



## **NOTICE OF CLE PROGRAM**

### ***Northern District of New York Local Rules: Overview of the Amendments Effective January 1, 2021***

**Tuesday, February 23, 2021 12:00 pm – 1:15 pm**

#### ***Presenters:***

- **Hon. Brenda K. Sannes** (U.S. District Judge, NDNY)
- **Michael Langan, Esq.** (Career Law Clerk to Hon. Glenn T. Suddaby)
- **Lori Welch** (Courtroom Deputy to Hon. Glenn T. Suddaby)

***Program Summary:*** *As practitioners who frequent the courts in the Northern District of New York, we have an obligation to be informed and educated about the District's Local Rules. These presenters participated in the drafting of the recent local rule amendments. During this webinar, they will discuss these amendments, comment on the rationale behind their enactment, and answer questions about how those amendments will affect cases in the NDNY.*

#### ***Agenda:***

- 12:00-12:05: Introduction of Speakers and Topic
- 12:05-1:05 pm: Panel Discussion of Notable Revisions to the Local Rules
- 1:05-1:15 pm: Question & Answer Opportunity

This program has been approved in accordance with the requirements of the New York State CLE Board for **1.5 hours of Law Practice Management CLE credit**. This program is appropriate for newly admitted and experienced attorneys. This is a single program; no partial credit will be awarded. As this webinar will be presented via Zoom, a code will be provided, which must be used to claim CLE credit. This program is complimentary to all NDNY-FCBA members.

**Please R.S.V.P. by Friday, February 19, 2021**

The Northern District of New York Federal Court Bar Association has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York.

## **Local Rules CLE Agenda**

Lori	Reorganization of the Rules: Reasons for it. Summary of changes located in the beginning of the Local Rules.
Mike	Case Annotations Worksheet
Judge Sannes	Overview of CLE
Lori	Rule 4.1
Judge Sannes	Local Rule 5.2 – Personal Privacy Protection (most violated local rule)
Mike/ Judge Sannes	Civil Local Rule 5.3/Criminal Local Rule 49.2 - Sealed Documents
Lori Mike Judge Sannes	Local Rule 7.1 – No more return dates; response deadlines. Oral Argument – how would they create an effective reason for oral argument and how they could create an effective oral argument to benefit their case (without regurgitating what their papers already said)
Judge Sannes	Rule 12.1 – MTD
Lori	Rule 15.1 – Motion to Amend/Supplemental
Lori	Rule 37.1 – Discovery Motions
Mike/ Judge Sannes	Local Rule 56.1 – SJ Motions Consequences of failing to respond Pro– Pro Se litigants
Judge Sannes	Local Rule 60.1 – Motions for reconsideration
Mike/ Judge Sannes	Local Rule 65.1 – TRO/PI
Judge Sannes	Local Rule 83.3 – Discipline of Attorneys
Judge Sannes	Process of how amendments are made:
Lori / Judge Sannes	HSD Documents

# Amendments to the NDNY Local Rules

Effective January 1, 2021

The proposed amendments detailed below were submitted or derived from comments received from the public, practitioners, judges and court staff during the May–July 2020 suggestion period. The changes were approved by the Board of Judges on October 8, 2020 subject to the review and approval of the Second Circuit Council. On November 9, 2020, the Second Circuit Judicial Council approved these changes. In addition, several of the Rules were modified to reflect citation, grammatical and/or administrative changes which do not materially alter the current rule. These amendments will become effective January 1, 2021 and supersede and/or supplement the specific sections set forth below.

## Summary Table of Changes to the NDNY Local Rules

<b>Rule Number</b>	<b>Topic</b>	<b>Description of Change</b>
3.1	Case Assignment System	Civil L.R. 40.1 has been renumbered and relocated to Civil L.R. 3.1 to correlate to Fed.R.Civ.P. Rule 3. No change to the rule.
Former 3.1	Civil Cover Sheet	Civil L.R. 3.1 has been renumbered as L.R. 3.2 to accommodate the new L.R. 3.1. No change to the rule.
Former 3.2	Venue	Civil L.R. 3.2 has been renumbered as L.R. 3.3 to accommodate the new L.R. 3.1. No change to the rule.
Former 3.3	Complex and Multi-District Litigation	Civil L.R. 3.3 has been renumbered as L.R. 3.4 to accommodate the new L.R. 3.1. No change to the rule.
3.5	Non-Incarcerated Pro Se Litigant	General Order 49 has been incorporated into L.R. 3.5, and G.O. #49 will be abrogated.
3.6	Incarcerated Pro Se Litigant	General Order 46 has been incorporated into L.R. 3.6, and G.O. #46 will be abrogated.
3.7	Transfer of Cases to Another District	Civil L.R. 83.6 has been renumbered and relocated to Civil L.R. 3.7 to correlate with Fed.R.Civ.P. Rule 3. No change to the rule.
4.1	Service of Process	Section (a) was modified to include exceptions to service rules, as well as to remove clerk's ability to appoint persons to serve process. Section (d) has been removed. Section (f) has been updated to clarify that individuals, corporation or association defendant are subject to this waiver rule, and it also allows for reasonable expenses, including attorneys' fees for bringing a motion, where a defendant fails to return a signed waiver of service.

5.1(e)	Service and Filing of Papers	The phrase “and if the plaintiff so requests” has been removed from this rule. If defendant(s) fails to sign and return a waiver of service, the USMS will automatically attempt personal service without plaintiff having to request personal service.
5.2	Personal Privacy Protection	Civil L.R. 8.1 has been renumbered and relocated to Civil L.R. 5.2 to correlate with Fed.R.Civ.P. Rule 5.2. Updates made to this section correspond with the Federal Rule.
Former 5.2	Prepayment of Fees	Civil L.R. 5.2 has been renumbered as L.R. 5.1.2 to accommodate the new L.R. 5.2. No change to the rule.
5.3	Sealed Matters	Civil L.R. 83.13 has been renumbered and relocated to Civil Local Rule 5.3 which correlates with Fed.R.Civ.P. Rule 5.2.
Former 5.3	Schedule of Fees	Civil L.R. 5.3 has been renumbered as L.R. 5.1.3 to accommodate the new L.R. 5.2. No change to the rule.
Former 5.4	Civil Actions Filed In Forma Pauperis	Civil L.R. 5.4 has been renumbered as L.R. 5.1.4 to accommodate the new L.R. 5.2. No change to the rule.
Former 5.5	Filing by Facsimile	Civil L.R. 5.5 has been renumbered as L.R. 5.1.5 to accommodate the new L.R. 5.2. No change to the rule.
5.6	Service of Writ in Exclusion & Deportation Cases	This Local Rule has been omitted as the corresponding Federal Rule was repealed.
Former 5.7	Documents to be provided to the Clerk	Civil L.R. 5.7 has been renumbered as L.R. 5.1.6 to accommodate the new L.R. 5.2. No change to the rule.
Former 5.8	Recording of Proceedings	Civil L.R. 5.8 has been renumbered as L.R. 5.1.7 to accommodate the new L.R. 5.2. No change to the rule.
6.1	Calculation of Time Periods	Provides a reference to Local Rule 7.1 for calculating time for the briefing schedule of motions.
7.1	Motion Practice	Civil L.R. 7.1 has been dissected, and various subsections have been renumbered and relocated to correspond with the appropriate Federal Rule. No oral argument will be held on any motions without Court approval. The calculation of response/reply deadlines to motions has been revised.

Former 8.1	Personal Privacy Protection	Civil L.R. 8.1 has been renumbered and relocated to Civil L.R. 5.2 to correlate with Fed.R.Civ.P. Rule 5.2. Updates made to this section correspond with the Federal Rule.
11.1	Appearance and Withdrawal of Attorney	Civil L.R. 83.2 has been renumbered and relocated to Civil L.R. 11.1 to correspond with Federal Rule. No change to the rule.
12.1	Defenses and Objections/Motions under Fed.R.Civ.P. Rule 12	This section from Civil L.R. 7.1 has been relocated to L.R. 12.1 to correlate with Fed.R.Civ.P. Rule 12.
15.1	Amended and Supplemental Pleadings	This section from Civil L.R. 7.1(a)(4) has been relocated to L.R. 15.1 to correlate with Fed.R.Civ.P. Rule 15. The title of this section was updated to correlate to Rule 15.
37.1	Discovery Motions	This section from Civil L.R. 7.1(d) has been relocated to L.R. 37.1 to correlate with Fed.R.Civ.P. Rule 37.
Former 40.1	Case Assignment System	Civil L.R. 40.1 has been renumbered and relocated to Civil L.R. 3.1 to correlate to Fed.R.Civ.P. Rule 3. No change to the rule.
Former 40.2	Preferences	Civil L.R. 40.2 has been renumbered as L.R. 40.1 as L.R. 40.1 has been moved to L.R. 3. No change to the rule.
Former 40.3	Trial Calendar	Civil L.R. 40.3 has been renumbered as L.R. 40.2 as L.R. 40.1 has been moved to L.R. 3. No change to the rule.
47.2(b)	Jury Selection	Section (b) has been updated to include a sentence explaining the jury selection process via "strike method".
54.4	Motion for Attorneys' Fees under 42 U.S.C. 406(b)	This local rule was added to extend the time frame to file a motion for attorneys' fees under 42 U.S.C. §406(b) to 60 days.
56.1	Summary Judgment Procedure	This section from Civil Local Rule 7.1(a)(3) was relocated to Civil L.R. 56.1 to correlate with Fed.R.Civ.P. Rule 56.
60.1	Relief from Judgment or Order	This section from Civil Local Rule 7.1 was relocated to Civil L.R. 60.1 to correlate with Fed.R.Civ.P. Rule 60.
64.1	Seizure of Property	This Local Rule was updated to provide guidance to attorneys with regard to clerk's office procedure for seizure of property, including applications under the Fair Debt Collection Act.

65.1	Injunctions and Temporary Restraining Orders	This section from Civil Local Rule 7.1 was relocated to Civil L.R. 65.1 to correlate with Fed.R.Civ.P. Rule 65. It includes the required paperwork for a Temporary Restraining Order/Preliminary injunction.
65.2	Temporary Restraining Orders	This Local Rule has been omitted as it is contained in L.R. 65.1.
68.1	Settlement Conferences	This Local Rule has been omitted as it references L.R. 16.1 which encompasses Rule 16 conferences.
Former 68.2	Settlement Procedures	Civil Local Rule 68.2 has been renumbered as Civil L.R. 68.1 as that rule has been omitted.
Former 72.4	Habeas Corpus	Civil Local Rule 72.4 has been relocated to its own Section XIII, Rule 1.1, for Habeas Corpus petitions. The new Rule 1.1(d) removes any reference to bound documents as all documents are filed electronically.
Former 72.5	Habeas Corpus Petitions Involving the Death Penalty	Civil Local Rule 72.5 has been relocated to its own Section XIII, Rule 1.2, for Habeas Corpus petitions involving the death penalty. The addition of Rule 1.1(f) includes the requirement of the Court to issue or deny a certificate of appealability in decisions on Habeas Corpus petitions.
Former 72.5(e)	Filing.	Civil Local Rule 72.5 has been renumbered and relocated as Habeas Corpus Local Rule 1.2(e). The requirement to provide 3 copies has been removed as it is no longer required.
74.1	Method of Appeal to District Judge in Consent Cases	This rule is omitted as Fed.R.Civ.P. Rule 74 was abrogated.
75.1	Proceedings on Appeal from Magistrate Judge to District Judge under Rule 73(d)	This rule is omitted as Fed.R.Civ.P. Rule 75 was abrogated
76.1	Bankruptcy Cases	Civil Local Rule 76.1 has been renumbered and relocated to L.R. 81.1. No change to the rule.
76.2	Bankruptcy Appeals	Civil Local Rule 76.2 has been renumbered and relocated to L.R. 81.2 and it replaced L.R. 81.2 which is being omitted. Section (b) has been modified to indicate that service upon interested parties is done electronically via ECF.
77.3	Sessions of Court	This rule is updated to include Plattsburgh as a location where Court is held in NDNY.

78.1	Motion Days	This Local Rule has been omitted as the Court will no longer hold oral argument on motions without prior approval of the Court.
79.2	Books and Records of the Clerk	This Local Rule has been removed as there is no corresponding Federal rule.
81.1	Bankruptcy Cases	Civil Local Rule 76.1 has been renumbered and relocated to L.R. 81.1. No change to the rule.
81.2	Bankruptcy Appeals	Civil Local Rule 76.2 has been renumbered and relocated to L.R. 81.2 and it replaced L.R. 81.2 which is being omitted. Section (b) has been modified to indicate that service upon interested parties is done electronically via ECF.
Former 81.1	Removal Bonds	This Local Rule has been removed as there is no corresponding Federal rule.
Former 81.2	Copies of State Court Proceedings in Removed Actions	This Local Rule has been removed as there is no corresponding Federal rule.
Former 81.3	Removed Cases, Demand for Jury Trial	Civil Local Rule 81.3 will be renumbered as L.R. 81.4 to follow new Local Rules 81.1 and 81.2 (formerly L.R. 76.1 and 76.2). No change to the rule.
Former 81.4	Actions removed pursuant to 28 U.S.C. §1452	Civil Local Rule 81.4 will be renumbered as L.R. 81.3 to follow new Local Rules 81.1 and 81.2 (formerly L.R. 76.1 and 76.2). No change to the rule.
83.1	Admission to the Bar	This rule was updated to require attorneys seeking admission to the NDNY as well as when paying the biennial fee, to affirm that he/she has not been convicted of a crime, or if so, to explain; as well as the requirement to notify the Court within 14 days of a conviction of misdemeanor or felony. The court fee for standard admission to the bar was updated to \$238.00 in accordance with District Court Miscellaneous Fee Schedule.
Former 83.2	Appearance and Withdrawal of Attorney	Civil Local Rule 83.2 has been renumbered and relocated to L.R. 11.1 to correlate to Fed.R.Civ.P. Rule 11. No change to the rule.
Former 83.3	Pro Bono Service	Civil Local Rule 83.3 has been renumbered as L.R. 83.2 as L.R. 83.2 has been relocated. It also includes a statement that pro bono attorneys may request the Clerk's office regenerate documents so as to avoid the cost of viewing the documents on PACER.

Former 83.4	Discipline of Attorneys	Civil L.R. 84.4 has been renumbered as L.R. 83.3. (L.R. 83.2 has been relocated to L.R. 11.1, and L.R. 83.3 has been renumbered as L.R. 83.2). This Local Rule was revised to incorporate General Order 57 which shall be abrogated, including but not limited to, reporting requirements of a conviction of a misdemeanor or felony; as well as a procedure for filing a motion to vacate a disciplinary order; and a procedure for applying for reinstatement 1 year after the disciplinary order was issued.
Former 83.5	Contempt	Civil Local Rule 83.5 has been renumbered as L.R. 83.4 as L.R. 83.2 has been relocated. No change to the rule.
Former 83.6	Transfer of Cases to Another District	Civil L.R. 83.6 has been renumbered and relocated to Civil L.R. 3.7 to correlate with Fed.R.Civ.P. Rule 3. No change to the rule.
Former 83.7	Mandatory Mediation Plan	Civil Local Rule 83.7 has been renumbered as L.R. 83.5 as L.R. 83.2 and 83.6 have been relocated. No change to the rule.
Former 83.8	Assisted Mediation Program	Civil Local Rule 83.8 has been renumbered as L.R. 83.6 as L.R. 83.2 and 83.6 have been relocated. The appointment of pro bono counsel for assisted mediation is no longer optional.
Former 83.9	Judicial Mediation in Prisoner Civil Rights Cases	Civil Local Rule 83.9 has been renumbered as L.R. 83.7 as L.R. 83.2 and 83.6 have been relocated. No change to the rule.
Former 83.10	Commission to Take Testimony	Civil Local Rule 83.10 has been omitted as corresponding the federal rule was repealed.
Former 83.11	Student Practice	Civil Local Rule 83.11 has been renumbered as L.R. 83.8 as L.R. 83.2 and 83.6 have been relocated and 83.10 has been repealed. No change to the rule.
Former 83.12	Production and Disclosure of Document and Testimony of Judicial Personnel in Legal Proceedings	Civil Local Rule 83.12 has been renumbered as L.R. 83.9 as L.R. 83.2 and 83.6 have been relocated and 83.10 has been repealed. No change to the rule.
Former 83.13	Sealed Matters	Civil Local Rule 83.13 has been renumbered and relocated as L.R. 5.3 to correspond with Fed.R.Civ.P. Rule 5.2. No change to the rule.
Former 83.14	Appearances of Former Judicial Officers	Civil Local Rule 83.11 has been renumbered as L.R. 83.8 as L.R. 83.2, 83.6, and 83.13 have been relocated and 83.10 has been repealed. No change to the rule.



Former Criminal L.R. 1.3	Personal Privacy Protection	Criminal Local Rule 1.3 has been renumbered and relocated to Crim.L.R. 49.1 to correlate with Fed.R.Crim.P. Rule 49. Updates made to this section correspond with the Federal Rule.
Criminal L.R. 12.1	Motions and Other Papers	No oral argument will be held on any motions, without Court approval. The calculation of response/reply deadlines to motions has been revised.
Former Criminal L.R. 13.1	Sealed Matters	Criminal Local Rule 13.1 has been renumbered and relocated to Criminal L.R. 49.2 to correlate with Fed.R.Crim.P. Rule 49.1. Paragraph (a) has been revised to clarify exceptions to this rule.
Criminal L.R. 46.2	Release of Bond	Criminal Local Rule 57.2 has been renumbered and relocated to Criminal L.R. 46.2 to correlate with Fed.R.Crim.P. Rule 46. No change to the rule.
Criminal L.R. 49.1	Personal Privacy Protection	Criminal Local Rule 1.3 has been renumbered and relocated to Crim.L.R. 49.1 to correlate with Fed.R.Crim.P. Rule 49. Updates made to this section correspond with the Federal Rule.
Criminal L.R. 49.2	Sealed Matters	Criminal Local Rule 13.1 has been renumbered and relocated to Criminal L.R. 49.2 to correlate with Fed.R.Crim.P. Rule 49.1. Paragraph (a) has been revised to clarify exceptions to this rule.
Criminal L.R. 57.2	Release of Bond	Criminal Local Rule 57.2 has been renumbered and relocated to Criminal L.R. 46.2 to correlate with Fed.R.Crim.P. Rule 46. No change to the rule.
Former Criminal L.R. 58.1	Magistrate Judges	Criminal Local Rule 58.1 has been renumbered as Criminal L.R. 59.1 to correlate with Fed.R.Crim.P. Rule 59. No change to the rule.
Former Criminal L.R. 58.2	Forfeiture of Collateral in Lieu of Appearance	Criminal Local Rule 58.2 has been renumbered as Criminal L.R. 58.1 as former Criminal L.R. 58.1 has been relocated.
Local Admiralty & Maritime Rule E(7)	Actions In Rem and Quasi In Rem- General Provisions	Rule E(7) has been updated to include a required security amount of \$1,000.00.
Former Local Rule for Admiralty & Maritime – Rule G(1) & (2)	Special Rules	Local Rules for Admiralty and Maritime Cases Rules G(1) and G(2) has been renumbered and relocated to Rules A(5) and A(6), respectively. No change to the rules.
Local Rule for Admiralty & Maritime –Rule G	Forfeiture Actions In Rem	This rule was added to correlate with Federal Admiralty and Maritime Rule G and to make reference to General Order 15 which governs forfeiture actions.

**CASE ANNOTATIONS TO**  
**NDNY LOCAL RULES OF PRACTICE**  
**ACCORDING TO THEIR PRE-2021 NUMBERING**

These annotations of cases (which date back to 1994) are provided in the event they are useful to practitioners when applying the District's Local Rules of Practice. However, please note that, on January 1, 2021, the District's Local Rules were renumbered to better track the Federal Rules of Civil Procedure. As a result, before relying on a case annotation, please find the date of the case and then compare the wording of the then-pending Local Rule to the wording of the current corresponding Local Rule. For prior versions of the Local Rules of Practice dating back to 2007, please see <https://www.nynd.uscourts.gov/local-rules>.

