the original complaint and sufficient copies of same to:

Lawrence K. Baerman, Clerk
U.S. District Court
Federal Building, P.O. Box 7367
100 S. Clinton Street
Syracuse, New York 13261-7367

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

NOTICE
Amended August 6, 2004

Effective ***January 1, 2004,*** the Office of the Clerk will accept electronically-filed documents and will make the content of those documents available on the Court's Internet webpage via PACER (Public Access to Court Electronic Records). Any subscriber to PACER will be able to read, download, store and print the full contents of the electronically-filed documents. The Clerk's Office is not posting documents sealed or otherwise restricted by court order (*See also General Order #22*).

You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. You must remember that any personal information not otherwise protected will be made available over the Internet via PACER. If sensitive information must be included, the following personal identifiers must be partially redacted from the document, whether it is filed traditionally or electronically:

- ✓ **Social Security Numbers.** If an individual's social security number must be included in a document, only the last four digits of that number should be used.
- ✓ **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- ✓ **Dates of Birth.** If an individual's date of birth must be included in a document, only the year should be used.
- ✓ **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- ✓ **Home Addresses.** If home addresses must be used, use only the City and State.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

a. file an unredacted version of the document under seal, or

b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The unredacted version of the document or the reference list shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file. In addition, exercise caution when filing documents that contain the following:

- personal identifying number, such as a driver's license number
- medical records, treatment and diagnosis
- employment history
- individual financial information
- proprietary or trade secret information
- information regarding an individual's cooperation with the government

Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion, redaction and/or exclusion of certain materials may be made. **It is the sole responsibility of counsel and the parties** to be sure that all documents comply with the rules of this Court requiring redaction of personal identifiers. The Clerk will not review each document for compliance with this rule. (*See also NDNY Local Civil Rule 8.1 and Criminal Rule 12.1(g))*

SAMPLE FORMS

You may use the following sample forms in initiating your lawsuit.

1. Waiver of Service of Summons 1A
2. Waiver of Service of Summons 1B
3. Duty to Avoid Unnecessary Costs of Service of Summons
4. Motion for Appointment of Counsel
5. Affidavit of Service by Mail
6. Certificate of Service by Mail
7. Application to Proceed Without Pre-Payment of Filing Fee
8. JS44 Civil Cover Sheet

Sample Complaint Forms are available on the Representing Yourself in Federal Court page of the courts web-site: www.nynd.uscourts.gov

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

Form 1A. Notice of Lawsuit and Request for Waiver of Service of Summons

To: (A) _____

[as (B) _____ of (C) _____]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Northern District of New York and assigned docket number (E) _____ CV _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. the action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before **60** days from the date designated below (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____ 20___.

_____
Signature of Plaintiff's Attorney or Unrepresented Plaintiff

NOTES:

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title, or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any
D - District
E - Docket number of action
F - Addressee must be given at least thirty (30) days (Sixty (60) days if located in foreign country) in which to return waiver

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

Form 1B. Waiver of Service of Summons

To:_____
(Name of Plaintiff's Attorney or Unrepresented Plaintiff)

I acknowledge receipt of your request that I waive service of summons in the action of

_____, which is case number

_____CV_____ in the United States District Court for the Northern
_____Docket N umber)

District of New York. I have also received a copy of the complaint in the action, two (2) copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided in Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within SIXTY (60) days after _____ _____, or within NINETY (90) days after the date if the request
(date request was sent)
was sent outside the United States.

_____
(Date) (Signature)

Printed/typed name: _____

[as _____]

[of _____]

Duty to Avoid Unnecessary Costs of Service of Summons
(Please refer to the reverse side of this form for information on your Duty to Avoid Unnecessary Costs of Service of Summons)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause can be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or the service of the summons), and may later object to the jurisdiction of the court or the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response within the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Plaintiff(s)	)	**Civil Case No.:**
vs.	)	
Defendant(s)	)	

MOTION FOR APPOINTMENT OF COUNSEL

(A) I hereby request a court-appointed attorney to represent me in this action.

(B) I have contacted the following attorneys in my effort to obtain counsel:

_____

_____

_____

_____

_____

NOTE: You **must** first attempt to find an attorney on your own before you file a motion for appointment of counsel with the Court. *See Terminate Control Corp. v. Horowitz*, 28 F.3d 1335 (2d Cir. 1994).

(C) I have attached to this motion the correspondence I have received from the attorneys listed above.

(D) The reasons I believe I should be appointed counsel pro bono are as follows:

_____

_____

_____

I declare under penalty of perjury that the foregoing is true and correct.

DATED:

_____
Signature of Plaintiff

AFFIDAVIT OF SERVICE BY MAIL

State of New York :
SS:
County of _____ :

I, _____, being duly sworn, deposes and says: that I am the plaintiff herein and served a copy of the following document(s):

_____ (Specify document(s)

on _____ (Name of person/Addressee)

at: _____ (Address to which document(s)

_____ were sent)

by mailing and depositing a true and correct copy of said document(s) in a mailbox located at: _____,

on the following date: _____, 200___.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: _____

Signature of Plaintiff

Sworn to before me this _____ day of _____, 200___.

_____

Notary Public

CERTIFICATE OF SERVICE BY MAIL

State of New York :

SS:

County of _____ :

I, _____, hereby certify that I am the plaintiff herein and served a copy of the following document(s):

_____ (Specify document(s)

on _____ (Name of person/Addressee)

at: _____ (Address to which document(s)

_____ were sent)

by mailing and depositing a true and correct copy of said document(s) in a mailbox located at: _____,

on the following date: _____, 200__.

I certify that the foregoing is true and correct.

DATED:

_____
Signature of Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Plaintiff(s)

v.

Defendant(s)

APPLICATION TO PROCEED WITHOUT FULL PREPAYMENT OF FEES; AFFIDAVIT AND AUTHORIZATION FORM

CASE NUMBER:

I, _____ declare that I am (check appropriate box)

☐ petitioner/plaintiff/movant ☐ other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated?: ☐ Yes ☐ No (If "No" go to Part 2)

   If "Yes" state the place of your incarceration: _____

   Are you employed at the institution? ☐ Yes ☐ No

   Do you receive any payment from same? ☐ Yes ☐ No

Notice to Inmates: **The Certificate Portion Of This Affidavit Must Be Completed.**

2. Are you currently employed?: ☐ Yes ☐ No

   a. If the answer is "Yes" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

   b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and the name and address of your last employer.

3. In the past twelve months have you received any money from any of the following sources?

a.	Business, profession or other self employment	☐	Yes	☐	No
b.	Rent payments, interest or dividends	☐	Yes	☐	No
c.	Pensions, annuities or life insurance payments	☐	Yes	☐	No
d.	Disability or workers compensation payments	☐	Yes	☐	No
e.	Gifts or inheritances	☐	Yes	☐	No
f.	Any other sources	☐	Yes	☐	No

If the answer to any of the above is "Yes" describe each source of money and state the amount received **and** what you expect you will continue to receive.

4. Do you have any cash, checking or savings accounts? ☐ Yes ☐ No
If "Yes" state the total amount _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or **any other assets?** ☐ Yes ☐ No
If "Yes" describe the property and state its value (Attach additional sheets as necessary):

6. List the person(s) who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

_____ _____
DATE SIGNATURE OF APPLICANT

CERTIFICATE

(To be completed by appropriate official at institution of incarceration)

I certify that the applicant named herein has the sum of $ _____ on account to his/her credit at (Name of Institution) _____.
I further certify that the applicant has the following securities to his/her credit: _____
I further certify that **during the past <u>six(6) months</u>** the applicant's average balance was $ _____

_____ _____
DATE SIGNATURE OF AUTHORIZED OFFICER

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question (U.S. Government Not a Party)
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
❒ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	❒ 610 Agriculture	❒ 422 Appeal 28 USC 158	❒ 400 State Reapportionment
❒ 120 Marine	❒ 310 Airplane	❒ 362 Personal Injury - Med. Malpractice	❒ 620 Other Food & Drug	❒ 423 Withdrawal 28 USC 157	❒ 410 Antitrust
❒ 130 Miller Act	❒ 315 Airplane Product Liability	❒ 365 Personal Injury - Product Liability	❒ 625 Drug Related Seizure of Property 21 USC 881		❒ 430 Banks and Banking
❒ 140 Negotiable Instrument	❒ 320 Assault, Libel & Slander	❒ 368 Asbestos Personal Injury Product Liability	❒ 630 Liquor Laws	PROPERTY RIGHTS	❒ 450 Commerce
❒ 150 Recovery of Overpayment & Enforcement of Judgment	❒ 330 Federal Employers' Liability	PERSONAL PROPERTY	❒ 640 R.R. & Truck	❒ 820 Copyrights	❒ 460 Deportation
❒ 151 Medicare Act	❒ 340 Marine	❒ 370 Other Fraud	❒ 650 Airline Regs.	❒ 830 Patent	❒ 470 Racketeer Influenced and Corrupt Organizations
❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	❒ 345 Marine Product Liability	❒ 371 Truth in Lending	❒ 660 Occupational Safety/Health	❒ 840 Trademark	❒ 480 Consumer Credit
❒ 153 Recovery of Overpayment of Veteran's Benefits	❒ 350 Motor Vehicle	❒ 380 Other Personal Property Damage	❒ 690 Other		❒ 490 Cable/Sat TV
❒ 160 Stockholders' Suits	❒ 355 Motor Vehicle Product Liability	❒ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	❒ 810 Selective Service
❒ 190 Other Contract	❒ 360 Other Personal Injury		❒ 710 Fair Labor Standards Act	❒ 861 HIA (1395ff)	❒ 850 Securities/Commodities/ Exchange
❒ 195 Contract Product Liability			❒ 720 Labor/Mgmt. Relations	❒ 862 Black Lung (923)	❒ 875 Customer Challenge 12 USC 3410
❒ 196 Franchise			❒ 730 Labor/Mgmt.Reporting & Disclosure Act	❒ 863 DIWC/DIWW (405(g))	❒ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	❒ 740 Railway Labor Act	❒ 864 SSID Title XVI	❒ 891 Agricultural Acts
❒ 210 Land Condemnation	❒ 441 Voting	❒ 510 Motions to Vacate Sentence	❒ 790 Other Labor Litigation	❒ 865 RSI (405(g))	❒ 892 Economic Stabilization Act
❒ 220 Foreclosure	❒ 442 Employment	Habeas Corpus:	❒ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	❒ 893 Environmental Matters
❒ 230 Rent Lease & Ejectment	❒ 443 Housing/ Accommodations	❒ 530 General		❒ 870 Taxes (U.S. Plaintiff or Defendant)	❒ 894 Energy Allocation Act
❒ 240 Torts to Land	❒ 444 Welfare	❒ 535 Death Penalty		❒ 871 IRS—Third Party 26 USC 7609	❒ 895 Freedom of Information Act
❒ 245 Tort Product Liability	❒ 445 Amer. w/Disabilities - Employment	❒ 540 Mandamus & Other			❒ 900Appeal of Fee Determination Under Equal Access to Justice
❒ 290 All Other Real Property	❒ 446 Amer. w/Disabilities - Other	❒ 550 Civil Rights			❒ 950 Constitutionality of State Statutes
	❒ 440 Other Civil Rights	❒ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

❒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Lawyer Referral Services & Legal Aid Offices For The Thirty Two Counties In The Northern District Of New York

County	Bar Association	Legal Aid Society
Albany	Albany County Bar Assoc. Albany County Courthouse Albany, NY 12207 (518-445-7691) Women's Bar Association Capital Chapter POB 7175 Albany, NY 13901 (518-438-5511)	Legal Aid Society of North Eastern NY 55 Columbia Street Albany, NY 12207 (518-462-6765)
Broome	Broome County Bar Assoc. 19 Chenango St. Suite 308 Binghamton, NY 13901 607-723-6331	Legal Aid Society of Mid NY 30 Fayette Street Binghamton NY 13901 607-723-7966
Cayuga	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	
Chenango	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800- 342-3661)	Broome Legal Asst. Corp. 30 Fayette Street Binghamton, NY 13901 (607-723-7966)
Clinton	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661) (1-800-722-7380)	North Country Legal Services POB 989 100 Court Street Plattsburgh, NY 12901

County	Bar Association	Legal Aid Society
Columbia	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	
Cortland	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Services of Central New York, Inc 11 Port Watson St. Cortland, NY 13045 (607-753-1134)
Delaware	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society Of Mid-New York Inc. 41-45 Dietz St. Oneonta, NY 13820 (607-433-2600)
Essex	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	North Country Legal Services Inc. POB 989 100 Court Street Plattsburgh, NY 12901 (1-800-722-7380)
Franklin	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-722-7380)	North Country Legal Services Inc. POB 989 100 Court Street Plattsburgh, NY 12901
Fulton	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc. 1170 Riverfront Center Amsterdam, NY 12010 (518-842-9466)

County	Bar Association	Legal Aid Society
Greene	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	
Hamilton	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	North Country Legal Services Inc. POB 989 100 Court Street Plattsburgh, NY 12901 (1800-722-7380)
Herkimer	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc. 61 West Street Ilion, NY 13357 (315-895-7789)
Jefferson	Jefferson County Lawyer Referral Agency 161 Clinton Street Room 204 Watertown, NY 13601 (315-785-6191)	Legal Services Of Central NY Inc 44 Public Sqare Watertown, NY 13601 (315-788-2072)
Lewis	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	
Madison	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc. 218 Farrier Avenue Oneida, NY 13421 (315-363-8620)

County	Bar Association	Legal Aid Society
Montgomery	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc. 1170 Riverfront Center Amsterdam, NY 12201 (518-842-9466)
Oneida	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661) & 218 Farrier Avenue Oneida, NY 13421 (315-363-8620)	Legal Aid Society of Mid-New York Inc. 255 Genesee St, 2nd fl Utica, NY 13501 (315-732-2131)
Onondaga	Onondaga Lawyer Referral 1000 State Tower Building Syracuse, NY 13202 (315-471-2690) Legal Services of Central New York 472 South Salina, suite 300 Syracuse, NY 13202 (315-475-3127)	Hiscock Legal Aid 351 South Warren St Syracuse, NY 13202 (315-422-8191) Franciscan Northside Ministries 804 North Salina St. Syracuse, NY 13208 (315)423-9961 Tuesday 2 - 4pm / Thursday 6 - 8 pm
Oswego	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Services of Central New York 120 East First St. Oswego, NY 13126 (315-342-2191)
Ostego	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc 41-45 Dietz St. Oneonta, NY 13820 (607-433-2600)

County	Bar Association	Legal Aid Society
Rensselaer	Rensselaer County Referral Service 297 River Street Troy, New York 12180 (518-272-7220)	North Eastern NY 55 Columbia Street Albany, NY 12207 (518-462-6765)
Saratoga	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Soc. of Northeastern NY 10-12 Lake Ave Saratoga Springs, NY 12866 (528-587-5188)
Schenectady	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Northeastern NY 55 Columbia Street Albany, NY 12207 (518-462-6765)
Schoharie	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Mid-New York Inc. 1170 Riverfront Center Amsterdam, NY 12201 (518-842-9466)
St. Lawrence	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	North Country Legal Services Inc. POB 989 100 Court Street Plattsburgh, NY 12901 (1-800-722-7380)
Tioga	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Chemung County Neighborhood Legal Services Inc. 215 North Cayuga Street Ithaca, NY 14850 (607-273-3666)

County	Bar Association	Legal Aid Society
Tompkins	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Chemung County Neighborhood Legal Services Inc 215 North Cayuga St. Ithaca, NY 14850 (607-273-2666)
Ulster	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	
Warren	Warren County Bar assoc. 21 Bay St. Glen Falls, NY 12801 (518-792-9239)	Legal Aid Society of Northeastern NY 10-12 Lake Avenue Saratoga Springs, NY 12866 (518-587-5188)
Washington	New York State Lawyer Referral Service 1 Elk Street Albany, NY 12207 (1-800-342-3661)	Legal Aid Society of Northeastern NY 10-12 Lake Avenue Saratoga Springs, NY 12866 (518-587-5188)

L O C A L R U L E S O F P R A C T I C E

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF NEW YORK

Effective January 1, 2007

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Forward

The Board of Judges for the Northern District of New York have adopted the following time schedule for the approval and amendment of the Local Rules of Practice. The Court will solicit comment on new and amended local rules from the bar and public during the months of May, June and July. Comments should be addressed to:

Lawrence K. Baerman
Clerk of Court
James Hanley Federal Building
P.O. Box 7367
100 South Clinton Street
Syracuse, New York 13261-7367

New and amended rules of practice will be forwarded to the Circuit Council of the Second Circuit for review and approval during the month of October. All new and amended local rules will become effective on January 1st each year. The Clerk of the Court will then make available to the bar and public the amended local rules.

Please note that the Court's Local Rules and General Orders may be obtained from the Court's webpage at "www.nynd.uscourts.gov".

Summary of Approved Local Rule Changes

The following Local Rules of Practice have been approved and will become effective January 1, 2007.

Local Rule	Description of Modification
7.1(d)	Language added within 7.1(d) to reinforce requirement articulated in L.R. 26.2 that for discovery motions, the discovery material needs to be filed with the motion.
7.1(g)	Modified to include language that the filing of a motion for reconsideration under Local Rule 7.1(g) tolls the ten day time period to file objections. See Ri Sau Kuen Chan v. NYU Downtown Hosp., 2004 WL 1886009 (S.D.N.Y. Aug. 23, 2004); Norex Petroleum Ltd. v. Access Industries, Inc., 2003 WL 21872389 (S.D.N.Y. Aug 7, 2003); EEOC v. Venator Group, 2001 WL 246376 (S.D.N.Y. Mar. 13, 2001); Yurman Design Inc. v. Chaindom Enterprises, Inc., 2000 WL 1871715 (S.D.N.Y. Dec. 30, 2000).
7.1(4)	Modified 3rd paragraph of 7.1(4) to require parties requesting leave to file a supplemental pleading under Fed.R.Civ.P. 15(d) to provide a red-lined version of the supplemental pleading.
16.2	Amended to specifically include requests for admissions within the list of devices subject to the requirements of this Rule.
81.3	Modified Rule to include language stating a motion filed in state court will not be considered unless it is refiled in this Court in accordance with these Rules.
83.4(g)	Incorporated new procedures regarding attorney discipline proceedings.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

OFFICERS

ACTIVE JUDGES:

Hon. Norman A. Mordue, Chief Judge
Federal Building and U.S. Courthouse
P.O. Box 7336
Syracuse, NY 13261-7336

Hon. David N. Hurd
Alexander Pirnie Federal Building
10 Broad Street
Utica, NY 13501

Hon. Lawrence E. Kahn
James T. Foley U.S. Courthouse
445 Broadway, Room 424
Albany, NY 12207-2926

Hon. Gary L. Sharpe
James T. Foley U.S. Courthouse
445 Broadway, First Floor South
Albany, NY 12207

SENIOR JUDGES:

Hon. Howard G. Munson
Federal Building and U.S. Courthouse
P.O. Box 7376
Syracuse, NY 13261-7376

Hon. Neal P. McCurn
Federal Building and U.S. Courthouse
P.O. Box 7365
Syracuse, NY 13261-7365

Hon. Thomas J. McAvoy
Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, NY 13901

Hon. Frederick J. Scullin, Jr.
Federal Building and U.S. Courthouse
P.O. Box 7255
Syracuse, NY 13261-7255

MAGISTRATE JUDGES:

Hon. Gustave J. DiBianco
Federal Building and U.S. Courthouse
P.O. Box 7396
Syracuse, NY 13261-7396

Hon. David E. Peebles
Federal Building & U.S. Courthouse
P.O. Box 7346
Syracuse, NY 13261-7346

Hon. David R. Homer
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

Hon. George Lowe
Federal Building & U.S. Courthouse
P.O. Box 7346
Syracuse, NY 13261-7346

Hon. Randolph F. Treece
James T. Foley U.S. Courthouse
445 Broadway, Room 407
Albany, NY 12207

Hon. Larry A. Kudrle
53 Court Street
Plattsburgh, NY 12901-2834

BANKRUPTCY JUDGES:

Hon. Stephen D. Gerling, Chief Judge
Alexander Pirnie Federal Building
Utica, NY 13501

Hon. Robert E. Littlefield, Jr.
James T. Foley U.S. Courthouse
Albany, NY 12201

UNITED STATES ATTORNEY:

Federal Building and U.S. Courthouse
Room 900
100 South Clinton Street
Syracuse, NY 13261
315-448-0672

Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, NY 13901
607-773-2887

James T. Foley U.S. Courthouse
445 Broadway, Room 231
Albany, NY 12201
518-431-0247

UNITED STATES COURT REPORTERS:

Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, NY 13901

Federal Building and U.S. Courthouse
100 South Clinton Street
Syracuse, NY 13260

James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12201

UNITED STATES PROBATION OFFICE:
Paul DeFelice, Chief Probation Officer

James T. Foley U.S. Courthouse
445 Broadway
P.O. Box 433
Albany, NY 12201
518-257-1700

P.O. Box 7035
Syracuse, NY 13261-7035
315-234-8700

DISTRICT COURT CLERK:
Lawrence K. Baerman, Clerk

Federal Building and U.S. Courthouse
P.O. Box 7367
100 South Clinton Street
Syracuse, NY 13261-7367
315-234-8500

U.S. Courthouse
15 Henry Street
Binghamton, NY 13901
607-773-2893

James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207
518-257-1800

U.S. Courthouse
Alexander Pirnie Federal Building
10 Broad Street
Utica, NY 13501
315-793-8151

BANKRUPTCY CLERK:
Richard G. Zeh, Sr.

James T. Foley U.S. Courthouse
Albany, NY 12201
518-257-1661

Alexander Pirnie Federal Building
Utica, NY 13501
315-793-8101

UNITED STATES MARSHAL:

Alexander Pirnie Federal Building
10 Broad Street
Utica, NY 13501
315-793-8109

James T. Foley U.S. Courthouse
P.O. Box 1128
Albany, NY 12201
518-431-0101

Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, NY 13901
607-773-2723

Federal Building and U.S. Courthouse
100 South Clinton Street
Syracuse, NY 13261
315-448-0340

FEDERAL PUBLIC DEFENDER
Alex Bunin

Syracuse Office
4 Clinton Exchange Building
Syracuse, NY 13202
315-701-0080

Albany Office
39 North Pearl Street
Albany, NY 12207
518-436-1850

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LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CASES

SECTION I.
SCOPE OF THE RULES
ONE FORM OF ACTION

1.1 Scope of the Rules.

(a) Title and Citation.

These are the Local Rules of Practice for the United States District Court for the Northern District of New York. They shall be cited as "L.R.___."

(b) Effective Date; Transitional Provision.

These Rules became effective on **January 1, 2007.** Recent amendments are noted with the phrase (Amended January 1, 2007).

(c) Scope of the Rules; Construction.

These Rules supplement the Federal Rules of Civil and Criminal Procedure. They shall be construed so as to be consistent with those Rules and to promote the just, efficient and economical determination of every action and proceeding.

(d) Sanctions and Penalties for Noncompliance.

Failure of an attorney or of a party to comply with any provision of these Rules, General Orders of this District, Orders of the Court, or the Federal Rules of Civil or Criminal Procedure shall be a ground for imposition of sanctions.

(e) Definitions.

1. The word "court," except where the context otherwise requires, refers to the United States District Court for the Northern District of New York.

2. The word "judge" refers either to a United States District Judge or to a United States Magistrate Judge, where appropriate.

3. The words "assigned judge," except where the context otherwise requires, refer to the United States District Judge or United States Magistrate Judge exercising jurisdiction with respect to a particular action or proceeding.