**LOCAL RULE 1.1(c) – CONSTRUCTION OF LOCAL RULES**

Local Rule 1.1(c) requires that the computation of the 10-day deadline for motions for reconsideration filed pursuant to Local Rule 7.1(g) must be subject to the exclusions set forth in Fed. R. Civ. P. 6(a). *Seitz v. Bd. of Tr. of Pension Plan of N.Y.S. Teamsters*, 97-CV-0232, 2000 WL 433096, at \*1 (N.D.N.Y. Apr. 21, 2000) (Munson, J.).

Local Rule 1.1(c) requires the rejection of the plaintiff's interpretation of Local Rule 72.1(b) and Local Rule 7.1(b)(2) as permitting an objection to a magistrate judge's non-dispositive order to be filed more than 10 days after the filing of that order, because that interpretation is inconsistent with Fed. R. Civ. P. 83(a), which establishes a 10-day deadline for such an objection. *DeSilva v. Bluegreen Corp.*, 96-CV-0683, 1997 WL 727523, at \*4 (N.D.N.Y. Oct. 7, 1997) (McAvoy, C.J.), *accord*, *Holt v. Welch Allyn, Inc.*, 95-CV-1135, 1999 WL 592686, at \*5 (N.D.N.Y. Aug. 2, 1999) (Munson, S.J.).

**LOCAL RULE 1.1(d) – SANCTIONS AND PENALTIES FOR NONCOMPLIANCE**

Failure to comply with this Memorandum-Decision and Order when moving to amend the Complaint may result in the denial of the motion or sanctions. L.R. 1.1(d). *U.S. Bank Trust, N.A. v. Monroe*, 15-CV-1480, 2017 WL 923326 (N.D.N.Y. March 3, 2017) (Kahn, J.).

Local Rule 1.1(d) allows the Court to deny a motion for sanctions due to the plaintiff's inability to prove a violation of Local Rule 8.1 which requires all parties to redact, or refrain from including, specific personal identifiers from all pleadings they file with the Court. *Clark v. New York State Office of State Comptroller*, 09-CV-0176, 2014 WL 823289, at \*12 (N.D.N.Y. Mar. 3, 2014) (Sharp, C.J.).

Local Rule 1.1(d) permits the Court to grant a summary judgment motion in its entirety due to the non-movant's failure to comply with Local Rule 8.1's requirement that parties shall redact or refrain from including certain personal identifiers from all pleadings that they file with the Court. *Morales v. NYS Dept. of Labor*, 857 F. Supp.2d 220, 257 (N.D.N.Y. 2012) (Mordue, J.).

Local Rule 1.1(d) gives the Court permission to strike an objection due to the filing of a document in violation of the sealing order entered in these cases. *Oneida Indian Nation v. Cty. of Oneida*, 802 F. Supp.2d 395, 400 (N.D.N.Y. 2011) (Kahn, J.).

Local Rule 1.1(d) permits the Court to dismiss a *pro se* litigant's action due to his failure to comply with Local Rule 10.1(c)(2)'s requirement that he immediately notify the Court of any change of address, *Latray v. Holder*, 10-CV-0915, 2010 WL 5070926, at \*1, n.1 (N.D.N.Y. Dec. 7, 2010) (McCurn, J.).

Local Rule 1.1(d) permits the Court to sanction a party for failing to comply with Local Rule 7.1(a)(3) by deeming as admitted any facts set forth in a movant's Statement of Material Facts. *Osier v. Broome Cnty.*, 47 F. Supp.2d 311, 317 (N.D.N.Y. 1999) (McAvoy, C.J.).

### LOCAL RULE 3.1 – CIVIL COVER SHEET

Local Rule 3.1 requires the plaintiff to submit a completed Civil Cover Sheet in the event that he chooses to file an Amended Complaint which will supersede and replace his original Complaint in its entirety. *Willie Eddie Conley Hurt v. Joe*, 15-CV-1207, 2015 WL 7432381, at \*1 (N.D.N.Y. Nov. 23, 2015) (Hurd, J.).

According to Local Rule 3.1 the Civil Cover Sheet is where the plaintiff first demands a jury trial. *McInerny v. Rensselaer Polytechnic Institute*, 05-CV-1267, 2009 WL 2163094, at \*1 (N.D.N.Y. Jul. 17, 2009) (Homer, M.J.).

### LOCAL RULE 4.1(b) – 60-DAY DEADLINE FOR SERVICE OF PROCESS

Pursuant to Local Rule 4.1(b), the Court may dismiss a complaint in accordance with General Order 25 if the plaintiff fails to serve process within the 60-day limit. *Watson v. Hartford*, 12-CV-1607, 2014 WL 1451913, at \*2 (N.D.N.Y. Apr. 14, 2014) (D'Agostino, J.).

The Court possesses the discretion to excuse a plaintiff's failure to serve process within the 60-day deadline established by Local Rule 4.1(b) and General Order 25, if the plaintiff serves process within the 120-day deadline imposed by Fed. R. Civ. P. 4(m). *Edsell v. Indep. Freightway*, 94-CV-0227, 1995 WL 375827, at \*2-3 (N.D.N.Y. June 16, 1995) (Pooler, J.), *aff'd on other grounds*, 101 F.3d 681 (2d Cir. 1996).

### LOCAL RULE 4.1(e) - 60-DAY DEADLINE FOR SERVICE OF PROCESS

In January 2018, N.D.N.Y. L.R. 4.1 was amended. Rule 4.1(e) provides as follows: In cases where an acknowledgment of service by a defendant located within any judicial district of the United States has been properly requested, whether pursuant to Fed. R. Civ. P. 4(d) or pursuant to N.Y. Civil Practice Law and Rules 312-a, the defendant shall have sixty days from the date the waiver request was sent to the defendant to answer or file a

motion to dismiss plaintiff's complaint. The Western District does not have an analogous Local Rule. *Animashaun v. Regner*, 18-CV-1119, 2018 WL 5603542, at \*2 (N.D.N.Y., October 29, 2018) (Sharpe, S.J.).

#### LOCAL RULE 4.1 – SERVICE OF PROCESS AND DISMISSAL OF COMPLAINTS

Generally, if an in forma pauperis application is granted by the Court, applicants are able to proceed with commencing an action without paying the filing fee, but still may be required to pay costs and expenses. Plaintiffs in this case did not file an in forma pauperis application at the commencement of this action. *Vidurek v. Cuomo*, 18-CV-0392, 2018 WL 2022615, at \*1 (N.D.N.Y. Apr. 26, 2018) (Hummel, M.J.).

The ninety (90) day period specified in Fed. R. Civ. P. 4(m) is further restricted by Local Rule 4.1, which requires that service be effected within sixty (60) days. *Pilgrim v. LaValley*, 11-CV-1331, 2016 WL 1714576, at \*5 (N.D.N.Y. Mar. 30, 2016) (Peebles, M.J.), *adopted*, 2016 WL 1700409 (N.D.N.Y. Apr. 27, 2016) (Sharpe, J.).

Under the Local Rules of Practice for this Court, a plaintiff must effectuate service within sixty (60) days. *Jefferson v. Haggett*, 13-CV-0513, 2015 WL 4251171, at \*4, n.8 (N.D.N.Y. July 13, 2015) (Report-Recommendation of Treece, M.J., adopted by Kahn, J.); *McGee v. Haigh*, 13-CV-0394, 2015 WL 1456612, at \*2 (N.D.N.Y. Mar. 30, 2015) (D'Agostino, J.).

Pursuant Local Rule 4.1(b) which allows 60 days for service process, dismissal is justified due to plaintiff's failure to either arrange for service or provide an explanation for that failure and request a further extension since the Text Order's issuance. *U.S. v. Palencar*, 14-CV-0733, 2014 WL 7339026, at \*1 (N.D.N.Y. Dec. 22, 2014) (Report-Recommendation of, Peebles, M.J., adopted by McAvoy, J.).

Local Rule 4.1(b) shortens the time for service from one hundred twenty (120) days to sixty (60) days. *Pilgrim v. Doe*, 11-CV-1331, 2014 WL 4828091, at \*7, n.4 (N.D.N.Y. Sept. 29, 2014) (Report-Recommendation of Peebles, M.J., adopted by Sharpe, C.J.).

According to New York State law, when “a person against whom a cause of action exists” dies, “the period of eighteen months after [his] death . . . is not part of the time within which the action must be commenced against his executor or administration. Therefore, neither Fed. R. Civ. P. 4(m) nor L.R. Civ. P 4.1 can have immediate cause for untimely dismissal. *Pilgrim v. Doe*, 11-CV-1331, 2014 WL 4828091, at \*8 (N.D.N.Y. Sept. 29, 2014) (Report-Recommendation of Peebles, M.J., adopted by Sharpe, C.J.).

#### LOCAL RULE 5.1(a) – DUTY TO PROVIDE OPPOSING PARTY WITH COPIES OF DOCUMENTS FILED

Local Rule 5.1(a) requires a party to provide his opponent with copies of the documents he has filed in Court or those documents will not be admissible. *Weston v. Sullivan*, 12-

CV-1893, 2013 WL 796084, at \*3 (N.D.N.Y. Mar. 4, 2013) (Baxter, M.J.).

Local Rule 5.1(a) stipulates that all claims must be in the form prescribed by Local Rule 10.1 and failure to do so may result in dismissal of the claim. *McCloud v. Tureglio*, 07-CV-0650, 2008 WL 1772305, at \*4 (N.D.N.Y. Apr. 15, 2008) (Mordue, J.).

Local Rule 5.1(a)'s requirement that a party provide to his opponent copies of the documents he has filed with the Court applies even to *pro se* litigants who are proceeding *in forma pauperis*. *Dorsey v. Fisher*, 09-CV-1011, 2009 WL 4985421, at \*6 (N.D.N.Y. Dec. 15, 2009) (Sharpe, J.), *accord*, *McCloud v. Tureglio*, 07-CV-0650, 2008 WL 1772305, at \*4 (N.D.N.Y. Apr. 15, 2008) (Mordue, C.J.); *Garraway v. Morabito*, 02-CV-0766, 2003 WL 21051724, at \*4 (N.D.N.Y. May 8, 2003) (Sharpe, M.J.).

Local Rule 5.1(a)'s requirement that a plaintiff's opposition papers contain an affidavit or a certificate of service applies even to *pro se* litigants. *Dollinger v. State Ins. Fund*, 44 F.Supp.2d 467, 471 (N.D.N.Y. Apr. 19, 1999) (McAvoy, C.J.).

#### LOCAL RULE 5.1(h) – SERVICE OF PROCESS BY U.S. MARSHALL

Local Rule 5.1(h) requires that a Marshal be responsible for the successful service of all summons and complaints for plaintiffs proceeding *pro se* and *in forma pauperis*. *Mehann v. Pataki*, 06-CV-0769, 2009 WL 3123860, at \*9 (N.D.N.Y. Sept. 29, 2009) (Scullin, S.J.), *accord*, *Booker v. Doe*, 06-CV-0073, 2008 WL 4527601, at \*12 (N.D.N.Y. Sept. 30, 2008) (Sharpe, J.).

Local Rule 5.1(h) obligates the Marshal acting as private process server on behalf of a plaintiff proceeding *in forma pauperis* to make efforts to locate a defendant and to make multiple attempts at service when necessary. *Lebron v. Swaitek*, 05-CV-0172, 2008 WL 755070, at \*2 (N.D.N.Y. March 19, 2008) (Sharpe, J.), *accord*, *Cipriani v. Buffardi*, 06-CV-0889, 2008 WL 65581, at \*2 (N.D.N.Y. Jan. 4, 2008) (Kahn, J.).

Local Rule 5.1(h) designates the U.S. Marshals to be responsible for service of process on behalf of a plaintiff proceeding *in forma pauperis* and therefore the plaintiff is not at fault for improper service and no penalty should be enacted upon the plaintiff. *Davidson v. Talbot*, 01-CV-0473, 2005 WL 928620, at \*6 (N.D.N.Y. March 31, 2005) (Treece, M.J.).

#### LOCAL RULE 5.2(a) – PREPAYMENT OF FILING FEES

Local Rule 5.2(a) gives the Court the right to dismiss a complaint if the filing fee or a proper *in forma pauperis* application is not submitted. *Souffont v. Cnty. of Otsego*, 13-CV-0811, 2013 WL 5938813, at \*2 (N.D.N.Y. Nov. 5, 2013) (Hurd, J.).

The Court may *sua sponte* dismiss a plaintiff's Complaint if he has not paid the filing fee specified in Local Rule 5.2(a) and has not submitted a complete and signed application to

proceed *in forma pauperis* within thirty days of a court's order to do so. *Frase v. Florian*, 09-CV-1170, 2010 WL 93482, at \*1 (N.D.N.Y. Jan. 7, 2010) (Suddaby, J.), *accord*, *Philip v. Wolfe*, 09-CV-1129, 2010 WL 148638, at \*1 (N.D.N.Y. Jan. 13, 2010) (Suddaby, J.).

The Court possesses the discretion to overlook an untimely notice of removal caused by a failure to prepay the filing fees in compliance with Local Rule 5.1(a). *Wysokowski v. Porvene Roll a Door Co.*, 94-CV-1390, 1995 WL 75360, at \*2 (N.D.N.Y. Feb. 22, 1995) (Pooler, J.).

#### LOCAL RULE 5.4(b) – PLEA ACTION PROCEDURE

Local Rule 5.4 provides that, if the prisoner fails to fully comply with the above-described requirements after being informed by court order of what is required, "the Court shall dismiss the action." N.D.N.Y. L.R. 5.4(b)(2)(A). Plaintiff's IFP application in this action is clearly incomplete, given the absence of a proper certification. For that reason, it must be denied. In light of plaintiff's allegation that he has attempted to secure a certified IFP application from prison officials, however, I will afford him another opportunity to submit a completed application. *Franklin v. Chenango County Public Defender's Office*, 18-CV-0865, 2018 WL 4288620, \*2 (N.D.N.Y., September 7, 2018) (Peebles, M.J.).

Although the certificate portion of the application has been completed by plaintiff, it has not been certified by an appropriate official at plaintiff's facility, nor have copies of plaintiff's inmate account statements been provided. As a result, plaintiff's IFP application is incomplete and must be denied. In light of plaintiff's pro se status and his efforts to comply with the filing fee requirements, the court will afford him another opportunity to do so. If plaintiff fails to timely comply, I will recommend to the assigned district judge that this action be dismissed without prejudice. *Demuth v. Chenango County Dept. of Social Services*, 18-CV-0767, 2018 WL 3617950, at \*1-2 (N.D.N.Y., July 30, 2018) (Peebles, M.J.).

In cases where a person requests to join an action as an additional plaintiff, in accordance with the Local Rules of Practice for this Court, the filing fee, which is currently \$400.00, must also be paid at the time an action is commenced, unless each plaintiff submits a completed *in forma pauperis* (IFP) Application. A prisoner seeking *in forma pauperis* status in a civil action, subject to the PLRA, may satisfy this requirement by submitting a completed, signed, and certified IFP Application along with the proper authorization forms issued by the Clerk's Office. N.D.N.Y.L.R. 5.4(b); 5.4(b)(1)(A). *Lasher v. Dagostino*, 16-CV-0198, 2016 WL 1717205, at \*1 (N.D.N.Y. Apr. 28, 2016) (Sannes, J.).

Courts have previously concluded that, even though there may be multiple plaintiffs in an action, this fact does not reduce or otherwise negate the obligation imposed on each incarcerated plaintiff to pay the filing fee under 28 U.S.C. § 1915(b)(1). If plaintiff has failed to comply with any of the requirements to commence an action in Federal Court,

his request to join the action at hand may be denied without prejudice. *Lasher v. Dagostino*, 16-CV-0198, 2016 WL 1717205, at \*1-2 (N.D.N.Y. Apr. 28, 2016) (Sannes, J.).

Local Rule 5.4(b) acknowledges that the inmate authorization form authorizes periodic withdrawals in respect of the filing fee and asserts the inmate plaintiff's obligation to pay the entire \$350.00 filing fee "regardless of the outcome of my lawsuit." *Lasher v. Dagostino*, 16-CV-0198, 2016 WL 1717205, at \*1 (N.D.N.Y. Apr. 28, 2016) (Sannes, J.).

Local Rule 5.4(b)(2)(A) provides that, when a prisoner fails to fully comply with the above-described requirements after being informed by court order of what is required, the Court shall dismiss the action. *Myers v. Bucca*, 15-CV-0553, 2015 WL 6963877, at \*2 (N.D.N.Y. Nov. 10, 2015) (Recommendation-Report of Baxter, M.J., adopted by Hurd, J.).

Local Rule 5.4(b)(1)(A)(B) authorizes prisoners/plaintiff's filing a complaint, who are filing *in forma pauperis* (IFP) motions, to comply with the requirements mandating that the IFP motion be accompanied with a "certification by an appropriate official" at plaintiff's facility, regarding his account balance, and a signed Inmate Authorization Form. *Liggins v. City of Utica*, 14-CV-0446, 2014 WL 7346041, at \*1 (N.D.N.Y. Dec. 23, 2014) (Report-Recommendation of Baxter, M.J., adopted by McAvoy, J.).

Local Rule 5.4(b)(1)(A)(B) mandates that prisoners must complete a properly certified *in forma pauperis* application and submit the authorization form issued by the Clerk's office in order to file a complaint without the normal filing fee. *James v. Bush*, 13-CV-1508, 2014 WL 576170, at \*2, n.3 (N.D.N.Y. Feb. 11, 2014) (Mcavoy, J.).

Local Rule 5.4(b)(2)(A) provides that when a prisoner fails to fully comply with the above described requirements after being informed by court order of what is required the Court shall dismiss the action. *Ross v. City of Binghamton*, 12-CV-1806, 2014 WL 409088, at \*2 (N.D.N.Y. Feb. 3, 2014) (D'Agostino, J.)

Local Rule 5.4(b)(1)(A) allows the Court to certify an *in forma pauperis* application without the mandated paper work if a viable substitute that complies with section 1915(a)(2) is available. *Topolski v. Wroblewski*, 13-CV-0872, 2013 WL 5652724, at \*6 (N.D.N.Y. Oct. 16, 2013) (Kahn, J.).

Local Rule 5.4(b)(1)(B) states that, if a prisoner submits a certified *in forma pauperis* application, but does not submit the authorization form to the Clerk's office within 30 days, the complaint shall be dismissed. *Magee ex rel. J.M. v. Doe*, 12-CV-0959, 2012 WL 3704951, at \*6 (N.D.N.Y. Jun. 28, 2012) (Treece, M.J.).

A prisoner must sign an agreement to pay the filing fee over a period of time to have a properly certified *in forma pauperis* application. Failure to comply will result in dismissal of the complaint in accordance with Local Rule 5.4(b). *Richardson v. Napoli*, 09-CV-1440, 2010 WL 1235383, at \*1 (N.D.N.Y. Mar. 30, 2010) (McAvoy, J.).

Neither a completed, outdated, *in forma pauperis* application, nor an application missing eleven portions, meet the requirement of a fully signed and completed application as specified in Local Rule 5.4(b)(1) since neither provides sufficient information necessary to determine the plaintiff's ability to pay the Courts \$350.00 filing fee. *Resto v. Weissmane*, 08-CV-0340, 2008 WL 4021053, at \*3 (N.D.N.Y. June 2, 2008) (Lowe, M.J.).

Local Rule 5.4(b)'s requirement of an original signature on all *in forma pauperis* applications applies even to inmates. *Moore v. Wiley*, 99-CV-1995, 2000 WL 804642, at \*1 (N.D.N.Y. June 12, 2000) (Mordue, J.).

Failure to comply with Local Rule 5.4(b) within a thirty-day period after a Court Order to do so may result in the plaintiffs action being dismissed and the plaintiff being barred from bringing future actions in this or any other Districts if he is found to have brought on three or more prior occasions, actions that were dismissed pursuant to 28 U.S.C. § 1915. *Ramos v. Doe*, 97-CV-1074, 1997 WL 627549, at \*3 (N.D.N.Y. Oct. 9, 1997) (Pooler, J.).

An action by a plaintiff seeking *in forma pauperis* status, filed prior to the PLRA statute requiring a filing fee of \$150.00, requires a filing fee of only \$120.00 but remains subject to the other requirements of Local Rule 5.4(b). *Ortiz v. Walker*, 96-CV-1506, 1997 WL 405209, at \*1 (N.D.N.Y. July 17, 1997) (Pooler, J.).

Local Rule 5.4(b) requires that an inmate seeking *in forma pauperis* status provide the court with a statement of all assets he possesses and certified account statements from his inmate account for the six-month period immediately preceding the filing of the action and the initial partial filing fee. *Caseras v. Goord*, 96-CV-1432, 1996 WL 743836, at \*1 (N.D.N.Y. Dec. 20, 1996) (Pooler, J.), *accord*, *Peterkin v. Androsko*, 96-CV-1382, 1996 WL 705872, at \*1 (N.D.N.Y. Nov. 29, 1996) (Pooler, J.); *Vasquez v. Turner*, 96-CV-1161, 1996 WL 705880, at \*1 (N.D.N.Y. Nov. 29, 1996) (Pooler, J.).

Local Rule 5.4(b)'s requirement that in an inmate seeking *in forma pauperis* status pay the full amount of the filing fee applies regardless of the outcome of the action. *Moses v. Sokol*, 96-CV-1411, 1996 WL 705884, at \*1 (N.D.N.Y. Nov. 29, 1996) (Pooler, J.).

The Court may dismiss an inmate's action if the inmate has not provided the account statements necessary for computing the partial filing fee in compliance with Local Rule 5.4(b) after a Court Order to do so. *Frasier v. Addleton*, 94-CV-0291, 1994 WL 400929, at \*1 (N.D.N.Y. July 25, 1994) (McAvoy, C.J.), *accord*, *Howard v. Miller*, 95-CV-0463, 1995 WL 759030, at \*1 (N.D.N.Y. Dec. 15, 1995) (Pooler, J.).



## LOCAL RULE 5.7 – DOCUMENTS PROVIDED TO THE CLERK

Local Rule 5.7's requirement that settlement conference statements provided to the Court prior to settlement conferences are not filed with the Clerk and are not for public viewing applies even when a party is allowed to intervene with a sealing order. *Town of Moreau, New York v U.S.*, 979 F. Supp. 129, 132 (N.D.N.Y. Sept. 18, 1997) (Kahn, J.).

## LOCAL RULE 7.1(a)(1) – MEMORANDA OF LAW

Legal arguments in support of a motion must be set forth in a memorandum of law in accordance with Local Rule 7.1(a)(1). *Maller v. Rite Aid Corp.*, 14-CV-0270, 2016 WL 1275628, at \*2 (N.D.N.Y. Mar. 31, 2016) (Suddaby, C.J.).

Local Rule 7.1(a)(1) requires a memorandum of law to possess a Table of Contents. *Dudla v. P.M. Veglio LLC*, 13-CV-0333, 2016 WL 1068120, at \*6 (N.D.N.Y. Mar. 15, 2016) (Kahn, J.).

Plaintiff's omnibus motion may be denied if unsupported by a memorandum of law in violation of Local Rule 7.1(a)(1) (consisting of a letter and declaration, which may not include "legal arguments" under Local Rule 7.1(a)(2)). *Bruno v. City of Schenectady*, 12-CV-0285, 2016 WL 1057041, at \*10 (N.D.N.Y. Mar. 14, 2016) (Suddaby, C.J.).

Without prior permission of the court to exceed the page limits imposed by the Bankruptcy Appeal Scheduling Order and the District's Local Rules (capping appellant's and respondent's briefs at twenty-five pages and reply briefs at ten pages, see N.D.N.Y. L.R. 7.1(a)(1), (b)(1)), the parties' disregard for the Rules and Court orders may result in the summary rejection of their briefing in the future. *John Nagle Co. v. McCarthy*, 539 B.R. 205, 209 (N.D.N.Y. 2015) (Sharpe, J.).

The Court notes that the "affirmation" and subsequent memorandum of law do not together total more than 25 pages, the limit imposed by the Court's Local Rules of Practice. N.D.N.Y. L.R. 7.1(a)(1). *Brown v. Cty. of Madison*, 09-CV-0125, 2015 WL 5750050, at \*1 (N.D.N.Y. Sept. 30, 2015) (Suddaby, C.J.).

All motions for reconsideration shall conform with the requirements set forth in L.R. 7.1(a)(1) and (2). *Smith v. Prack*, 12-CV-1474, 2015 WL 5512951, at \*10 (N.D.N.Y. Sept. 14, 2015) (Report-Recommendation of Peebles, M.J. adopted by Suddaby, J.).

In accordance with the requirements set forth in N.D.N.Y. L.R. 7.1(a)(1) and (2), the Court will decide Motions for Reconsideration or Re-argument on submission of the papers, without oral argument, unless the Court directs otherwise. *Smith v. Prack*, 12-CV-1474, 2015 WL 5512951, at \*10 (N.D.N.Y. Sept. 14, 2015) (Report-Recommendation of Peebles, M.J. adopted by Suddaby, J.).

Local Rule 7.1(a)(1) requires a memorandum of law to contain a table of contents. *Brown v. Cty. of Madison*, 09-CV-0125, 2015 WL 1413360, at \*5 (N.D.N.Y. Mar. 27, 2015) (Suddaby, J.).

Objection request forms of relief in which the requests constitute separate motions may be denied if they are unsupported by a memorandum of law, as required by Local Rule 7.1(a)(1). *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 687 (N.D.N.Y. 2015) (Report-Recommendation of Hummel, M.J. adopted by Suddaby, J.).

Under Local Rule 7.1(a)(1), if memoranda contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis), copies of those decisions shall be mailed to a *pro se* petitioner, but no longer need to be filed with the court. N.D.N.Y. L.R. 7.1(a)(1). *Burroughs v. Griffin*, 13-CV-1505, 2014 WL 3779007, at \*2 (N.D.N.Y. July 31, 2014) (Baxter, M.J.).

Local Rule 7.1(a)(1) limits the length of a memorandum of law to twenty-five (25) pages unless a party obtains leave of the judge hearing the motion before filing. Failure to adhere to the aforementioned rule can result in dismissal of the complaint. *Clark v. New York State Office of State Comptroller*, 09-CV-0716, 2014 WL 823289, at \*4 (N.D.N.Y. Mar. 3, 2014) (Sharpe, C.J.).

A motion for reconsideration must conform to the requirements set out in Local Rule 7.1(a)(1). *Brennan v. Roman Catholic Diocese of Syracuse New York, inc.*, 09-CV-1015, 2013 WL 6169674, at \*3 (N.D.N.Y. Nov. 20, 2013) (Suddaby, J.).

A plaintiff can have an acceptable memorandum of law and satisfy Local Rule 7.1(a)(1), but a supporting affidavit and proof of service is also required to fulfill Local Rule 7.1(a)(1)-(2) and (3). Failure to comply with these requirements makes a motion subject to denial on this procedural basis. *Dorsey v. Artus*, 09-CV-1011, 2013 WL 5463720, at \*6 (N.D.N.Y. Sept. 20, 2013) (Sharpe, C.J.).

Local Rule 7.1(a)(1) requires a plaintiff seeking to transfer his case to another district to provide a specific rule or statute around which the motion is based. *Finnick v. NYCM*, 13-CV-0085, 2013 WL 5325630, at \*1 (N.D.N.Y. Sept. 20, 2013) (Suddaby, J.).

Local Rule 7.1(a)(1) mandates that a memorandum of law must have a table of contents. Failure to include one could, at the judge's discretion, result in dismissal. *Stephenson Equip. v. ATS Specialized, Inc.*, 10-CV-1517, 2013 WL 4508444, at \*2 (N.D.N.Y. Aug. 23, 2013) (Suddaby, J.).

The Court possesses the discretion to determine a motion's purpose when it is in violation of Local Rule 7.1(a)(1) and therefore the grounds on which the motion is sought are unclear. *Pratt v. Indian River Cent. Sch. Dist.*, 09-CV-0411, 2011 WL 1204804, at \*5 (N.D.N.Y. March 29, 2011) (Suddaby, J.).

The court may dismiss a *pro se* litigant's motion due to his failure to comply with both Local Rule 7.1(a)(1) requiring that a motion be accompanied by a memorandum of law and Local Rule 7(b) requiring the movant to state the grounds for seeking the order. *Pickering-George v. Cuomo*, 10-CV-0771, 2010 WL 5094629, at \*2 (N.D.N.Y. Dec. 8, 2010) (Suddaby, J.).

A plaintiff must comply with Local Rule 7.1(a) requiring a memorandum of law even when subject matter jurisdiction is not yet determined. *Jones v. Cawley*, 10-CV-0712, 2010 WL 2545738, at \*3 (N.D.N.Y. June 21, 2010) (McAvoy, S.J.).

Local Rule 7.1(a)(1)'s requirement that memoranda containing citations to decisions exclusively reported on computerized databases must include a copy thereof applies even to unpublished cases. *In re Jacob*, 418 B.R. 37, 38 (N.D.N.Y. Oct. 16, 2009) (Hurd, J.).

Local Rule 7.1(a)(1)'s requirement that a memorandum of law may not exceed twenty-five pages in length applies even to petitioners moving for appointment of counsel. *Heath v. Artus*, 09-CV-0770, 2009 WL 1940037, at \*2 (N.D.N.Y. July 7, 2009) (Scullin, J.).

Even a request for a Temporary Restraining Order must comply with Local Rule 7.1(a)(1),(2)'s requirements that a motion be accompanied by a memorandum of law and an affidavit. *In re Martino*, 09-CV-0645, 2009 WL 1706703, at \*2 (N.D.N.Y. June 17, 2009) (Suddaby, J.).

Local Rule 7.1(a)(1) allows the Court to strike any pages in a plaintiff's memorandum of law exceeding the page limit of twenty-five when the plaintiff has failed to obtain leave from the Court prior to filing. *Mancini v. CSX Transp., Inc.*, 08-CV-0933, 2010 WL 5418920, at \*1 (N.D.N.Y. Dec. 23, 2010) (McAvoy, S.J.), *accord*, *Duttweiler v. Eagle Janitorial, Inc.*, 05-CV-0886, 2009 WL 5171834, at \*3 (N.D.N.Y. Dec. 22, 2009) (Suddaby, J.); *Vanbrocklen v. U.S., Transp. Sec. Admin.*, 08-CV-0312, 2009 WL

1449042, at \*1 (N.D.N.Y. May 21, 2009) (McAvoy, J.).

A motion to dismiss may be denied if it is not accompanied by a memorandum of law in compliance with Local Rule 7.1(a)(1) because the movant has therefore failed to show cause for the granting of the motion. *U.S. v. Nier*, 09-CV-0038, 2009 WL 1076203, at \*3 (N.D.N.Y. Apr. 21, 2009) (Suddaby, J.).

The Court possesses the discretion to disregard a memorandum in its entirety when it does not comply with multiple parts of Local Rule 7.1 such as the page limit, the page layout, or the separation of factual evidence, factual denials and record evidence. *Cusamano v. Sobek*, 604 F. Supp.2d 416, 430 (N.D.N.Y. 2009) (Suddaby, J.).

Local Rule 7.1 specifies that, when a moving party makes a motion based on a rule or statute, it must specify that rule or statute in the moving papers so as to clarify assertions and arguments to the Court. *Rescuecom Corp. v. Chumley*, 522 F. Supp.2d 429, 451 (N.D.N.Y. 2007) (Scullin, J.).

The Court may construe an affidavit as a memorandum of law for the purpose of analysis when it violates Local Rule 7.1(a)(1) and (2). *Hunt v. U.S.*, 07-CV-0112, 2007 WL 2406912, at \*2 (N.D.N.Y. Aug. 21, 2007) (Sharpe, J.).

Local Rule 7.1(a)(1)'s twenty-five (25) page limit on all memorandums of law means that legal arguments may not be included in a memorandum of law by reference alone. *Topliff v. Wal-Mart Stores East LP*, 04-CV-0297, 2007 WL 911891, at \*9 (N.D.N.Y. March 22, 2007) (Lowe, M.J.).

The Court possesses the discretion to deny, without prejudice, a motion for summary judgment when both parties have failed to comply with Local Rule 7.1(a)(1),(2) and (3). *Lore v. City of Syracuse*, 00-CV-1833, 2007 WL 655628, at \*2 (N.D.N.Y. Feb. 26, 2007) (Munson, J.).

The Court may deny a plaintiff's motion for injunctive relief and compensatory damages because of his failure to adhere to Local Rule 7.1(a)(1), 7(b)(1). *Goros v. Cent. Office Review Comm.*, 03-CV-0407, 2006 WL 2794415, at \*9 (N.D.N.Y. Sept. 26, 2006) (Lowe, M.J.).

Local Rule 7.1(a)(1) stipulates that a motion to dismiss on any basis requires a memorandum of law, but a motion to compel is an exception to the rule and does not require memorandum be submitted. *Sanders v. Giannotta*, 03-CV-1117, 2006 WL

2528532, at \*1 (N.D.N.Y. Aug. 30, 2006) (DiBianco, M.J.).

The Court may deny a cross-motion for summary judgment when the movant has violated Local Rules 7.1(a)(1) by failing to submit a memorandum of law. *U.S. v. Rinehart*, 04-CV-1028, 2005 WL 2922181, at \*3 (N.D.N.Y. Nov. 4, 2005) (McAvoy, S.J.).

The court may construe letters seeking relief as motions for reconsideration despite a plaintiff's failure to comply with Local Rule 7.1(a)(1)-(2), (g) which requires that a memorandum of law accompany a formal motion for reconsideration. *Jones v. Parmley*, 98-CV-0374, 2005 WL 928666, at \*1 (N.D.N.Y. Apr. 20, 2005) (Scullin, C.J.).

The Court may accept a memorandum which violates Local Rule 7.1(a)(1) by not containing a table of contents. *Power Corp., Inc. v. Trafalgar Power, Inc.*, 00-CV-1246, 2000 WL 33963085, at \*4 (N.D.N.Y. Nov. 8, 2000) (Peebles, M.J.).

The Court may allow a memorandum of law in violation of Local Rule 7.1(a)(1)'s twenty-five (25) page limit if the opposing party fails to object. *Ciaprazi v. Goord*, 02-CV-0915, 2005 WL 3531464, at \*5 (N.D.N.Y. Dec. 22, 2005) (Sharpe, J.), *accord*, *Rivers v. O'Brien*, 83 F. Supp.2d 328, 331 (N.D.N.Y. 2000) (Kahn, J.).

Local Rule 7.1(a)(1) requires citations in all memorandums of law to contain sufficient information to identify and support the legal precedent cited. *McKnight v. Dormitory Auth. of the State of New York*, 189 F.R.D. 225, 227 (N.D.N.Y. Nov. 4, 1999) (McAvoy, C.J.), *accord*, *Clark v. New York State Elec. & Gas Corp.*, 67 F. Supp.2d 63, 71 (N.D.N.Y. 1999) (McAvoy, C.J.).

When a plaintiff fails to adhere to the procedures of Local Rule 7.1, he leaves the Court with no legal arguments which it can consider and the Court sees the absence of his memoranda as an admission to the claims, motions and Statements of Material Fact by the defendant. *Grassi v. Lockheed Martin Fed. Sys., Inc.*, 186 F.R.D. 277, 278 (N.D.N.Y. Apr. 30, 1999) (McAvoy, C.J.).

#### LOCAL RULE 7.1(a)(2) – AFFIDAVITS

Pursuant to Local Rule 7.1(a)(2)(A), an affidavit is not required for a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. *Netti v. New York*, 17-CV-0976, 2018 WL 6671555, at \*3 (N.D.N.Y., December 19, 2018), (Suddaby, C.J.).

Because an affidavit may not contain legal arguments, see N.D.N.Y. L.R. 7.1(a)(2), and because Plaintiff failed to file a memorandum of law as required by N.D.N.Y. L.R. 7.1(a)(1), the Court treats the motion as unopposed. *Tuff v. Village of Yorkville Police Department*, 16-CV-0473, 2017 WL 2790529, at \*1 (N.D.N.Y., June 27, 2017) (McAvoy, S.D.J.).

Pursuant to the Court's Local Rules of Practice, affidavits must not contain legal arguments. N.D.N.Y. L.R. 7.1(a)(2). Legal arguments must be set forth in a memorandum of law. N.D.N.Y. L.R. 7.1(a)(1). *Garcia v. Corr. Med. Care Inc.*, 16-CV-0575, 2017 WL 913637, at \*2 (N.D.N.Y., March 7, 2017) (Suddaby, C.J.).

Pursuant to this Court's Local Rules of Practice, “[a]n affidavit must not contain legal arguments but must contain factual and procedural background that is relevant to the motion the affidavit supports.” N.D.N.Y. L.R. 7.1(a)(2). Plaintiff's counsel has violated this Local Rule by filing an attorney affidavit replete with legal arguments, which ordinarily would not be considered. However, the Court will consider the affidavit out of solicitude to Plaintiff and because the affidavit, when combined with Plaintiff's memorandum of law, does not exceed twenty-five pages in length. *Helen Cross v. Colvin*, 16-CV-0111, 2016 WL 7011477, at \*2 (N.D.N.Y., December 1, 2016) (Suddaby, C.J.).

A plaintiff's motion to amend a complaint may be denied if the plaintiff does not identify the amendments in his proposed pleading, either through the submission of a red-lined version of the original pleading or other equivalent means, in violation of Local Rule 7.1(a)(2). *Heendeniya v. St. Joseph's Hosp. Health Ctr. (SJHHC)*, 15-CV-1238, 2016 WL 756537, at \*4 (N.D.N.Y. Feb. 25, 2016) (Suddaby, C.J.).

Pursuant to the Court's Local Rules of Practice, arguments may not be asserted in affidavits. N.D.N.Y. L.R. 7.1(a)(2). *Thurston v. Sisca*, 14-CV-1150, 2015 WL 6872329, at \*3 (N.D.N.Y. Nov. 9, 2015) (Suddaby, C.J.).

Local Rule 7.1(a)(2) requires a supporting affidavit and accompanying proof of service. *Mohr v. Sec. Credit Servs., LLC*, 141 F. Supp. 3d 179 (N.D.N.Y. 2015) (Hummel, M.J.).

Local Rule 7.1(a)(2) requires a cross-motion to be supported by an affidavit. *Nitti v. Cty. of Tioga*, 14-CV-0954, 2015 WL 5708637, at \*10 (N.D.N.Y. Sept. 28, 2015) (Suddaby, C.J.).

The defendants may move to strike the plaintiffs' cross-motion on three grounds: (1) the plaintiff's cross-motion is improper under Rule 7.1(c) of the Local Rules of Practice of this Court because the relief he/she requests-remand or, in the alternative, partial summary judgment-is not “a competing request for relief or order similar to” dismissal of the Complaint, as sought by Defendants; (2) the plaintiff failed to submit an affidavit in support of a cross-motion, as required by Local Rule 7.1(a) (2); and (3) to the extent it

seeks partial summary judgment, the plaintiff's cross-motion was not filed at least thirty-one days before the return date stated in the defendants' motion to dismiss, as required by Local Rule 7.1(b)(1). *Nitti v. Cty. of Tioga*, 14-CV-0954, 2015 WL 5708637, at \*5 (N.D.N.Y. Sept. 28, 2015) (Suddaby, C.J.).

Oppositions to Objections that request forms of relief that constitute separate motions may be denied if they are unsupported by an affidavit as required by Local Rule 7.1(a)(2). *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 687 (N.D.N.Y. 2015) (Report-Recommendation of Hummel, M.J. adopted by Suddaby, J.).

N.D.N.Y. L.R. 7.1(a)(2) states that “an affidavit must not contain legal arguments but must contain factual and procedural background that is relevant to the motion the affidavit supports.” *Brown v. Cty. of Madison*, 09-CV-0125, 2015 WL 1413360, at \*5 (N.D.N.Y. Mar. 27, 2015) (Suddaby, J.).

Pursuant to Local Rule 7.1, motions to intervene must set forth a return date and include an affidavit. In addition, pursuant to Fed. R. Civ. P. 24(C), they must include a proposed pleading in intervention. *Knight v. Fed. Nat. Mortgage Ass'n*, 13-CV-0183, 2014 WL 4901617, at \*11 (N.D.N.Y. Sept. 30, 2014) (Suddaby, J.).