4. The words "Chief Judge" refer to the Chief Judge or a judge temporarily performing the duties of Chief Judge under 28 U.S.C. § 136(e).

5. The word "clerk" refers to the Clerk of the Court or to a deputy clerk whom the Clerk designates to perform services of the general class provided for in Fed. R. Civ. P. 77.

6. The word "marshal" refers to the United States Marshal of this District and includes deputy marshals.

7. The word "party" shall include a party's representative.

8. Reference in these Rules to an attorney for a party is in no way intended to preclude a party from appearing pro se, in which case reference to attorney applies to the pro se litigant.

9. Where appropriate, the "singular" shall include the "plural" and vice versa.

1.2 Availability of the Local Rules.

Copies of these Rules are available from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov**."

2.1 One Form of Action.

[Reserved.]

SECTION II.
COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS.

3.1 Civil Cover Sheet.

A completed civil cover sheet on a form available from the Clerk shall be submitted with every complaint, notice of removal, or other document initiating a civil action. This requirement is solely for administrative purposes, and matters appearing on the civil cover sheet have no legal effect in the action.

3.2 Venue.

The Court's Civil Case Assignment Plan shall control venue for civil cases filed in the Northern District of New York.

3.3 Complex and Multi-district Litigation.

(a) If the judge presiding over a case determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen months from the date the complaint is filed, the judge may design and issue a particularized case management order that will move the case to trial as quickly as the complexity of the case allows.

(b) The parties shall promptly notify the Court in writing if any action commenced is appropriate for multi-district litigation.

4.1 Service of Process.

(a) Service shall be made in the manner specified in the Federal Rules of Civil Procedure or as required or permitted by statute. The party seeking service of papers shall be responsible for arranging the service. The Clerk is authorized to sign orders appointing persons to serve process.

(b) Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25 which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice. In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4.

(c) At the time the complaint or notice of removal is served, the party seeking to invoke the jurisdiction of this Court shall also serve on all parties the following materials:

1. Judicial Case Assignment Form;

2. Joint Civil Case Management Plan Containing Notice of Initial Pretrial Conference;

3. Notice and Consent Form to Proceed Before a United States Magistrate Judge; and

4. Notice and Consent Form for the Court Sponsored Alternative Dispute Resolution Procedures.

The Clerk shall furnish these material to the party seeking to invoke the jurisdiction of this Court at the time the complaint or notice of removal is filed.

5.1 Service and Filing of Papers.

(a) All pleadings and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure and shall be in the form prescribed by L.R. 10.1. The party or its designee shall declare, by affidavit or certification, that it has provided all other parties in the action with all documents it has filed with the Court. See also L.R. 26.2 (discovery material).

(b) In civil actions where the Court has directed a party to submit an order or judgment, that party shall file all such orders or judgments in duplicate, and the Clerk's entry of such duplicate in the proper record book shall be deemed in compliance with Fed. R. Civ. P. 79(b). Such party shall also furnish the Clerk with a sufficient number of additional copies for each party to the action, which the Clerk shall mail with notice of entry in accordance with Fed. R. Civ. P. 77(d).

(c) In a civil action, upon filing a notice of appeal, the appellant shall furnish the Clerk with a sufficient number of copies for mailing in accordance with Fed. R. App. P. 3(d).

(d) Upon filing of a motion pursuant to Fed. R. Civ. P. 65.1, the moving party shall furnish the Clerk with a sufficient number of copies of the motion and notice of the motion in compliance with the mailing provision of that rule.

(e) No paper on file in the Clerk's office shall be removed except pursuant to the Court's order.

(f) All civil complaints submitted to the Clerk for filing shall be accompanied by a summons or, if electing to serve by mail, the approved service by mail forms, together with sufficient copies of the complaint for service on each of the named defendants.

(g) A private process server shall serve every summons, except as otherwise required by statute or rule or as the Court directs for good cause shown. A private process server is any person authorized to serve process in an action brought in the New York State Supreme Court or in the court of general jurisdiction of the State in which service is made.

(h) In the case of a prisoner's civil rights action, or any action where a party has been granted leave to proceed in forma pauperis, the Marshal shall serve the summons and complaint by regular mail pursuant to Fed. R. Civ. P. 4(c)(2). The Marshal shall file the return or other acknowledgment of service with the Court. The return shall constitute *prima facie* evidence of the service of process. If no acknowledgment of service is filed with the Court, the Marshal shall notify the plaintiff and, if the plaintiff so requests, shall make personal service as provided in Fed. R. Civ. P. 4.

5.1.2 Electronic Case Filing

All cases filed in this Court may be assigned to the Electronic Case Files System ("ECF") in accordance with the *Procedural Order on Electronic Case Filing* **(General Order #22)**, the provisions of which are incorporated herein by reference, and which the Court may amend from time to time. Copies of General Order # 22 are available at the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov.**"

5.2 Prepayment of Fees.

(a) Filing Fees.

A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee before the case will be docketed and process issued. Title 28 U.S.C. § 1915 and L. R. 5.4 govern in forma pauperis proceedings.

(b) Miscellaneous Fees.

The Clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance.

5.3 Schedule of Fees.

Fee schedules are available at the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov.**"

5.4 Civil Actions Filed In Forma Pauperis; Applications for Leave to Proceed In Forma Pauperis.

(a) On receipt of a complaint or petition and an application to proceed in forma pauperis, and supporting documentation as required for prisoner litigants, the Clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The complaint, application, and supporting documentation then shall be forwarded to the assigned Magistrate Judge for a determination of whether the applicant will be granted leave to proceed in forma pauperis and whether the complaint or petition shall be served by the Marshal. Prior to service of process by the Marshal pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915 to determine whether *sua sponte* dismissal is appropriate. The granting of an in forma pauperis application shall in no way relieve the party of the obligation to pay all other fees for which such party is responsible regarding such action, including, but not limited to, copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act ("PLRA"), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified in forma pauperis application; and

(B) Submit the authorization form issued by the Clerk's office.

2. (A) (i) If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").

(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner fails to fully comply with the terms of such Order within such period of time, the action shall be dismissed.

(B) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.

3. After being notified of the filing of the civil action, the agency having custody of the prisoner shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning the action.

5.5 Filing by Facsimile.

The Clerk's office shall not accept any facsimile transmission unless the Court gives prior approval.

5.6 Service of the Writ in Exclusion and Deportation Cases.

(a) After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served on, the master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ shall not be recognized as binding without proper service. Service shall be made by delivery of the original writ to the respondent while the alien is in custody. Service shall not be made on a master after a ship has cast off her moorings.

(b) In case the writ is served on the master of a ship or on the commanding officer of an airplane, such person may deliver the alien at once to the officer from whom such person received the alien for custody until the return day. In such case, the writ shall be deemed returnable promptly; and the custody of the officer receiving the alien shall be deemed that of the respondent, pending disposition of the writ.

5.7 Documents to be provided to the Clerk.

All pretrial and settlement conference statements shall be provided to the Clerk but not filed. These documents are not for public view. Forms for preparation of pretrial and settlement conference statements are available from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov**."

6.1 Calculation of Time Periods.

[Reserved.]

SECTION III.
PLEADINGS AND MOTIONS

7.1 Motion Practice.

Introduction - Motion Dates and Times.

Unless the Court directs otherwise, motions shall be made returnable at the **next regularly scheduled motion date at least thirty-one days from the date the motion is filed and served.** The moving party shall select a return date in accordance with the procedures set forth in subdivision (b). If the return date selected is not the next regularly scheduled motion date, or if no return date is selected, the Clerk will set the proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form provided to the parties at the commencement of the litigation or may be obtained from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov."**

(a) Papers Required.

Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit, and proof of service on all the parties. See L.R. 5.1(a). Additional requirements for specific types of motions, including cross-motions, see L.R. 7.1(c), are set forth in this rule.

1. Memorandum of Law.

No party shall file or serve a memorandum of law that exceeds twenty- five (25) pages in length, unless leave of the judge hearing the motion is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis, Juris, etc.) shall be accompanied by copies of the decisions.

When making a motion based upon a rule or statute, the moving papers must specify the rule or statute upon which the motion is predicated.

A memorandum of law is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
(B) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
(C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
(D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
(E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery; and
(F) a motion pursuant to Fed. R. Civ. P. 55 for default.

2. Affidavit.

An affidavit must not contain legal arguments but must contain factual and procedural background as appropriate for the motion being made.

An affidavit is required for all motions except the following:

(A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
(B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
(C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.

3. Summary Judgment Motions.

Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact about which the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute in separately numbered paragraphs. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing party.

4. Motions to Amend or Supplement Pleadings or for Joinder or Interpleader.
(Amended January 1, 2007)

An unsigned copy of the proposed amended pleading must be attached to a motion brought under Fed. R. Civ. P. 14, 15, 19-22. Except as the Court otherwise provides, the proposed amended pleading must be a complete pleading, which will supersede the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means.

Where leave to supplement a pleading is sought under Fed. R. Civ. P. 15(d), the proposed supplemental pleading must be limited to transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. The paragraphs in the proposed pleading must be numbered consecutively to the paragraphs contained in the pleading that is to be supplemented. In addition to the pleading requirements set forth above, the party requesting leave to supplement must set forth specifically the proposed supplements and identify the supplements in the proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means.

Caveat: The granting of the motion does not constitute the filing of the amended pleading. After leave is given, unless the Court otherwise orders, the moving party must file and serve the original signed amended pleading within ten (10) days of the Order granting the motion.

(b) Motions.

1. Dispositive Motions.

All motion papers must be filed with the Court and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion. The Notice of Motion must state the return date that the moving party has selected.

Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers may not exceed ten (10) pages and must be filed with the Court and served upon the other parties not less than **ELEVEN DAYS** prior to the return date of the motion.

A surreply is not permitted.

All original motion papers, including memoranda of law and supporting affidavits, if any, shall be filed in accordance with the *Administrative Procedures for Electronic Case Filing* (General Order #22) and/or the case assignment form provided to the parties at the commencement of the litigation. The assigned judge may request that the parties provide a courtesy copy of the motion papers.

2. Non-Dispositive Motions.

Prior to making any non-dispositive motion before the assigned Magistrate Judge, the parties must make **good faith efforts among themselves to resolve or reduce all differences relating to the non-dispositive issue**. If, after conferring, the parties are unable to arrive at a mutually satisfactory resolution, the party seeking relief must then request a court conference with the assigned Magistrate Judge.

A court conference is a prerequisite to filing a non-dispositive motion before the assigned Magistrate Judge. Within the notice of motion, the moving party is required to set forth the date that the court conference with the Magistrate Judge was held regarding the issues being presented in the motion. Failure to include this information within the notice of motion may result in the rejection of the motion papers.

Actions which involve an incarcerated, pro se party are not subject to the requirement that a court conference be held prior to filing a non-dispositive motion.

Unless the Court orders otherwise, all motion papers must be filed with the Court and served upon the other parties not less than **THIRTY-ONE DAYS** prior to the return date of the motion.

Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN DAYS** prior to the return date of the motion.

Reply papers and adjournments are not permitted without the Court's prior permission.

3. Failure To Timely File or Comply.

The Court shall not consider any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule unless good cause is shown. Where a properly filed motion is unopposed and the Court determines that the moving party has met its burden to demonstrate entitlement to the relief requested therein, the non-moving party's failure to file or serve any papers as this Rule requires shall be deemed as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. Notice should be provided at the earliest practicable date, but in any event no less than **FOURTEEN CALENDAR DAYS** prior to the scheduled return date of the motion, unless for good cause shown. **Failure to comply with this Rule may result in the Court imposing sanctions.**

(c) Cross-Motions.

A cross-motion may be filed and served at the time opposition papers to the original motion are filed and served (not less than **SEVENTEEN DAYS** prior to the return date of the motion). If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed twenty-five (25) pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed twenty-five (25) pages in length, exclusive of exhibits. The reply/opposition papers must be filed with the Court and served on the other parties not less than **ELEVEN DAYS** prior to the return date of the original motion.

The cross-moving party may not reply in further support of its cross-motion without the Court's prior permission.

(d) Discovery Motions. **(Amended January 1, 2007)**

The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention.

2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.

3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a court conference with the assigned Magistrate Judge. Incarcerated, pro se parties are not subject to the court conference requirement prior to filing a motion to compel discovery. The assigned Magistrate Judge may direct the party making the request for a court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing party and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the item should be allowed or disallowed.

4. Following a request for a discovery conference, the Court may schedule a conference and advise all parties of a date and time. The discovery conference may be conducted by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance, as the assigned Magistrate Judge directs.

5. Following a discovery conference, the Court may direct the prevailing party to submit a proposed order, on notice to the other parties.

6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, at the Court's discretion, the resisting party will be subject to the sanction of the imposition of costs, including the attorneys' fees of opposing counsel in accordance with Fed. R. Civ. P. 37.

7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the privilege claimed. No generalized claims of privilege may be made.

8. Any motion to compel discovery that these Rules authorize shall be filed no later than **TEN CALENDAR DAYS** after the discovery cut-off date. See L.R. 16.2. Any motion filed pursuant to Fed. R. Civ. P. 37 shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the Court.

(e) Order to Show Cause.

All motions brought by Order to Show Cause shall conform with the requirements set forth in L. R. 7.1(a)(1) and (2). **Immediately after filing an Order to Show Cause, the moving party must telephone the Chambers of the presiding judicial officer and inform Chambers staff that it has filed an Order to Show Cause.** Telephone numbers for all Chambers may be obtained from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov."** The Court shall determine the briefing schedule and return date applicable to motions brought by Order to Show Cause.

In addition to the requirements set forth in Local Rule 7.1(a)(1) and (2), a motion brought by Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. Reasonable advance notice of the application for an Order to Show Cause must be given to the other parties, except in those circumstances where the movant can demonstrate, in a detailed and specific affidavit, good cause and substantial prejudice that would result from the requirement of reasonable notice.

An Order to Show Cause must contain a space for the assigned judge to set forth (a) the deadline for supporting papers to be filed and served, (b) the deadline for opposing papers to be filed and served, and (c) the date and time for the hearing.

(f) Temporary Restraining Order.

A temporary restraining order may be sought by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. Any application for a temporary restraining order must be served on all other parties unless Fed. R. Civ. P. 65 otherwise permits. L.R. 7.1(b)(2) governs motions for injunctive relief, other than those brought by Order to Show Cause. L.R. 7.1(e) governs motions brought by Order to Show Cause.

(g) Motion for Reconsideration. **(Amended January 1, 2007)**

Motions for reconsideration or reargument, unless Fed. R. Civ. P. 60 otherwise governs, may be filed and served no later than **TEN CALENDAR DAYS** after the entry of the challenged judgment, order, or decree. All motions for reconsideration shall conform with the requirements set forth in L.R. 7.1(a)(1) and (2). The briefing schedule and return date applicable to motions for reconsideration shall conform to L.R. 7.1(b)(2). A motion for reconsideration of a Magistrate Judges's determination of a non-dispositive matter shall toll the ten (10) day time period to file objections pursuant to L.R. 72.1(b). Motions for reconsideration or reargument will be decided on submission of the papers, without oral argument, unless the Court directs otherwise.

(h) Oral Argument.

On all motions made to a district court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the district court judge's discretion, or on consideration of a request of any party, a motion returnable before a district court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the Magistrate Judge *sua sponte* directs or grants the request of any party for oral argument.

(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.

A party who presents vexatious or frivolous motion papers or fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorneys' fees to opposing counsel.

Local Rule 7.1(j) Adjournments of Dispositive Motions

After the moving party files and serves its motion papers requesting dispositive relief, but before the time that opposing papers must be filed and served, the parties may agree to an adjournment of the return date for the motion. However, any such adjournment may not be for more than **THIRTY-ONE DAYS** from the return date that the moving party selected. In addition, the parties may agree to new dates for the filing and service of opposition and reply papers. However, all papers must be filed with the Court and served upon the other parties not less than **ELEVEN DAYS** prior to the newly selected return date of the motion. If the parties agree to such an adjournment, they must file a letter with the Court stating the following: (1) that they have agreed to an adjournment of the return date for the motion, (2) the new return date, (3) the date on which opposition papers must be filed and served, and (4) the date on which reply papers must be filed and served. The parties may not agree to any further adjournment.

If one of the parties seeks an adjournment of not more than **THIRTY-ONE DAYS** from the return date that the moving party selected, but the other parties will not agree to such an adjournment, the party seeking the adjournment must file a letter request with the Court, and serve the same upon the other parties, stating the following: (1) that the parties cannot agree to an adjournment, (2) the reason that the party is seeking the adjournment, and (3) the suggested return date for the motion. Within three days of receiving this letter request, the parties who have not agreed to an adjournment may file a letter with the Court, and serve the same upon the other parties, setting forth the reasons that they do not agree to the requested adjournment. The Court will then take the request under advisement and, as soon as practicable, will enter an order granting or denying the request and, if granting the request, setting forth new dates for the filing and serving of opposition and reply papers.

If any party seeks an adjournment of the return date that is more than **THIRTY-ONE DAYS** from the return date that the moving party selected, that party must file a letter request with the Court stating the following: (1) why a longer adjournment is needed and (2) a suggested return date for the motion. The Court will grant such an adjournment only upon a showing of exceptional circumstances. In the alternative or if the Court denies the request for an adjournment, the moving party may **withdraw its motion without prejudice** to refile at a later date. The moving party must refile its motion within the time frame set in the Uniform Pretrial Scheduling Order unless either the assigned District Judge or the assigned Magistrate Judge has granted an extension of the motion-filing deadline.

8.1 Personal Privacy Protection.

Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings that they file with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

1. **Social security numbers**. If an individual's social security number must be included in a document, use only the last four digits of that number.
2. **Names of minor children**. If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers**. If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses**. If a home address must be used, use only the City and State.

In addition, caution shall be exercised when filing documents that contain the following:

1) personal identifying number, such as a driver's license number;
2) medical records, treatment and diagnosis;
3) employment history;
4) individual financial information; and
5) proprietary or trade secret information.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may

a. file an unredacted version of the document under seal, or

b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal and may be amended as of right.

Counsel is strongly urged to discuss this issue with all their clients so that they may make an informed decision about the inclusion of certain information. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties.** The Clerk will not review each pleading for compliance with this Rule. Counsel and the parties are cautioned that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

Exception: Transcripts of the administrative record in social security proceedings and state court records relating to a habeas corpus petitions are exempt from this requirement.

9.1 Request for Three-Judge Court.

Whenever a party believes that the relief requested in a lawsuit is such that it may be granted only by a three-judge court, the words "Three-Judge Court," or the equivalent, shall be included immediately following the title of the first pleading in which the cause of action requesting a three-judge court is asserted. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in an attached statement. On the convening of a three-judge court, in addition to the original papers on file, the following shall be made available to the Clerk for distribution: three copies of the pleadings, three copies of the motion papers, and three copies of all memoranda of law.

9.2 Requirement to File a Civil RICO Statement.

In any action in which a party asserts a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., the party asserting such a claim shall file, within thirty (30) days of the filing of the pleading containing such claim, a RICO statement. This statement shall conform to the format that the Court has adopted and shall be entitled "RICO Statement." Copies of General Order #14 - CIVIL RICO STATEMENT FILING REQUIREMENTS may be obtained from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov.**" This statement shall state in detail and with specificity the information requested in the RICO Statement. The Court shall construe the RICO Statement as an amendment to the pleadings.

10.1 Form of Papers.

(a) Form Generally. All pleadings, motions, and other documents presented for filing shall be in the following form:

- 8 ½ x 11 inch white paper of good quality,
- plainly and legibly written, typewritten, printed or reproduced,
- without erasures or interlineation materially defacing them,
- in black ink,
- pages fastened,
- text in minimum 12 point type; footnotes minimum 10 point type,
- all text shall be single sided and double-spaced
- block quotation and footnotes may be single-spaced,
- extensive footnotes may not be used to circumvent page limitations,
- compacted or other compressed printing features are prohibited,
- typed matter not exceeding 6-l/2 x 9-1/2 inches on subsequent pages,
- pages consecutively numbered,
- punched with two (2) holes approximately 1/4 inch in diameter, centered 2-3/4 inches apart, 1/2 to 5/8 inch from top edge of document,
- the Court may order electronic submission in a WordPerfect-compatible format.

Documents that do not comply with the requirements listed above may be rejected upon order of the Court.

(b) Information required. The following information must appear on each document filed:

1. A caption, which must include the title of the Court, the title of the action, the civil action number of the case, the initials of the assigned judges, and the name or nature of the paper in sufficient detail for identification. **Affidavits and declarations must be separately captioned and must not be physically attached to the Notice of Motion or Memorandum of Law.**

2. Each document must identify the person filing the document. This identification must include an original signature of the attorney or pro se litigant; the typewritten name of that person; the address of a pro se litigant; and the bar roll number, office address, telephone number, e-mail address and fax number of the attorney. **All attorneys of record and pro se litigants must immediately notify the Court of any change of address.** The notice of change of address is to be filed with the Clerk and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply.

   Attorneys shall also file a new registration statement within ten days of a change of address, firm name, telephone number, e-mail address and fax number. Attorney registration forms may be obtained at the Court's webpage at **"www.nynd.uscourts.gov;"** see also L.R. 41.2(b); L.R. 83.1(e).

(c) The record on hearings, unless ordered printed, shall be plainly typewritten and bound in book form, paged and indexed.

(d) All documents including exhibits must be in the English language or be accompanied by an English translation.

11.1 Signing of Pleadings, Motions, and Other Papers; Sanctions.

[Reserved.]

12.1 Defenses and Objections - How Presented.

[Reserved.]

13.1 Counterclaims and Cross-Claims.

[Reserved.]

14.1 Impleader.

See L.R. 7.1(a)(4).

15.1 Form of a Motion to Amend and Its Supporting Documentation.

See L.R. 7.1(a)(4).

16.1 Civil Case Management.

This Court has found that the interests of justice are most effectively served by adopting a systematic, differential case management system that tailors the level of individualized and case-specific management to such criteria as case complexity, time required to prepare a case for trial, and availability of judicial and other resources.

(a) Filing of Complaint/Service of Process. Upon the filing of a complaint, the Clerk shall issue to the plaintiff General Order 25, which requires, among other things, service of process upon all defendants within sixty (60) days of the filing of the complaint. This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice.

(b) Assignment of District Judge/Magistrate Judge. Upon filing of a complaint, the Clerk shall assign a district judge and a magistrate judge to preside over each case. The assignment shall be made in accordance with the provisions of the case assignment plan. Once assigned, either judicial officer shall have authority to design and issue a case management order.

(c) Initial Pretrial Conference. Except for cases excluded under section II of General Order 25, an initial pretrial conference pursuant to Fed. R. Civ. P. 16 shall be held within 120 days after the filing of the complaint. The Clerk shall set the date of this conference upon the filing of the complaint. The purpose of this conference will be to prepare and adopt a case-specific management plan which will be memorialized in a case management order. See subsection (d) below. In order to facilitate the adoption of such a plan, prior to the scheduled conference, counsel for all parties shall confer among themselves as required by Fed. R. Civ. P. 26(f) and shall use the Civil Case Management Plan form contained in the General Order 25 filing packet. The parties' jointly-proposed plan, or if consensus cannot be reached, each party's proposed plan, shall be filed with the Clerk at least ten (10) business days prior to the scheduled pretrial conference.