A cross-motion by the plaintiff must be supported by an affidavit in accordance with Local Rule 7.1(a)(2). *Pirro v. National Grid*, 12-CV-1364, 2014 WL 1303414, at \*7 (N.D.N.Y. Mar. 31, 2014) (Suddaby, J.).

A complaint whose affidavit contains legal argument can be subject to dismissal because it violates Local Rule 7.1(a)(2). *Henry v. U.S. Dept. of Agriculture Rural Development New York State*, 12-CV-0883, 2014 WL 582187, at \*2 (N.D.N.Y. Feb. 13, 2014) (Sharpe, C.J.).

According to Local Rule 7.1(a)(2), an affidavit is necessary to grant a motion to transfer an action to another Federal District Court. *Fennick v. NYCM*, 13-CV-0085, 2013 WL 5323630, at \*1 (N.D.N.Y. Sept. 20, 2013) (Suddaby, J.).

In order to satisfy Local Rule 7.1(a)(2), a motion to dismiss for lack of subject-matter justification must be accompanied by an affidavit. *Rother v. NYS Dept. of Corr. and Community Supervision*, 970 F. Supp.2d 78, 90 (N.D.N.Y. 2013) (Kahn, J.).

Legal arguments in an affidavit is a violation of Local Rule 7.1(a)(2) and therefore falls short of demonstrating good cause to extend the deadline to permit late amended answers. *Am. Honda Motor Inc. v. V.M. Paolozzi Imports Inc.*, 10-CV-0955, 2013 WL 1296421, at \*3 (N.D.N.Y. Mar. 26, 2013) (Scullin, J.).

Local Rule 7.1(a)(2) requires any motion to amend or supplement to be accompanied by an affidavit. *Blond v. City of Schenectady*, 10-CV-0598, 2010 WL 4316810, at \*2 (N.D.N.Y. Oct. 26, 2010) (McAvoy, S.J.).

Local Rule 7.1(a)(2)'s requirement that an affidavit may not contain legal arguments, applies even to counsel. *Rescuecom Corp. v. Chumley*, 07-CV-0690, 2011 WL 1204758, at \*18 (N.D.N.Y. March 28, 2011) (Suddaby, J.), *accord*, *Duttweiler v. Eagle Janitorial, Inc.*, 05-CV-0886, 2009 WL 5171834, at \*3 (N.D.N.Y. Dec. 22, 2009) (Suddaby, J.).

Legal arguments in an affidavit are in violation of Local Rule 7.1(a)(2) and therefore are insufficient to indicate a genuine issue of material fact on a motion for summary judgment. *Felix-Torres v. Graham*, 687 F. Supp.2d 38, 52 (N.D.N.Y. 2009) (Suddaby, J.)

The Court may strike any portions of an affidavit containing arguments, written in the third person, not made from personal knowledge or contradictory to previous testimony since it is in clear violation of Local Rule 7.1(a)(2). *Duttweiler v. Eagle Janitorial, Inc.*, 05-CV-0886, 2009 WL 1606351, at \*3-4 (N.D.N.Y. June 4, 2009) (Suddaby, J.).

A motion to dismiss for failure to state a claim on which relief can be granted is an exception to Local Rule 7.1(a)(2) and does not require an accompanying affidavit. *Welch v. Selsky*, 06-CV-0812, 2008 WL 238553, at \*7 (N.D.N.Y. Jan. 28, 2008) (Kahn, J.).

Local Rule 7.1(a)(2)'s requirement that a motion for summary judgment must be accompanied by an affidavit may be substituting an unsworn declaration, subscribed by the declarant as true under penalty of perjury, for the affidavit. *Caidor v. Potter*, 02-CV-1486, 2007 WL 2847229, at \*5 (N.D.N.Y. Sept. 26, 2007) (Mordue, C.J.).

Local Rule 7.1(a)(2)'s requirement that an affidavit accompany all motions applies even to a motion for sanctions. *Eady v. Lappin*, 05-CV-0824, 2007 WL 1531879, at \* 4 (N.D.N.Y. May 22, 2007) (Mordue C.J.).

Local Rule 7.1(a)(1) in conjunction with Local Rule 7.1(a)(2) requires that arguments in refutation of arguments by opposing parties must be presented in an opposition memorandum of law rather than an affidavit. *Topliff v. Wal-Mart Stores East LP*, 04-CV-0297, 2007 WL 911891, at \*23 (N.D.N.Y. March 22, 2007) (Lowe, M.J.).

Motions to dismiss for failure to serve summonses requires a supporting affidavit. *Griffin-Nolan v. Providence Washington*, 04-CV-1453, 2005 WL 1460424, at \*3 (N.D.N.Y. June 20, 2005) (Scullin, C.J.).

An affidavit submitted with opposition papers to a motion to dismiss for failure to state a claim is in violation of Local Rule 7.1(a)(2) and therefore must be disregarded by the Court. *Federated Mut. Ins. Co. v. Woodstock '99, LLC*, 190 F. Supp.2d 324, 328 (N.D.N.Y. 2002) (Hurd, J.).

Legal arguments raised in an affidavit, submitted with an opposition to summary judgment, are in violation of Local Rule 7.1(a)(2) and therefore must be disregarded by the Court. *Gonzalez v. New York State Dep't of Corr. Servs. Fishkill Corr. Facility*, 122



F. Supp.2d 335, 341 (N.D.N.Y. 2000) (McAvoy, J.).

The Court may dismiss all content contained in a memorandum of law based on testimony, which would rightfully be contained in an affidavit as required by Local Rule 7.1(a)(2). *McPherson v. Greater Syracuse Chamber of Commerce*, 97-CV-1179, 2000 WL 139251, at \*4 (N.D.N.Y. Feb. 3, 2000) (Munson, J.).

The argument that a plaintiff is entitled to judgment as a matter of law is a legal argument and therefore when presented in an affidavit the court must deny it for violating Local Rule 7.1(a)(2). *Ragona v. Wal-Mart Stores, Inc.*, 62 F. Supp.2d 665, 667 (N.D.N.Y. 1999) (McAvoy, C.J.).

#### LOCAL RULE 7.1 (a)(3) – SUMMARY JUDGMENT MOTIONS: STATEMENTS OF MATERIAL FACT

“[Plaintiff’s] ... 40-page, 139-paragraph, single-spaced, handwritten document that attempted to serve as the following four things at the same time: (1) a partial Rule 7.1 Response (and counter-statement of facts); (2) a Rule 7.1 Statement of Material Facts (in support of Plaintiff’s cross-motion for summary judgment); (3) a declaration; and (4) a document containing legal arguments (including ad hominem attacks on defense counsel) .... Such a document is in flagrant violation of numerous local rules. As a result, the document in question was, and is, properly disregarded by the Court.” “I note that Plaintiff’s attachment of a (self-serving) affirmation at the end of his Rule 7.1 Statement, pursuant to 28 U.S.C. § 1746, is not sufficient to transform the factual assertions therein into factual assertions supported by record citations, as required by Local Rule 7.1. *Stamm v. Onondaga County*, 17-CV-0579, 2019 WL 1004527, at \*1-3 (N.D.N.Y., March 1, 2019) (Suddaby, C.J.).

The Court may accept properly supported facts in the defendant’s Statement of Material Facts as true when the plaintiff has failed to submit his own statement of material fact in opposition to summary judgment and has therefore violated the procedure of Local Rule 7.1(a)(1) and 7.1(a)(3). *Bombard v. Gen. Motors Corp.*, 238 F. Supp.2d 464, 466 (N.D.N.Y. 2002) (Munson, J.).

While plaintiff sharply disputes certain facts set forth in defendants’ Local Rule 7.1(a)(3) Statement, the denials are not supported by citations to the record as required by the court. This failure, however, does not affect the court’s analysis particularly in light of the preference and desirability of resolving litigated matters based upon relative merit, rather than on the basis of a procedural or technical default, and the fact that the defendants do not seek summary judgment on the basis of this shortcoming. *Carr v. City of Norwich*, 17-CV-0954, 2019 WL 1332770, at \*3 (N.D.N.Y., March 1, 2019) (Peebles, M.J.).

Defendant contends that *pro se* plaintiffs are not exempt from the requirements of Local Rule 7.1(a)(3) and that plaintiff failed to properly respond to defendant’s Motion for

Summary Judgment insofar as he did not comply with Local Rule 7.1(a)(3). Keeping in mind the special solicitude afforded to a pro se plaintiff, the Court declines to dismiss the Complaint solely due to plaintiff's failure to fully comply with Local Rule 7.1, especially as plaintiff's responses did attempt some measure of compliance. *Yancey v. Robertson*, 17-CV-0381, 2018 WL 7114888, at \*2 (N.D.N.Y., December 7, 2018) (Hummel, M.J.).

Defendants' Statement of Material Facts contains no citations to the record for any of the 19 statements of material fact. It therefore wholly fails to comply with Local Rule 7.1(a)(3). Thus, Defendants' motion may be denied for failing to comply with the Local Rules. *Watson v. City of Kingston-Kingston Police Dept.*, 15-CV-1356, 2018 WL 4509488, at \*1 (N.D.N.Y., September 19, 2018) (Sannes, J.).

Plaintiff has not filed a responsive Rule 7.1 Statement, but makes numerous factual assertions contradicting the facts set forth by Defendants in his various submissions. In deference to Plaintiff's pro se status the Court has opted to review the entire summary judgment record in order to ascertain the undisputed material facts. *Vaszquez v. Russell*, 16-CV-0623, 2018 WL 5728041, at \*1 (N.D.N.Y., August 10, 2018) (Stewart, M.J.).

Undeniably, *pro se* litigants are entitled to some measure of forbearance when defending against summary judgment motions. The deference owed to *pro se* litigants, however, does not extend to relieving them of the ramifications associated with the failure to comply with the court's local rules. Here, because plaintiff was warned of the consequences of failing to properly respond to defendant's Local Rule 7.1 Statement, Dkt. No. 46 at 2, and he has failed to do so, I will deem defendant's facts contained in his Local Rule 7.1(a)(3) Statement as having been admitted to the extent they are supported by accurate record citations. As to any facts not contained in defendant's Local Rule 7.1(a)(3) Statement, in light of the procedural posture of this case, the court is "required to resolve all ambiguities and draw all permissible factual inferences" in favor of plaintiff. *Miller-Harris v. Dinello*, 16-CV-0541, 2018 WL 5728115, at \*3 (N.D.N.Y., August 7, 2018) (Report-Recommendation by Peebles, M.J., adopted by Scullin, J.)

Although the defendant argues, and the Local Rules provide, that the Court shall deem admitted any facts the nonmoving party fails to "specifically controvert," pro se plaintiffs are afforded special solicitude in this District and within the Second Circuit. Accordingly, in deference to plaintiff's *pro se* status, the Court will independently review the record when evaluating defendants' Motion for Summary Judgment, and "treat plaintiff's opposition as a response to" defendants' Statement of Material Facts. *Campbell v. Prue*, 16-CV-0004, 2018 WL 4635708, at \*3 (N.D.N.Y., July 3, 2018) (Hummel, M.J.).

A Rule 7.1 Response is not the means by which to dispute a possibly implied fact but the means by which to dispute an expressly asserted fact. *Mahar v. Warren County Board of Supervisors*, 17-CV-0201, 2018 WL 2727870, at \*2 (N.D.N.Y., June 6, 2018) (Suddaby, C.J.).

A district court has broad discretion to determine whether to overlook a party's failure to

comply with the local court rules,” and “may in its discretion opt to ‘conduct an assiduous review of the record’ even where one of the parties has failed to file [ ] a [7.1] statement. *Dizak v. Hawks*, 15-CV-1171, 2018 WL 993720, at \*1 (N.D.N.Y., February 20, 2018) (Report-Recommendation by Dancks, M.J., adopted by Kahn, S.D.J.).

The non-moving party's subsequent response must mirror the moving party's statement of material facts by (1) admitting and/or denying each of the moving party's factual assertions in matching numbered paragraphs and (2) supporting any denials with specific citations to the record where the factual issue arises. N.D.N.Y. L.R. 7.1(a)(3). *O'Dell v. Tucker*, 13-CV-1275, 2016 WL 3017391 (N.D.N.Y. May 24, 2016) (Dancks, J.); *Willig v. Swarts*, 12-CV-1649, 2015 WL 5093771, at \*2 (N.D.N.Y. Aug. 28, 2015) (Scullin, J.).

According to Local Rule 7.1(a)(3), "the Court shall deem admitted any facts set forth in the Statement of Material Facts that the opposing party does not specifically controvert." *Depalma v. New York State*, 14-CV-0058, 2016 WL 1305972, at \*3 (N.D.N.Y. Mar. 31, 2016) (Kahn, J.). *Engineers Joint Welfare Fund v. C. Destro Dev. Co.*, 10-CV-0474, 2016 WL 1275649, at \*1 (N.D.N.Y. Mar. 31, 2016) (Kahn, J.); *McGee v. Haigh*, 13-CV-394, 2015 WL 1456612, at \*5 (N.D.N.Y. Mar. 30, 2015). (Report-Recommendation of Peebles, M.J. adopted by D'Agostino, J); *Judge v. Gibson*, 13-CV-727, 2015 WL 926388, at \*3 (N.D.N.Y. Mar. 4, 2015) (Scullin, J.).

The Court often enforces Local Rule 7.1(a)(3) by deeming facts set forth in a moving party's statement to be admitted, to the extent that those facts are supported by evidence in the record, where the nonmoving party has willfully failed to properly respond to that statement. *Marino v. Koenigsmann*, 12-CV-1170, 2016 WL 1298726, at \*15 (N.D.N.Y. Mar. 31, 2016); (Suddaby, C.J.); *Conway v. U.S. Postal Serv.*, 14-CV-0180, 2016 WL 1259412, at \*5 (N.D.N.Y. Mar. 30, 2016).

*Pro se* litigants are not excused from compliance with Local Rule 7.1(a)(3). *Depalma v. New York State*, 14-CV-0058, 2016 WL 1305972, at \*3 (N.D.N.Y. Mar. 31, 2016) (Kahn, J.).

Local Rule 7.1(a)(3) requires that the non-moving party file a response to the moving party's Statement of Material Facts, which admits or denies each of the moving party's factual assertions in matching numbered paragraphs, and supports any denials with a specific citation to the record where the factual issue arises. *Conway v. U.S. Postal Serv.*, 14-CV-0180, 2016 WL 1259412, at \*5 (N.D.N.Y. Mar. 30, 2016) (Suddaby, C.J.); *U.S. v. Fritsch*, 12-CV-0906, 2014 WL 3928452, at \*4 (N.D.N.Y. Aug. 12, 2014).

Under Local Rule 7.1(a)(3), a “Statement of Material Facts” is filed only by a party moving for summary judgment. *Bruno v. City of Schenectady*, 12-CV-0285, 2016 WL 1057041, at \*10 (N.D.N.Y. Mar. 14, 2016) (Suddaby, C.J.).

At a judge’s discretion, according Local Rule 7.1(a)(3), failure of the moving party to submit an accurate and complete Statement of Material Facts may result in a denial of the

motion. *Klein v. Fischer*, 13-CV-0437, 2015 WL 5174031, at \*11 (N.D.N.Y. Sept. 2, 2015) (Report-Recommendation of Dancks, M.J. adopted by Sannes, J.).

The Court's Local Rules provide that any motion for summary judgment must be accompanied by a statement of material facts as to which, the moving party submits, there exists no genuine dispute. N.D.N.Y. L.R. 7.1(a)(3). *McGee v. Haigh*, 13-CV-394, 2015 WL 1456612, at \*1 (N.D.N.Y. Mar. 30, 2015). (Report-Recommendation of Peebles, M.J. adopted by D'Agostino, J).

Local Rule 7.1(a)(3) requires a party moving for summary judgment to submit a statement of material facts with specific citations to the record where those facts are established. N.D.N.Y. L.R. 7.1(a)(3); *Willig v. Swarts*, 12-CV-1649, 2015 WL 5093771, at \*2 (N.D.N.Y. Aug. 28, 2015); *Judge v. Gibson*, 13-CV-727, 2015 WL 926388, at \*3 (N.D.N.Y. Mar. 4, 2015) (Scullin, J.).

Local Rule 7.1(a)(3) provides that any motion for summary judgment must include a statement of material facts, and "each fact listed shall set forth a specific citation to the record where the fact is established." *Judge v. Gibson*, 13-CV-727, 2015 WL 926388, at \*3 (N.D.N.Y. Mar. 4, 2015) (Scullin, J.); *U.S. v. Hughes*, 14-CV-0719, 2015 WL 729735, at \*2 (N.D.N.Y. Feb. 19, 2015) (Kahn, J.).

Plaintiff's failure to respond to the defendants' Rule 7.1(a)(3) statement is the functional equivalent of his admission of the material facts contained with[in] the statement for the purposes of the instant motion. *McGee v. Haigh*, 13-CV-394, 2015 WL 1456612, at \*1 (N.D.N.Y. Mar. 30, 2015) (Report-Recommendation of Peebles, M.J. adopted by D'Agostino, J); *Judge v. Gibson*, 13-CV-727, 2015 WL 926388, at \*3 (N.D.N.Y. Mar. 4, 2015) (Scullin, J.).

The Local Rules clearly state that the record for purposes of the statement of material facts does not include attorney's affidavits. N.D.N.Y. L.R. 7.1(a)(3). *U.S. v. Hughes*, 14-CV-0719, 2015 WL 729735, at \*2 (N.D.N.Y. Feb. 19, 2015) (Kahn, J.).

Local Rule 7.1(a)(3) states that "the record for purposes of the Statement Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits." *U.S. v. Hughes*, 14-CV-0719, 2015 WL 729735, at \*2 (N.D.N.Y. Feb. 19, 2015) (Kahn, J.).

Local Rule 7.1(a)(3) states that "the record on a motion for summary judgment does not . . . include attorney's affidavits." *Rodriguez v. Bubnis*, 11-CV-1436, 2014 WL 6078529, at \*9 (N.D.N.Y. Nov. 13, 2014) (Suddaby, J.). (Report-Recommendation of Peebles, M.J. adopted by D'Agostino, J.).

## LOCAL RULE 7.1(a)(4) – MOTIONS TO AMEND OR SUPPLEMENT A PLEADING

Plaintiff’s motion to amend his complaint may be denied in violation of Local Rule 7.1(a)(4) if Plaintiff’s motion is not supported by an unsigned copy of the proposed amended pleading. *Heendeniya v. St. Joseph's Hosp. Health Ctr. (SJHHC)*, 15-CV-1238, 2016 WL 756537, at \*4 (N.D.N.Y. Feb. 25, 2016) (Suddaby, C.J.).

Local Rule 7.1 directs that a motion for leave to amend a pleading must (1) attach an unsigned copy of the proposed amended pleading, and (2) 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 in accordance with L.R. 7.1(a)(4). *Zavalidroga v. Oneida Cnty. Dep't of Adult Protect. Servs.*, 14-CV-1273, 2015 WL 9255557, at \*4 (N.D.N.Y. Dec. 18, 2015) (Report-Recommendation of Dancks, J. adopted by Suddaby, C.J.); *Police Benevolent Ass'n of New York State, Inc. v. New York*, 11-CV-1528, 2015 WL 1281520, at \*5 (N.D.N.Y. Mar. 20, 2015) (D’Agostino, J.).

One of the purposes of the requirement that motions to amend be accompanied by a copy of the proposed amended complaint is to ensure that all of the allegations asserted against the defendant(s) named therein are contained in a single document, thereby reducing the likelihood that a party will overlook one or more allegations against him. Moreover, this requirement eliminates the confusing nature of “piecemeal” amended complaints. *Doggett v. Douglas*, 95-CV-1380, 1998 WL 312355, at \*3 (N.D.N.Y. June 8, 1998) (Pooler, J.); *Howard v. Potter*, 06-CV-0982, 2008 WL 495569, at \*2 (N.D.N.Y. Feb. 20, 2008) (Hurd, J.); *Brown v. Duncan*, 00-CV-0290, 2006 WL 1977469, at \*6 (N.D.N.Y. July 11, 2006) (Sharpe, J.); *Chapdelaine v. Keller*, 95-CV-1126, 1999 WL 34998130, at \*1 (N.D.N.Y. Sept. 28, 1999) (Sharpe, M.J.), *accord, Smith v. West*, 03-CV-1178, 2006 WL 3729316, at \*2 (N.D.N.Y. Dec. 15, 2006) (DiBianco, M.J.).

## LOCAL RULE 7.1(b)(1) – DISPOSITIVE MOTIONS

The Local Rules prohibit Plaintiff from filing a sur-reply, L.R. 7.1(b)(1), and dismissal of his claim as time-barred would unfairly deprive him of a chance to demonstrate that his FLSA claim is timely. Therefore, the Court deems Defendant's statute of limitations defense waived. *Maddison v. Comfort Systems USA (Syracuse), Inc.*, 17-CV-0359, 2018 WL 679477, at \*2 (N.D.N.Y., February 1, 2018) (Kahn, J.).

According to Local Rule 7.1(b)(1), in the event a plaintiff seeks partial summary judgment, the plaintiff’s cross-motion must be filed and served at least thirty-one (31) days before the return date stated in the defendants’ motion to dismiss. *Nitti v. Cty. of Tioga*, 14-CV-0954, 2015 WL 5708637, at \*5 (N.D.N.Y. Sept. 28, 2015) (Suddaby, C.J.).

According to Local Rule 7.1(b)(1), sur-replies are not permitted unless permission is obtained by the Court before filing a sur-reply. *Jones v. Smith*, 13-CV-1004, 2015 WL 1414511, at \*6 (N.D.N.Y. Mar. 27, 2015) (Suddaby, J.).

## LOCAL RULE 7.1(b)(2) – NON-DISPOSITIVE MOTIONS

DRNY subsequently filed a letter motion requesting permission to file a reply brief. Indeed, the Local Rules require a party to seek such permission from the court before filing reply papers on a non-dispositive motion. See N.D.N.Y. L.R. 7.1(b)(2). However, inherent within this requirement is the understanding that the party seeking to file reply papers will provide the court with a reason why they are necessary. Because DRNY provides no such reason for granting its request and because the court perceives none, the letter motion is denied. *Disability Rights New York v. Wise*, 15-CV-0032, 2018 WL 3104445, at \*1 (N.D.N.Y., June 22, 2018) (Sharpe, J.).

Local Rule 7.1(b)(2) states that “parties must make good faith efforts among themselves to resolve or reduce all differences relating to the non-dispositive issue.” *Dudla v. P.M. Veglio LLC*, 13-CV- 0333, 2016 WL 1068120, at \*17 (N.D.N.Y. Mar. 15, 2016) (Kahn, J.).

A Plaintiff’s reply on an omnibus motion may be unauthorized if the motion is non-dispositive in nature and no prior leave to file a reply was granted (or even requested). N.D.N.Y. L.R. 7.1(b)(2). *Bruno v. City of Schenectady*, 12-CV-0285, 2016 WL 1057041, at \*10 (N.D.N.Y. Mar. 14, 2016) (Suddaby, C.J.).

Local Rule 7.1(b)(2) provides that a party may not file reply papers in support of a non-dispositive motion without the express permission of the Court. *Horanzy v. Vemma Nutrition Co.*, 87 F. Supp. 3d 341, 345 (N.D.N.Y. 2015) (Hurd, J.); *NXIVM Corp. v. Foley*, 14-CV-1375, 2015 WL 7776923, at \*5 (N.D.N.Y. Dec. 2, 2015) (Kahn, J.).

## LOCAL RULE 7.1 (b)(3) – FAILURE TO TIMELY FILE OR COMPLY

Under the Local Rules of this District, a party opposing a dispositive motion must file its opposition papers no less than seventeen days prior to the return date of the motion. L.R. 7.1(b)(1). National Bank filed its Motion on October 2, 2017, with a return date of November 3, 2017. Mot. Thus, Green Oak’s response was due on October 17, 2017. Green Oak filed its Opposition on October 27, 2017, ten days after its deadline. Green Oak has neither acknowledged nor explained its tardiness, much less shown good cause. Therefore, pursuant to Local Rule 7.1(b)(3), the Court deems the Motion to be unopposed. *Green Oak Stockade View Apartments, LLC v. National Bank of Coxsackie*, 17-CV-0615, 2018 WL 1568543, at \*2 (N.D.N.Y., March 29, 2018) (Kahn, J.).

Local Rule 7.1(b)(3) provides that, 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 nonmoving 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. *Farone & Son Funeral Home, Inc. v. Denise Delee*, 15-CV-0679, 2016 WL 2354264, at \*3 (N.D.N.Y. May 4, 2016) (Suddaby,

C.J.); *O'Dell v. Tucker*, 13-CV-01275, 2016 WL 3017241, at \*76-77 (N.D.N.Y. May 2, 2016) (Dancks, M.J.); *Scott v. Harrigan*, 13-CV-1368, 2016 WL 859370, at \*1 (N.D.N.Y. Feb. 10, 2016) (Peebles, M.J.).

According to Local Rule 7.1(b)(3), “the Court shall not consider any papers . . . that are not timely filed . . . unless good cause is shown.” N.D.N.Y. L.R. 7.1(b)(3). *Koziol v. King*, 14-CV-946, 2016 WL 1298133, at \*2 (N.D.N.Y. Mar. 31, 2016) (Sharpe, J.).

According to Local Rule 7.1 (b)(3), when a non-movant has failed to respond to a movant's motion for summary judgment, “the fact that there has been no such response . . . does not . . . [by itself] mean that the motion is to be granted automatically.” The Court must (1) determine what material facts, if any, are disputed in the record presented on the movant's motion, and (2) assure itself that, based on those undisputed material facts, the law indeed warrants judgment for the movant. *Marino v. Koenigsmann*, 12-CV-1170, 2016 WL 1298726, at \*15 (N.D.N.Y. Mar. 31, 2016) (Suddaby, C.J.).

Where a non-movant has willfully failed to respond to a movant's properly filed and facially meritorious memorandum of law (submitted in support of its motion for summary judgment), the non-movant is deemed to have “consented” to the legal arguments contained in that memorandum of law under Local Rule 7.1(b)(3). *Marino v. Koenigsmann*, 12-CV-1170, 2016 WL 1298726, at \*15 (N.D.N.Y. Mar. 31, 2016); *Conway v. U.S. Postal Serv.*, 14-CV-0180, 2016 WL 1259412, at \*5 (N.D.N.Y. Mar. 30, 2016); *Trostle v. State of New York*, 13 CV-0709, 2016 WL 1175215, at \*6 (N.D.N.Y. Mar. 24, 2016) (Suddaby, C.J.).

Under Local Rule 7.1(b)(3), when a non-movant fails to oppose a legal argument asserted by a movant, the movant may succeed on the argument by showing that the argument possesses facial merit, which has appropriately been characterized as a “modest” burden. *Rizzo v. Health Research, Inc.*, 12-CV-1397, 2016 WL 632546, at \*10 (N.D.N.Y. Feb. 16, 2016); *Conway v. U.S. Postal Serv.*, 14-CV-0180, 2016 WL 1259412, at \*5 (N.D.N.Y. Mar. 30, 2016) (Suddaby, C.J.).

Local Rule 7.1(b)(3) requires a party “who does not intend to pursue” a motion to notify the Court and other parties no less than fourteen (14) days before the scheduled return date. *Horanzy v. Vemma Nutrition Co.*, 87 F. Supp. 3d 341, 345 (N.D.N.Y. 2015) (Hurd, J.).

#### LOCAL RULE 7.1(c) – CROSS-MOTIONS

Although Defendant Tarolli characterizes its motion as a “cross-motion,” the motion is merely a “motion,” because it does not seek relief against the previously moving party (i.e., Plaintiff) nor does it seek relief that competes with the relief sought by Plaintiff. *Robert H. Law Inc. v. Woodbine Bus. Park, Inc.*, 13-CV-1393, 2018 WL 851382, at \*1 (N.D.N.Y. Feb. 12, 2018) (Suddaby, C.J.).

As an initial matter, TIPC's request runs afoul of at least two different Local Rules. First, Local Rule 7.1(c) requires that where, as here, "a party makes a cross-motion, it must join its cross-motion brief with its opposition brief." Indeed, Local Rule 7.1(c) explicitly states that "[a] separate brief in opposition to the original motion is not permissible." *Thousand Island Park Corporation v. Welser*, 18-CV-0117, 314 F.Supp.3d 391, at \*399 (N.D.N.Y., June 14, 2018) (Hurd, J.).

Local Rule 7.1(c) permits but does not always require the original moving party to file a reply "with a reply/opposition brief." This rule does not specify that the reply should or must include a responsive statement of undisputed material facts. Thus, in light of the ambiguity in the local rules, the Court does not always penalize a party for failing to respond to the opposing party's additional statement of undisputed material facts. Instead, the Court examines the record to determine whether any dispute of material fact exists. *Kennedy v. Equity Transp. Co.*, 14-CV-0864, 2015 WL 6392755, at \*3 (N.D.N.Y. Oct. 22, 2015) (Peebles, M.J.).

#### LOCAL RULE 7.1(d) – DISCOVERY MOTIONS

When necessary, the parties should first seek clarity from opposing counsel regarding discovery and interrogatory responses where questions of accuracy and/or completeness arise, especially where those questions present issues that could potentially have a dispositive effect on a party's claims. *Seedan Real Estate Holding, LLC v. Leary*, 16-CV-00595, 2018 WL 6830707, at \*14 (N.D.N.Y. Dec. 28, 2018) (Mordue, J.).

Pursuant to Local Rule 7.1(d)(8), parties must file any motion to compel discovery no later than fourteen (14) days after the discovery cut-off date. *Lyman v. Felter*, 12-CV-0530, 2015 WL 1415270, at \*1 (N.D.N.Y. Mar. 26, 2015) (Treece, M.J.), report and recommendation adopted, No. 12-CV-0530, 2015 WL 3549667 (N.D.N.Y. June 8, 2015) (D'Agostino, J.)

#### LOCAL RULE 7.1(e) – ORDER TO SHOW CAUSE

Local Rule 7.1(e) provides that "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." Here, as Plaintiff set forth in its affidavit, Plaintiff reasonably believed that a lien discharge bond obviated the need to extend the notices of pendency in this case. It was not until October 21, 2016, when Defendants' counsel questioned the validity of the lien discharge bond, that Plaintiff realized that the notices of pendency would have to be extended. Since the notices of pendency are set to expire on November 5, 2016 and November 6, 2016, Plaintiff could not comply with the standard notice of motion procedure and still extend the notices of pendency. As such, Plaintiff has demonstrated good and sufficient cause why the standard notice of motion procedure was not used. *Mid Atlantic Framing, LLC v. AVA Realty Ithaca, LLC*, 13-CV-01376, 2016 WL 11325766, at \*2 (N.D.N.Y., Nov. 2, 2016) (D'Agostino, J.).



Local Rule 7.1(e) provides that “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.” *Hartley v. Seely*, 15-CV-1345, 2016 WL 1558461, at \*1 (N.D.N.Y. Apr. 18, 2016) (Kahn, J).

#### LOCAL RULE 7.1(f) – TEMPORARY RESTRAINING ORDER

Local Rule 7.1(f) provides that “[a]ny application for a temporary restraining order must be served on all other parties unless Fed. R. Civ. P. 65 otherwise permits.” Rule 65 of the Federal Rules of Civil Procedure provides that the Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if (1) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition, and (2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. *Gottlieb v. The Variable Annuity Life Ins. Co.*, 15-CV-1420, 2015 WL 9239896, at \*1-2 (N.D.N.Y. Dec. 17, 2015) (McAvoy, J.).

Local Rule 7.1(f) requires a party seeking a temporary restraining order do so either by a notice of motion or order to show cause. *Hilson v. Beaury*, 13-CV-0606, 2014 WL 4457132, at \*7 (N.D.N.Y. Sept. 10, 2014) (Report Recommendation of Peebles, M.J. adopted by Kahn, J.).

Motions for a temporary restraining order or preliminary injunction must be supported by the submission of a memorandum of law and an affidavit. N.D.N.Y. L.R. 5.1(a), 7.1(a), (f). *Hilson v. Beaury*, 13-CV-0606, 2014 WL 4457132, at \*7 (N.D.N.Y. Sept. 10, 2014) (Report Recommendation of Peebles, M.J. adopted by Kahn, J.).

#### LOCAL RULE 7.1(g) – MOTIONS FOR RECONSIDERATION

Plaintiffs' motion for reconsideration is untimely. See N.D.N.Y. L.R. 7.1(g) (“[A] party may file and serve a motion for reconsideration or reargument no later than FOURTEEN DAYS after the entry of the challenged ... order....”); (“Because the Reconsideration Motion cannot be construed as a Rule 59 motion to alter or amend a judgment, and is instead an interlocutory motion for reconsideration, Local Rule 7.1(g) sets the deadline to file the motion.”). The motion therefore must be denied. *Katen & Sons, Inc. v. Allegheny Trucks, Inc.*, 16-CV-01124, 2018 WL 3159822, at \*1 (N.D.N.Y., May 17, 2018) (Sannes, J.).

“Generally, the prevailing rule in the Northern District ‘recognizes only three possible grounds upon which motions for reconsideration may be granted; they are (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or prevent manifest injustice.’”. These requirements prevent the moving party from simply relitigating issues already decided by the Court. *Loguidice v. McTiernan*, 14-CV-1323, 2017 WL 3327599, at \*2

(N.D.N.Y. Aug. 3, 2017) (Hummels, M.J.).

To the extent that a party seeks the reconsideration of the Court's prior rulings, those requests may be denied if they are untimely under Local Rule 7.1(g). *Alex v. Gen. Elec. Co.*, 12-CV-1021, 2016 WL 1057042, at \*26 (N.D.N.Y. Mar. 14, 2016) (Suddaby, C.J.).

Local Rule 7.1(g) requires that a motion for reconsideration be filed no later than fourteen (14) days after the entry of the challenged judgment, order, or decree. Denial or approval of the motion may occur upon the Court's discretion. *Utica Mut. Ins. Co. v. Clearwater Ins. Co.*, 13-CV-1178, 2015 WL 4496374, at \*1 (N.D.N.Y. July 23, 2015) (Sharpe, J.); *Hogan v. Cty. of Lewis, New York*, 11-CV-0754, 2015 WL 9165956, at \*2 (N.D.N.Y. Dec. 16, 2015); *Upstate Shredding, LLC v. Ne. Ferrous, Inc.*, 12-CV-1015, 2016 WL 865299, at \*10 (N.D.N.Y. Mar. 2, 2016) (Kahn, J.).

The standard for granting a motion for reconsideration may justifiably be reconsidered by the Court upon the following grounds: (1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; or (3) it becomes necessary to remedy a clear error of law or to prevent manifest injustice. Motions for reconsideration requested by a party must follow the fourteen (14) day time limit set forth by Local Rule 7.1(g). *PPC Broadband, Inc. v. Corning Optical Commc'ns RF, LLC*, 13-CV-1310, 2015 WL 58388, at \*1 (N.D.N.Y. Jan. 5, 2015) (Sharpe, C.J.); *Halo Optical Products, Inc. v. Liberty Sports, Inc.*, 14-CV-282, 2015 WL 999076, at \*3 (N.D.N.Y. Mar. 5, 2015) (D'Agostino, J.); *Constitution Pipeline Co., LLC v. Sydlar*, 14-CV-2108, 2015 WL 4389777, at \*1 (N.D.N.Y. July 14, 2015) (Mordue, J.); *Russo v. Cty. of Warren*, 12-CV-1616, 2016 WL 843373, at \*1 (N.D.N.Y. Mar. 1, 2016) (Scullin, J.).

According to Local Rule 7.1(g), when a party is seeking relief, motions for reconsideration must be filed within fourteen (14) days after the entry of the challenged judgment, unless otherwise governed by Fed. R. Civ. P. 60. *Piazza v. Colvin*, 11-CV-957, 2015 WL 1969139, at \*2 (N.D.N.Y. May 1, 2015) (Hurd, J.).

#### LOCAL RULE 7.1(i) – SANCTIONS FOR VEXATIOUS OR FRIVOLOUS MOTIONS OR FAILURE TO COMPLY WITH THIS RULE

Pursuant to Local Rule 7.1(i), 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 attorney's fees to the opposing party. If there is a clear and obvious violation of the Local Rules, sanctions, or an order to show cause, are often imposed without any prior warning by the court. *Dudla v. P.M. Veglio LLC*, 13-CV-0333, 2016 WL 1068120, at \*16 (N.D.N.Y. Mar. 15, 2016) (Kahn, J.).

#### LOCAL RULE 8.1 – PERSONAL PRIVACY PROTECTION

Local Rule 8.1 provides that “parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all filings with the Court, including exhibits thereto, whether filed electronically or in paper form, unless the Court

orders otherwise[:]” (1) social security numbers; (2) names of minor children; (3) dates of birth; (4) home addresses; and (5) names of sexual assault victims. In addition, “caution shall be exercised when filing documents that contain the following: (1) personal identifying numbers, such as a driver’s license number; (2) medical records, treatment and diagnosis; (3) employment history; (4) individual financial information; and (5) propriety or trade secret information.” *Phillips v. Dawes*, 16-CV-0219, 2016 WL 11478218, at \*7 (N.D.N.Y., July 14, 2016) (Dancks, M.J.).

Local Rule 8.1(6) restricts exhibits containing information that identifies victim(s) of sexual assault. *Ness v. Rock*, 08-CV-0361, 2016 WL 796076, at \*1 (N.D.N.Y. Feb. 23, 2016) (Sharpe, J.).

According to Local Rule 8.1, if the involvement of a minor child is required in any pleadings filed with the Court, only the child’s initials shall be used. *March v. Colvin*, 13-CV-0703, 2014 WL 1680607, at \*1 (N.D.N.Y. Apr. 28, 2014) (Sharpe, C.J.); *Cudworth ex rel. K.D. v. Colvin*, 13-CV-0361, 2014 WL 4827946 (N.D.N.Y. Sept. 29, 2014) (Sharpe, C.J.), *aff’d sub nom. Cudworth v. Colvin*, 605 F. App’x 77 (2d Cir. 2015).

Papers containing names of children as well as other identifiers should be redacted from any public access pursuant to Local Rule 8.1 of this Court. *Clare-Lunny v. Lunny*, 14-CV-351, 2014 WL 3670546, at \*3 (N.D.N.Y. July 23, 2014) (Report Recommendation of Baxter, M.J. adopted by Kahn, J.).

Pursuant to Local Rule 8.1, all pleadings submitted to the Court must either exclude, or where necessary redact personal information. The Court has the discretionary power to decide whether or not to impose sanctions on violations of this nature. *Clark v. New York State Office of State Comptroller*, 09-CV-0716, 2014 WL 823289, at \*12 (N.D.N.Y. Mar. 3, 2014) (Sharpe, C.J.).

Local Rule 8.1 provides that personal information such as financial account numbers must be identified only by the last four digits of the given number. *Taylor v. Taylor*, 12-CV-0037, 2013 WL 1183290, at \*5 (N.D.N.Y. Mar. 21, 2013) (Kahn, J.).

When a document is filed in violation of Local Rule 8.1, the Court may abstain from giving sanctions and instead direct the Clerk to seal the offending documents to shield them from public view. *N.C. v. Oneida City School Dist.*, 07-CV-01230, 2010 WL 3981823, at \*7 (N.D.N.Y. Oct. 8, 2010) (McCurn, J.).

Local Rule 8.1’s personal privacy protection also applies to jurors, including but not limited to their home addresses and juror questionnaires. *U.S. v. Bruno*, 700 F Supp.2d 175, 180 (N.D.N.Y. Feb. 24, 2010) (Sharpe, C.J.).

## LOCAL RULE 9.1 – REQUEST FOR THREE-JUDGE COURT

In conjuncture with Local Rule 9.1 whenever a party believes that only a three-judge court may grant the relief requested in a lawsuit, said party must include the words “Three-Judge Court” immediately following the title of the first pleading. *Dzwonczyk v. Hurd*, 13-CV-0190, 2013 WL 2285391, at \*3 (N.D.N.Y. May 23, 2013) (Sharpe, C.J.).