(d) Subject Matter of Initial Pretrial Conference. At the initial pretrial conference, the Court shall consider, and the parties shall be prepared to discuss, the following:

1. Deadlines for joinder of parties, amendment of pleadings, completion of discovery, and filing of dispositive motions;

2. Trial date;

3. Requests for jury trial;

4. Subject matter and personal jurisdiction;

5. Factual and legal bases for claims and defenses;

6. Factual and legal issues in dispute;

7. Factual and legal issues that can be agreed upon or which can be narrowed through motions and which will expedite resolution of the dispute;

8. Specific relief requested, including method for computing damages;

9. Intended discovery and proposed methods to limit and/or decrease time and expense thereof;

10. Suitability of case for voluntary arbitration;

11. Measures for reducing length of trial;

12. Related cases pending before this or other U.S. District Courts;

13. Procedures for certifying class actions, if appropriate;

14. Settlement prospects; and

15. If the case is in the ADR track, choice of ADR method and estimated time for completion of ADR.

(e) Uniform Pretrial Scheduling Order. Upon completion of the initial pretrial conference, the presiding judge may issue a Uniform Pretrial Scheduling Order setting forth deadlines for joinder of parties, amendment of pleadings, production of expert reports, completion of discovery, and filing of motions; a trial ready date; the requirements for all trial submissions; and if an ADR track case, the ADR method to be used and the deadline for completion of ADR.

(f) Enforcement of Deadlines. Deadlines that the Court institutes in any case management order shall be strictly enforced and shall not be modified by the Court, even upon stipulation of the parties, except upon a showing of good cause.

16.2 Discovery Cut-Off. (Amended January 1, 2007)

The "discovery cut-off" is that date by which all responses to written discovery, including requests for admissions, shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this Rule. Discovery requests that call for responses or scheduled depositions after the discovery cut-off will not be enforceable except by order of the court for good cause shown. Motions to compel discovery shall be filed and served no later than ten (10) days after the discovery cut-off. See L.R. 7.1(d)(8).

SECTION IV.
PARTIES

17.1 Actions by or on Behalf of Infants and/or Incompetents.

(a) An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the Court embodied in an order, judgment or decree. The proceedings on an application to settle or compromise such an action shall conform to the New York State statutes and rules; but the Court, for good cause shown, may dispense with any New York State requirement.

(b) The Court shall authorize payment of a reasonable attorneys' fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise, and shall determine the fee and disbursements, after due inquiry as to all charges against the amount recovered.

(c) The Court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems will best protect the interest of the infant or incompetent.

18.1 Joinder of Claims and Remedies.

See L.R. 7.1(a)(4).

19.1 Joinder of Persons Necessary for Just Adjudication.

See L.R. 7.1(a)(4).

20.1 Permissive Joinder of Parties.

See L.R. 7.1(a)(4).

21.1 Misjoinder and Nonjoinder of Parties.

See L.R. 7.1(a)(4).

22.1 Interpleader.

[Reserved.]

23.1 Designation of "Class Action" in the Caption.

(a) In any case sought to be maintained as a class action pursuant to Fed. R. Civ. P. 23, the complaint or other pleading asserting a class action shall include next to its caption the words "Class Action."

(b) The plaintiff also shall check the appropriate box on the Civil Cover Sheet at the time of filing the action.

23.2 Certification of a Class Action

As soon as practicable after the commencement of an action designated as a "Class Action," the plaintiff shall file a motion, with the assigned district judge, seeking an order of the court determining that the action may be maintained as a class action.

24.1 Intervention.

[Reserved.]

25.1 Substitution of Parties.

[Reserved.]

SECTION V.
DEPOSITIONS AND DISCOVERY

26.1 Form of Certain Discovery Documents.

The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In answering or objecting to interrogatories, requests for admission, or requests to produce or inspect, the responding party shall first state verbatim the propounded interrogatory or request and immediately thereafter the answer or objection.

26.2 Filing Discovery.

Parties shall not file notices to take depositions, transcripts of depositions, interrogatories, requests for documents, requests for admissions, disclosures, and answers and responses to these notices and requests unless the Court orders otherwise; provided, however, that discovery material to be used at trial or in support of any motion, including a motion to compel or for summary judgment, shall be filed with the Court prior to the trial or motion. Any motion pursuant to Fed. R. Civ. P. 37 shall be accompanied by the discovery materials to which the motion relates if those materials have not previously been filed with the Court.

26.3 Production of Expert Witness Information.

There shall be binding disclosure of the identity of expert witnesses. Such disclosure, including a curriculum vitae and, unless waived by the other parties, service of the expert's written report pursuant to Fed. R. Civ. P. 26(a)(2)(B), must be made before the completion of discovery in accordance with the deadlines contained in the Uniform Pretrial Scheduling Order or any other Court order. Failure to comply with these deadlines may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).

If a treating physician is expected to be called as a witness, he or she must be identified in accordance with the timetable provided in the Uniform Pretrial Scheduling Order or other Court order.

For information on the number of experts allowed in Patent cases see Local Rule 83.8.

26.4 Timing of Discovery.

Fed. R. Civ. P. 26(d), which prohibits discovery prior to a meeting and conference between the parties, and Fed. R. Civ. P. 26(f), which directs parties to meet and confer with each other relative to the nature and basis of claims and defenses to a lawsuit, shall not apply to any action in which a party is incarcerated.

27.1 Depositions Before Action or Pending Appeal.

[Reserved.]

28.1 Persons Before Whom Depositions Shall be Taken.

[Reserved.]

29.1 Discovery Stipulations.

[Reserved.] See L.R. 16.1(f); 16.2.

30.1 Depositions.

Unless the Court orders otherwise pursuant to Fed. R. Civ. P. 5(d) and 26(c), transcripts of depositions when received and filed by the Clerk, shall then be opened by the Clerk who shall affix the filing stamp to the cover page of the transcripts. See L.R. 26.2.

31.1 Depositions On Written Questions.

[Reserved.]

32.1 Use of Depositions in Court Proceedings.

[Reserved.]

33.1 Interrogatories.

[Reserved.]

34.1 Production of Documents and Things.

[Reserved.]

35.1 Physical and Mental Examination of Persons.

[Reserved.]

36.1 Requests for Admission.

[Reserved.]

37.1 Form of Discovery Motions.

See L.R. 7.1(d).

SECTION VI.
TRIALS

38.1 Notation of "Jury Demand" in the Pleading.

(a) If a party demands a jury trial as permitted by Fed. R. Civ. P. 38(b), the party shall place a notation on the front page of the initial pleading which that party signed, stating "Demand for Jury Trial" or an equivalent statement. This notation shall serve as a sufficient demand under Fed. R. Civ. P. 38(b).

(b) In cases removed from state court, a party may file a "Demand for Jury Trial" that is separate from the initial pleading. See Fed. R. Civ. P. 81.3; L.R. 81.3.

39.1 Opening Statements and Closing Arguments.

The Court will determine the time to be allotted for opening and closing arguments.

39.2 Submission of Pretrial Papers.

All pretrial submissions are to be filed in accordance with the requirements of the Uniform Pretrial Scheduling Order unless the Court orders otherwise.

40.1 Case Assignment System.

Immediately upon the filing of a civil action or proceeding, the Clerk shall assign to such action or proceeding a district judge and magistrate judge pursuant to the Court's Assignment Plan. See General Order #12.

40.2 Preferences.

Only the following causes shall be entitled to preferences:

1. Issues in bankruptcy framed by an answer to a bankruptcy petition which are triable by a jury;

2. Causes entitled to a preference under any statute of the United States;

3. Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment, or after a mistrial;

4. Causes to which a receiver appointed by any court or a trustee or debtor-in-possession in a bankruptcy proceeding is a party;

5. Causes which, in the discretion of the assigned judge, are entitled to a preference for meritorious reasons.

Preferences shall be obtained only by order of the Court on two-days notice of the application.

40.3 Trial Calendar.

The trial calendar number shall be the same as the docket number. No note of issue is required. Each judge shall dispose of cases as required by law and the effective administration of justice.

41.1 Settlements, Apportionments and Allowances in Wrongful Death Actions.

In an action for wrongful death

1. The Court shall apportion the proceeds of the action only where required by statute;

2. The Court shall approve a settlement only in a case covered by subdivision 1; and

3. The Court shall approve an attorneys' fee only upon application in accordance with the provisions of the Judiciary Law of the State of New York.

41.2 Dismissal of Actions.

(a) Each judge shall from time to time notice for hearing on a dismissal calendar such actions or proceedings assigned to that judge which appear not to have been diligently prosecuted. Whenever it appears that the plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge shall order it dismissed. In the absence of an order by the assigned judge or magistrate judge setting any date for any pretrial proceeding or for trial, the plaintiff's failure to take action for four (4) months shall be presumptive evidence of lack of prosecution. Unless the assigned judge or magistrate judge otherwise orders, each party shall, not less than ten (10) days prior to the noticed hearing date, serve and file a certificate setting forth the status of the action or proceeding and whether good cause exists to dismiss it for failure to prosecute. The parties need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable. If a party fails to respond as this Rule requires, the Court shall issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires. Nothing in this Rule shall preclude any party from filing a motion to dismiss an action or proceeding for failure to prosecute under Fed. R. Civ. P. 41(b).

(b) Failure to notify the Court of a change of address in accordance with L.R. 10.1(b) may result in the dismissal of any pending action.

41.3 Actions Dismissed by Stipulation.

Stipulations of dismissal shall be signed by each attorney and/or pro se litigant appearing in the action. Any action which is submitted for dismissal by stipulation of the parties shall contain the following language, if applicable: "That no party hereto is an infant or incompetent." For actions involving an infant or incompetent, see L.R. 17.1.

42.1 Separation of Issues in Civil Suits.

[Reserved.]

43.1 Examination of Witnesses.

[Reserved.]

44.1 Official Records.

[Reserved.]

45.1 Subpoenas.

[Reserved.] See Fed. R. Civ. P. 45.

46.1 Exceptions to Rulings.

[Reserved.]

47.1 Grand and Petit Jurors.

Grand and petit jurors to serve at stated and special sessions of the Court shall be summoned pursuant to the Jury Selection and Service Act of 1968, as amended, codified in Title 28 of the United States Code, and the Plan adopted and approved by the judges of this Court and approved by the Judicial Council for the Court of Appeals for the Second Circuit. The selection of grand and petit jurors is made by random selection from voter registration lists and supplemented by, if available, lists of licensed drivers from the New York State Department of Motor Vehicles. Court sessions, pursuant to 28 U.S.C. § 112, are designated to be held in the Northern District of New York in the cities of Albany, Auburn, Binghamton, Malone, Syracuse, Utica and Watertown. For jury selection purposes under § 1869(c) of the Act, this District is divided into divisions from which jurors are selected for the particular place where jury sessions are to be held. The divisions are as follows:

1. ALBANY DIVISION: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren and Washington Counties.

2. BINGHAMTON DIVISION: Broome, Chenango, Delaware, Otsego and Tioga Counties.

3. SYRACUSE - AUBURN DIVISION: Cayuga, Cortland, Madison, Onondaga, Oswego, and Tompkins Counties.

4. UTICA DIVISION: Fulton, Hamilton, Herkimer, Montgomery and Oneida Counties.

5. WATERTOWN DIVISION: Jefferson, Lewis and St. Lawrence Counties.

6. MALONE DIVISION: Clinton, Essex and Franklin Counties.

A copy of the Plan for the NDNY for Random Selection of Grand and Petit Jurors is available upon request at the Clerk's office or on the Court's webpage at "**www.nynd.uscourts.gov.**"

47.2 Jury Selection.

(a) Voir Dire. Voir dire examination shall be conducted by the Court, by the attorneys, or by both, as the Court shall determine. Within the Court's sound discretion, the attorneys' examination shall be limited by time and subject matter.

(b) Impanelment of the Jury. Unless the Court otherwise orders, the jury shall be impaneled by use of the "Strike" or "Jury Box" selection method at the Court's discretion.

(c) Peremptory Challenges. Unless otherwise provided, all parties shall alternately exercise their peremptory challenges.

(d) Waiver of Peremptory Challenges. Except when using the strike method, to pass or refuse to exercise a peremptory challenge shall constitute a waiver of the right to exercise the challenge.

47.3 Assessment of Juror Costs.

Whenever any civil action scheduled for jury trial is postponed, settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including marshal's fees, mileage and per diem, shall be assessed against the parties and/or their attorneys as the Court directs, unless the Court and the Clerk's office are notified at least one full business day prior to the day on which the action is scheduled for trial, in time to advise the jurors that it shall not be necessary for them to attend. The parties shall receive an advance estimation of costs upon request to the Clerk.

47.4 Jury Deliberation.

Availability of Attorneys During Jury Deliberations. Attorneys shall be available on short notice during jury deliberations in the event of a verdict or a question by the jury. The Clerk shall be kept informed as to where attorneys will be at all times when the jury is deliberating. Attorneys should not leave the building without the presiding judge's prior approval.

47.5 Jury Contact Prohibition.

The following rules apply in connection with contact between attorneys or parties and jurors:

1. At any time after the Court has called a jury panel from which jurors shall be selected to try cases for a term of Court fixed by the presiding judge or otherwise impaneled, no party or attorney, or anyone associated with the party or the attorney, shall have any communication or contact by any means or manner with any juror until such time as the panel of jurors has been excused and the term of court ended.

2. This prohibition is designed to prevent all unauthorized contact between attorneys or parties and jurors and does not apply when authorized by the judge while court is in session or when otherwise authorized by the presiding judge.

48.1 Number of Jurors.

In civil cases the Court shall determine the number of jurors, which shall not be less than six nor more than twelve.

49.1 Special Verdicts and Interrogatories.

[Reserved.]

50.1 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings.

[Reserved.]

51.1 Instructions to the Jury.

When Submitted and Served. See Uniform Pretrial Scheduling Order issued by the court following the initial pretrial conference. See L.R. 16.1(e).

52.1 Proposed Findings in Civil Cases.

(a) In civil non-jury trials, each party shall submit proposed findings of fact and conclusions of law sufficiently detailed that, if the Court adopts them, would form an adequate factual basis, supported by anticipated evidence, for the resolution of the case and the entry of judgment.

(b) When Submitted and Served.

See Uniform Pretrial Scheduling Order issued by the Court following the initial pretrial conference. See L.R. 16.1(e).

53.1 Masters.

[Reserved]

53.2 Master's Fees.

The Court, in its discretion, shall fix the compensation of masters. Factors the Court shall consider include expended hours, disbursements, the relative complexity of the matter, and whether the parties have previously consented to a reasonable rate of compensation. The compensation and disbursements shall be paid and taxed as costs in the manner and amounts that the Court directs unless the parties stipulate otherwise.

53.3 Oath of Master, Commissioner, etc.

Every person appointed master, special master, commissioner, special commissioner, referee, assessor or appraiser (collectively referred to as "master") shall take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that said duties shall be faithfully and impartially discharged. The oath shall be taken before any federal or state officer authorized by federal law to administer oaths and shall be filed in the Clerk's office.

SECTION VII.
JUDGMENTS

54.1 Taxation of Costs.

(a) Procedure for Taxation in Civil Cases.

The party entitled to recover costs shall file, within thirty (30) days after entry of judgment, a verified bill of costs on the forms that the Clerk provides. The party seeking costs shall accompany its request with receipts indicating that the party actually incurred the costs that it seeks. The verified bill of costs shall include the date on which the party shall appear before the Clerk for taxation of the costs and proof of service of a copy on the party liable for the costs. Post-trial motions shall not serve to extend the time within which a party may file a verified bill of costs as provided in this Rule, except on an order extending the time. Forms for the preparation of a bill of costs are available from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov**."

(b) To Whom Payable.

Except in criminal cases, suits for civil penalties for violations of criminal statutes, and government cases that the Department of Justice does not handle, all costs taxed are payable directly to the party entitled thereto and not to the Clerk, unless the Court orders otherwise.

(c) Waiver of Costs.

Failure to file a bill of costs within the time provided for in this Rule shall constitute a waiver of the taxable costs.

54.2 Jury Cost Assessment.

See L.R. 47.3.

54.3 Award of Attorneys' Fees.

[Reserved]

54.4 Allowances to Attorneys and Receivers.

Every attorney and receiver requesting an allowance for services rendered in a civil action where a receiver has been appointed shall, on filing the receiver's report with the Clerk, file a detailed statement of the services rendered and the amount claimed, with a statement of any partial allowance previously made, together with an affidavit of the applicants, stating that no agreement has been made, directly or indirectly, and that no understanding exists for a division of fees between the attorney and the receiver. The petition shall be heard and allowance made on notice as the Court shall direct.

55.1 Certificate of Entry of Default

A party applying for a certificate of entry of default by the Clerk pursuant to Fed. R. Civ. P. 55(a) shall submit an affidavit showing that (1) a party against whom a judgement for affirmative relief is sought has failed to plead or otherwise defend the action as provided by the Federal Rules of Civil Procedure and (2) the pleading to which no response has been made was properly served.

55.2 Default Judgment.

(a) By the Clerk.

When a party is entitled to have the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, **the Clerk's certificate of entry of default**, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a per diem rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that

1. The party against whom judgment is sought is not an infant or an incompetent person;
2. The party against whom judgment is sought is not in the military service, or if unable to set forth this fact, the affidavit shall state that the party against whom judgment is sought by default is in the military service or that the party seeking a default judgment is not able to determine whether or not the party against whom judgment by default is sought is in the military service;
3. The party has defaulted in appearance in the action;

4. Service was properly effectuated under Fed. R. Civ. P. 4;

5. The amount shown in the statement is justly due and owing and that no part has been paid except as set forth in the statement required by this Rule; and

6. The disbursements sought to be taxed have been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest and costs. If, however, the Clerk determines, for whatever reason, that it is not proper for a default judgment to be entered, the Clerk shall forward the documents submitted in accordance with **L.R. 55.2(a)** to the assigned district judge for review. The assigned district judge shall then promptly notify the Clerk as to whether the Clerk shall properly enter a default judgment under this **L.R. 55.2(a).**

(b) By the Court.

A motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), shall be accompanied by a **clerk's certificate of entry of default** in accordance with Fed. R. Civ. P. 55(a), a **proposed form of default judgment**, and a copy of the pleading to which no response has been made. The application also shall be accompanied by an affidavit of the party or the party's attorney setting forth facts as required by L.R. **55.*2*(a)**.

56.1 Summary Judgment Procedure.

See L.R. 7.1 (a)(3).

56.2 Notice to Pro Se Litigants of the Consequences of Failing to Respond to a Summary Judgment Motion.

When moving for summary judgment against a pro se litigant, the moving party shall inform the pro se litigant of the consequences of failing to respond to the summary judgment motion. Counsel for the moving party shall send a notice to the pro se litigant that a motion for summary judgment seeks dismissal of some or all of the claims or defenses asserted in their complaint or answer and that their failure to respond to the motion may result in judgment being entered against them. A sample notice can be obtained from the Court's webpage at "**www.nynd.uscourts.gov**."

57.1 Declaratory Judgment.

[Reserved.]

58.1 Entry of Judgment.

(a) Upon the verdict of a jury or the decision by the Court, the Clerk shall sign and enter a separate document which shall constitute the judgment. The judgment shall contain no recitals other than a recital of the verdict or any direction by the Court on which the judgment is entered. Unless the Court specifically directs otherwise, the Clerk shall promptly prepare the judgment. The Clerk shall promptly sign and enter it, except that where Fed. R. Civ. P. 58 requires the Court's approval, the Clerk shall first submit the judgment to the Court, which shall manifest approval by signing it or noting approval on the margin. The notation of the judgment in the appropriate docket shall constitute the entry of judgment.

(b) The attorney causing the entry of an order or judgment shall append to, or endorse on, it a list of the names of the parties entitled to be notified of the entry and the names and addresses of their respective attorneys if known.

58.2 Entering Satisfaction of Judgment or Decree.

The Clerk shall enter satisfaction of a money judgment recovered or registered in the District as follows:

(a) Upon the payment into Court of the amount, plus applicable interest, and the payment of the marshal's fees, if any;

(b) Upon the filing of a satisfaction-piece executed and acknowledged by

1. The judgment-creditor; or
2. The judgment-creditor's legal representative or assigns, with evidence of the representative's authority; or
3. The judgment-creditor's attorney or proctor, if within two years of the entry of the judgment or decree.

(c) If the judgment-creditor is the United States, upon filing of a satisfaction-piece executed by the United States Attorney.

(d) In admiralty, pursuant to an order of satisfaction; but an order shall not be made on the consent of the proctors only, unless consent is given within two years from the entry of the decree to be satisfied.

(e) Upon the registration of a certified copy of a satisfaction entered in another district.

59.1 New Trial; Amendment of Judgment.

[Reserved.] See L.R. 7.1(g) (Motions for Reconsideration).

60.1 Relief from Judgment or Order.

[Reserved.]

61.1 Harmless Error.

[Reserved.]

62.1 Stay of Proceedings.

[Reserved.]

62.2 Supersedeas Bond.

See L.R. 67.1

63.1 Disability of a Judge.

[Reserved.]

SECTION VIII.
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

64.1 Seizure of Person or Property.

The Court has adopted a Uniform Procedure for Civil Forfeiture Cases, which is available from the Clerk's office or at the Court's webpage at "**www.nynd.uscourts.gov**."

65.1 Injunctions.

See L.R. 7.1(f).

65.1.1 Sureties.

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation shall be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation; or be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or the undertaking or guaranty of two individual residents of the Northern District of New York, each of whom owns real or personal property within the district worth double the amount of the bond, undertaking or stipulation, over all the debts and liabilities of each of the residents, and over all obligations assumed by each of the residents on other bonds, undertakings or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond or undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving full name, occupation, residence and business address and showing that the surety is qualified as an individual surety under subdivision (b) of this Rule.

(d) Members of the bar, administrative officers or employees of this Court, the Marshal, or the Marshal's deputies or assistants shall not act as sureties in any suit, action or proceeding pending in this Court. See L.R. 67.3.

65.2 Temporary Restraining Orders.

See L.R. 7.1(f).

66.1 Receiverships.

[Reserved.]

67.1 Deposits in Court.

(a) A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and any damage for delay as may be awarded, plus $250 to cover costs.

When a stay shall be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond. In all other cases, the Court shall, on notice, grant a stay on the terms it deems proper.

On approval, a supersedeas bond shall be filed with the Clerk, and a copy thereof, with notice of filing, shall promptly be served upon all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, the Court shall provide prompt notice of a hearing on such objections.

(b) Order Directing the Investment of Funds.

Any order directing the Clerk to invest funds deposited with the registry account of the Court pursuant to 28 U.S.C. § 2041 shall include the following:

1. The amount to be invested; and

2. The type of interest-bearing account in which the funds are to be invested.

(c) Time for Investing Funds.

The Clerk shall take all reasonable steps to invest the funds within ten (10) days of the filing date of the order.

(d) Fee.

Unless the Court orders otherwise, the Clerk, at the time the income becomes available, shall deduct from the income earned on the investment a fee as authorized by the Judicial Conference of the United States and set out by the Director of the Administrative Office.

67.2 Withdrawal of a Deposit Pursuant to Fed. R. Civ. P. 67.

Any person seeking withdrawal of money deposited in the Court pursuant to Fed. R. Civ. P. 67 and subsequently deposited into an interest-bearing account or instrument as required by Fed. R. Civ. P. 67 shall provide a completed Internal Revenue Service Form W-9 with the motion papers seeking withdrawal of the funds.

67.3 Bonds and Other Sureties.

(a) General Requirements.

Unless the Court expressly directs otherwise pursuant to the provisions of 18 U.S.C. § 3146 in the supervision of a criminal matter, every bond, recognizance or other undertaking required by law or court order in any proceeding shall be executed by the principal obligor and by one or more sureties qualified as provided by this Rule.

(b) Unacceptable Sureties.

An attorney or the attorney's employee, a party to an action, or the spouse of a party to an action or of an attorney shall not be accepted as surety on a cost bond, bail bond, appeal bond, or any other bond.

(c) Corporate Surety.

A corporate surety on any undertaking in which the United States is the obligee shall be qualified in accordance with the provisions of 6 U.S.C. §§ 6-13, and approved thereunder by the

Secretary of the Treasury of the United States. In all other instances, a corporate surety qualified to write bonds in the State of New York shall be an acceptable surety. In all actions, a power of attorney showing authority of the agent signing the bond shall be attached to the bond.

(d) Personal Surety.

Persons competent to convey real property who own real property in the State of New York of an unencumbered value of at least the stated penalty of the bond shall obtain consideration for qualification as surety thereon by attaching thereto a duly acknowledged justification showing (1) the legal description of the real property; (2) a complete list of all encumbrances and liens thereon; (3) its market value based upon recent sales of like property; (4) a waiver of inchoate rights of any character and certification that the real property is not exempt from execution; and (5) certification as to the aggregate amount of penalties of all other existing undertakings, if any, assured by the bondsperson as of that date. The Court will review the justifications and certifications for approval or disapproval of the surety.

(e) Cost Bonds.

The Court on motion, or upon its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as the court by its order shall designate.

(f) Cash Bonds.

Cash bonds shall be deposited into the Court's registry only upon execution and filing of a written bond sufficient as to form and setting forth the conditions of the bond. Withdrawal of cash bonds so deposited shall not be made except upon the Court's written order.

(g) Insufficiency--Remedy.

An opposing party may raise objections to a bond's form or timeliness or the sufficiency of the surety. If the bond is found to be insufficient, the Court shall order that a sufficient bond be filed within a stated time. If the order is not complied with, the case shall be dismissed for want of prosecution, or the Court shall take other appropriate action as justice requires.

68.1 Settlement Conferences.

See L.R. 16.1.

68.2 Settlement Procedures.

(a) On notice to the Court or the Clerk that an action has been settled, and upon confirmation by all parties, the Court may issue a judgment dismissing the action by reason of settlement. The order shall be issued without prejudice to the right to secure reinstatement of the case within thirty (30) days after the date of judgment by making a showing that the settlement was not, in fact, consummated.

(b) If the Court decides not to follow the procedures set forth in L.R. 68.2(a), the parties shall file within thirty (30) days of the notification to the Court, unless otherwise directed by written order, such pleadings as are necessary to terminate the action. If the required documents are not filed within the thirty (30) day period, the Clerk shall place the action on the dismissal calendar.

See also L.R. 17.1 (Actions involving infants and/or incompetents).

69.1 Execution.

[Reserved.]

70.1 Judgment for Specific Acts; Vesting Title.

[Reserved.]

71.1 Process in Behalf of and Against Persons Not Parties.

[Reserved.]

71A.1 Condemnation Cases.

[Reserved.]

72.1 Authority of Magistrate Judges

(a) A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c) and any additional duties that are consistent with the Constitution and laws of the United States. Part-time Magistrate Judges are authorized to exercise all of those duties, except that only Magistrate Judges specifically designated by the Court are authorized to perform duties allowed under 28 U.S.C. § 636(c) and any additional duty consistent with the Constitution and laws of the United States.

(b) Any party may file objections to a Magistrate Judge's determination of a non-dispositive matter by filing with the Clerk and serving upon all parties their objections. The objections must be filed and served within ten (10) days after being served with the Magistrate Judge's order, must state a return date in accordance with L.R. 7.1(b)(2) and must specifically designate the order or part of the order from which they seek relief and the basis for the objection. All supporting and opposition papers must be filed in accordance with L.R. 7.1(b)(2). The supporting papers shall include the following documents:

1. A designation of the contents of the record on appeal, including the documents, exhibits and other materials to be considered; and

2. A memorandum of law.

Opposition papers shall also include a memorandum of law responsive to the appellant's arguments. Appeals will be decided on submission of the papers without oral argument unless the Court directs otherwise.

(c) Any party may object to a Magistrate Judge's proposed findings, recommendations, or report issued pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) within ten (10) days after being served with a copy of the Magistrate Judge's recommendation. The party must file with the Clerk and serve upon all parties written objections which specifically identify the portions of the proposed findings, recommendations, or report to which objection is made and the basis for the objection. The party shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which objection is made. Objections may not exceed twenty-five (25) pages without the Court's prior approval. Response to the objections may be filed and served within ten (10) days after being served with a copy of the objections. Replies by the objecting party are not permitted. The Court will proceed in accordance with Fed. R. Civ. P. 72(b) or Rule 8(b) of the Rules Governing Section 2254 Petitions, as applicable.

72.2 Duties of Magistrate Judges.

(a) In all civil cases, in accordance with Fed. R. Civ. P. 16, the Magistrate Judge assigned pursuant to L.R. 40.1 is authorized to hold conferences before trial, enter scheduling orders, and modify scheduling orders. The scheduling order may limit the time to join parties, amend pleadings, file and hear motions, and complete discovery. It may also include dates for a final pretrial conference and other conferences, a trial ready date, a trial date, and any other matters appropriate under the circumstances of the case. A schedule cannot be modified except by order of the Court. The Magistrate Judge may explore the possibility of settlement and hold settlement conferences.

(b) The following procedure will be followed regarding consent of the parties and designation of a Magistrate Judge to exercise civil trial jurisdiction under 28 U.S.C. § 636(c):

1. Upon the filing of a complaint or petition for removal, the Clerk shall promptly provide to the plaintiff, or the plaintiff's attorney, a notice, as approved by the Court, informing the parties of their right to consent to have the full-time Magistrate Judge conduct all proceedings in the case. Proceedings in the case include hearing and determining all pretrial and post-trial motions, including dispositive motions; conducting a jury or non-jury trial; and ordering the entry of a final judgment. Copies of the notice shall be attached to the copies of the complaint and summons when served. Additional copies of the notice shall be furnished to the parties at later stages of the proceedings and shall be included with pretrial notices and instructions. The consent form will state that any appeal lies directly with the Court of Appeals for the Second Circuit.

2. If the parties agree to consent, the attorney for each party or the party, if pro se, must execute the consent form. Executed consent forms shall be filed directly with the Clerk. No consent form shall be made available, nor shall its contents be made known, to any District Judge or Magistrate Judge, unless all of the parties have executed the consent form. No judge or other court official shall attempt to persuade or induce any party to consent to the reference of any matter to a Magistrate Judge. A District Judge, Magistrate Judge, or other court official may again inform or remind the parties that they have the option of referring the case to a Magistrate Judge. In reminding the parties about the availability of consent to a Magistrate Judge, the parties must be informed that they are free to withhold consent without adverse substantive consequences. The parties may agree to a Magistrate Judge's exercise of civil jurisdiction at any time prior to trial, subject to the approval of the District Judge.

3. When all of the parties have executed and filed the consent forms, the Clerk shall then transmit them along with the file to the assigned District Judge for approval and referral of the case to a Magistrate Judge. If the District Judge assigns the case to a Magistrate Judge on consent, authority vests in the Magistrate Judge to conduct all proceedings and to direct the Clerk to enter a final judgment in the same manner as if a District Judge presided over the case.

4. The Clerk shall notify any parties added to an action after consent and reference to a Magistrate Judge of their right to consent to the exercise of jurisdiction by the Magistrate Judge. If an added party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the referring District Judge for further proceedings.

(c) Assignment of Magistrate Judges to Serve as Special Masters.

A Magistrate Judge shall serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Where the parties consent, a Magistrate Judge shall serve as a special master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).

(d) Other Duties in Civil Actions.

A magistrate judge is also authorized to

1. Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, as amended, in accordance with 46 U.S.C. § 4311(d), 12309(c);

2. Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

3. Review petitions in civil commitment proceedings under Title III of the Narcotic Rehabilitation Act;

4. Supervise proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 1782;

5. Exercise general supervision of the Court's civil calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges; and

6. Administer oaths and affirmations and take acknowledgments, affidavits, and depositions.

72.3 Assignment of Duties to Magistrate Judges.

(a) Upon filing of the complaint, the Clerk shall assign the case to a District Judge and a Magistrate Judge. See L.R. 40.1

(b) All civil cases in which consent forms have been executed and filed pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b) shall be transmitted to the judge to whom the case has been assigned for approval and referral of the case to a Magistrate Judge, who shall then have the authority to conduct all proceedings and to direct the Clerk to enter a final judgment. See L.R. 72.2(b)(3)

(c) Prisoner Cases.

Proceedings commenced by an unrepresented prisoner shall, unless the Court orders otherwise, be referred to a Magistrate Judge for the purpose of reviewing applications, petitions and motions in accordance with these Rules and 28 U.S.C. § 636.

(d) Social Security Appeal Cases.

Upon the filing of the complaint, social security appeal cases shall be assigned in rotation to the active district judges. These cases shall be referred immediately in rotation to a full-time magistrate judge for the purpose of review and submission of a report-recommendation relative to the complaint or, if the Magistrate Judge has been assigned to the case pursuant to 28 U.S.C. § 636(c) and L.R. 72.2(b), for final judgment.

(e) Federal Debt Collection Act Cases.

1. Any action brought pursuant to the Federal Debt Collection Act, 28 U.S.C. § 3001 *et seq.*, shall be handled on an expedited basis and brought before a Magistrate Judge in Syracuse, New York, or to a District Judge if no Magistrate Judge is available, for an initial determination.

2. If appropriate, an order shall be issued directing the Clerk to issue the writ being sought, except that an application under 28 U.S.C. § 3203 for a writ of execution in a post-judgment proceeding shall not require an order of the Court.

3. Thereafter, the Clerk is directed to assign geographically a Magistrate Judge if none was previously assigned in accordance with General Order #12.

4. The assigned Magistrate Judge shall conduct any hearing that may be requested, decide all non-dispositive issues, and issue a report-recommendation on any and all dispositive issues.

5. The parties shall file written objections to the report-recommendation within twenty (20) days of the filing of same. Without oral argument, the assigned District Judge shall review the report-recommendation along with any objections that have been filed.

6. On the request for a hearing, the Clerk shall make a good faith effort to schedule the hearing within five (5) days of the receipt of the request or "as soon after that as possible," pursuant to 28 U.S.C. § 3101(d)(1).

72.4 Habeas Corpus.

(a) Petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed pursuant to the Rules Governing § 2254 Cases in the United States District Courts and the Rules Governing § 2255 Proceedings in the United States District Courts. All memoranda of law filed in Habeas Corpus proceedings shall conform to the requirements set fort in Local Rule 7.1(a)(1).

(b) Subject to the requirement of subsection (c), the original verified petition shall be filed with the Clerk at Syracuse, New York. Applications for a writ of habeas corpus made by persons in custody shall be filed, heard and determined in the district court for the district within which they were convicted and sentenced provided, however, that if the convenience of the parties and witnesses requires a hearing in a different district, such application shall be transferred to any district that the assigned judge finds or determines to be more convenient.

(c) Before a second or successive application is filed in this Court, the applicant shall move in the Second Circuit Court of Appeals for an order authorizing the district court to consider the application.

(d) If state court records are to be submitted with respondent's answer to the petition, the records must be properly identified in the answer and arranged in chronological order. The pages of the state court records must be sequentially numbered so that citations to those records will identify the exact location where the information appears. If documents are separately bound and the citation to the documents is easily identifiable, the documents need not be repaginated.

72.5 Habeas Corpus Petitions Involving the Death Penalty; Special Requirements.

(a) Applicability.

This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. A subsequent filing relating to a particular petition may be deemed a first petition under this Rule if the original filing was not dismissed on the merits. The District Judge or Magistrate Judge to whom the petition is assigned may modify the application of this Rule. This Rule shall supplement the Rules Governing § 2254 Cases and does not in any regard alter or supplant those rules.

(b) Notices From Office of the Attorney General for the State of New York.

The Office of the Attorney General for the State of New York ("Attorney General") shall send to the Clerk (1) prompt notice whenever the New York State Court of Appeals affirms a sentence of death; (2) at least once a month, a list of scheduled executions; and (3) at least once a month, a list of the death penalty appeals pending before the New York State Court of Appeals.

(c) Notice From Petitioner's Counsel.

Whenever counsel determines that a petition will be filed in this Court, counsel shall promptly file with the Clerk and serve on the Attorney General a written notice of counsel's intention to file a petition. The notice shall state the name of the petitioner, the district in which the petitioner was convicted, the place of the petitioner's incarceration, the status of the petitioner's state court proceedings and the scheduled date of execution. The notice is for the Court's information only and the failure to file the notice shall not preclude the filing of the petition.

(d) Counsel.

1. Appointment of Counsel.

Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed pro se and the Court is satisfied, after a hearing, that petitioner's election is intelligent, competent, and voluntary. Where counsel is to be appointed, such appointment shall be made at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases ("qualified panel") will be certified by the active judges of this district.

If state appellate counsel is available to continue representation into the federal courts and counsel is deemed qualified to do so by the assigned District Judge, there is a presumption in favor of continued representation except when state appellate counsel was also counsel at trial. In light of this presumption, it is expected that appointed counsel who is willing to continue representation and who has been certified by the assigned District Judge as qualified to do so, would ordinarily file a motion for appointment of counsel on behalf of his or her client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm appointment before preparing the petition, counsel may move for appointment as described above before filing the petition.

If state appellate counsel is not available to represent the petitioner on federal habeas corpus or if appointment of state appellate counsel would be inappropriate for any reason, the Court may appoint counsel upon application of the petitioner. The Clerk shall have available forms for such application. Counsel may be appointed from the qualified panel. The assigned District Judge may suggest one or more counsel for appointment. If application for appointed counsel is made before a petition is filed, the application shall be assigned to a District Judge and Magistrate Judge in the same manner that a non-capital petition would be assigned. The District Judge and Magistrate Judge so assigned shall be the District Judge and Magistrate Judge assigned when counsel files a petition for writ of habeas corpus.

2. Second Counsel.

Appointment and compensation of second counsel shall be governed by the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases.

(e) Filing.

1. General requirement.

Petitions as to which venue lies in this District shall be filed in accordance with the applicable Local Rules. Petitions shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by that form. All petitions shall (1) state whether the petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons given for denial of relief; (2) set forth any scheduled execution date; and (3) contain the wording in full caps and underscored "Death Penalty Case" directly under the case number on each pleading. Counsel for petitioner shall file an original and three (3) copies of the petition. A *pro se* petitioner need file only the original.

The Clerk will immediately notify the Attorney General's office when a petition is filed.

When a petitioner who was convicted outside of this District files a petition, the Court will immediately advise the clerk of the district in which the petitioner was convicted.

2. Emergency motions or applications.

Emergency motions or applications shall be filed with the Clerk. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by facsimile. Counsel should communicate with the Clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court. The motion or application shall contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in the prior actions.

(f) Assignment to Judicial Officers.

Notwithstanding the Court's case assignment plan, petitions shall be assigned to judges of the Court as follows: (1) the Clerk shall establish a separate category for these petitions, to be designated with the title "Capital Case"; (2) all active judges of this Court shall participate in the assignments; (3) the Clerk shall assign petitions in the Capital Case category randomly to each of the available active judges of the Court; (4) if a petitioner has previously sought relief in this Court with respect to the same conviction, the petition shall, when practical, be assigned to the judicial officers who were assigned to the prior proceeding; and (5) pursuant to 28 U.S.C. § 636(b)(1)(B), and consistent with law, the Court may designate Magistrate Judges to perform all duties under this Rule, including evidentiary hearings.

(g) Transfer of Venue.

Subject to the provisions of 28 U.S.C. § 2241(d), it is the Court's policy that a petition should be heard in the district in which the petitioner was convicted rather than in the district of the petitioner's present confinement. See L.R. 72.4(b). If an order for the transfer of venue is made, the Court will order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

(h) Stays of Execution.

1. Stay Pending Final Disposition.

Upon the filing of a habeas corpus petition, unless the petition is patently frivolous, the Court shall issue a stay of execution pending final disposition of the matter. Notwithstanding any provision of this paragraph (h), stays of execution shall not be granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph (h) for a stay shall be ineffective in any case in which the stay would be inconsistent with the limitations of 28 U.S.C. § 2262 or any other governing statute.

2. Temporary Stay for Appointment of Counsel.

Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the Court may designate an attorney who will assist an indigent petitioner in filing *pro se* applications for appointment of counsel and for a temporary stay of execution. Upon the filing of this application, the Court shall issue a temporary stay of execution and appoint counsel. The temporary stay will remain in effect for forty-five (45) days unless the Court extends this time.

3. Temporary Stay for Preparation of the Petition.

Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of nonfrivolous issues to be raised in the petition, the Court shall issue a temporary stay of execution unless no nonfrivolous issues are presented. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the petition. The Court may extend the temporary stay upon a subsequent showing of good cause.

4. Temporary Stay for Transfer of Venue. See paragraph (g).

5. Temporary Stay for Unexhausted Claims.

If the petition indicates that there are unexhausted claims for which a state court remedy is still available, the petitioner will be granted a sixty (60) day stay of execution in which to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the proceedings on the petition will be stayed. After the state court proceedings have been completed, the petitioner may amend the petition with respect to the newly exhausted claims.

6. Stay Pending Appeal.

If the petition is denied and a certificate of appealability for appeal is issued, the Court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

7. Notice of Stay.

Upon the granting of any stay of execution, the Clerk will immediately notify the appropriate prison superintendent and the Attorney General. The Attorney General shall ensure that the Clerk has a twenty-four (24) hour telephone number for the superintendent.

(i) Procedures for Considering the Petition.

Unless the Court summarily dismisses the petition as patently frivolous, the following schedule and procedures shall apply subject to the Court's modification. Requests for enlargement of any time period in this Rule shall comply with these Local Rules.

1. Respondent shall, as soon as practicable, but in any event on or before twenty (20) days from the date of service of the petition, file with the Court the following:

(A) Transcripts of the state trial court proceedings;
(B) Appellant's and respondent's briefs on direct appeal to the Court of Appeals, and the opinion or orders of that Court;
(C) Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings;
(D) Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction; and
(E) An index of all materials described in paragraphs (A) through (D) above.

The materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner or the petitioner *pro se*. If time does not permit, the answer may be filed without attachments (A) through (D) above, but the respondent shall file the necessary copies as soon as possible. If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be filed.

2. If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), or if counsel for petitioner does not have copies of all the documents that respondent filed with the Court, counsel for petitioner shall immediately notify the Court in writing, with a copy to respondent. The Court will provide copies of any missing documents to the petitioner's counsel.

3. Respondent shall file an answer to the petition with accompanying points and authorities within thirty (30) days from the date of service of the petition. Respondent shall attach any other relevant documents not already filed.

4. Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

5. There shall be no discovery without leave of the Court.

6. Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether an evidentiary hearing will be held.

(j) Evidentiary Hearing.

If an evidentiary hearing is held, the Court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(k) Rulings.

The Court's rulings may be in the form of a written opinion, which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed. The Clerk will immediately notify the appropriate prison superintendent and the Attorney General

whenever relief is granted on a petition. The Clerk will immediately notify the clerk of the United States Court of Appeals for the Second Circuit by telephone of (1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal or (2) the denial of a stay of execution. When a notice of appeal is filed, the Clerk will transmit the appropriate documents to the United States Court of Appeals for the Second Circuit immediately.

73.1 Magistrate Judges: Trial by Consent.

Upon the consent of the parties, a Magistrate Judge shall conduct all proceedings in any civil case, including a jury or non-jury trial and shall order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). See L.R. 72.2(b)(2)

74.1 Method of Appeal to District Judge in Consent Cases.

[Reserved.]

75.1 Proceedings on Appeal from Magistrate Judge to District Judge under Rule 73(d).

[Reserved.]

76.1 Bankruptcy Cases.

(a) Reference to Bankruptcy Court. All cases under Title 11 of the United States Code, and all proceedings arising under Title 11, or arising in, or related to, a case under Title 11, are referred to the bankruptcy court of this District pursuant to Title 28 U.S.C. § 157.

76.2 Bankruptcy Appeals.

(a) When a notice of appeal is filed with the bankruptcy court clerk, and the notice is not timely filed in accordance with Fed. R. Bankr. P. 8002(a), and no motion for extension of time has been filed in accordance with Fed. R. Bankr. P. 8002(c), the bankruptcy court clerk shall forward the notice of appeal together with a "Certification of Noncompliance" to the Clerk without assembling the record as provided for in Fed. R. Bankr. P. 8007(b). The notice and certificate shall be filed, assigned a civil action number, and forwarded to a District Judge for a determination as to whether the notice of appeal was timely filed or the appeal is to be dismissed as untimely. If the District Judge makes a determination that the appeal was timely filed or should otherwise be perfected, the bankruptcy court clerk shall be notified to complete the record promptly in accordance with Fed. R. Bankr. P. 8007(b).

(b) The Clerk shall issue a standard bankruptcy appeal scheduling order at the time of the filing of the record on appeal, a copy of which shall be provided to the parties, the bankruptcy judge from whom the appeal was taken, and the bankruptcy court clerk.

(c) Appeals from a decision of the bankruptcy court shall be in accordance with 28 U.S.C. § 158 and applicable bankruptcy rules. Fed. R. Bankr. P. 8009 respecting the filing of briefs shall not be applicable, and briefs shall be filed in accordance with the scheduling order of this Court.

76.3 Bankruptcy Record of Transmittal, Certificate of Facts, and Proposed Findings Pursuant to Title 11, Section 110(i)

(a) Upon direction of the bankruptcy judge, the bankruptcy court clerk shall cause to be filed with the Clerk the designated record of transmittal, which shall consist of certified copies of the Memorandum-Decision, Findings of Fact, Conclusions of Law, bankruptcy docket, and transcript of proceedings which relate to the bankruptcy judge's findings. The bankruptcy court clerk shall also provide the Clerk with a list of those individuals to whom the notice of filing shall be given.

(b) Upon receipt of the above, the Clerk shall assign a civil action number, assign a District Judge and issue a scheduling order for the filing of motions pursuant to Title 11, Section 110(i)(1). Copies of the scheduling order shall be served upon those individuals designated by the bankruptcy court clerk.

Upon the filing of any motion(s), the Clerk shall schedule and notice all concerned parties of a hearing date. Failure to file motions within the time ordered will be deemed a waiver of the provisions of Title 11, Section 110(i)(1). The Clerk shall prepare and present to the assigned District Judge a proposed order pursuant to the provisions of L. R. 41.2.

SECTION IX.
DISTRICT COURT AND CLERKS

77.1 Hours of Court.

[Reserved.]

77.2 Orders.

(a) With these exceptions, all orders, whether by consent or otherwise, shall be presented for approval and execution to the assigned judge. The Clerk may sign without submission to the assigned judge the following orders:

1. Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;

2. Orders on consent for the substitution of attorneys in civil cases where the trial of the action has not been set. See also L.R. 83.2;

3. Orders restoring an action to the court docket after the filing of a demand for trial de novo pursuant to L.R. 83.7-7 (Consensual Arbitration Program);

4. Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

(b) If instructed to do so by the assigned judge, the prevailing party shall submit a proposed order which has been approved by the opposing party and which contains the endorsement of the opposing party: "Approved as to form."

When the parties are unable to agree as to the form of the proposed order, the prevailing party shall, on three (3) days notice to all other parties, submit a proposed order and a written explanation for the form of that order. Costs and attorneys' fees may be awarded against a party whose unreasonable conduct is deemed to have required the bringing of the motion. The provisions of L.R. 7.1 shall not apply to such motion and oral argument shall not be heard.

77.3 Sessions of Court.

The Court shall be in continuous session in Albany, Binghamton, Syracuse, and Utica. Sessions shall from time to time be held in Auburn, Malone and Watertown, or such other place as the Court shall, by order, deem appropriate. Jurors shall serve as the Court directs.