## LOCAL RULE 9.2 – REQUIREMENTS TO FILE A CIVIL RICO STATEMENT

Plaintiff has failed to comply with Local Rule 9.2, which requires a party asserting a RICO claim to submit a civil RICO statement within thirty days of filing the pleading asserting the claim. L.R. 9.2. However, because his RICO claims are dismissed for failure to state a claim, the Court need not address the Browns' argument that his failure to comply with Rule 9.2 justifies dismissal. *LoPorto v. County of Rennselaer*, 15-CV-0866, 2018 WL 4565768, at \*18 (N.D.N.Y. Sept. 24, 2018) (Kahn, J.).

In order to satisfy Local Rule 9.2, the plaintiff’s complaint must contain a civil RICO cause of action. *De Ponceau v. Bruner*, 09-CV-0605, 2012 WL 1030415, at \*2 (N.D.N.Y. Feb. 21, 2012) (Peebles, M.J.).

Local Rule 9.2 requires that when a civil RICO claim is asserted before the Court, a RICO statement containing certain specified information must be filed by the party raising the claim. *Amaker v. Kelley*, 01-CV-0877, 2009 WL 385413, at \*11 (N.D.N.Y. Feb. 9, 2009) (Scullin, J.).

Local Rule 9.2 stipulates that a RICO claim must be filed within 30 days of the commencement of the action. However, a *pro se* litigator may be afforded an additional 20 days to comply. *Dicob v. Knuckles*, 07-CV-1044, 2007 WL 3353089, at \*1 (N.D.N.Y. Nov. 7, 2007) (McAvoy, J.).

## LOCAL RULE 10.1 – FORM OF PAPERS

Local Rule 10.1(a) requires that all pleadings, motions and other documents must be paginated and consecutively numbered. *Henry v. U.S. Dept. of Agriculture Rural Development New York State*, 12-CV-0883, 2014 WL 582187, at \*2 (N.D.N.Y. Feb. 13, 2014) (Sharpe, C.J.).

Local Rule 10.1(a) requires that all pleadings, motions and other documents must have one-inch margins, 12-point font, and be double spaced. Failure to comply with said stipulations can result in papers being stricken and not considered by the Court. *Cross v. Potter*, 09-CV-1293, 2013 WL 1149525, at \*2 (N.D.N.Y. Mar. 19, 2013) (McAvoy, J.).

Pursuant to Local Rule 10.1(a)(7), citations to plaintiffs' memorandum of law correspond to the CM/ECF-generated page numbers because plaintiffs did not include page numbers in contravention of the Local Rules of Practice. *Fedele v. Harris*, 14-CV-0559, 2018 WL

3520447, at \*4 (N.D.N.Y., July 20, 2018) (Sharpe, J.).

Page citations to Defendant's memorandum of law refer to the pagination generated by CM/ECF, the Court's electronic filing system. Defendant is respectfully reminded that, pursuant to the Court's Local Rules of Practice, (1) all pleadings, motions, and other documents presented for filing must bear consecutively-numbered pagination (N.D.N.Y. L.R. 10.1[a][7] ), and (2) memoranda of law must contain a table of contents. *Leroi Inc., v. Csc3c Inc.*, 15-CV-0565, 2016 WL 4997228, at \*2 (N.D.N.Y. Sept. 19, 2016) (Suddaby, J.).

Defendant argues that the Court should strike Plaintiff's opposition brief as violative of Local Rule 10.1, which provides that "extensive footnotes must not be used to circumvent page limitations." L.R. 10.1(5). Defendant points out that the Court struck Plaintiffs' original opposition papers for exceeding the page limits on briefing and ordered that they be re-filed in accordance with the rules. Defendant contends that Plaintiffs simply re-filed their original brief and converted text footnotes to comply with the page limits. Defendant argues that the Court should punish this conduct by striking the Plaintiffs' opposition papers. The Court will deny this request. Defendant has cited no prejudice from the Plaintiff's briefing, and the Court prefers to decide motions on their merits, rather than because one side seizes a procedural advantage. *Horton v. Guilot*, 14-CV-1050, 2016 WL 4444875, at \*2 (N.D.N.Y., August 23, 2016) (McAvoy, J.).

Local Rule 10.1(b)(2) requires that every paper filed with the Court be plainly and legibly written, typewritten, printed or reproduced. Failure to do so makes it nearly impossible for the Court to understand the basis of the motion, providing sufficient explanation for dismissal. *Roy v. Mercy of Northern NY*, 10-CV-0216, 2012 WL 887060, at \*1 (N.D.N.Y. Mar. 15, 2012) (Kahn, J.).

Local Rule 10.1(b) provides that all *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 of the Court and served on all other parties to the action. The notice must identify each and every action for which the notice shall apply. *Lewis v. Estate of Sheridan*, 12-CV-0031, 2015 WL 1449163, at \*1 (N.D.N.Y. Mar. 30, 2015) (Report Recommendation of Peebles M.J., adopted by Sharpe, C.J.).

Local Rule 10.1(b) provides that all attorneys of record and *pro se* litigants must immediately notify the Court of any change in address. Failure to promptly advise both the Court and the Respondent's counsel of any change in address will result in the dismissal of the action without any additional notice. *LaSalle v. Lee*, 11-CV-0304, 2012 WL 4793505, at \*2 (N.D.N.Y. Sept. 6, 2012) (Peebles, M.J.); *Johnson v. Prack*, 13-CV-1449, 2015 WL 5092677, at \*1 (N.D.N.Y. Aug. 27, 2015) (Report Recommendation of Dancks, M.J. adopted by Hurd, J.); *Simmon v. Uhler*, 14-CV-1419, 2015 WL 5655561, at \*4 (N.D.N.Y. Sept. 24, 2015) (Report Recommendation of Baxter, M.J. adopted by Hurd, J.).

Local Rule 10.1(b)(5) provides that all documents must be single-sided. *Dudla v. P.M. Veglio LLC*, 13-CV-0333, 2016 WL 1068120, at \*6 (N.D.N.Y. Mar. 15, 2016) (Kahn, J.).

Local Rule 10.1(c)(2) requires that all documents submitted to the Court must include the original signature of the attorney or *pro se* litigant. *Robinson v. Fischer*, 13-CV-1545, 2014 WL 1289611, at \*5 (N.D.N.Y. Mar. 31, 2014) (Suddaby, J.).

Local Rule 10.1(c)(2) provides that "all attorneys of record and *pro se* litigants must immediately notify the Court of any change of address." The litigant is to provide notice to the Clerk of Court and to the attorneys for the other parties. *Id.* A failure to follow this rule "may result in the dismissal of any pending action." L.R. 41.2(b). Likewise, Federal Rule of Civil Procedure 41(b) permits a court to dismiss a case when a plaintiff "fails to prosecute or to comply with these rules or a court order." Fed. R. Civ. P. 41(b). Defendants contend that Plaintiff's failure to provide notice to the Court justifies dismissing the action. The Court finds that Defendants' motion should be denied. *Gilmore v. Carey*, 15-CV-20, 2016 WL 3199513, at \*1 (N.D.N.Y. June 8, 2016) (emphasis removed).

Pursuant to Local Rule 10.1(e), any document that a party transmits to the Court (including one in the record on appeal) that is in a language other than English must be accompanied by an English translation that the translator has certified as true and accurate. *Cornado v. NYPD*, 09-CV-1202, 2010 WL 396362, at \*2 (N.D.N.Y. Jan 25, 2010) (Hurd, J.).

#### LOCAL RULE 16.2 – DISCOVERY CUT-OFF

Pursuant to Local Rule 16.2, parties are required to file and serve discovery-related motions within fourteen (14) days of the discovery deadline. *Bartnick v. CSX Transp., Inc.*, 11-CV-1120, 2014 WL 823421, at \*1 (N.D.N.Y. Mar. 3, 2014) (Sharpe, C.J.).

Local Rule 16.2 stipulates that no motions to compel discovery may be filed after the discovery cut-off except by order of the Court for good cause shown. *Lenhard v. Dinallo*, 08-CV-0165, 2011 WL 4592804, at \*3 (N.D.N.Y. Sept. 30, 2011) (McCurn, J.).

#### LOCAL RULE 17.1 – ACTIONS BY OR ON BEHALF OF INFANTS AND/OR INCOMPETENTS

Local Rule 17.1(a) provides that an action by or on behalf of an infant or an incompetent shall not be settled by or compromised without leave of the Court embodied in an order, judgment, or decree. *Gerow v. U.S.*, 93-CV-1198, 1997 WL 538910, at \*1 (N.D.N.Y. Aug. 26, 1997) (Pooler, J.).

According to Local Rule 17.1(b), the Court shall authorize payment of a reasonable attorney's fee and disbursements after due inquiry as to all charges against the amount recovered. *Gerow v. U.S.*, 93-CV-1198, 1997 WL 538910, at \*3 (N.D.N.Y. Aug. 26,

1997) (Pooler, J.).

In accordance with Local Rule 17.1(c), the Court maintains the right to order the remainder of the proceeds of the recovery or settlement to be distributed as it will best protect the infant. *Gerow v. U.S.*, 93-CV-1198, 1997 WL 538910, at \*3 (N.D.N.Y. Aug. 26, 1997) (Pooler, J.).

#### LOCAL RULE 23.2 – CERTIFICATION OF A CLASS ACTION

Although plaintiff has designated this matter as a class action in the complaint's caption, he has not met the requirements of Local Rule 23.2 which requires "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 plaintiff may maintain the action as a class action." N.D.N.Y. L.R. 23.2; see also Fed. R. Civ. P. 23(c). Accordingly, the question of class certification is, at this time, premature for the Court to address. *Stiegman v. New York State Office of Info. Tech. Servs.*, 19-CV-0018, 2019 WL 1762900, at \*9 (N.D.N.Y., Apr. 22, 2019) (Hummel, M.J.).

According to Local Rule 23.2, the plaintiff shall file a motion, with the assigned district judge seeking an order of the Court determining that the plaintiff may maintain the action as a class action. *Seekamp v. Fuccillo Auto. Group, Inc.*, 09-CV-0018, 2010 WL 980581, at \*7 (N.D.N.Y. Mar. 15, 2010) (Kahn, J.).

#### LOCAL RULE 26.1 – FORM OF CERTAIN DISCOVERY DOCUMENTS

Local Rule 26.1 mandates that, in answering or objecting to interrogatories, the responding party shall first state verbatim the propounded interrogatory or request and immediately there-after the answer or objection. *Trueman v. New York State Canal Corp.*, 09-CV-0049, 2010 WL 681341, at \*1 (N.D.N.Y. Feb. 24, 2010) (Treece, M.J.).

#### LOCAL RULE 26.2 – FILING DISCOVERY

Pursuant with Local Rule 26.2, neither discovery requests (such as interrogatories, document requests, and requests for admissions) nor the parties' disclosures under the Mandatory Discovery Order are to be filed with the Court unless the Court specifically directs or when those materials are submitted in support of a motion filed. *McGregor v. Jarvis*, 08-CV-0770, 2009 WL 174595, at \*2 (N.D.N.Y. Jan. 23, 2009) (Sharpe, J.).

#### LOCAL RULE 26.3 – PRODUCTION OF EXPERT WITNESS INFORMATION

Plaintiff argues that using Dr. Leinung's declaration did not violate N.D.N.Y. L.R. 26.3 because Dr. Leinung was identified in an interrogatory in April 2016, well before the November 2016 expert disclosures deadline; and Plaintiff argues that there was no requirement to submit a supplemental disclosure. *Levy v. New York State Dep't of*

*Environmental Conservation*, 15-CV-1252, 297 F. Supp.3d 297, at \*313 (N.D.N.Y., March 22, 2018) (Suddaby, C.J.).

Local Rule 26.3 provides that there shall be binding disclosure of the identity of expert witnesses. The parties shall make 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), before the completion of discovery in accordance with the deadlines contained in the Uniform Pretrial Scheduling Order or by any other Court order. *Global Rock Networks, Inc. v. MCI Commc'ns Servs., Inc.*, 943 F. Supp.2d 320, 329 (N.D.N.Y. 2013) (D'Agostino, J.).

#### LOCAL RULE 40.1 – CASE ASSIGNMENT SYSTEM

By statute and Local Rule 40.1, district courts are authorized to refer Social Security appeals to magistrate judges for proposed findings and recommendations as to disposition. *Zongos v. Colvin*, 12-CV-1007, 2014 WL 788791 (N.D.N.Y. Feb. 25, 2014) (Sharpe, C.J.); *Marvin v. Colvin*, 15-CV-0074, 2016 WL 2968051, at \*2 (N.D.N.Y. May 20, 2016) (Sharpe, J.).

#### LOCAL RULE 41.2 – DISMISSAL OF ACTIONS

The duration of plaintiff's failure to communicate, which by now is nearly six months, weighs in favor of dismissal pursuant to Rule 41(b). Local Rule 41.2(a) provides that when the "plaintiff has failed to prosecute an action or proceeding diligently, the assigned judge shall order it dismissed." N.D.N.Y. L.R. 41.2(a). Although the length of plaintiff's delay to date is not exceedingly long, there is no indication of an end to his inactivity. *McKnight v. Ferrick*, 16-CV-0957, 2017 WL 3172794, at \*3 (N.D.N.Y., June 30, 2017) (Peebles, M.J.).

Local Rule 41.2(b) states that failure to notify the Court of a change of address in accordance with Local Rule 10.1(c)(2) may result in the dismissal of any pending action. *Walsh v. Jordan*, 12-CV-1722, 2014 WL 177550, at \*3 (N.D.N.Y. May 2, 2014) (D'Agostino, J.); *Simmon v. Uhler*, 14-CV-1419, 2015 WL 5655561, at \*1 (N.D.N.Y. Sept. 24, 2015) (Report-Recommendation of Baxter, M.J. adopted by Hurd, J.); *Gilmore v. Carey*, 15-CV-0020, 2016 WL 3199513, at \*1 (N.D.N.Y. June 8, 2016) (McAvoy, J.).

According to Local Rule 41.2(a), the plaintiff's failure to take action for four (4) months shall be presumptive evidence of lack of prosecution. *Watch v. Hartford*, 12-CV-1607, 2014 WL 1451943, at \*3 (N.D.N.Y. Apr. 14, 2014) (D'Agostino, J.); *Lyman v. Felter*, 12-CV-0530, 2015 WL 3549667, at \*1 (N.D.N.Y. June 8, 2015) (D'Agostino, J.); *Coleman v. Syracuse*, 14-CV-1521, 2016 WL 770058, at \*2 (N.D.N.Y. Jan. 14, 2016) (Dancks, M.J.); *Bertrand v. Demmon*, 14-CV-1456, 2016 WL 2858860, at \*1 (N.D.N.Y. May 13, 2016) (Suddaby, C.J.).



A determination whether to dismiss an action pursuant to Fed. R. Civ. P. 41.2(b) involves consideration of the following: (1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply will result in dismissal, (3) whether the defendants are likely to be prejudiced by for the delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal. *Lebarron v. Warren Cty. Sheriff's Office*, 13-CV-1572, 2016 WL 2621796, at \*1 (N.D.N.Y. Apr. 6, 2016) (Hummel, M.J.).

Local Rule 41.2(a) gives the Court the inherent power to *sua sponte* clear their calendars of cases that have remained dormant because of the inaction or dilatoriness of the parties seeking relief. *Hurd v. Porter*, 11-CV-1388, 2014 WL 467894, at \*4 (N.D.N.Y. Feb. 6, 2014) (D'Agostino, J.).

#### LOCAL RULE 53.2 – MASTER'S FEES

Local Rule 53.2 authorizes the appointment of a Special Master for, *inter alia*, difficult computations of damages. *Adjusters Intern., Inc. v. Public Adjusters Intern.*, 92-CV-1426, 1997 WL 458453, at \*1 (N.D.N.Y. Aug. 1, 1997) (Scullin, J.).

#### LOCAL RULE 54.1 – TAXATION OF COSTS

Local Rule 54.1(a) provides in part that the party entitled to recover costs shall file its request for reimbursement "within thirty (30) days after entry of judgment" and that "[p]ost-trial motions shall not serve to extend the time within which a party may file a verified bill of costs . . . , except on a showing of good cause or an order extending the time." N.D.N.Y.L.R. 54.1(a). Local Rule 54.1(c) provides that a failure to request such costs "within the time provided for in this Rule shall constitute a waiver of taxable costs." N.D.N.Y.L.R. 54.1(c). Where plaintiffs do "not comply with Local Rule 54.1", courts have exercised their discretion to not award taxable costs when submission would be untimely. *Grant v. Lockett*, 15-CV-0445, 2019 WL 1872967, at \*3 (N.D.N.Y., Apr. 26, 2019) (Hurd, J.).

The sole applicable procedural rule that governs deadlines for requests for Bills of Costs is Local Rule 54.1(a). In pertinent part, that Local Rules sets a thirty-day deadline for such requests, and provides that "[p]ost-trial motions shall not serve to extend . . . [the deadline], except on a showing of good cause or an order extending the time." *Johnson v. Santamore*, 14-CV-0676, 2017 WL 4334136, at \*5 (N.D.N.Y. Sept. 28, 2017) (Suddaby, C.J.).

While defendants are correct that, in this District, the prevailing party in civil litigation must seeks costs by filing a bill of costs within thirty days of entry of judgment, see N.D.N.Y. L.R. 54.1(a), technical compliance may be excused under certain circumstances. *Miller v. City of Ithaca, New York*, 10-CV-0957, 2017 WL 61947, at \*4 (N.D.N.Y. Jan. 5, 2017) (Sharpe, J.)

The Court will not award Petitioner the costs it has requested if Petitioner has failed to accompany its Bill of Costs with receipts indicating that Petitioner actually incurred the costs as required by Local Rule 54.1 *Am. Honda FIN. Corp. v. Route 57 Dev., LLC*, 13-CV-0260, 2016 WL 2770532, at \*2 (N.D.N.Y. May 13, 2016) (Suddaby, C.J.).

Local Rule 54.1(a) stipulates that in order to collect costs the party must accompany its request with receipts indicating that the party actually incurred the costs that it seeks. *U.S. v. Marotta*, 12-CV-0325, 2012 WL 2752927, at \*2 (N.D.N.Y. Jul. 9, 2012) (D'Agostino, J.).

Pursuant to Local Rule 54.1(a), 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. *Benson v. Quickknowledge, Inc.*, 08-CV-1215, 2010 WL 1930970, at \*4 (N.D.N.Y. May 10, 2010) (Suddaby, J.).

#### LOCAL RULE 54.4 – ALLOWANCES TO ATTORNEYS AND RECEIVERS

According to Local Rule 54.4 every attorney or receiver wishing to obtain an allowance for services rendered in a civil action must file a detailed statement of the services rendered and the amount claimed. *JWJ Industries, Inc. v. Oswego Cty.*, 09-CV-0740, 2013 WL 791603, at \*1 (N.D.N.Y. Mar. 4, 2013) (McAvoy, J.).

#### LOCAL RULE 55.1 – CERTIFICATE OF ENTRY OF DEFAULT

Local Rule 55.1 requires the party requesting an entry of default to submit an affidavit showing “(1) the party against whom it seeks a judgment of affirmative relief is not an infant, in the military, or an incompetent person (2) a party against whom it seeks a judgment for affirmative relief has failed to plead or otherwise defend the action as provided in the Federal Rules of Civil Procedure and (3) it has properly served the pleading to which the opposing party has not responded. *CIT, N.A. v. Fox*, 18-CV-00154, 2019 WL 2162099, (N.D.N.Y. May 17, 2019) (D'Agostino, J.).

According to Local Rule 55.1, a party may request that the Clerk of the Court enter a certificate of entry of default if the opposing party failed to respond to the complaint or otherwise appear in this action. *OneWest Bank, N.A. v. Conklin*, 310 F.R.D. 40, 42 (N.D.N.Y. 2015) (D'Agostino, J.).

Local Rule 55.1 sets forth a two-step process that first requires the entry of a default through a notation on the record that the party has defaulted, and then entry of a default judgment, which is the final action in the case. The Court Clerk must enter the default pursuant to Fed. R. Civ. P. 55(a) “when a party against whom a judgment for affirmative relief is sought, has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” *OneWest Bank, N.A. v. Conklin*, 310 F.R.D. 40, 42-43 (N.D.N.Y. 2015) (D'Agostino, J.).

The Court can find that papers submitted by a party in support of a motion for default judgment can fulfill the requirements set out in Local Rule 55.1 with regard to an entry of default even though the party may not have specifically applied for it. *Pregis Corp. v. Franklin Logistical Servs., Inc.*, 13-CV-1535, 2015 WL 4508415, at \*10 (N.D.N.Y. July 23, 2015) (Suddaby, J.).

Pursuant to Local Rule 55.1, a party may apply for default judgment if it submits an affidavit showing the failure of the opposition party to plead or otherwise defend the action. *Dahlgren v. State Farm Life & Acc. Assur. Co.*, 13-CV-0386, 2014 WL 30003, at \*1 (N.D.N.Y. Jan. 3, 2014) (Sharpe, C.J.).

#### LOCAL RULE 55.2 – DEFAULT JUDGMENT

Under Local Rule 55.2(a), when requesting an entry of default judgment from the Clerk of the Court, the moving party must submit (a) the Clerk's certificate of entry of default, (b) a statement showing the principal amount due (not to exceed the amount demanded in the Complaint and giving credit for any payments with the dates of payments), (c) a computation of the interest to the day of judgment, (d) a per diem rate of interest, (e) the costs and taxable disbursements claimed, and (f) an affidavit of the moving party or the party's attorney. N.D.N.Y. L.R. 55.2(a). The appended affidavit must show that (a) the party against whom judgment is sought is not an infant or incompetent person, (b) the party against whom judgment is sought is not in military service, (c) the party against whom judgment is sought has defaulted in appearance in the action, (d) service was properly effected under Fed. R. Civ. P. 4, (e) the amount shown in the statement is justly due and owing and no part has been paid except as set forth in the party's other statement, and (f) disbursements sought to be taxed have been made in the action or will necessarily be made or incurred. *Nationstar Mortgage LLC v. Dolan*, 16-CV-1360, 2018 WL 3323526, at \*3 (N.D.N.Y. July 6, 2018) (Suddaby, C.J.).

Under Local Rule 55.2(b), the moving party must submit with its motion for default judgment the following: (1) a clerk's certificate of entry of default; (2) a proposed form of default judgment; (3) a copy of the pleading to which no response has been made; and (4) an affidavit. *U.S. v. Spaulding*, 15-CV-0482, 2016 WL 589700, at \*2 (N.D.N.Y. Feb. 11, 2016) (Kahn, J.).

Under Local Rule 55.2(a), the affidavit must set forth the following: (1) that the party against whom judgment is sought is not an infant, incompetent, or in military service; (2) that the party against whom judgment is sought has defaulted in appearance in the action; (3) that service was properly effected under Federal Rule of Civil Procedure 4; (4) that the amount sought is justly due and owing, and no part has been paid; and (5) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred. *U.S. v. Spaulding*, 15-CV-0482, 2016 WL 589700, at \*2 (N.D.N.Y. Feb. 11, 2016) (Kahn, J.).

Pursuant to Local Rule 55.2(a), a party seeking default judgment must submit, among other things, an affidavit which must set forth the following information: (1) the party against whom judgment is sought is not an infant, an incompetent, or in military service; (2) the party against whom judgment is sought has defaulted in appearance in the action; (3) service was properly effected under Federal Rule of Civil Procedure 4; (4) the amount sought is justly due and owing, and no part has been paid; and (5) the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred. *U.S. v. Bent*, 12-CV-0110, 2013 WL 5771171, at \*2 (N.D.N.Y. Oct. 24, 2013) (Kahn, J.).

Under Local Rule 55.2(b), the moving party must submit the following with its motion for default judgment: (1) a clerk's certificate of entry of default; (2) a proposed form of default judgment; (3) a copy of the pleading to which no response has been made; and (4) an affidavit. *U.S. v. Howard*, 12-CV-0117, 2013 WL 5771029, at \*2 (N.D.N.Y. Oct. 24, 2013) (Kahn, J.).

#### LOCAL RULE 56.2 – NOTICE TO *PRO SE* LITIGANTS OF THE CONSEQUENCES OF FAILING TO RESPOND TO A SUMMARY JUDGMENT MOTION

In compliance with Local Rule 56.2, the moving party must inform a *pro se* litigant of the consequences of his failure to respond to the summary judgment motion. *Riehl v. Martin*, 13-CV-0439, 2014 WL 1289601, at \*5 (N.D.N.Y. Mar. 31, 2014) (Sharpe, C.J.); *Dubuque v. Nowicki*, 13-CV-1032, 2015 WL 3960909, at \*1 (N.D.N.Y. June 24, 2015) (Suddaby, J.); *Henson v. Gagnon*, 13-CV-0590, 2015 WL 9809874, at \*9 (N.D.N.Y. Dec. 10, 2015) (Dancks, M.J.).

#### LOCAL RULE 65.1.1 – SURETIES

Local Rule 65.1.1(b) specifies that, 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. *U.S. v. Salvagno*, 314 F. Supp.2d 115, 117 (N.D.N.Y. 2004) (Munson, J.).

#### LOCAL RULE 67.1 – DEPOSITS IN COURT

Where a judgment is for a sum of money only, Local Rule 67.1(d) requires that a party must pay the amount of the supersedeas bond in full, an additional eleven (11) percent to cover interest and any damage for delay as may be awarded, plus \$250 to cover costs. *Hines v. City of Albany*, 06-CV-1517, 2015 WL 58178, at \*2 (N.D.N.Y. Jan. 5, 2015) (Suddaby, J.).

Local Rule 67.1(d) requires that a party must pay the amount of the supersedeas bond in full, plus an additional eleven percent to cover interest and any damage for delay as may be awarded, and \$250 to cover costs. A stay of this payment may be granted by the Court if the party can show insolvency or imminent bankruptcy. *Zalewski v. T.P. Builders, Inc.*, 10-CV-0876, 2012 WL 6680371, at \*2 (N.D.N.Y. Dec. 21, 2012) (Sharpe, C.J.).

## LOCAL RULE 67.3 – BONDS AND OTHER SURETIES

Local Rule 67.3(a) requires that 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. *U.S. v. Salvagno*, 314 F. Supp.2d 115, 117 (N.D.N.Y. 2004) (Munson, J.).

## LOCAL RULE 68.2 – SETTLEMENT PROCEDURES

The Court noted that, pursuant to Local Rule 68.2(a), an application to reopen the case would be permitted if it were filed within 60 days of the date of the Order or within any extended time frame that the Court granted prior to the expiration of the original 60-day time frame. *Coffee Mania, LLC v. Coffeemanía Bryant Park, LLC*, 15-CV-0823, 2017 WL 3396534, at \*2 (N.D.N.Y., August 8, 2017) (Scullin, J.).

Once a settlement has been reached, the Court may issue a judgment dismissing the action by reason of settlement pursuant to the procedure described in Local Rule 68.2(a). *Juanes v. Lyzwinski*, 10-CV-0459, 2013 WL 3713419, at \*7 (N.D.N.Y. Jul. 12, 2013) (Baxter, M.J.).

In accordance with Local Rule 68.2(b), once an action has been dismissed by the Court due to agreed settlement, the parties have the right to secure reinstatement of the case within thirty (30) days after the date of the judgment by making a showing that the settlement was not, in fact, consummated. *Flores v. Human Tech.*, 93-CV-1015, 1995 WL 562218, at \*1 (N.D.N.Y. Sept. 21, 1995) (Pooler, J.).

## LOCAL RULE 72.1 – AUTHORITY OF MAGISTRATE JUDGES

According to Local Rule 72.1(c), within fourteen (14) days after a party has been served with a copy of a magistrate judge's Report-Recommendation, the party may serve and file specific, written objections to the proposed findings and recommendations. If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. *Perry v. Ogdensburg Corr. Facility*, 10-CV-1033, 2016 WL 3004658, at \*1 (N.D.N.Y. May 24, 2016) (Kahn, J.).

Under Local Rule 72.1(c), parties have fourteen (14) days to file written objections to a magistrate judge's report. Failure to do so within the allotted time period will preclude appellate review. *Tafari v. Superintendent*, 12-CV-0985, 2014 WL 2215763, at \*8 (N.D.N.Y. May 29, 2014) (Sharpe, C.J.); *Flemming v. Kelsh*, 13-CV-0758, 2016 WL 2757398, at \*1 (N.D.N.Y. May 12, 2016) (Report-Recommendation of Baxter, M.J., adopted by Kahn, J.).

Local Rule 72.1(b), which governs the filing of objections to a magistrate judge's determination, provides that, unless the Court directs otherwise, the Court will decide all appeals on submission of the papers without oral argument. *Shenko v. Fed. Bureau of Investigation*, 14-CV-1595, 2016 WL 1558462, at \*1 (N.D.N.Y. Apr. 18, 2016) (Kahn, J.).

Local Rule 72.1(c) provides that, when reviewing a party's objections to a magistrate judge's report-recommendation, the Court will proceed with the submissions in accordance with Local Rule 72.1(b). *Shenko v. Fed. Bureau of Investigation*, 14-CV-1595, 2016 WL 1558462, at \*1 (N.D.N.Y. Apr. 18, 2016) (Kahn, J.).

In accordance with Local Rule 72.1(c), if a specific objection is made to a portion of a magistrate judge's report recommendation, the Court will subject that section of the report to a *de novo* review. *Levola v. New York State Div. of Parole*, 12-CV-1185, 2014 WL 2106294, at \*2 (N.D.N.Y. May 20, 2014) (Suddaby, J.).

While any party may file objections to a magistrate judge's determination of a non-dispositive matter, according to Local Rule 72.1(b), a district court judge may not modify or set aside any part of the magistrate judge's order unless it is clearly erroneous or contrary to law. *Barnes v. Prack*, 11-CV-0857, 2013 WL 1121353, at \*2 (N.D.N.Y. Mar. 18, 2013) (McAvoy, J.); *Cintron v. Weissman*, 14-CV-0116, 2015 WL 5604954, at \*1 (N.D.N.Y. Sept. 23, 2015) (Report-Recommendation of Peebles M.J. adopted by McAvoy, J.).

Local Rule 72.1(a) stipulates that Magistrate Judges are authorized to perform all duties that are consistent with the Constitution and laws of the United States. *Gaffield v. Wal-Mart Stores East, LP*, 616 F. Supp.2d 329, 333 (N.D.N.Y. 2009) (Scullin, J.).

## LOCAL RULE 72.2 – DUTIES OF MAGISTRATE JUDGES

Local Rule 72.2(a) allows magistrate judges the authority to manage civil cases by conducting conferences, entering scheduling orders, controlling discovery, and resolving non-dispositive motions. *Brace v. King*, 07-CV-1028, 2007 WL 3353237, at \*1 (N.D.N.Y. Nov. 8, 2007) (Sharpe, J.).

Local Rule 72.2(a) gives magistrate judges all civil litigation for purposes of pre-trial management. *Carmona v. Wright*, 233 F.R.D. 270, 276 (N.D.N.Y. Jan. 26, 2006) (Sharpe, J.).

In order for a magistrate judge to preside over civil action, the parties must satisfy Local Rule 72.2(b) by submitting a consent form to the Court. *Topliff v. Wal-Mart Stores East, LP*, 04-CV-0297, 2007 WL 911891, at \*1 (N.D.N.Y. Mar. 22, 2007) (Lowe, M.J.).

## LOCAL RULE 72.3 – ASSIGNMENT OF DUTIES TO MAGISTRATE JUDGES

Pursuant to 28 U.S.C. § 636(b)(1) and N.D.N.Y. L.R. 72.3(e)(5), the parties may lodge written objections to the foregoing report. Such objections must be filed with the clerk of the court within TWENTY-ONE days of service of this report.4 FAILURE TO SO OBJECT TO THIS REPORT WILL PRECLUDE APPELLATE REVIEW. *U.S. v. Gutman*, 17-CV-0134, 2017 WL 1958937, at \*2 (N.D.N.Y. Apr. 23, 2017) (Peebles, M.J.).

Local Rule 72.3(c) stipulates that any proceedings that an unrepresented prisoner commences shall be referred to a magistrate judge. *Melendez v. Schneiderman*, 13-CV-0622, 2014 WL 2154536, at \*1 (N.D.N.Y. May 22, 2014) (Sharpe, C.J.).

Local Rule 72.3(d) mandates that Social Security appeal cases be put in rotation to the district judges, who then refer the case in rotation to a full-time magistrate judge. In the event of an appeal to the magistrate judge’s final judgment, the district judge who initially had the case shall preside. *Wichelns v. Comm’r of Social Sec.*, 12-CV-1595, 2014 WL 1311564, at \*3 (N.D.N.Y. Mar. 31, 2014) (Mordue, J.).

According to Local Rule 72.3(b), the assigned district judge must give his approval before the magistrate judge can assume authority over all proceedings and final judgment of a civil matter. *Jenkins v. Talika Rice and Progressive Ins. Co*, 11-CV-1037, 2011 WL 4810978, at \*1 (N.D.N.Y. Oct. 11, 2011) (Kahn, J.).

Local Rule 72.3(a) dictates that, immediately upon the filing of a civil action or proceeding, the Clerk shall assign a district judge and may also assign a magistrate judge pursuant to the Court’s Assignment Plan. *Yagan v. Dougherty*, 10-CV-0528, 2010 WL 2594369, at \*1 (N.D.N.Y. Jun. 23, 2010) (McCurn, J.).

## LOCAL RULE 72.4 – HABEAS CORPUS

Local Rule 72.4(a) states that no memoranda of law filed in habeas corpus proceedings shall exceed twenty-five (25) pages in length, unless the party filing the memorandum of law obtains leave of the judge hearing the motion prior to filing. *Raucci v. Kirkpatrick*, 16-CV-0031, 2016 WL 204495, at \*1 (N.D.N.Y. Jan. 15, 2016) (Sannes, J.).

In an attempt to bring a proceeding for habeas corpus under 28 U.S.C. § 2244, pursuant to Local Rule 72.4(c), before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4). *Encarnacion v. Bradt*, 14-CV-0697, 2015 WL 7078682, at \*5 (N.D.N.Y. Nov. 12, 2015) (Report-Recommendation of Baxter, M.J. adopted by Suddaby, C.J.).

According to Local Rule 72.4, records provided to the Court in a habeas corpus appeal must be arranged in chronological order and be sequentially numbered. *Toolasprashed v.*

*Schutt*, 10-CV-1289, 2010 WL 5014452, at \*2 (N.D.N.Y. Dec. 3, 2010) (Kahn, J.); *Burroughs v. Griffin*, 13-CV-1505, 2014 WL 3779007, at \*2 (N.D.N.Y. July 31, 2014) (Baxter, M.J.).

Pursuant to Local Rule 72.4 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 in which they were convicted and sentenced. *Hall v. Rock*, 10-CV-0130, 2014 WL 2432921, at \*1 (N.D.N.Y. Jun. 16, 2011) (Mordue, C.J.).

#### LOCAL RULE 73.1 – MAGISTRATE JUDGES: TRIAL BY CONSENT

Local Rule 73.1 stipulates that upon the consent of the parties all proceedings in a civil case, including a jury or non-jury trial, and the entry of a final judgment, be conducted by a magistrate judge. *Sherman v. Holt*, 12-CV-0292, 2013 WL 6506475, at \*1 (N.D.N.Y. Dec. 12, 2013) (Baxter, M.J.).

#### LOCAL RULE 76.1 – BANKRUPTCY CASES

Each district court may refer “any or all” bankruptcy proceedings to the bankruptcy judges for the district. By local rule, this Court automatically refers all such proceedings “to the bankruptcy court of this District.” L.R. 76.1. But the Court “may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.” *In Re Turkey Lake, LLC*, 18-CV-00281, 2018 WL 4214355, at \*2 (N.D.N.Y. Apr. 23, 2018) (Sannes, J.).

In accordance with Local Rule 76.1, all cases under Title II, and all such proceedings arising under Title II, or arising in or related to cases arising under Title II are referred to the Bankruptcy Court. *Brenenstuhl v. Amica Mut. Ins. Co.*, 10-CV-1365, 2013 WL 3327954 (N.D.N.Y. Jul. 1, 2013) (Hummel, J.).

#### LOCAL RULE 76.2 – BANKRUPTCY APPEALS

Pursuant to Local Rule 76.2(a), the Clerk of Bankruptcy Court may issue a certification of non-compliance for untimeliness. *Bosman v. Glod*, 15-CV-1036, 2015 WL 9244275, at \*1 (N.D.N.Y. Dec. 17, 2015) (Sharpe, J.).

In accordance with Local Rule 76.2(b), the Clerk of the Court enters a Revised Bankruptcy Scheduling Order, the length of which may vary by case and must be provided to both parties. *Corvetti v. Hudson*, 06-CV-0537, 2007 WL 2027093, at \*5 (N.D.N.Y. Jul. 9, 2007) (Scullin, J.).

Local Rule 76.2(c) provides that appeals from a decision by the Bankruptcy Court shall be in accordance with 28 U.S.C. 158 and other applicable bankruptcy rules. *Harris v. Albany Cty. Office*, 03-CV-1404, 2005 WL 388590, at \*2 (N.D.N.Y. Feb. 16, 2005) (Sharpe, J.).



## LOCAL RULE 83.1 – ADMISSION TO THE BAR

Pursuant to previous Local Rule 83.1, attorneys of the Northern District Bar must pay a \$30.00 biennial registration fee, which shall be due and owing every two years unless the Board of Judges directs otherwise. *Totey v. Life Ins. Co. of N. Am.*, 05-CV-0877, 2009 WL 3764222, at \*4 (N.D.N.Y. Nov. 10, 2009) (Scullin, J.).

## LOCAL RULE 83.2 – APPEARANCE AND WITHDRAWAL OF ATTORNEY

In defendants' response, Assistant Attorney General James J. Seaman stated, "Please accept this letter as my notice of appearance for defendants in this case." (Dkt. No. 603 at 1.) This does not comply with N.D.N.Y. L.R. 83.2(a). Mr. Seaman must file a written notice of appearance. *Barnes v. Fischer*, 13-CV-0164, 2018 WL 4660380, at \*3 (N.D.N.Y. Sept. 18, 2018) (Sharpe, J.).

By an order of the Court, upon a finding of good cause granting leave to withdraw, Local Rule 83.2(b) provides that an attorney who has appeared may withdraw only upon notice to the client and all parties to the case. Unless the Court orders otherwise, withdrawal of counsel, with or without the consent of the client, shall not result in the extension of any of the deadlines contained in any case management orders or the adjournment of a trial ready or trial date. *Hexemer v. Gen. Elec. Co.*, 12-CV-1808, 2014 WL 5465813, at \*2 (N.D.N.Y. Oct. 28, 2014) (Hummel, M.J.).

Local Rule 83.2(b) stipulates that an attorney seeking to withdraw must provide notice to the client, as well as all other parties in the case, and obtain an order of the Court granting permission. *S.E.C. v. StratoComm Corp.*, 11-CV-1188, 2013 WL 3542621, at \*1 (N.D.N.Y. Jul. 11, 2013) (Hummel, M.J.).

In accordance with Local Rule 83.2(a), an attorney must file with the Clerk a written notice of appearance. In the interest of judicial efficiency however, the Court may proceed as if an appearance notice had been entered. In this case future failure to comply may result in sanctions against the attorney. *U.S. v. 22,555.00 in U.S. Currency*, 11-CV-1079, 2012 WL 2906835, at \*1 (N.D.N.Y. Jul. 16, 2012) (Suddaby, J.).

When a party retains new counsel, the Court will set a date by which the new counsel must submit a notice of appearance as required by Local Rule 83.2(a). *Heck-Johnson v. First Unum Life Ins. Co.*, 01-CV-1739, 2006 WL 1228841, at \*6 (N.D.N.Y. May 4, 2006) (Sharpe, J.).