77.4 Court Library.

The district court libraries are not open for use by the public.

77.5 Official Newspapers.

All process, notices, and orders required to be published shall be published in the proper county in an official newspaper. The Court shall direct the publication of process, notices, and orders in any other newspaper, upon proper showing, as it shall deem advisable. The following are designated as official newspapers:

County	Newspaper	City
Albany	Times Union (D)	Albany, NY
Broome	Binghamton Press/Sun Bulletin (D)	Binghamton, NY
Cayuga	The Citizen (D)	Auburn, NY
Clinton	Press-Republican (D)	Plattsburgh, NY
Chenango	Evening Sun (D)	Norwich, NY
Columbia	Register Star (D)	Hudson, NY
	The Independent (W)	Hillsdale, NY
Cortland	Cortland Standard (D)	Cortland, NY
Delaware	Walton Reporter (W)	Walton, NY
Essex	Lake Placid News (W)	Lake Placid, NY
Franklin	Adirondack Enterprise (D)	Saranac Lake, NY
Fulton	Leader Herald (D)	Gloversville, NY
Greene	Catskill Daily Mail (D)	Catskill, NY
Hamilton	Post Star (D)	Glens Falls, NY
Herkimer	Telegram (D)	Herkimer, NY
	The Evening Times (D)	Little Falls, NY
Jefferson	Watertown Times (D)	Watertown, NY
	Thousand Island Sun (W)	Alexandria Bay, NY

County	Newspaper	City
Lewis	Journal Republican (W)	Lowville, NY
Madison	Oneida Dispatch (D)	Oneida, NY
Montgomery	The Recorder (D)	Amsterdam, NY
Oneida	Utica Observer Dispatch (D)	Utica, NY
	Rome Sentinal (D)	Rome, NY
Onondaga	Post Standard (D)	Syracuse, NY
Oswego	Palladium Times (D)	Oswego, NY
Otsego	The Daily Star	Oneonta, NY
Rensselaer	Times Record (D)	Troy, NY
St. Lawrence	Ogdensburg Journal (D)	Ogdensburg, NY
	Tribune Press (W)	Gouverneur, NY
	Daily Courier Observer (D)	Massena, NY
Saratoga	Saratogian-Tri City News (D)	Saratoga Springs,NY
Schenectady	Schenectady Gazette (D)	Schenectady, NY
Schoharie	Times Journal (W)	Cobleskill, NY
Tioga	Owego Pennysaver (W)	Owego, NY
Tompkins	Ithaca Journal (D)	Ithaca, NY
Ulster	The Daily Freeman (D)	Kingston, NY
Warren	Post Star (D)	Glen Falls, NY
	Times (D)	Glen Falls, NY
Washington	Whitehall Times (W)	Whitehall, NY

(D) = Daily (W) = Weekly

77.6 Release of Information.

All court personnel, including but not limited to marshals, deputy clerks, court clerks, bailiffs, court reporters, law clerks, secretaries, and probation officers, shall not disclose to any person, without the Court's authorization, information divulged in arguments and hearings held in chambers or otherwise outside the presence of the public or any information relating to a pending case that is not part of the Court's public records.

77.7 Official Station of the Clerk.

The Clerk's official station shall be Syracuse. The Clerk shall appoint deputy clerks in such number as are necessary, and they shall be stationed at Albany, Binghamton, Utica, Syracuse and Watertown.

78.1 Motion Days.

Listings of the regularly scheduled motion days for all judges shall be available at each Clerk's office and are available on the Court's webpage at "www.nynd.uscourts.gov." Notice of the regular motion days for all judges shall be provided at the time an action is commenced.

79.1 Custody of Exhibits and Transcripts.

(a) Unless the Court orders otherwise, exhibits and transcripts shall not be filed with the Clerk. Rather, they shall be retained in the custody of the attorney who produced them in court.

(b) In the case of an appeal or other review by an appellate court, the parties are encouraged to agree with respect to which exhibits and transcripts are necessary for the determination of the appeal. In the absence of agreement and except as provided in this Rule, a party, upon written request of any other party or by Court order, shall make available at the Clerk's office all the original exhibits in the party's possession, or true copies, to enable such other party to prepare the record on appeal. At the same time and place, such other party also shall make available all the original exhibits in that party's possession. All exhibits made available at the Clerk's office, which any party designates as part of the record on appeal, shall be filed with the Clerk, who shall transmit them together with the record on appeal to the clerk of the Second Circuit Court of Appeals. Exhibits and transcripts not so designated shall remain in the custody of the respective attorneys who shall have the responsibility of promptly forwarding them to the clerk of the Second Circuit Court of Appeals on request.

(c) Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them, who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Second Circuit Court of Appeals.

(d) The party responsible for filing the exhibits and transcripts with the Clerk shall be responsible for removing them (1) if no appeal is taken, within ninety (90) days after a final decision is rendered or (2) if an appeal has been taken, within thirty (30) days after the mandate of the final reviewing court is filed. The Clerk shall notify the parties that fail to comply with this Rule to remove their exhibits. Upon their failure to do so within thirty (30) days, the Clerk shall dispose of these exhibits and transcripts as the Clerk sees fit.

79.2 Books and Records of the Clerk.

[Reserved.]

80.1 Stenographic Transcript: Court Reporting Fees.

Subject to the provisions of Fed. R. Civ. P. 54(d), the expense of any party in obtaining all or any part of a transcript for the Court's use when the Court so orders and the expense of any party in obtaining all or any part of a transcript for the purposes of a new trial or for amended findings or for appeals shall be a taxable cost against the unsuccessful party. A fee schedule of transcript rates is available on the Court's webpage at "**www.nynd.uscourts.gov**."

81.1 Removal Bonds.

[Reserved.]

81.2 Copies of State Court Proceedings in Removed Actions.

[Reserved.]

81.3 Removed Cases, Demand for Jury Trial. (Amended January 1, 2007)

In an action removed from a state court, a party entitled to trial by jury under Fed. R. Civ. P. 38 shall be accorded a jury trial if a demand is filed and served in accordance with the provisions of Fed. R. Civ. P. 81 and L.R. 38.1. A motion filed in state Court will not be considered unless it is refiled in this Court in accordance with the Local Rules of Practice for the Northern District of New York.

81.4 Actions Removed Pursuant to 28 U.S.C. § 1452.

If removal is based upon 28 U.S.C. § 1452 (Removal of claims related to bankruptcy cases), the removing party shall specifically identify in its Notice of Removal which claims or causes of action it is removing and which of the parties in the state court action are parties to the removed claims or causes of action.

82.1 Jurisdiction and Venue Unaffected.

[Reserved.]

83.1 Admission to the Bar.

(a) Permanent Admission. A member in good standing of the bar of the State of New York or of the bar of any United States District Court, whose professional character is good, may be permanently admitted to practice in this Court on motion of a member of the bar of this Court in compliance with the requirements of this Rule. **An admission packet containing all the required forms is available from the Clerk's office and on the Court's webpage at "www.nynd.uscourts.gov**."

Each applicant for permanent admission must file, at least ten (10) days prior to the scheduled hearing (unless, for good cause shown, the Court shortens the time), documentation for admission as set forth below. Ordinarily, the Court entertains applications for admission only on regularly scheduled motion days. Documentation required for permanent admission includes:

1. **A verified petition for admission** stating the following:

- place of residence and office address;
- the date(s) when and court(s) where previously admitted;
- legal training and trial experience;
- whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and
- that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Federal Rules of Criminal Procedure for the District Courts; the Local Rules of the District Court for the Northern District of

New York; and the N.Y.S. Lawyer's Code of Professional Responsibility. The applicant shall further affirm faithful adherence to these Rules and responsibilities.

2. **Affidavit of Sponsor.** The sponsor must be a member in good standing of the bar of the Northern District of New York who has personal knowledge of the petitioner's background and character. A form Affidavit of Sponsor is available from the Clerk's office.

3. **Attorney E-Filing Registration Form**. The E-Filing Registration Form must be in the form prescribed by the Clerk, which sets forth the attorney's current office address(es); telephone and fax number(s), and e-mail address. A copy of the Attorney E-Filing Registration Form is available on the Court's webpage at "**www.nynd.uscourts.gov**." See subdivision (e) for requirements when information on the Registration Form changes.

4. **Certificate of Good Standing.** The certificate of good standing must be dated within six (6) months of the date of admission.

5. **The Required Fee.** As prescribed by and pursuant to the Judicial Conference of the United States and the Rules of this Court, the fee for admission to the bar is **$150.00**.

In addition to the initial admission fee, there shall be a **$30.00** biennial registration fee. This fee shall be due and owning on **June 1st, 2001** and every two years thereafter unless deferred by the Board of Judges. Failure to remit this fee will result in the removal of the non-paying attorney from the Court's bar roll. Should the payment of this biennial fee present a significant financial hardship, an attorney may request, via an application to the Chief Judge, that the biennial registration fee be waived.

The Clerk shall deposit the additional **$30.00** fee required for admission to the bar and the **$30.00** biennial registration fee into the District Court Fund. The Clerk shall be the trustee of the Fund, and the monies deposited in the Fund shall be used only for the benefit of the bench and bar in the administration of justice. All withdrawals from the Fund require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize the withdrawals. The admission fees and biennial registration fees are waived for all attorneys in the employ of the United States Government.

The biennial registration fees **only** are waived for all attorneys employed by state and local public sector entities.

6. **Oath on Admission.** An applicant must swear or affirm that as an attorney and counselor of this Court the applicant will conduct himself or herself uprightly and according to law and that he or she will support the Constitution of the United States. The Oath on Admission, form AO 153, is signed in court at the time of the admission.

(b) Applicants who are not admitted to another United States District Court in New York State must appear with their sponsor for formal admission unless such appearance is waived in the

exercise of judicial discretion. If the applicant is admitted to practice in New York State, the Certificate of Good Standing submitted with the application for admission must be from the appropriate New York State Appellate Division. All requirements of subdivision (a) apply.

If the applicant is from outside New York State, the Certificate of Good Standing may be from the highest court of the state or from a United States District Court. All requirements of subdivision (a) apply. Out-of-state applicants must maintain an office in the state in which the applicant is admitted. Upon ceasing to maintain an office in that state, the attorney automatically ceases to be a member of the bar of this Court.

(c) Applicants who are members in good standing of a United States District Court for the Eastern, Western, or Southern District of New York need not appear for formal admission. The applicant must submit a Certificate of Good Standing from the United States District Court where the applicant is a member and a proposed order granting the admission. A sponsor's affidavit is not required. All other requirements of subdivision (a) apply.

(d) Pro Hac Vice Admission. A member in good standing of the bar of any state, or of any United States District Court, may be admitted pro hac vice to argue or try a particular case in whole or in part. In addition to the requirements of L.R. 83.1(a)(1)(3) and (4), a Motion for Pro Hac Vice Admission must be made, which includes the case caption of the particular case for which the admission is being sought. See L.R. 10.1(b). In lieu of a written motion for admission, the sponsoring attorney may make an oral motion in open court on the record. In that case, the attorney seeking pro hac vice admission must immediately complete and file the required documents as set forth above.

The *pro hac vice* admission fee is **$30.00**. The Clerk deposits all *pro hac vice* admission fees into the District Court Fund. See L.R. 83.1(a)(5). While an attorney may be admitted *pro hac vice* in connection with a particular case, only an attorney permanently admitted to practice in this Court may enter appearances for parties, sign stipulations, or receive payments on judgments, decrees or orders. An attorney admitted *pro hac vice* must file a written notice of appearance in the case for which the attorney was admitted in accordance with L.R. 83.2.

(e) Registration Form Changes. Every attorney must file a supplemental statement setting forth any change in the information on the Registration Form within ten (10) days of the change. This supplemental statement should be made by filing a new Registration Form which reflects the new information and which identifies which information changed. Failure to timely file a supplemental Registration Form may result in inability to notify that attorney of developments in the case or other sanctions in the Court's discretion. See L.R. 41.2(b). A copy of the Attorney Registration Form is available on the Court's webpage at "**www.nynd.uscourts.gov**."

(f) Pro Bono Service. Every member of the bar of this Court shall be available upon the Court’s request for appointment to represent or assist in the representation of indigent parties. Appointments under this Rule shall be made in a manner such that no attorney shall be requested to accept more than one appointment during any twelve-month period.

(g) United States Attorney’s Office. An attorney appointed by the United States Attorney General as a United States Attorney, an assistant United States attorney, or as a special

assistant United States attorney under 28 U.S.C. §§ 541-543, who has been admitted to practice before any United States District Court, shall be admitted to practice in this Court upon motion of a member of the bar of this Court. Thereafter, the attorney may appear before this Court on any matter on behalf of the United States.

83.2 Appearance and Withdrawal of Attorney.

(a) Appearance. An attorney appearing for a party in a civil case shall promptly file with the Clerk a written notice of appearance; however, no notice of appearance needs to be filed if the party that would be filing the notice of appearance is the same individual who has signed the complaint, notice of removal, pre-answer motion, or answer.

(b) Withdrawal. An attorney who has appeared may withdraw only upon notice to the client and all parties to the case and an order of the Court, upon a finding of good cause, granting leave to withdraw. If leave to withdraw is granted, the withdrawing attorney must serve a copy of the order upon the affected party and file an affidavit of service.

Unless the Court orders otherwise, withdrawal of counsel shall not result in the extension of any of the deadlines contained in any case management orders, including the Uniform Pretrial Scheduling Order, see L.R. 16.1(e), or the adjournment of a trial ready or trial date.

83.3 Pro Bono Panel.

(a) Description of Panel. In recognition of the need for representation of indigent parties in civil actions, this Court has established the Pro Bono Panel ("Panel") of the Northern District of New York.

1. The Panel shall include those members of the Criminal Assigned Counsel Panel in this Court. Any other attorney admitted to practice in this Court shall also be expected to participate in periodic training as the Court offers and to accept no more than one pro bono assignment per year.

2. The Court shall maintain a list of Panel members, which shall include the information deemed necessary for the effective administration and assignment of Panel attorneys.

3. The Court shall select Panel members for assignment upon its determination that the appointment of an attorney is warranted. The Court shall select from the Panel a member who has not received an appointment from the Court during the past year and (i) has attended a training seminar that this Court sponsors, (ii) has adequate prior experience closely related to the matter assigned, or (iii) has accepted criminal (CJA) assignments from the Court.

4. Where a pro se party has one or more other cases pending before this Court in which an attorney has been appointed, the Court may determine it to be appropriate that the attorney appointed in the other case or cases be appointed to represent the *pro se* party in the case before the Court.

5. Where the Court finds that the nature of the case requires specific expertise, and among the Panel members available for appointment there are some with the required expertise, the

attorney may be selected from among those included in the group or the Court may designate a specific member of the Panel.

6. Where the Court finds that the nature of the case requires specific expertise and none of the Panel members available for appointment has indicated that expertise, the Court may appoint an attorney with the required expertise who is not on the Panel.

(b) Application for Appointment of Attorney.

1. Any application for the appointment of an attorney by a party appearing *pro se* shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this Court, including both pending and terminated actions.

2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.

3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, a subsequent application may be entertained, using the procedures specified above, within a reasonable time after the change in circumstances has occurred.

(c) Factors Used in Determining Whether to Appoint Counsel.

Upon receipt of an application for the appointment of an attorney, the Court shall determine whether an attorney is to be appointed to represent the *pro se* party. The Court shall make that determination within a reasonable time after the application is made. Factors that the Court will take into account in making the determination are as follows:

1. The potential merit of the claims as set forth in the pleading;

2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;

3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;

4. The capability of the *pro se* party to present the case;

5. The inability of the *pro se* party to retain an attorney by other means;

6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit that the Court shall derive from the assistance of an appointed attorney;

7. Any other factors the Court deems appropriate.

(d) Order of Appointment. Whenever the Court concludes that the appointment of an attorney is warranted, the Court shall issue an order directing the appointment of an attorney to represent the *pro se* party. The order shall be transmitted promptly to the Clerk. If service of the summons and complaint has not yet been made, an order directing service by the United States Marshal or by other appropriate method of service shall accompany the appointment order.

(e) Notification of Appointment. After an attorney has been selected, the Clerk shall send the attorney a copy of the order of appointment. Copies of the pleadings filed to date, relevant correspondence, and all other relevant documents shall be forwarded to the Clerk's office nearest to the attorney and made available for immediate review and copying of the necessary papers without charge. In addition to notifying the attorney, the Clerk shall also notify all of the parties to the action of the appointment, together with the name, address and telephone number of the appointed attorney.

(f) Duties and Responsibilities of Appointed Counsel. On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as these Rules provide. In the Court's discretion, stand-by counsel may be appointed to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the Court where appropriate. The Court may in its discretion appoint counsel for other purposes.

(g) Reimbursement for Expenses. Pro Bono attorneys who are appointed pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **$1,200.00**. Any expenses in excess of **$300.00** should receive the Court's prior approval. If good cause is shown, the Court may approve additional expenses. Request for reimbursement should be submitted on the Pro Bono Fund Voucher and Request for Reimbursement Form and be accompanied by detailed documentation. Counsel are advised that vouchers submitted in excess of **$1,200.00**, absent the Court's prior approval, may be reduced or denied. All reimbursements made by withdrawal from the District Fund shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize withdrawals. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on the form the Clerk provides for reimbursement of such expenses.**

(h) Grounds for Relief from Appointment.

After appointment, an attorney may apply to be relieved of an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;

2. the attorney does not feel competent to represent the party in the particular type of action assigned;

3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or

4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

(i) Application for Relief from Appointment.

Any application by an appointed attorney for relief from an order of appointment on any of the grounds set forth in this Rule shall be made to the Court promptly after the attorney becomes aware of the existence of such grounds or within such additional period as the Court may permit for good cause shown.

(j) Order Granting Relief from Appointment.

If the Court grants an application for relief from an order of appointment, the Court shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the Court shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se.*

83.4 Discipline of Attorneys. (Amended January 1, 2007)

(a) The Chief Judge shall have charge of all matters relating to discipline of members of the bar of this Court.

(b) Any member of the bar of this Court who is convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this Court and, upon the judgment of conviction becoming final, shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of a judgment of conviction, the attorney shall be suspended from practicing before this Court and, on presentation of proof that judgment of conviction is final, the name of the attorney convicted shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(c) Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of an order accepting resignation, the name of the attorney resigning shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(d) Any member of the bar of the Northern District of New York who shall be disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this Court unless an examination of the record resulting in the discipline discloses

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject;

3. that the imposition of the same discipline by this Court would result in grave injustice; or

4. that the misconduct has been held by this Court to warrant substantially different discipline.

On the filing of a certified or exemplified copy of an order imposing discipline, the attorney shall, by order of the Court, be disciplined to the same extent by this Court. It is provided, however, that within thirty (30) days of service on the attorney of the order of discipline imposed by the Northern District of New York, either the attorney or a bar association designated by the Chief Judge in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in the Northern District of New York should not be modified on the basis of one or more of the grounds set forth in this Rule. The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.

(e) Any member of the bar of this Court who is convicted of a misdemeanor in any State, Territory, other District, Commonwealth, or Possession, upon such conviction, may be disbarred, suspended, or censured.

Upon the filing of a certified or exemplified copy of a judgment of conviction, the Chief Judge may designate a bar association to prosecute a proceeding against the attorney. The bar association shall obtain an order requiring the attorney to show cause within thirty (30) days after service, personally or by mail, why the attorney should not be disciplined. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. On the attorney's answer to the order to show cause, the Chief Judge may set the matter for prompt hearing before a court of one or more judges or shall appoint a master to hear and to report findings and a recommendation. After a hearing and report, or if the attorney makes no timely answer or the answer raises no issue requiring a hearing, the Court shall take action as justice requires. In all proceedings, a certificate of conviction shall constitute conclusive proof of the attorney's guilt of the

conduct for which the attorney was convicted.

(f) Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have their name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended automatically for a like period from practice in this Court.

(g) (1) In addition to any other sanctions imposed in any particular case under these Rules, any person admitted to practice in this Court may be prohibited from practicing in this Court or otherwise disciplined for cause.

(2) Complaints alleging any cause for discipline shall be directed to the Chief Judge and must be in writing. If the conduct alleged in the complaint is deemed sanctionable by the Chief Judge, the Chief Judge shall appoint a panel attorney to investigate and, if necessary, support the complaint. At the same time, the Chief Judge shall refer the matter to a magistrate judge for all pre-disposition proceedings.

(3) The Chief Judge shall appoint a panel of attorneys who are members of the bar of this Court to investigate complaints and, if the complaint is supported by the evidence, to prepare statements of charges and to support such charges at any hearing. In making appointments to the panel, the Chief Judge may solicit recommendations from the Federal Court Bar Association and other bar associations and groups. Attorneys shall be appointed to the panel for terms not to exceed four years without limitation as to the number of terms an attorney may serve. An attorney from this panel who is appointed to investigate and support a com plaint in accordance with subsection (3) below ("panel attorney") may be reimbursed for expenses incurred in performing such duties from the Pro Bono Fund to the extent and in the manner provided in N.D.N.Y.L.R. 83.3(g).

(4) If the panel attorney determines after investigation that the evidence fails to establish probable cause to believe that any violation of the Code of Professional Responsibilities has occurred, the panel attorney shall submit a report of such findings and conclusions to the Chief Judge for the consideration of the active district court judges.

(5) If the panel attorney determines after investigation that the evidence establishes probable cause to believe that one or more violations of the Code of Professional Responsibilities has occurred, the panel attorney shall prepare a statement of charges alleging the grounds for discipline. The Clerk of the Court shall cause the Statement of Charges to be served upon the attorney concerned ("responding attorney") by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this Court and, if different, to the last known address of the attorney as shown in any other source together with a direction from the Clerk that the responding attorney shall show cause in writing within thirty days why discipline should not be imposed.

(6) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned magistrate judge shall schedule a prompt evidentiary hearing. The magistrate judge may grant such pre-hearing discovery as deemed necessary, shall hear witnesses called by the panel attorney supporting the charges and by the responding attorney, and may consider such other evidence included in the record of the hearing as deemed relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The magistrate judge shall report his or her findings and recommendations in writing to the Chief Judge and shall serve them upon the

responding attorney and the panel attorney. The responding attorney and the panel attorney may file objections to the magistrate judge's report and recommendations within twenty days of the date thereof.

(7) An attorney may not be found guilty of a disciplinary charge except upon a majority vote of the district judges, including senior district judges, that such charge has been proven by clear and convincing evidence. Any discipline imposed shall also be determined by a majority vote of the district judges, including senior district judges, except that in the event of a tie vote, the Chief Judge shall cast a tie-breaking vote. If the complaint under subsection (2) above giving rise to the disciplinary proceeding was submitted by a district judge, that judge shall be recused from participating in the decisions regarding guilt and discipline.

(8) Unless other wise ordered by the Court, all documents, records, and proceedings concerning a disciplinary matter shall be filed and conducted confidentially except that, without further order of the Court, the Clerk of the Court may notify other licensing jurisdictions of the imposition of any sanctions.

(h) A visiting attorney permitted to argue or try a particular cause in accordance with L.R. 83.1 who is found guilty of misconduct shall be precluded from again appearing in this Court. On entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the Court's opinion.

(i) Unless the Court orders otherwise, no action shall be taken pursuant to L.R. 83.4 (e) and (f) in any case in which disciplinary proceedings against the attorney have been instituted in the State.

(j) The Court shall enforce the N.Y.S. Lawyer's Code of Professional Responsibilities, as adopted from time to time by the Appellate Division of the State of New York and as interpreted and applied by the United States Court of Appeals for the Second Circuit.