## LOCAL RULE 83.3 – PRO BONO PANEL

As is required by Local Rule 83.3(c), in order to determine whether or not to appoint counsel for an indigent party in a civil case, the Court must first determine whether the indigent's position seems likely to be of substance. *Adams v. Loreman*, 07-CV-0452,

2012 WL 555095, at \*6 (N.D.N.Y. Feb. 21, 2012) (Kahn, J.).

Local Rule 83.3 (g) limits the potential reimbursement of a counsel's expenses in a pro bono case to \$2,000, barring extenuating expenses previously approved by the Court. *Adams v. Loreman*, 07-CV-0452, 2012 WL 555095, at \*7 (N.D.N.Y. Feb. 21, 2012) (Kahn, J.).

Local Rule 83.3(h) allows the Court discretion to award an appointed attorney for a prevailing party's attorney's fees from the judgment or settlement. *Adams v. Loreman*, 07-CV-0452, 2012 WL 555095, at \*7 (N.D.N.Y. Feb. 21, 2012) (Kahn, J.).

Local Rule 83.3(g) does not supplant the general rule that costs incurred by the prevailing party might be taxed to losing parties, and thus did not prevent appointed counsel from obtaining taxable costs. *Lewis v. City of Albany Police Dept.*, 554 F. Supp.2d 297, 297 (N.D.N.Y. 008) (Hurd, J.).

Local Rule 83.3(c) allows a district judge to appoint counsel for a petitioner who cannot afford representation on his own when the interests of justice so require. *Jones v. U.S.*, 01-CV-0513, 2004 WL 1013315, at \*2 (N.D.N.Y. Apr. 20, 2004) (Kahn, J.).

Under Local Rule 83.3(g), a pro bono attorney may be relieved where some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy. *Douglas v. Sullivan*, 90-CV-0871, 1998 WL 173309, at \*1 (N.D.N.Y. Mar. 18, 1998) (Mcavoy, C.J.).

According to Local Rule 83.3(i), the Court has the discretion to decline further pro bono appointment, permitting the party to proceed *pro se*. *Douglas v. Sullivan*, 90-CV-0871, 1998 WL 173309, at \*1 (N.D.N.Y. Mar. 18, 1998) (Mcavoy, C.J.).

#### LOCAL RULE 83.4 – DISCIPLINE OF ATTORNEYS

Local Rule 83.4(j) adopts the New York Rules of Professional Conduct, which stipulates that a lawyer who has formerly served as a public officer or employee of the government shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee. *Heyliger v. Collins*, 11-CV-1293, 2014 WL 910324, at \*2 (N.D.N.Y. Mar. 10, 2014) (Peebles, M.J.).

Pursuant to Local Rule 83.4(a), the chief judge of the district is charged with all matters relating to discipline of members of the bar of this Court and any person may be restricted from practicing in this Court or otherwise disciplined for cause. *In re Dickerson*, 08-33071, 2009 WL 4666457, at \*11 (N.D.N.Y. Dec. 8, 2009) (Cangilos-Diaz, B.J.).

According to Local Rule 83.4(g)(2), the chief judge must deem the alleged attorney conduct sanctionable before appointing a panel attorney to investigate. *Jawa v. Rome Dev. Disabilities Servs. Office*, 97-CV-1346, 1999 WL 288661, at \*5 (N.D.N.Y. May 5, 1999) (Munson, J.).

Local Rule 83.4(d) provides that any member of the bar of the Northern District who is disciplined by a court in any state will be disciplined to the same extent by this Court, barring any extraordinary circumstances. *Matter of Benjamin*, 870 F. Supp. 41, 42 (N.D.N.Y. 1994) (Scullin, J.).

#### LOCAL RULE 83.5 – CONTEMPT

Local Rule 83.5(a) provides that “[a] reasonable attorney’s fee, necessitated by the contempt proceeding, may be included as an item of damages.” *H & R Block Tax Servs., LLC v. Strauss*, 15-CV-0085, 2015 WL 4094649, at \*5 (N.D.N.Y. July 7, 2015) (Kahn, J.).

Local Rule 83.5(d) stipulates that, if the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the preceding. *Engineers Joint Welfare, Pension, Supplemental Unemployment Ben. and Training Funds v. VK Power Transport, LLC*, 05-CV-1392, 2007 WL 3124718, at \*1 (N.D.N.Y. Oct. 25, 2007) (Sharpe, J.).

Pursuant to Local Rule 83.5(c), if the Court finds that the alleged contemnor is guilty, the Court shall issue an order fixing the fine, which shall include the damages found and naming the person to whom the fine shall be payable. *Graphic Commc’ns Int’l Union v. Case-Hoyt Corp.*, 95-CV-1624, 1998 WL 37583, at \*3 (N.D.N.Y. Jan. 30, 1998) (Pooler, J.).

#### LOCAL RULE 83.7-1 – SCOPE AND EFFECTIVENESS OF RULE

In order to have the arbitration placed in the Alternative Dispute Resolution program, Local Rule 83.7-1 must be satisfied by both parties consenting to place the matter in ADR. *Vittengl v. Wurld Media Inc.*, 06-CV-1513, 2007 WL 1063655, at \*2 (N.D.N.Y. Apr. 5, 2007) (Hurd, J.).

#### LOCAL RULE 83.11-5 – THE MEDIATION SESSION

Pursuant to Local Rule 83.11-5, during a mediation session the attorneys expected to try the case for the parties must be accompanied by an individual with the authority to settle the lawsuit. *Aveos Fleet Performance Inc. v. Vision Airlines Inc.*, 11-CV-0950, 2014 WL 144632, at \*1 (N.D.N.Y. Jan. 13, 2014) (Suddaby, J.).

## LOCAL RULE 83.13 – SEALED MATTERS

Local Rule 83.13 provides that “a party seeking to have a document [or] a portion of a document . . . sealed” must file on the Electronic Case Filing System “an application setting forth the reason(s) that the referenced material should be sealed under the governing legal standard,” and “shall attach a proposed order (which shall not be filed under seal unless the Court deems doing so to be appropriate) containing specific findings justifying the sealing under the governing legal standard.” *Palomo v. Demaio*, 15-CV-1536, 2018 WL 5113133, at \*1 (N.D.N.Y., October 19, 2018) (Kahn, J.).

Pursuant to Local Rule 83.13, a party wishing to submit a matter under seal must submit an application setting forth the reasons why the document should be sealed as well as a proposed sealing order to be approved by the Court. *Chase v. Corr. Med. Care, Inc.*, 14-CV-0474, 2015 WL 9308269, at \*1 (N.D.N.Y. Dec. 22, 2015) (Hurd, J.).

Pursuant to Local Rule 83.13, in order to have a document sealed by the Court the party must file an application for a sealing order. *Finnick v. NYCM*, 13-CV-0085, 2013 WL 6528848, at \*3 (N.D.N.Y. Dec. 11, 2013) (Suddaby, J.).



UNITED STATES DISTRICT COURT

Northern District of New York

Hon. Glenn T. Suddaby, Chief Judge | John M. Domurad, Clerk of Court

# LOCAL RULES OF PRACTICE



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

Effective JANUARY 1, 2021



UNITED STATES DISTRICT COURT

Northern District of New York

Hon. Glenn T. Suddaby, Chief Judge | John M. Domurad, Clerk of Court

Why the major reorganization of the Local Rules?

Summary Table of Changes to the rules can be found in the first 9 pages of the Local Rules located at

<https://www.nynd.uscourts.gov/local-rules>



UNITED STATES DISTRICT COURT

Northern District of New York

Hon. Glenn T. Suddaby, Chief Judge | John M. Domurad, Clerk of Court

Case Annotations to NDNY Local Rules of Practice  
referencing their pre-2021 rule number



UNITED STATES DISTRICT COURT

# Northern District of New York

Hon. Glenn T. Suddaby, Chief Judge | John M. Domurad, Clerk of Court

## Overview of CLE

- Discuss some of the changes to the local rules
- Discuss practices concerning some of the commonly-used rules
  - Explain procedures for amendments to the rules
- Note recently-enacted General Order 62, concerning  
Highly Sensitive Documents (HSD)





# Amendment to Rule 4.1 Service of Process

L.R. 4.1(a) was modified to include exceptions to service rules (i.e. Habeas corpus petitions and Social Security appeals), as well as to remove clerk's ability to appoint persons to serve process.

L.R. 4.1(e) has been updated to clarify that any individual, corporation or association defendant, that is subject to the waiver of service rule under Fed.R.Civ.P. Rule 4(e), (f) or (h) and located within the United States, that fails to sign and return a waiver of service requested by plaintiff, the defendant will be required to pay expenses incurred by plaintiff for service of the summons and complaint, including attorneys' fees on any motion required to be filed to collect those service expenses.



# Amendment to Rule 5.2 Personal Privacy Protection

Civil L.R. 8.1 has been renumbered and relocated to Civil L.R. 5.2 to correlate with Fed.R.Civ.P. Rule 5.2. Updates made correspond with the Federal Rule.

Personal Identifiers subject to this rule:

- Social security numbers and taxpayer identification number. If an individual's social security number or taxpayer identification number must be included in a document, use only the last four digits of that number.
- Names of minor children. If the involvement of a minor child must be mentioned, use only the initials of that child.
- Dates of birth. If an individual's date of birth must be included in a document, use only the year.
- Financial account numbers. If financial account numbers are relevant, use only the last four digits of those numbers.
- Home Addresses. If a home address must be used, use only the City and State.
- Names of Sexual Assault Victims. If the involvement of a sexual assault victim must be mentioned, use only information that does not tend to identify the victim(s) of sexual assault, and redact the name to "Victim 1," "Victim 2", etc.



# Amendment to Civil Rule 5.3/ Criminal Rule 49.2 - Sealed Matters

Civil L.R. 83.13 has been renumbered and relocated to Civil Local Rule 5.3 which correlates with Fed.R.Civ.P. Rule 5.2.

- File motion or document as usual on ECF with a redacted version of the document(s) or a blank page, if sealing sought for entire document.
- File a separate motion to seal a document on ECF that:
  1. states reasons for sealing under *Lugosch* (2d Cir. 2006) and
  2. attaches a proposed order containing the necessary findings.
- Send sealed material via email to the assigned address.
- If granted, the order will be filed unless the Court seals some/all of it.
- If denied, the document(s) to be sealed will be withdrawn and returned.



# Amendment to Rule 7.1 Motion Practice

Civil Local Rule 7.1 has been dissected and various subsections have been renumbered and relocated to correspond with the appropriate Federal Rule.

- All motions are decided without oral argument unless scheduled by the Court.
- Dispositive Motions:
  1. Opposition papers are due within 21 days after service of the motion
  2. Reply papers, if any, may not exceed 10 pages in length and are due within 7 days after service of the opposition papers.
  3. Surreply is not permitted.
- Non-Dispositive Motions:
  1. Must make good faith effort among the parties to resolve or reduce the differences relating to the non-dispositive issue.
  2. Must request court conference with the Magistrate Judge before filing any non-dispositive motion
  3. Opposition papers are due within 21 days after service of the motion.
  4. No reply is permitted.



# Amendment to Rule 7.1

## Motion Practice

- Any requests for oral argument, file written request specifying reason, e.g.,
  1. need to respond to arguments presented in last-filed brief
  2. need to advise Court of recent events or case law
  3. need to re-familiarize Court with case's facts and/or history, or
  4. need of inexperienced lawyer to gain courtroom experience.



# Amendment to Rule 12.1

## Defenses and Objections/Motions under Fed.R.Civ.P. Rule 12

Rule 12.1 - This section from Local Rule 7.1 has been relocated to Local Rule 12.1 to correlate with Federal Rules of Civil Procedure.

- No affidavit required for:
  1. motion to dismiss made pursuant to Fed.R.Civ.P. 12(b)(6)
  2. motion for judgment on the pleadings made pursuant to Fed.R.Civ.P. 12(c)
  3. motion to strike made pursuant to Fed.R.Civ.P. 12(f)
- No memorandum of law is required for
  1. Motion for more definite statement made pursuant to Fed.R.Civ.P. 12(e)



# Amendment to Rule 15.1

## Amendment and Supplemental Pleadings

This section from Civil L.R. 7.1(a)(4) has been relocated to L.R. 15.1 to correlate with Fed.R.Civ.P. Rule 15. The title of this section was updated to correlate to Rule 15.

### Motion to Amend Pleadings

- Attach unsigned complete proposed amended pleading with redline/strikeout of the proposed changes
- Proposed pleading will supersede the pleading sought to be amended in all respects
- May not incorporate any portion of its prior pleading or exhibits thereto by reference

### Motion to Supplement Pleadings

- Proposed pleading may only include transactions or occurrences or events which have occurred since the date of the original pleading and should be numbered consecutively to paragraphs in original pleading.
- If leave is granted, the moving party must file and serve the original signed amended/supplemental pleading within 14 days of the Order granting the motion.



# Amendment to Rule 37.1 Discovery Motions

This section from Civil L.R. 7.1(d) has been relocated to L.R. 37.1 to correlate with Fed.R.Civ.P. Rule 37.

- Parties must make good faith effort to resolve the issue prior to contacting the court.
- Must request a conference with the assigned Magistrate Judge prior to filing a motion
- All discovery motions must be made no later than 14 days after the discovery deadline, unless otherwise ordered by the Court
- All discovery materials relating to the motion should be attached as exhibits, if not previously provided to the Court
- Response to motion due 21 days after service. No reply permitted.





# Amendment to Rule 56.1 Summary Judgment Procedure

This section from Civil Local Rule 7.1(a)(3) was relocated to Civil L.R. 56.1 to correlate with Fed.R.Civ.P. Rule 56.

- Only substantive change: when opposing party's Response sets forth assertions in dispute, moving party may reply in a separate Reply Statement and/or Reply Memorandum of Law
- For specific advice about Statement of Material Facts and Responses thereto, see CLE from 6/11/20
- If you are moving party who is facing a *pro se* litigant, remember to serve a copy of the District's form "Notification of the Consequences of Failing to Respond to a MSJ" found at <https://www.nynd.uscourts.gov/forms/notification-failure-respond-summary-judgment-motion>.



# Amendment to Rule 60.1 Relief from Judgment or Order

This section from Civil Local Rule 7.1 was relocated to Civil L.R. 60.1 to correlate with Fed.R.Civ.P. Rule 60.

- Unless otherwise provided by the Court, by statute or rule (such as Fed.R.Civ.P. 50, 52, 59 and 60), a party may file and serve a motion for reconsideration or reargument no later than 14 days after the entry of the challenged judgment, order, or decree.
- All motions for reconsideration shall conform with the requirements of L.R. 7.1(a)(1) and (2).



# Amendment to Rule 65.1 Injunctions and Temporary Restraining Orders

This section from Civil Local Rule 7.1 was relocated to Civil L.R. 65.1 to correlate with Fed.R.Civ.P. Rule 65. It includes the required paperwork for a Temporary Restraining Order/Preliminary injunction.

Papers required:

- Notice of Motion for TRO/PI (or Order to Show Cause)
- Copy of complaint, if the case has been recently filed
- Memorandum of Law
- Proposed Order granting injunctive relief
- Certificate of Service on opposing party
- Local Rule 7.1(e) sets forth the requirements for an Order to Show Cause



# Amendment to Rule 83.3

## Discipline of Attorneys

Civil L.R. 84.4 has been renumbered as L.R. 83.3. This Local Rule was revised to incorporate General Order 57 which has since been abrogated.

- L.R. 83.3(b) requires attorneys admitted to the NDNY bar to report any felony or misdemeanor conviction within 14 days of conviction.
- L.R. 83.3(b)(4) requires an attorney who has been disciplined by another court to report it to the NDNY within 14 days of entry of a discipline order.
- L.R. 83.3(h) outlines the procedure for filing an application to vacate a disciplinary order.
- L.R. 83.3(i) outlines the procedure for applying for reinstatement 1 year after a disciplinary order was issued.



# Process of how amendments to the Local Rules are made

**March 1 – April 15:** NDNY solicits proposed changes from the bench, bar and public. Notification is posted under announcements on the website at <https://www.nynd.uscourts.gov/>

**April – June:** Local Rules Committee reviews proposed changes and develops proposed modification language where appropriate.

**June:** Proposed changes advanced to the Board of Judges for approval to post for public comment.

**June – August:** Open period for public comment on proposed changes. Notification is posted under announcements on the NDNY website.

**August – September:** Local Rules Committee reviews all comments and advances recommendation to the Board of Judges for approval.

**September – October:** Approved proposed changes are advanced to the 2<sup>nd</sup> Circuit Council for review and approval.

**October – November:** Approved changes are incorporated into next year's Local Rules of Practice and posted to our website on January 1st.



# Highly Sensitive Documents (HSD)

As mandated by the Administrative Office, HSD documents are not to be electronically filed on CM/ECF.

HSD documents are identified as:

- Applications for Search Warrants
- Applications for Electronic Surveillance under 18 U.S.C. § 2518
- Sealed Grand Jury Indictments
- Sealed Criminal Complaints
- Pen Registers
- Grand Jury Target Letters
- Grand Jury Non-Disclosure Orders
- Applications for 18 U.S.C. § 2703-d disclosures
- Civil - Qui Tam actions

General Order 62 outlines the procedures for filing, service and management of HSD documents.

**Hon. Brenda K. Sannes**

*U.S. District Judge*

Brenda K. Sannes is a United States District Judge for the Northern District of New York. At the time of her appointment in 2014 she was the Appellate Chief in the United States Attorney's Office in that district.

Judge Sannes earned her B.A. degree magna cum laude, with distinction in the English Department, from Carleton College in 1980. She earned her J.D. degree magna cum laude from the University of Wisconsin Law School in 1983 where she was an articles editor for the law review and was elected to the Order of the Coif.

From 1983 to 1984, Judge Sannes clerked for the Honorable Jerome Farris on the Ninth Circuit Court of Appeals. From 1984 to 1988, she was litigation associate in a law firm in Los Angeles. In 1988, she became an Assistant United States Attorney in Los Angeles. During her time in that office she served as a Deputy Chief in the Narcotics Section and later as the Anti-Terrorism Advisory Council Coordinator. She moved to Central New York in 1994 and was an Assistant United States Attorney in the Northern District of New York from 1995 until her judicial appointment in 2014. She served as the Appellate Chief from 2005 until her appointment to the bench.

**Michael G. Langan** has been the career law clerk to a federal court judge in the Northern District of New York for more than sixteen years (first to U.S. Magistrate Judge George H. Lowe and currently to Chief U.S. District Judge Glenn T. Suddaby). Before that, he practiced federal litigation in Washington, D.C., and Syracuse, N.Y., for six years (first at Piper Rudnick LLP, and then at Bond Schoeneck & King PLLC). He received his J.D. in 1998 from George Mason University School of Law, where he was the Notes Editor of the *George Mason Law Review*. He received his M.F.A. in Creative Writing in 1995 from George Mason University, where he was a graduate fellow and co-manager of the Writing Center. He received his B.A. in philosophy in 1991 from Colgate University, from which he graduated *cum laude*. He has taught more than a dozen continuing legal education courses, and a half-dozen college courses in law and writing.

**LORI M. WELCH** has been Court Services Administrator since 2019 where she supervises clerk's office staff in Syracuse and Plattsburgh in court operational duties, including monitoring and reviewing their work. Manages workflow within the clerk's office, including assessing workflow history and patterns to ensure equity in work distribution according to staffing limitations, adequate coverage, transparency and uniformity in practice, rule and procedural compliance. Lori analyzes current operating policies and procedures, best practices from other districts, Federal and local rules in order to implement process improvement initiatives. She monitors the management of civil and criminal cases and conduct annual case management reviews, and make recommendations to the Clerk and the Court on methods to improve the general workflow processes. Participates in judicial conference calls and assist judicial officers with procedural issues. Prepares and analyzes statistical data for the NDNY for the Clerk,

Deputy Clerk and Judges. Serves on Local Rules Committee. Review of comments and suggestions from the U.S. Attorney's Office, Federal Public Defender's Office, members of the NDNY bar, staff and public with regard to NDNY Local Rules, and draft proposed revisions to the local rules for the Committee's review and comments.