(k) Nothing in this Rule shall limit the Court's power to punish contempts or to sanction counsel in accordance with the Federal Rules of Civil or Criminal Procedure or the Court's inherent authority to enforce its rules and orders.

83.5 Contempt.

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit on which the notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for resulting damages, and evidence as to the amount of damages that is available to the moving party. A reasonable attorneys' fee, necessitated by the contempt proceeding, may be included as an item of damages. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers on which it is based shall be served on the contemnor's attorney; otherwise service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of summons. If an order to show cause is sought, the order may, on necessity shown,

embody a direction to the United States Marshal to arrest and hold the alleged contemnor in bail in an amount fixed by the order, conditioned upon appearance at the hearing and further conditioned upon the alleged contemnor's amenability to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the resulting damages, the alleged contemnor shall, on demand, be entitled to have oral evidence taken either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, a written demand shall be made on or before the return day or adjourned day of the application; otherwise the alleged contemnor shall be deemed to have waived a trial by jury.

(c) If the alleged contemnor is found to be in contempt of the Court, an order shall be made and entered

1. Reciting or referring to the verdict or findings of fact on which the adjudication is based;

2. Setting forth the amount of the damages to which the complainant is entitled;

3. Fixing the fine, if any, imposed by the Court, which fine shall include the damages found and naming the person to whom the fine shall be payable;

4. Stating any other conditions, the performance of which shall operate to purge the contempt;

5. Directing, in the Court's discretion, the arrest and confinement of the contemnor by the United States Marshal until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. On an order of contempt, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) If the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the proceeding and, in the discretion of the Court, shall have judgment against the complainant for costs, disbursements and a reasonable attorneys' fee.

83.6 Transfer of Cases to Another District.

In a case ordered transferred from this district, the Clerk, unless otherwise ordered, shall, upon the expiration of ten (10) days, mail to the court to which the case is transferred

1. Certified copies of the Court's opinion and order compelling the transfer and of the docket entries in the case; and
2. The originals of all papers on file in the case except for the opinion ordering the

transfer of the action.

SECTION X.
ALTERNATE DISPUTE RESOLUTION AND GENERAL PROVISIONS

83.7 Arbitration.

83.7-1 Scope and Effectiveness of Rule.

This Rule governs the consensual arbitration program for referral of civil actions to court-annexed arbitration. It may remain in effect until further order of the Court. Its purpose is to establish a less formal procedure for the just, efficient and economical resolution of disputes, while preserving the right to a full trial on demand.

83.7-2 Actions Subject to this Rule.

The Clerk shall notify the parties in all civil cases, except as otherwise directed by these Rules, that they may consent to non-binding arbitration under this Rule. The notice shall be furnished to the parties at pretrial/scheduling conferences or shall be included with pretrial conference notices and instructions. Consent to arbitration under this Rule shall be discussed at the pretrial/scheduling conference. No party or attorney shall be prejudiced for refusing to participate in arbitration. The Court shall allow the referral of any civil action pending before it to the arbitration process if the parties consent. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing the form with the Clerk within ten (10) days after receipt of the form by the parties. Consent shall be freely and knowingly entered into.

83.7-3 Referral to Arbitration.

(a) Time for Referral.

The Clerk shall refer every action subject to this Rule to arbitration in accordance with the procedures under this Rule twenty (20) days after the filing of the last responsive pleading or within twenty (20) days of the filing of a stipulated consent order referring the action to arbitration, whichever event occurs last, except as otherwise provided. If any party notices a motion to dismiss under the provisions of Fed. R. Civ. P. 12(a) and/or (b), or a motion to join necessary parties pursuant to the Federal Rules of Civil Procedure prior to the expiration of the twenty (20) day period, the motion shall be heard by the assigned judge and further proceedings under this Rule shall be deferred pending decision on the motion. If the action is not dismissed on the motion, it shall be referred to arbitration twenty (20) days after the filing of the decision.

Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed and served within twenty (20) days following the close of discovery. The filing of a Rule 56 motion shall defer further proceedings under this Rule pending decision on the motion.

(b) Authority of Assigned Judge.

Notwithstanding any provision of this Rule, every action subject to this Rule shall be assigned to a judge upon filing in the normal course, in accordance with the Court's Assignment Plan. The assigned judge shall have authority to conduct status and settlement conferences, hear motions and in all other respects supervise the action in accordance with these Rules notwithstanding its referral by consent to arbitration.

(c) Relief from Referral.

Any party shall request relief from the operation of this Rule by filing with the Court a motion for the relief within twenty (20) days after entry of the initial stipulated consent order which refers the case for arbitration. The assigned judge shall, *sua sponte*, exempt an action from the application of this Rule where the objectives of arbitration would not be realized because (1) the case involves complex or novel legal issues, (2) legal issues predominate over factual issues, or (3) for other good cause.

83.7-4 Selection and Compensation of Arbitrator.

(a) Selection of Arbitrators.

The Clerk shall maintain a roster of arbitrators qualified to hear and determine actions under this Rule. The Court shall select arbitrators from time to time from applications submitted by or on behalf of attorneys willing to serve. To be eligible for selection, an attorney (1) shall have been admitted to practice for not less than five (5) years; (2) shall be a member of the bar of this Court or a member of the New York bar and reside within the Northern District of New York; and (3) shall either (i) for not less than five (5) years have devoted 50% or more of the attorney's professional time to matters involving litigation, or (ii) have substantial experience serving as a "neutral" in dispute resolution proceedings, or (iii) have substantial experience negotiating consensual resolutions to complex problems. Each attorney shall, upon selection, take the oath or affirmation prescribed in 28 U.S.C. § 453 and shall complete any training that the Court requires.

(b) Selection of the Panel.

Whenever an action has been referred to arbitration through consent of the parties pursuant to this Rule, the parties shall nominate the arbitrator or arbitrators whom they select to serve as an arbitrator(s) in full compliance with L.R. 83-7-4 (a), or the Clerk shall promptly furnish to each party a list of arbitrators whose names shall have been drawn at random from the roster for the division in which the case is pending. If the parties have elected to proceed with a **single** arbitrator, the Clerk shall provide five (5) names for the selection process. If the parties have elected to proceed with a panel of **three** (3) arbitrators, the Clerk shall provide seven (7) names for the selection process.

1. Each side shall be entitled to strike two names from the list. All parties shall sign the list and return it to the Clerk within ten (10) days of receipt. Failure of the parties to timely notify the Clerk of strikes shall result in the Clerk's selection of the panel.

2. The Clerk shall promptly notify the person or persons whose names are not stricken. If the parties have elected to proceed with a single arbitrator, and the arbitrator selected is unable or unwilling to serve, the process of selection under this Rule shall begin anew. If the parties have elected to proceed with a panel of arbitrators and any person selected is unable or unwilling to serve, the Clerk shall select an additional name at random who shall constitute the third member of the panel. If the Clerk is still unable to form a panel of three arbitrators for any reason, the process of selection under this Rule shall begin anew. When a single arbitrator, or when three of the selected arbitrators have agreed to serve, the Clerk shall promptly send written notice of the membership of the panel to each arbitrator and the parties.

(c) Disqualification.

No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 (conflict of interest) exist or in good faith shall be believed to exist.

(d) Withdrawal by Arbitrator.

Any person whose name appears on the roster maintained in the Clerk's office may ask at any time to have their name removed or, if selected to serve on a panel, decline to serve but remain on the roster.

(e) Compensation and Reimbursement.

Arbitrators shall be paid $250.00 per day or portion of each day of hearing in which they participate serving as a single arbitrator or $100.00 for each day or portion of a day if serving as a member of a panel of three (3). Compensation for an arbitrator's services outside of the hearing shall be supported by an affidavit setting forth in detail the time required for pre- and post-hearing matters. When the arbitrators file their decision, each shall submit a voucher, on the form that the Clerk prescribes, for payment by the Administrative Office of the United States Courts of compensation and out-of-pocket expenses necessarily incurred in the performance of their duties under this Rule. No reimbursement shall be made for the cost of office or other space for the hearing.

83.7-5 Arbitration Hearings.

(a) Hearing date.

After an answer is filed in a case in which the parties have consented to arbitration and the Court has approved the consent and on completion of the parties' selection of the panel, the arbitration clerk shall send a notice to the attorneys setting forth the date, time and location for the arbitration hearing. The date of the arbitration hearing set forth in the notice shall be approximately five (5) months, but in no event later than 180 days, from the date the answer was filed, except that the arbitration proceeding shall not, in the absence of the parties' consent, commence until thirty (30) days after the Court's disposition of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties if such a motion was filed and served within twenty (20) days after the filing of the last responsive pleading. Motions for summary judgment pursuant to Fed. R. Civ. P. 56 shall be filed in accordance with 83.7-3(a). The Court may modify the 180-day and twenty (20) day periods specified in L.R. 83.7 for good cause shown. The notice shall also advise the attorneys that they may agree to an earlier date for the arbitration hearing provided the arbitration clerk is notified within thirty (30) days of the date of the notice.

The notice shall also advise the attorneys that they have 120 days to complete discovery unless the Court orders a shorter or longer period for discovery. If a third party has been brought into the action, this notice shall not be sent until the third party has filed an answer.

(b) Upon entry of the order designating the arbitrator(s), the arbitration clerk shall send to each arbitrator a copy of the order designating the arbitrator, a copy of the court docket sheet and a copy of the guidelines for arbitrators. On receipt of the notice scheduling the case to proceed to arbitration and appointing an arbitrator, the plaintiff's attorney shall promptly forward to the arbitrator copies of all pleadings, including any counterclaim or third-party complaint and respective

answer. Thereafter, and at least ten (10) days prior to the arbitration hearing, each attorney shall deliver to the arbitrator(s) and to the adverse attorney pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories to which reference shall be made at the hearing (but not including documents intended solely for impeachment).

(c) Default of a Party.

The arbitration hearing shall proceed in the absence of any party who, after notice, fails to be present. If a party fails to participate in the arbitration process in a meaningful manner, the arbitrator(s) shall make that determination and shall support it with specific written findings filed with the Clerk. The Court shall then conduct a hearing, on notice to all attorneys and personal notice to any party adversely affected by the arbitrator's determination, and may impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial de novo which that party has filed.

(d) Conduct of Hearing.

The arbitrator is authorized to administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses, except as otherwise provided. In receiving evidence, the arbitrator shall be guided by the Federal Rules of Evidence. These rules, however, shall not preclude the arbitrator from receiving evidence which the arbitrator considers to be relevant and trustworthy and which is not privileged. A party desiring to offer a document, otherwise subject to hearsay objections, at the hearing shall serve a copy on the adverse party not less than ten (10) days in advance of the hearing, indicating intent to offer it as an exhibit. Unless the adverse party gives written notice in advance of the hearing of intent to cross-examine the author of the document, any hearsay objection to the document shall be deemed waived. Attendance of witnesses and production of documents shall be compelled in accordance with Fed. R. Civ. P. 45.

(e) Transcript or Recording.

A party may cause a transcript or recording to be made of the proceedings at its expense but shall, at the request of the opposing party, make a copy available to the party at no charge, unless the parties have otherwise agreed. Except as provided in L.R. 83.7-7(c), no transcript of the proceeding shall be admissible in evidence at any subsequent de novo trial of the action.

(f) Place of Hearing.

Hearings shall be held at any location within the Northern District of New York that the arbitrator(s) designates. Hearings may be held in any courtroom or other room in any federal courthouse that the Clerk makes available to the arbitrator(s). When no room is available, the hearing shall be held at any suitable location that the arbitrator(s) selects. In selecting a hearing location, the arbitrator shall consider the convenience of the panel, the parties and the witnesses. The date for the hearing shall not be continued except for extreme and unanticipated emergencies.

(g) Time of Hearing.

Unless the parties agree otherwise, hearings shall be held during normal business hours.

(h) Authority of Arbitrator.

The arbitrator(s) shall be authorized to make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing before the arbitrator(s). Any two members of a panel shall constitute a quorum; but, unless the parties stipulate otherwise, the concurrence of a majority of the entire panel shall be required for any action or decision by the panel.

(i) Ex Parte Communication.

There shall be no ex parte communication between an arbitrator(s) and any attorney or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

83.7-6 Award and Judgment.

(a) Filing of Award.

The arbitrator(s) shall file the award with the Clerk promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the arbitrator(s) files the award, the Clerk shall serve copies on the parties.

(b) Form of Award.

The award shall state clearly and concisely the name or names of the prevailing party or parties, the party or parties against which it is rendered, and the precise amount of money and other relief, if any, awarded. It shall be in writing and, unless the parties stipulate otherwise, be signed by the arbitrator or by at least two members of a panel. No panel member shall participate in the award without having attended the hearing.

(c) Entry of Judgment on Award.

Unless a party has filed a demand for a trial de novo (or a notice of appeal which shall be treated as a demand for trial de novo) within thirty (30) days of the filing of the arbitration award, the Clerk shall enter judgment on the arbitration award in accordance with Fed. R. Civ. P. 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(d) Sealing of Arbitration Awards.

The contents of any arbitration award made under this Rule shall not be made known to any judicial officer who might be assigned to preside at the trial of the case or to rule on potentially dispositive motions

1. Until the district court has entered final judgment in the action or the action has been otherwise terminated;

2. Except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act; or

3. Except as necessary for the Court to determine whether to assess costs or attorneys' fees under 28 U.S.C. § 655.

83.7-7 Trial De Novo.

(a) Time for Demand.

If either party files and serves a written demand for a trial de novo within thirty (30) days of entry of judgment on the award, the Clerk shall immediately vacate the judgement and the action shall proceed in the normal manner before the assigned judge.

(b) Restoration to Court Docket.

On a demand for a trial de novo, the action shall be restored to the Court's docket, trial ready, and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the Court calendar which is no later than that which a party otherwise would have had, is preserved.

(c) Limitation on Admission of Evidence.

At the trial de novo, the Court shall not admit any evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding unless

1. The evidence would otherwise be admissible in the Court under the Federal Rules of Evidence; or

2. The parties have stipulated otherwise.

(d) Arbitrator's Costs.

The party requesting a trial de novo shall deposit the cost of the arbitrator's services as a prerequisite to the trial. If the requesting party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, such funds so paid shall be retained by the Clerk. However, if that party is successful in obtaining a more favorable result, the prepaid costs shall be reimbursed.

(e) Opposing Party's Costs.

If a party has rejected an award and the action proceeds to trial, that party shall pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the arbitrator's award on that claim. If the opposing party has also rejected that award, however, a party is entitled to costs only if the verdict is more favorable to that party than the arbitrator's award:

1. Actual costs include those costs and fees taxable in any civil action and attorneys' fees for each day of trial not to exceed **$500.00.**

2. For good cause shown, the Court shall order relief from payment of any or all costs.

3. The provisions of L.R. 83.7-7 (d) and (e) shall not apply to claims to which the United States or one of its agencies is a party.

83.7-8 Cases Pending Prior to the Implementation of Arbitration.

Notwithstanding the provisions of the Rules set forth above, each district judge shall select cases from the docket currently in process and notify the attorneys involved of the availability of the consensual arbitration program. A case shall qualify for referral to arbitration if it complies with the provisions of this Rule.

83.8 Number of Experts in Patent Cases.

On the trial of a patent case, whether in open court or by deposition, or partly in each way, only one expert witness shall be allowed to each side, unless leave for additional experts has been obtained from the Court on motion made and cause shown.

83.9 Commission to Take Testimony.

(a) Except as the law otherwise provides, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the depositions shall be as provided in the Federal Rules of Civil Procedure. The party seeking the deposition shall furnish the officer to whom the commission is issued with a copy of the Federal Rules of Civil Procedure pertaining to discovery.

(b) Upon receipt of a deposition, the Clerk, unless otherwise ordered, shall open and file it promptly.

83.10 Student Practice.

General Order #13 pertains to the rules regarding student practice in this district. A copy of General Order #13 may be obtained from the Clerk's office or on the Court's webpage at "www.nynd.uscourts.gov."

83.11-1 Mediation.

(a) Purpose. The purpose of this Rule is to provide a supplementary procedure to the Court's existing alternative dispute resolution procedures. It provides for an earlier resolution of civil disputes resulting in savings of time and cost to litigants and the Court without sacrificing the quality of justice rendered or the right of litigants to a full trial on all issues not resolved through mediation.

(b) Definitions. Mediation is a process by which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation and settlement. The mediator is an advocate for settlement and uses the mediation process to help the parties fully explore any potential area of agreement. The mediator does not serve as a judge or arbitrator and has no authority to render any decision on any disputed issue or to force a settlement. The parties themselves are responsible for negotiating any resolution(s) to their dispute.

83.11-2 Designation and Qualifications of Mediators.

(a) Designation of Mediators. The judges of this Court may authorize those persons who are eligible and qualified to serve as mediators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw such designation of any mediator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.

(b) List of Mediators. The Alternative Dispute Resolution clerk (ADR clerk) shall maintain a list of court-approved mediators that shall be made available to counsel and the public upon request.

(c) Required Qualifications of Mediators.

1. An individual may be designated as a mediator if he or she (1) has practiced law for at least five (5) years; and (2) is a member in good standing of the bar of this Court or of the New York bar and resides within the Northern District of New York; or (3)is a professional mediator who would otherwise qualify as a special master or is determined by the Court to be competent to perform the duties of the mediator and has completed appropriate training in the process of mediation as the Court may from time to time determine and direct; and (4) shall attend and complete a mediation training course that the Court sponsors. Upon Court approval as a mediator, every mediator shall take the oath prescribed by 28 U.S.C.§ 453.

2. No person shall serve as a mediator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist, or may in good faith be believed to exist. Additionally, any mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the mediator has a continuing obligation to disclose any information that may cause a party or the court to believe, in good faith, that such mediator should be disqualified.

(d) Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which the Board of Judges may terminate at any time, as they, in their sole discretion may determine.

(e) Service to the Bar and Court Provided by Mediators.

The individuals serving as mediators in the Northern District of New York perform their mediation duties as a pro bono service for the Court, litigants and the bar.

83.11-3 Actions Subject to Mediation.

(a) The Court may refer any civil action (or any portion thereof) to mediation under this Rule

1. By order of referral; or
2. On the motion of any party; or
3. By consent of the parties.

(b) Any civil action or claim referred to mediation pursuant to this Rule may be withdrawn from mediation by application to the assigned judge at least ten (10) days prior to the scheduled mediation session.

(c) Notwithstanding the provisions of the Rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the mediation program.

83.11-4 Procedures for Referral, Selecting the Mediator, and Scheduling the Mediation Session.

(a) The possibility and appropriateness of mediation under this Rule shall be discussed at the initial status/scheduling conference of the case that is held in accordance with the provisions of General Order #25.

(b) In every case in which the Court determines that referral to mediation is appropriate pursuant to 83.11-3 of this Rule, the Court shall enter an order of reference, which shall define the period of time during which the mediation session shall be conducted. The Court intends that mediation under this Rule occur at the earliest practical time in an effort to encourage earlier, less costly resolutions of disputes. Referral to mediation under this Rule shall not delay or stay other proceedings, including but not limited to discovery, unless the Court so orders.

(c) Within ten (10) days of the order of reference, parties are to select a mediator of their choice from a list of mediators available from the Court and submit the selection to the ADR clerk in the Clerk's office. If no such selection is made in a timely manner or if the parties cannot agree upon the mediator, the ADR clerk shall make the selection for them. The ADR clerk shall work with the selected mediator and counsel of record to set a mutually agreeable date for the mediation within the time prescribed by the order of reference.

(d) Mediation sessions under this Rule may be held in any available court space or in any other suitable location agreeable to the mediator and the parties. Consideration shall be given to the

convenience of the parties and to the cost and time of travel involved.

(e) There shall be no continuance of a mediation session beyond the time set in the referral order except by order of this Court upon a showing of good cause. If any rescheduling occurs within the prescribed time, the ADR clerk must be notified and the location of the rescheduled hearing must be selected.

(f) Any settlement prior to the scheduled mediation shall be promptly reported to the mediator and to the ADR clerk.

83.11-5 The Mediation Session.

(a) Memorandum for Mediation. At least two days prior to the mediation session, each party shall provide to the mediator and all other such parties a "memorandum for mediation." This memo shall:

1. State the name and role of each person expected to attend;
2. Identify each person with full settlement authority;
3. Include a concise summary of the parties' claims or defenses;
4. Discuss liability and damages; and
5. State the relief sought by such party.

The summary shall not exceed five pages and shall not be filed in the case or otherwise made part of the court file.

(b) Attendance Required. The attorney who is expected to try the case for each party shall appear and shall be accompanied by an individual with authority to settle the lawsuit. The latter shall be the parties (if natural persons) or representatives of parties that are not natural persons. This latter party may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers or indemnitors who shall attend and are subject to the provisions of this Rule. Only the assigned judge may excuse attendance of any attorney, party, or party's representative. Any such request must be made in writing to the presiding judge a minimum of forty-eight (48) hours in advance of the mediation session.

(c) Good Faith Participation in the Process. Parties and counsel shall participate in good faith, without any time constraints, and put forth their best efforts toward settlement. Typically, the mediator will meet initially with all parties to the dispute and their counsel in a joint session and thereafter separately with each party and their representative. This process permits the mediator and the parties to explore the needs and interests underlying their respective positions, generate and evaluate alternative settlement proposals or potential solutions, and consider interests that may be outside the scope of the stated controversy including matters that may not be addressed by the Court. The parties will participate in crafting a resolution of the dispute.

(d) Confidentiality. Mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the mediation process.

1. All written and oral communications made in connection with or during the mediation session are confidential.

2. No communication made in connection with or during any mediation session may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.

3. Privileged and confidential status is afforded all communications made in connection with the mediation session, including matters emanating from parties and counsel as well as mediators' comments, assessments, and recommendations concerning case development, discovery, and motions. Except for communication between the assigned judge and the mediator regarding noncompliance with program procedures (*as set forth in this Rule*), there will be no communications between the Court and the mediator regarding a case that has been designated for mediation. The parties will be asked to sign an agreement of confidentiality at the beginning of the mediation session.

4. Parties, counsel and mediators may respond to inquiries from authorized court staff which are made for the purpose of program evaluation. Such responses will be kept in strict confidence.

5. The mediator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the mediator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

6. Immunity. A mediator, as well as the Mediation Administrator (ADR clerk), shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this mediation. *See e.g. Wagshal v. Foster,* 28 F. 3d 1249 (D.C. Cir. 1994).

7. Default. Subject to the mediator's approval, the mediation session may proceed in the absence of a party, who, after due notice, fails to be present. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the mediation session in good faith in accordance with this Rule.

8. Conclusion of the Mediation Session. The mediation shall be concluded:

a. By the parties' resolution and settlement of the dispute;
b. By adjournment for future mediation by agreement of the parties and the mediator; or
c. Upon the mediator's declaration of impasse that future efforts to resolve the dispute are no longer worthwhile.

Unless the Court authorizes otherwise, mediation sessions shall be concluded at least ten (10) days prior to any final pretrial conference that the Court has scheduled.

If the mediation is adjourned by agreement for further mediation, the additional session shall be concluded within the time the Court orders.

83.11-6 Mediation Report; Notice of Settlement or Trial.

(a) Immediately upon conclusion of the mediation, the mediator shall file a mediation report with the ADR clerk, indicating only whether the case settled, settled in part, or did not settle.

(b) In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

(c) If the parties reach a partial agreement to narrow, withdraw or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within five (5) days of the mediation. The stipulation shall bind the parties.

(d) If the mediation session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.12-1 Early Neutral Evaluation.

The ENE Process. Early neutral evaluation (ENE) is a process in which parties obtain from an experienced neutral (an "evaluator") a nonbinding, reasoned, oral evaluation of the merits of the case. The first step in the ENE process involves the Court appointing an evaluator who has expertise in the area of law in the case. After essential information and position statements are exchanged early in the pretrial period (usually within 150 to 200 days after a complaint has been filed), the evaluator convenes an ENE session that typically lasts about two hours. At the ENE meeting, each side briefly presents the factual and legal basis of its position. The evaluator may ask questions of the parties and help them identify the main issues in dispute and also areas of agreement. He or she may also help the parties explore options for settlement. If settlement does not occur, the evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the evaluator's assistance. They may also explore ways of narrowing the issues in dispute, exchanging information about the case or otherwise preparing efficiently for trial.

The evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case. The ENE process, whether or not it results in settlement, is confidential.

83.12-2 Designation and Qualifications of Evaluators.

(a) Designation of Evaluators. The judges of this Court may authorize those persons who are eligible and qualified to serve as evaluators under this Rule in such numbers as the Court shall deem appropriate. The Court may withdraw such designation of any evaluator at any time. Applications for designation as an ADR panel member are available at the Clerk's office.

(b) List of Evaluators. The ADR clerk shall maintain a list of court-approved evaluators that shall be made available to counsel and the public upon request.

(c) Required Qualifications of Evaluators.

1. An individual may be designated as an Early Neutral Evaluator if he or she (1) has practiced law for at least fifteen years; and (2) is a member in good standing of the bar of this court or of the New York bar and resides within the Northern District of New York; or (3) is a professional whom this Court determines to be competent to perform the duties of the evaluator and has completed appropriate training in the process of Early Neutral Evaluation as the Court may from time to time determine and direct. Upon Court approval as an evaluator, every evaluator shall take the oath prescribed by 28 U.S.C. § 453.

2. No person shall serve as an evaluator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist or may in good faith be believed to exist. Additionally any evaluator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144. Furthermore, the evaluator has a continuing obligation to disclose any information which may cause a party or the Court to believe in good faith that such evaluator should be disqualified.

(d) Removal from the Panel. Membership in the ADR Panel is a privilege, not a right, which the Board of Judges may terminate at any time, as they, in their sole discretion may determine.

(e) Service to the Bar and Court Provided by Evaluators. The individuals serving as evaluators in the Northern District of New York perform their duties as a pro bono service to the Court, litigants, and the bar.

83.12-3 Actions Subject to Early Neutral Evaluation.

(a) The Court may refer any civil action (or any portion thereof) to Early Neutral Evaluation under this Rule

1. By order of referral;
2. On the motion of any party; or
3. By consent of the parties.

(b) Any civil action or claim referred to the Early Neutral Evaluation Process pursuant to this Rule may be withdrawn from the program by application to the assigned judge at least ten (10) days before the scheduled evaluation session.

(c) Notwithstanding the provisions of the rules set forth above, each judge shall select cases from the docket currently pending and notify the attorneys involved of the availability of the Early Neutral Evaluation Process.

(d) When a case is designated for ENE, the ADR clerk will provide counsel with copies of the judge's designation order, a listing by division of the available early neutral evaluators, and a copy of the ENE procedure guide.

83.12-4 Administrative Procedures and Requirements.

(a) In most cases, the ENE order will be issued early enough in the pretrial period to allow the ENE session to be held between 150 and 200 days from the filing of the complaint.

(b) When the ADR clerk receives a copy of a judicial order designating a case for ENE, the parties will be given a date by which they must choose an evaluator from the list provided to counsel. If selection of an evaluator is not made by the designated date, the ADR clerk will assign an evaluator with expertise in the subject matter of the lawsuit and notify counsel.

(c) The evaluator will contact all attorneys and set the date and place of the evaluation session. Whenever possible, the ENE session shall be held within 150 to 200 days of the filing of the complaint and within forty-five days of the date that the ADR clerk notifies counsel of the identity of the evaluator.

(d) The ADR clerk and evaluators shall schedule ENE proceedings in a manner that does not interfere in any way with the management of case processing or the actions of the referring judge. No party may avoid or postpone any obligation imposed by the order of reference on any ground related to the ENE process.

83.12-5 Evaluation Statements.

(a) No later than ten (10) calendar days prior to the ENE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written evaluation statement not to exceed ten (10) pages *excluding exhibits and attachments*.

Such statements must

1. Identify person(s), in addition to counsel, who will attend the ENE session and who have decision-making authority;

2. Address whether the case involves legal or factual issues the early resolution of which might reduce the scope of the dispute or contribute significantly to settlement negotiations; and

3. Identify the discovery that will contribute most to meaningful settlement negotiations.

(b) Parties may also identify persons whose presence at the ENE session might improve significantly the productivity of the session.

(c) Parties shall attach to the evaluation statements, copies of key documents out of which the suit arose (*e.g., contracts*) or materials that might advance the purposes of the ENE session (*e.g., medical reports*).

Written evaluation statements are NOT to be filed with the Court. Evaluation statements are considered confidential between the parties and the evaluator.

83.12-6 Attendance at ENE Sessions.

(a) The Court requires parties to attend evaluation sessions. The main purposes of an ENE session are to give litigants the opportunity (1) to present their positions; (2) to hear their opponents' view of the issues in dispute; and (3) to hear a neutral assessment of the strengths of each side's case.

(b) When a party to a case is not a natural person (*e.g. a corporation*), a person *other than the outside counsel* who has authority to enter stipulations and to bind the party in a settlement must attend.

(c) In cases involving insurance carriers, company representatives with settlement authority shall attend.

(d) When a party is a unit of the federal government, an agency representative and counsel from the U.S. Attorney's Office, must attend the ENE session.

(e) An attorney for each party who has primary responsibility for handling the trial of the matter must attend the ENE session.

(f) A party or attorney may be excused from attending an ENE session only after petitioning the referring judge in writing no fewer than ten (10) calendar days before the scheduled ENE session. Such a petition must show that attendance at the ENE session would impose an extraordinary or unjustifiable hardship.

(g) **Default.** Subject to the evaluator's approval, the evaluation session may proceed in the absence of a party, who, after due notice, fails to be present. The Court may impose sanctions on any party who, absent good cause shown, fails to attend or participate in the evaluation session in good faith in accordance with this Rule.

83.12-7 Procedures at ENE Sessions.

(a) The evaluator has broad discretion to structure the ENE session. She or he will decide the time and place of the session and will structure the session and any follow-up sessions. Rules of evidence shall not apply and there is no formal examination or cross-examination of witnesses.

(b) The evaluator shall:

1. Permit each party, or counsel, to make an oral presentation of its position;

2. Help parties identify areas of agreement and enter stipulations, wherever feasible;

3. Assess the relative strengths and weaknesses of the parties' positions and explain the reasons for the assessments;

4. Help parties explore settlement;

5. Estimate, where possible, the likelihood of liability and the range of damages;

6. Help parties develop an information-sharing or discovery plan to expedite settlement discussions or to position the case for disposition by other means; and

7. Determine what, if any, follow-up measures will contribute to case development or settlement (*e.g. written reports; telephone reports; additional ENE sessions; or other forms of ADR, such as arbitration, mediation, settlement conference, or consent before a Magistrate Judge*).

(c) When an evaluator completes work on a case, she or he will, regardless of case outcome, submit an evaluator assessment form to the ADR clerk.

83.12-8 Confidentiality.

Early Neutral Evaluation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during the ENE session. There shall be no stenographic or electronic record, e.g., audio or video, of the ENE process.

(a) All written and oral communications made in connection with or during any ENE sessions are confidential.

(b) No communication made in connection with or during any ENE sessions may be disclosed or used for any purpose in any pending or future proceeding in this Court.

(c) Privileged and confidential status is afforded all communications made in connection with ENE sessions, including matters emanating from parties and counsel as well as evaluators' comments, assessments, and recommendations concerning case development, discovery and motions. Except for communication between the assigned judge and the evaluator regarding noncompliance with program procedures *as set forth in this Rule*, there will be no communications between the Court and the evaluator regarding a case that has been designated for evaluation. The parties will be asked to sign an agreement of confidentiality at the beginning of the evaluation session.

(d) Parties, counsel, and evaluators may respond to inquiries from authorized court staff which

are made for the purposes of program evaluation. Such responses will be kept in strict confidence.

(e) The evaluator may not be required to testify in any proceeding relating to or arising out of the matter in dispute. Nor may the evaluator be subject to process requiring disclosure of information or data relating to or arising out of the matter in dispute.

83.12-9 Role of Evaluators.

(a) Evaluators may not compel parties or counsel to conduct or respond to discovery or to file motions.

(b) Evaluators may not determine the issues in a case or impose limits on pretrial activities.

(c) Evaluators, and any parties who encounter a problem during the ENE session and have discussed such problem with the evaluator without obtaining a satisfactory resolution of the matter, shall report to the assigned judge any instances of noncompliance with ENE procedures that, in their view, may disrupt the evaluation process or threaten the integrity of the ENE program.

(d) **Immunity**. An evaluator, as well as the ADR clerk, shall be immune from claims arising out of acts or omissions incident to service as a court appointee in this Early Neutral Evaluation Program.

83.12-10 Early Neutral Evaluation Report.

(a) Immediately upon conclusion of the evaluation session, the evaluator shall file a report with the ADR clerk indicating only whether the case settled, settled in part, or did not settle.

(b) In the event the parties reach an agreement to settle the case, the representatives for each party shall promptly notify the ADR clerk and promptly prepare and file the appropriate stipulation of dismissal.

(c) If the parties reach a partial agreement to narrow, withdraw, or settle some but not all claims, they shall file a stipulation concisely setting forth the resolved claims with the ADR clerk within five (5) days of the evaluation session. The stipulation shall bind the parties.

(d) If the Early Neutral Evaluation Session does not conclude in settlement of all the issues in the case, the case will proceed toward trial pursuant to the scheduling orders entered in the case.

83.13 Sealed Matters

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for the assigned judge's approval. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until a subsequent order, upon the Court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

83.14 Production and Disclosure of Documents and Testimony of Judicial Personnel in Legal Proceedings

(A) The purpose of the rule is to implement the policy of the Judicial Conference of the United States with regard

(1) to the production or disclosure of official information or records by the federal judiciary, and

(2) the testimony of present or former judiciary personnel relating to any official information acquired by any such individual as part of the individual's performance of official duties, or by virtue of that individual's official status, in federal, state, or other legal proceedings. Implementation of this Rule is subject to the regulations established by the Judicial Conference of the United States which are incorporated herein (a copy of such regulations can be obtained from the Clerk of the Court.)

(B) Requests covered by this Rule include an order, subpoena, or other demand of a court or administrative or other authority, of competent jurisdiction, under color of law, or any other request by whatever method, for the production, disclosure, or release of information or records by the federal judiciary, or for the appearance and testimony of federal judicial personnel as witnesses as to matters arising out of the performance of their official duties, in legal proceedings. This includes requests for voluntary production or testimony in the absence of any legal process.

(C) This Rule does not apply to requests by members of the public, when properly made through the procedures established by the court for records or documents, such as court files or dockets, routinely made available to members of the public for inspection or copying.

(D) Any request for testimony or production of records shall set forth a written statement by the party seeking the testimony or production of records containing an explanation of the nature of the testimony or records sought, the relevance of the

testimony or records sought to the legal proceedings, and the reasons why the testimony or records sought, or the information contained therein, are not readily available from other sources or by other means. This explanation shall contain sufficient information for the determining officer to decide whether or not federal judicial personnel should be allowed to testify or the records should be produced. Where the request does not contain an explanation sufficient for this purpose, the determining officer may deny the request or may ask the requester to provide additional information. The request for testimony or production of records shall be provided to the federal judicial personnel from whom testimony or production of records is sought at least fifteen (15) working days in advance of the time by which the testimony or production of records is to be required. Failure to meet this requirement shall provide a sufficient basis for denial of the request.

(E) In the case of a request directed to a district judge, or magistrate judge, or directed to a current or former member of such a judge's personal staff, the determining officer shall be the district judge or magistrate judge.

(F) Procedures to be followed:

(1) In the case of a request directed to an employee or former employee of the office of the clerk of court, the determining officer shall be the Clerk of Court. The Clerk shall consult with the chief judge of the district court for determination of the proper response to a request.

(2) In the case of a request directed to an employee or former employee of the Probation Office, the determining officer will be the chief probation officer or his designee. The determining officer shall consult with the chief judge or his designee regarding the proper response to a request. The chief probation officer's designee(s) will be the officer to whom the request is directed and the officer's supervisor or manager. The chief judge's designee will be the judge who sentenced the offender from whom the request is received or whose records are the subject of the request. Requests for disclosure, other than subpoenas, not otherwise covered by memorandum of understanding, statute, rule of procedure, regulation, case law, or court-approved local policy, will be presented to the sentencing judge, or in his or her absence, the chief judge, for approval. All subpoenas will be presented to the court.

84.1 Forms.

[Reserved.]

85.1 Title.

[Reserved.]

86.1 Effective Date.

See L.R. 1.1(b).

SECTION XI.
CRIMINAL PROCEDURE

1.1 Scope of the Rules.

These are the Local Rules of Practice for Criminal Cases in the United States District Court for the Northern District of New York. They shall be cited as "**L. R. Cr. P. ____**."

1.2 Electronic Case Filing.

All criminal cases filed in this Court may be assigned to the Electronic Case Files System in accordance with the General Order # 22, the provisions of which are incorporated herein by

reference, and which the Court may amend from time to time.

1.3 Personal Privacy Protection.

Effective November 1, 2004, all non-sealed documents filed in criminal cases will be viewable by the public via the Internet. Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all pleadings filed with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court orders otherwise.

1. **Social security numbers**. If an individual's social security number must be included in a document, use only the last four digits of that number.
2. **Names of minor children**. If the involvement of a minor child must be mentioned, use only the initials of that child.
3. **Dates of birth.** If an individual's date of birth must be included in a document, use only the year.
4. **Financial account numbers**. If financial account numbers are relevant, use only the last four digits of those numbers.
5. **Home Addresses**. If a home address must be used, use only the City and State.

In addition, caution shall be exercised when filing documents that contain the following:
1) personal identifying number, such as a driver's license number;
2) medical records, treatment and diagnosis;
3) employment history;
4) individual financial information; and
5) proprietary or trade secret information.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may

a. file an unredacted version of the document under seal, or

b. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

Counsel is strongly urged to discuss this issue with all their clients so that an informed decision about the inclusion of certain information may be made. The responsibility for redacting these personal identifiers **rests solely with counsel and the parties.** The Clerk will not review each pleading for compliance with this Rule. Counsel and the parties are cautioned that failure to redact these personal identifiers may subject them to the Court's full disciplinary power.

Exception: Transcripts of the administrative record in social security proceedings and state

court records relating to a habeas corpus petitions are exempt from this requirement.

2.1 THROUGH 4.1

[Reserved]

5.1 Notice of Arrest.

(a) Notice of Arrest of Parole, Special Parole, Mandatory Release or Military Parole Violators.

As soon as practicable after taking into custody any person charged with a violation of parole, special parole, mandatory release, or military parole, the United States Marshal shall give written notice to the chief probation officer of the date of the arrest and the place of confinement of the alleged violator.

(b) Notice of Arrest of Probation or Supervised Release Violators.

As soon as practicable after taking into custody any person charged with a violation of probation or supervised release, the United States Marshal shall give written notice to the chief probation officer, the United States Attorney, and the United States Magistrate Judge assigned to the case.

(c) Notice of Arrest by Federal Agencies and Others.

It shall be the duty of the United States Marshal to require all federal agencies and others who arrest or hold any person as a federal prisoner in this district, and all jailers who incarcerate any such person in any jail or place of confinement in this district, to give the United States Marshal notice of the arrest or incarceration promptly.

As soon as practicable after receiving notice or other knowledge of any such arrest or incarceration anywhere within the district, the Marshal shall give written notice to the United States Magistrate Judge at the office closest to the place of confinement and to the United States Attorney and the pretrial services officer of the date of arrest and the prisoner's place of confinement.

5.1.1 THROUGH 10.1

[Reserved]

11.1 Pleas

(a) In all cases where a presentence report is required, the Court will defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B) and its decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and (e)(1)(C) until there has been an opportunity to consider the presentence report, unless the Court states otherwise.

(b) An attorney for a defendant indicating a desire to change a previously entered "not guilty" plea shall give notice to the United States Attorney and the assigned judge as soon as practicable and, if possible, at least twenty-four (24) hours prior to the commencement of the trial.

(c) For any plea agreement that is to be sealed, the United States Attorney shall provide the Court with a proposed sealing order.

12.1 Motions and Other Papers.

(a) All motion papers must be filed with the Court and served upon the other parties no less than **THIRTY-ONE CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date that the moving party selected. The moving party must specifically articulate the relief requested and must set forth a factual basis which, if proven true, would entitle the moving party to the requested relief. Opposing papers must be filed with the Court and served upon the other parties not less than **SEVENTEEN CALENDAR DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of the Court, upon a showing of necessity. If leave is granted, reply papers must be filed with the Court and served upon the other parties not less than **ELEVEN CALENDAR DAYS** prior to the return date of the motion.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless the assigned judge specifically requests that they do so.

In addition, no party shall file or serve a memorandum of law which exceeds twenty-five (25) pages in length, unless leave of Court is obtained prior to filing. All memoranda of law exceeding five (5) pages shall contain a table of contents and, wherever possible, parallel citations. A separate memorandum of law is unnecessary when the case law may be concisely cited (i.e. several paragraphs) in the body of the motion.

(b) No motion to compel discovery shall be heard unless the attorney for the moving party files with the Court, simultaneously with the filing of the moving papers, a notice stating that the moving party has conferred and discussed in detail with the opposing party the issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.

(c) All motions and other papers filed in a criminal action or proceeding shall show on the first page beneath the file number which, if any, of the speedy trial exclusions under 18 U.S.C. § 3161 are applicable to the action sought or opposed by the motion or other paper and the amount of resulting excludable time.

(d) Adjournment of motions shall be in the Court's discretion. Any party seeking an adjournment from the Court shall first contact the opposing attorney. Any application for an adjournment of a motion shall be made in writing and shall set forth the reason for the adjournment.

(e) If the parties agree that a suppression hearing is necessary and the papers conform to the requirements of L.R. Cr. P. 12.1(a), the Court will set the matter for a hearing. If the government contests whether a hearing should be conducted, the defendant's motion must be accompanied by an affidavit, based upon personal knowledge, setting forth facts which, if proven true, would entitle the defendant to relief.

(f) An affidavit of counsel is not required when filing motions in criminal cases. A certificate of service is required at the conclusion of the motion.

(g) All papers filed in criminal cases shall comply with the guidelines established in Local Rule 8.1 regarding personal privacy protection.

13.1 Sealed Matters.

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for the assigned judge's approval. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon the assigned judge's approval of the sealing order, the Clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until a subsequent order, upon the Court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

14.1 Discovery

(a) It is the Court's policy to rely on the discovery procedure as set forth in this Rule as the sole means for the exchange of discovery in criminal actions except in extraordinary circumstances. This Rule is intended to promote the efficient exchange of discovery without altering the rights and obligations of the parties, while at the same time eliminating the practice of routinely filling perfunctory and duplicative discovery motions.

(b) Fourteen (14) days after arraignment, or on a date that the Court otherwise sets for good cause shown, the government shall make available for inspection and copying to the defendant the following:

1. **Fed. R. Crim. P. 16(a) & Fed. R. Crim. P. 12(d) information.** All discoverable information within the scope of Fed. R. Crim. P 16(a), together with a notice pursuant to Fed. R. Crim. P. 12(d) of the government's intent to use this evidence, in order to afford the defendant an opportunity to file motions to suppress evidence.

2. **Brady Material.** All information and material that the government knows that may be favorable to the defendant on the issues of guilt or punishment, within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963).

3. **Federal Rule of Evidence 404(b).** The government shall advise the defendant of its intention to introduce evidence in its case in chief at trial, pursuant to Rule 404(b) of the Federal Rules of Evidence. This requirement shall replace the defendant's duty to demand such notice.

(c) Unless a defendant, in writing, affirmatively refuses discoverable materials under Fed. R. Crim. P. 16(a)(1)(C), (D), or (E), the defendant shall make available to the government all discoverable information within the scope of Fed. R. Crim. P. 16(b) within twenty-one (21) days of arraignment.

(d) No less than fourteen (14) days prior to the start of jury selection, or on a date the Court sets otherwise for good cause shown, the government shall tender to the defendant the following:

1. **Giglio Material.** The existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).

2. Testifying Informant's Convictions. A record of prior convictions of any alleged informant who will testify for the government at trial.

(e) The government shall anticipate the need for, and arrange for the transcription of, the grand jury testimony of all witnesses who will testify in the government's case in chief, if subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. § 3500. The government, and where applicable, the defendant, are requested to make materials and statements subject to Fed. R. Crim. P. 26.2 and 18 U.S.C. §3500 available to the other party at a time earlier than rule or law requires, so as to avoid undue delay at trial or hearings.

(f) It shall be the duty of counsel for all parties to immediately reveal to opposing counsel all newly discovered information, evidence, or other material within the scope of this Rule, and there is a continuing duty upon each attorney to disclose expeditiously. The government shall advise all government agents and officers involved in the action to preserve all rough notes.

(g) No attorney shall file a discovery motion without first conferring with opposing counsel, and the Court will not consider a motion unless it is accompanied by a certification of such conference and a statement of the moving party's good faith efforts to resolve the subject matter of the motion by agreement with opposing counsel. No discovery motions shall be filed for information or material within the scope of this Rule unless it is a motion to compel, a motion for protective order or a motion for an order modifying discovery. See Fed. R. Crim. P. 16(d). Discovery requests made pursuant to Fed. R. Crim. P. 16 and this Rule require no action on the part of this Court and should not be filed with the Court unless the party making the request desires to preserve the discovery matter for appeal.

15.1 THROUGH 16.1

[Reserved.]

17.1 Subpoenas.

(a) Production Before Trial.

Except on order of a judge, no subpoena for production of documents or objects shall be sought or issued if the subpoena requests production before trial. See Fed. R. Crim. P. 17(c).

(b) Depositions.

Except on order of a judge, no subpoena for a deposition shall be sought or issued. See Fed. R. Crim. P. 15; 17(f).

(c) Subpoenas Requested by Attorneys Appointed Under the Criminal Justice Act.

1. The Clerk shall issue subpoenas, signed but otherwise in blank, to an attorney appointed under the Criminal Justice Act. No subpoena so issued shall be served outside the boundaries of this district. Attorneys shall file with the clerk of the court a list of those witnesses whom they have subpoenaed. This filing shall constitute certification that the subpoena(s) is necessary to obtain relevant and material testimony and that the witness' attendance is reasonably necessary to the defense of the charge.

2. If a witness is to be subpoenaed outside the boundaries of this district, an ex parte application for issuance of a subpoena shall be made to the appropriate court.

3. The defense attorney shall request service of the subpoenas under this Rule by the United States Marshal. The defense attorney shall obtain an order from the Court directing the Marshal to serve subpoenas. The Marshal shall serve the subpoenas in the same manner as in other cases, except that the name and address of the person served shall not be disclosed without prior authorization of the defense attorney. No fee shall be allowed for private service of any subpoena issued under this Rule unless express advance authorization is obtained by written order of the court.

4. As authorized by Fed. R. Crim. P. 17(b), the Court orders that the costs for service of process and payment of witness fees for each witness subpoenaed under this Rule shall be paid in the same manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf of the government.

17.1.1 Pretrial Conferences.

At the request of any party or upon the Court's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding. The agenda at the pretrial conference shall consist of any of the following items, so far as applicable, and such other matters that the judge designates as may tend to promote the fair and expeditious trial of the action or proceeding:

(a) Production of witness statements under the Jenks Act, Title 18 U.S.C. § 3500 or Fed. R. Crim. P. 26.2;

(b) Production of grand jury testimony of witnesses intended to be called at trial;

(c) Production of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;

(d) Stipulation of facts which may be deemed proved at the trial without further proof by either party and limitation of witnesses;

(e) Appointment by the Court of interpreters under Fed. R. Crim. P. 28;

(f) Dismissal of certain counts and elimination from the case of certain issues; e.g., insanity, alibi, and statute of limitations;

(g) Severance of trial as to any co-defendant or joinder of any related case;

(h) Identification of informers, use of lineup or other identification evidence, use of evidence of prior convictions of defendant or any witness, etc.;

(i) Pretrial exchange of lists of witnesses intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(j) Pretrial exchange of documents, exhibits, summaries, schedules, models, or diagrams intended to be offered or used at trial;

(k) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(l) Preparation of trial briefs on controversial points of law likely to arise at trial;

(m) Scheduling of the trial and of witnesses;

(n) Settlement of jury instructions, voir dire questions, and challenges to the jury; and

(o) Any other matter which may tend to promote a fair and expeditious trial.

18.1 THROUGH 19.1

[Reserved]

20.1 Transfer from a District for Plea and Sentence.

Upon the transfer under Fed. R. Crim. P. 20 of an information or indictment charging a minor offense, the case shall be referred immediately to a Magistrate Judge who shall take the plea and impose sentence in accordance with the rules for the trial of minor offenses if, pursuant to 18 U.S.C. § 3401, the defendant consents in writing to this procedure.

21.1 THROUGH 23.1.

[Reserved]

23.1 Free Press- Fair Trial Directives.

(a) It is the duty of the lawyer or law firm, and of non-lawyer personnel employed by a lawyer's office or subject to a lawyer's supervision, private investigators acting under the supervision of a criminal defense lawyer, and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation (including government lawyers and lawyers for targets, subjects, and witnesses in the investigation) shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the administration of justice.

(c) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will interfere with a fair trial; except that the lawyer or the law firm may quote from or refer without comment to public records of the Court in the case.

(d) Statements concerning the following subject matters presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

(1) The prior criminal record (including arrests, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;

(2) The existence or contents of any confession, admission or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Information the lawyer or law firm knows is likely to be inadmissible at trial and would, if disclosed, create a substantial likelihood of prejudicing an impartial trial: and

(7) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(e) Statements concerning the following subject matters presumptively do not involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

(1) An announcement, at the time of arrest, of the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit and use of weapons), the identity of the investigating and arresting officer or agency and the length of investigation;

(2) An announcement, at the time of seizure, stating whether any items of physical evidence were seized and, if so, a description of the items seized (but not including any confession, admission or statement);

(3) The nature, substance or text of the charge, including a brief description of the offense charges;

(4) Quoting or referring without comment to public records of the Court in the case;

(5) An announcement of the scheduling or result of any state in the judicial process, or an announcement that a matter is no longer under investigation;

(6) A request for assistance in obtaining evidence and the disclosure of information necessary to further such a request for assistance; and

(7) An announcement, without further comment, that the accused denies the charges, and a brief description of the nature of the defense.

(f) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against said lawyer.

(g) The Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the Court may deem appropriate for inclusion in such order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies to be considered are: change of venue, postponing the trial, a searching voir dire, emphatic jury instructions, and sequestration of jurors.

(h) Disciplinary action may be taken against any lawyer who violates the terms of this rule.

24.1 THROUGH 30.1.

[Reserved]

30.1 Jury Instructions.

Proposed jury instructions shall be submitted to the Court in accordance with the time frames set forth in the Criminal Pretrial Scheduling Order issued at the time of arraignment. All proposed jury instructions shall be accompanied by citations to relevant authorities.

31.1

[Reserved]

32.1 Presentence Reports.

(a) Order for Presentence Report.

Sentences will be imposed without unnecessary delay following the completion of the presentence investigation and report. This Court adopts the use of a uniform presentence order. The uniform presentence order shall contain: (1) date by which the presentence report is to be made available; (2) the deadlines for filing objections, if any, to the presentence report; (3) the deadlines for filing presentence memoranda, recommendations and motions; and (4) a date for sentencing.

(b) Presence of Counsel.

On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation. It shall be incumbent upon the defendant's counsel to advise the Probation Office within two (2) business days of the date that the presentence report is ordered that counsel wishes to be present at any interview with the defendant.

(c) Disclosure Procedures.

1. The Presentence Report is confidential and should not be disclosed to anyone other than the defendant, the defendant's attorney, the United States Attorney and the Bureau of Prisons without the Court's consent.

2. The court directs the probation officer not to disclose the probation officer's confidential recommendation to any of the parties.

3. All counsel are admonished that the time limits set forth in the Uniform Presentence Order shall be adhered to in order to allow sufficient time for the Court to read and analyze the material which is submitted.

4. The Court, on motion of either party or of the probation office, may modify the time requirements set forth in the Uniform Presentence Order subject to the provisions of Title 18 U.S.C. § 3552(d).

(d) Responsibilities of the Clerk and Probation Office.

1. Within three (3) business days after sentencing, the Clerk shall serve a copy of the judgment upon the parties and the United States Marshal.

2. Copies of the Presentence Report provided to the Court of Appeals for the Second

Circuit by the Clerk shall include the Court's finding on unresolved objections.

33.1 THROUGH 43.1.

[Reserved.]

44.1 Right to and Assignment of Counsel.

If a defendant, appearing without an attorney in a criminal proceeding, desires to obtain an attorney, a reasonable continuance for arraignment, not to exceed one week at any one time, shall be granted for that purpose. If the defendant requests that the Court appoint an attorney or fails for an unreasonable time to appear with an attorney, the assigned District Judge or Magistrate Judge shall, subject to the applicable financial eligibility requirements, appoint an attorney unless the defendant, electing to proceed without an attorney, waives the right to an attorney in a manner approved by the District Judge or the Magistrate Judge. In that case, the District Judge or Magistrate Judge shall, nevertheless, designate an attorney to advise and assist the defendant to the extent the defendant might thereafter desire. Appointment of an attorney shall be made in accordance with this Court's Plan adopted pursuant to the Criminal Justice Act of 1964 and on file with the Clerk.

44.2 Appearance and Withdrawal of Counsel.

(a) An attorney appearing for a defendant in a criminal case, whether retained or appointed, shall promptly file a written appearance with the Clerk. An attorney who has appeared shall thereafter withdraw only upon notice to the defendant and all parties to the case and an order of the Court finding that good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not be deemed good cause unless the Court determines otherwise.

(b) Unless leave is granted, the attorney shall continue to represent the defendant until the case is dismissed, the defendant is acquitted or convicted, or the time for making post-trial motions and for filing a notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until the court having jurisdiction of the case grants leave to withdraw or until that court has appointed another attorney as provided in 18 U.S.C. § 3006A and other applicable provisions of law.

45.1 Excludable Time under the Speedy Trial Act.

No continuance or extension shall be granted under the Speedy Trial Act unless a motion or stipulation is submitted that recites the appropriate exclusionary provision of the Speedy Trial Act, 18 U.S.C. § 3161. In addition, the motion or stipulation shall be accompanied by an affidavit of facts upon which the Court can base a finding that the requested relief is warranted. The attorneys shall also submit a proposed order setting forth the time to be excluded and the basis for its exclusion. If the exclusion affects the trial date of the action, the stipulation or proposed order shall have a space for the Court to enter a new trial date in accordance with the excludable time period. The Court shall disallow all requests for a continuance or extension that do not comply with this Rule.

46.1 Pretrial Services and Release on Bail.

Pursuant to the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152 -3155, the Court authorizes the United States Probation Office and/or Pretrial Services Office of the Northern District of New York to perform all services as the Act provides.

(a) Pretrial Service Officers shall conduct an interview and investigate each individual charged with an offense and shall submit a report to the Court as soon as practicable. The judicial officer setting conditions of release or reviewing conditions previously set shall receive and consider all reports that Pretrial Service Officers, the government and defense counsel submit.

(b) Pretrial service reports shall be made available to the attorney for the accused and the attorney for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein.

(c) Pretrial Service Officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or modifications of the release.

47.1 Motions.

See L.R. Cr. P. 12.1.

48.1 THROUGH 56.1.

[Reserved]

57.1 Criminal Designation Forms.

The United States Attorney shall file a criminal designation form with each new indictment or information. On this sheet the United States Attorney shall indicate the name and address of the defendant and the magistrate judge case number, if any. The criminal designation form also shall contain any further information that the Court or the Clerk deems pertinent. A copy of the designation form can be obtained from the Court's webpage at "**www.nynd.uscourts.gov."**

57.2 Release of Bond.

When a defendant has obtained release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. The defendant's attorney shall prepare a motion and proposed order for the release of the bond and submit the motion to the Court for the assigned judge's signature. Unless otherwise specified by court order, or upon such proof as the Court shall require, all bond refunds shall be disbursed to the individual whose name appears on the Court's receipt for payment.

58.1 Magistrate Judges.

(a) Powers and Duties.

1. A full-time Magistrate Judge is authorized to exercise all powers and perform all duties permitted by 28 U.S.C. § 636(a), (b), and (c), and any additional duties that are consistent with the Constitution and laws of the United States. A part-time Magistrate Judge is authorized to exercise all of those duties, except those permitted under 28 U.S.C. § 636(c), and any additional duties consistent with the Constitution and laws of the United States.

2. A Magistrate Judge is also authorized to:

(A) Conduct removal proceedings and issue warrants of removal in accordance with Fed. R. Crim. P. 40;

(B) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

(C) Impanel and charge a Grand Jury and Special Grand Juries and receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);

(D) Conduct voir dire and select petit juries for the Court;

(E) Conduct necessary proceedings leading to the potential revocation of probation;

(F) Order the exoneration or forfeiture of bonds;

(G) Exercise general supervision of the Court's criminal calendar, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the Court;

(H) Exercise all the powers and duties conferred or imposed upon United States commissioners by law or the Federal Rules of Criminal Procedure;

(I) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits, and depositions;

(J) Determine motions pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of the defendant and, if necessary, order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4241(b); and

(K) Conduct hearings to determine the mental competency of the defendant pursuant to 18 U.S.C. § 4247(d) and issue a report and recommendation to the assigned District Judge pursuant to 28 U.S.C. § 636(b).

(b) Felonies.

On the return of an indictment or the filing of an information, a District Judge shall assign

felony matters to a Magistrate Judge for the purpose of arraignment, for the determination and fixing the conditions of pretrial release, and for the assignment of an attorney to the extent authorized by law.

(c) Misdemeanors.

1. A Magistrate Judge is authorized to conduct trials of persons accused of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401, order a presentence investigation report on any such persons who are convicted or plead guilty or nolo contendere, and sentence such persons.

2. Any person charged with a misdemeanor may, however, elect to be tried before a judge of the district court for the district in which the offense was committed. The Magistrate Judge shall carefully advise defendants of their right to trial, judgment, and sentencing by a judge of the district court and their right to a trial by jury before a District Judge or Magistrate Judge. The Magistrate Judge shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the Magistrate Judge. That consent specifically must waive trial, judgment, and sentencing by a judge of the district court.

3. Procedures on appeal to a District Judge in a consent case pursuant to 18 U.S.C. § 3401 shall be as provided in Fed. R. Crim. P. 58(g). Unless otherwise ordered,

   (A) The appellant's brief shall be filed within ten (10) days following the filing of the notice of appeal;

   (B) The appellee's brief shall be filed within ten (10) days following submission of the appellant's brief;

   (C) No oral argument shall be permitted.

58.2 Forfeiture of Collateral in Lieu of Appearance.

In accordance with Fed. R. Crim. P. 58(d)(1), the U.S. District Court for the Northern District of New York has adopted the schedule for violations as set forth in General Order #4. Copies of General Order #4 may be obtained from the Clerk's office or on the Court's webpage at "**www.nynd.uscourts.gov.**"

59.1 THROUGH 60.1.

[Reserved]

SECTION XII.
LOCAL RULES OF PROCEDURE FOR ADMIRALTY AND MARITIME CASES

Rule A Scope of the Rules.

(a)1. Authority. A majority of the judges have promulgated this Court's local admiralty rules as authorized by and subject to the limitations of the Fed. R. Civ. P. 83.

(a)2. Scope. The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims "Supplemental Rule or Rules." All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

(a)3. Citation. The local admiralty rules may be cited by the letter "LAR" and the lowercase letters and numbers in the parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

(a)4. Definitions. As used in the local admiralty rules, "court" refers to United States District Court for the Northern District of New York; "judge" refers to a United States District Judge or to a United States Magistrate Judge; "clerk" refers to the Clerk of the Court and includes deputy clerks of the Court; "marshal" refers to the United States Marshal of this district and includes deputy marshals; "keeper" refers to any person or entity that the Marshal appoints to take physical custody of and maintain the vessel or other property under arrest or attachment; and "substitute custodian" refers to the individual or entity who, upon motion and order of the Court, assumes the duties of the marshal or keeper with respect to the vessel or other property arrested or attached.

Rule B Maritime Attachment and Garnishment.

(b)1. Found within the District.

A defendant is not found within the district unless the defendant can be personally served therein by delivering process (i) in the case of an individual, to the individual personally, or by leaving a copy thereof at the individual's dwelling, house or usual place of abode with some person of suitable age and discretion; (ii) in the case of a corporation, trust or association, to an officer, trustee, managing or general agent thereof; (iii) in the case of a partnership, to a general partner thereof; and (iv) in the case of a limited liability company, to a manager thereof.

(b)2. Affidavit that defendant is not found within the District.

The affidavit that Supplemental Rule B(1) requires to accompany the complaint shall specify with particularity the efforts made by and on behalf of the plaintiff to find and serve the defendant within the district.

(b)3. Notice to Defendant.

In default applications, the affidavit or other proof that Supplemental Rule B(2) requires from the plaintiff or the garnishee shall specify with particularity the effort made to give notice of the action to the defendant.

(b)4. Service by Marshal.

If property to be attached is a vessel or tangible property aboard a vessel, the process shall be delivered to the Marshal for service.

Rule C Actions in Rem – Special Provisions.

(c)1. Intangible Property.

The summons to show cause why property should not be deposited in the Court issued pursuant to Supplemental Rule C(3) shall direct the person having control of intangible property to show cause no later than ten (10) calendar days after service why the intangible property should not be delivered to the Court to abide the judgment. The Court for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the Court's control. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the Court, deliver or pay over to the person on whose behalf the warrant was served or to the

clerk the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6) why the property should not be delivered to the Court.

(c)2. Publication of Notice of Action and Arrest.

The notice that Supplemental Rule C(4) requires shall be published at least once in a newspaper named in LAR (g)2, and the plaintiff's attorney shall file a copy of the notice as it was published with the Clerk. The notice shall contain:

(a) The court, title, and number of the action;

(b) The date of the arrest;

(c) The identity of the property arrested;

(d) The name, address, and telephone number of the attorney or the plaintiff;

(e) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the Clerk and serve it on the plaintiff's attorney within ten (10) calendar days after publication.

(f) A statement that an answer to the complaint must be filed and served within thirty (30) calendar days after publication and that, otherwise, default may be entered and condemnation ordered;

(g) A statement that applications for intervention under Fed. R. Civ. P. 24 by persons asserting maritime liens or other interests shall be filed within the time fixed by the Court; and

(h) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

(c)3. Default In Action In Rem.

(a) Notice Required.

A party seeking a default judgment in an action in rem must satisfy the Court that due notice of the action and arrest of property has been given:

(1) by publication as required in LAR(c) (2), and

(2) by service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and

(3) by mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interests.

(1) If the defendant property is a vessel documented under the law of the United States, the plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, the plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c)4. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may move for entry of default under Fed. R. Civ. P. 55(a). Default will be entered upon showing that:

(a) Notice has been given as LAR (c) (3) (a) requires; and

(b) Notice has been attempted as LAR (c) (3) (b) requires, where appropriate; and

(c) The time for claimants of ownership to or possession of the property to answer has expired; and

(d) No answer has been filed or no one has appeared to defend on behalf of the property. The plaintiff may move for judgment under Fed. R. Civ. P. Rule 55(b) at any time after default has been entered.

Rule D. Possessory, Petitory, and Partition Actions.

(d)1. Return Date.

In a possessory action under Supplemental Rule D, a judge may order that the statement of interest and answer be filed on a date earlier than twenty (20) calendar days after arrest. The order may also set a date for expedited hearing of the action.

Rule E. Actions In Rem and Quasi In Rem – General Provisions

(e) 1. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under Supplemental Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

(e) 2. Salvage Action Complaints.

In an action for a salvage award, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salved or other basis for an award and the dollar amount of the award sought.

(e) 3. Verification of Pleadings.

Every complaint in Supplemental Rule B, C, and D actions shall be verified upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746 by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized representative thereof; and state that the affiant or declarant is authorized so to verify. If the verification was not made by a party or authorized representative, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

(e) 4. Review by Judicial Officer.

Unless the Court requires otherwise, the review of complaints and papers called for by Supplemental Rule B(1) and C(3) does not require the affiant or declarant party or attorney to be present. The applicant for review shall include a form of order to the Clerk which, upon the assigned judge's signature, will direct the arrest, attachment or garnishment that the applicant seeks. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rule B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

(**e) 5. Instructions to the Marshal**.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal.

(e)6. Property in Possession of United States Officer.

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee, if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property unless the Court orders otherwise.

(e) 7. Security for Costs.

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the Clerk pursuant to Supplemental Rule E(2) (b). Unless otherwise ordered, the amount of security shall be $500.00. The party so ordered shall post the security within five (5) days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the Court. A party may move for an order increasing the amount of security for costs.

(e) 8. Adversary Hearing.

The Court shall conduct the adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) within three business days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(e) 9. Appraisal.

The Clerk will enter an order for appraisal of property so that security may be given or altered at request of any interested party. If the parties do not agree in writing upon an appraiser, a judge will appoint the appraiser. The appraiser shall be sworn

to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall promptly file the appraisal with the Clerk and serve it upon counsel of record. The moving party shall pay the appraiser's fee in the first instance, but this fee is taxable as an administrative cost of the action.

(e) 10. Security Deposit for Seizure of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit $1,000 with the marshal to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance. The marshal is not required to execute process until the deposit is made. The marshal may also require the party to arrange, in advance of the seizure, for a private security company to maintain security over the vessel or property after attachment. Parties requesting the attachment of a vessel or property are advised to contact the local marshal's office for further information regarding this requirement. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to advance such additional costs as required by the marshal may not participate further in the proceedings, except by order of the Court. The marshal may, upon notice to all parties, petition the Court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within three business days of the initial request for additional sums.

(e) 11. Intervenors' Claims.

(a) Presentation of Claims.

When a vessel or property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present it by filing an intervening complaint and obtaining a warrant of arrest, and not by filing an original complaint, unless the Court orders otherwise. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as LAR (e)(10) requires.

(b) Sharing Marshal's Fees and Expenses.

An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim against the

property bears to the sum of all the claims asserted against the property. If any plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

(e)(12) Custody of Property.

(a) Safekeeping of Property.

When a vessel or other property is brought into the Marshal's custody by arrest or attachment, the Marshal shall arrange for the adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the Court. An application seeking appointment of a substitute custodian shall be on notice to all parties and the Marshal and must show the name of the proposed substitute custodian, the location of the vessel during the period of such custody, and that adequate insurance coverage is in place.

(b) Insurance.

The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property and in maintaining the court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and, where possible, shall be named as an additional insured on the policy. A party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The initial party obtaining the arrest and holding of the property shall pay the premiums charged for the liability insurance in the first instance, but these premiums are taxable as administrative costs of the action while the vessel, cargo, or other property is in the custody of the court.

(c)(1) Cargo Handling, Repairs, and Movement of the Vessel.

Following arrest or attachment of a vessel, cargo handling shall be permitted to commence or continue unless the Court orders otherwise. No movement of or repairs to the vessel shall take place without order of the Court. The applicant for an order under this Rule shall give notice to the Marshal and to all parties of record.

(c)(2) Insurance.

Upon any application under (c)(1) above, the moving party shall obtain and provide proof of adequate insurance coverage of the moving party to indemnify the Marshal for any liability arising out of such activity, and any such activity shall be at the cost and expense of the moving party and shall not be taxable as an administrative cost of the action, unless the Court orders otherwise. Before or after the Marshal has taken custody of a vessel, cargo, or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The Court will require that adequate insurances on the property be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges.

A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court, who has not been paid and claims the right to payment as an expense of administration, shall submit an invoice to the Clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

(e)(13) Sale of Property.

(a) Notice.

Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published as provided in LAR (g)(2) at least three (3) times during the period of time consisting of thirty (30) days prior to the day of the sale.

(b) Payment of Bid.

These provisions apply unless otherwise ordered in the order of sale; the person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is $1,000 or less. If the bid exceeds $1,000, the bidder shall immediately pay a deposit of at least $1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three business days after the day on which the bid was accepted. If an objection to the sale or any upset bid permitted by the order of sale is filed within that period, the bidder is excused from paying the balance of the purchase price until three business days after the sale is approved. Payment shall be made in cash, by certified check, or by cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Late Payment.

If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(d) Default.

If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default. In such a case, the Court may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs that the Marshal incurs because of the default, the balance being retained in the registry of the Court awaiting further order of the Court.

(e) Report of sale by Marshal.

At the conclusion of the sale, the Marshal shall forthwith file a written report with the Court of the fact of sale, the date, the names and addresses, and bid amounts of the bidders, and any other pertinent information.

(f) Time and Procedure for Objection to Sale.

An interested person may object to the sale by filing a written objection with the Clerk within three (3) business days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven calendar days. If additional custodial expenses are required, the objector must furnish same forthwith, failing which, the objection shall be immediately dismissed. Payment to the Marshal shall be in cash, certified check, or cashier's check drawn on banks insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(g) Confirmation of Sale.

Unless an objection to the sale is filed, or any upset bid permitted by and conforming to the terms provided in the order of sale is filed, within three (3) business days of the sale, the sale shall be deemed confirmed without further order of the Court. The Clerk shall prepare and deliver to the Marshal a certificate of confirmation, and the Marshal shall transfer title to the confirmed purchaser only upon further order of the Court.

(h) Disposition of Deposits.

(1) Objection Sustained.

If an objection is sustained, sums that the successful bidder deposited will be returned to the bidder forthwith. The sum that the objector deposited will be applied to pay the fees and expenses that the Marshal incurred in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed from the proceeds of a subsequent sale for any expense of keeping the property.

(2) Objection Overruled.

If the objection is overruled, the sum that the objector deposited will be applied to pay the expenses of keeping the property from the day the objection was filed until the day the sale is confirmed. Any balance remaining will be returned to the objector forthwith.

Rule F. Limitation of Liability.

(f)1. Security for Costs.

The amount of security for costs under Supplemental Rule F(1) shall be $1,000, and it may be combined with the security for value and interest, unless otherwise ordered.

(f)2. Order of Proof at Trial.

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the party asserting a claim against the vessel or owner in the latter shall proceed with its proof first, as is normal at civil trials.

Rule G. Special Rules.

(g)1. Newspapers for Publishing Notices

Unless the Court orders otherwise, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspapers of general circulation in accordance with the L. R. 77.5.

(g)2. Use of State Procedures.

When the plaintiff invokes a state procedure in order to attach or garnish as the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims permit, the process for attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.