

FEDERAL LITIGATION GUIDE: NEW YORK AND CONNECTICUT

RULES PAMPHLET

2005

**District Court Rules
Federal Rules of Appellate Procedure
with Second Circuit Rules
Federal Rules of Civil Procedure
Federal Rules of Evidence
Multidistrict Litigation Rules
United States Supreme Court Rules
Title 28, United States Code. Selected Sections**

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RULES PAMPHLET

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SOUTHERN AND EASTERN DISTRICTS OF NEW YORK COURT RULES

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LOCAL CIVIL RULES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK

Rule 1.1. Application of Rules.

These Local Civil Rules apply in civil actions as defined in Federal Rules of Civil Procedure 1 and 2.

History: Adopted April 15, 1997.

Rule 1.2. Clerk's Office.

The offices of the clerk are open from 8:30 a.m. to 5:00 p.m. Monday through Friday and closed on Saturdays, Sundays, and legal holidays. A night depository with an automatic time and date stamp shall be maintained by the clerk of the Southern District in the Pearl Street Courthouse and by the clerk of the Eastern District in the Brooklyn Courthouse. After regular business hours, papers for the district court only may be deposited in the night depository. Such papers will be considered as having been filed in the district court as of the time and date stamped thereon, which shall be deemed presumptively correct.

[Source: Former Local General Rule 1]

History: Adopted April 15, 1997.

Rule 1.3. Admission to the Bar.

(a) A member in good standing of the bar of the state of New York, or a member in good standing of the bar of the United States District Court in New Jersey, Connecticut or Vermont and of the bar of the State in which such district court is located, provided such district court by its rule extends a corresponding privilege to members of the bar of this court, may be admitted to practice in this court on compliance with the following provisions:

Each applicant for admission shall file with the clerk, at least ten (10) days prior to hearing (unless, for good cause shown, the judge shall shorten the time), a verified

written petition for admission on a form supplied by the clerk stating: (1) applicant's residence and office address; (2) the time when, and courts where, admitted; (3) applicant's legal training and experience; (4) whether applicant has ever been held in contempt of court, and, if so, the nature of the contempt and the final disposition thereof; (5) whether applicant has ever been censured, suspended or disbarred by any court, and, if so, the facts and circumstances connected therewith; (6) that applicant has read and is familiar with (a) the provisions of the Judicial Code (Title 28, U.S.C.) which pertain to the jurisdiction of, and practice in, the United States District Courts; (b) the Federal Rules of Civil Procedure; (c) the Federal Rules of Criminal Procedure; (d) the Federal Rules of Evidence; (e) the Local Rules of the United States District Court for the Southern and Eastern Districts of New York; and (f) the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York; and (7) that applicant will faithfully adhere to all rules applicable to applicant's conduct in connection with any activities in this court.

The petition shall be accompanied by a certificate of the clerk of the court for each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that state court. The petition shall also be accompanied by an affidavit of an attorney of this court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this court, how long and under what circumstances the attorney has known the applicant, and what the attorney knows of the

applicant's character and experience at the bar. Such petition shall be placed at the head of the calendar and, on the call thereof, the attorney whose affidavit accompanied the petition shall personally move the admission of the applicant. If the petition is granted, the applicant shall take the oath of office and sign the roll of attorneys.

(b) A member in good standing of the bar of either the Southern or Eastern District of New York may be admitted to the bar of the other district without formal application (1) upon filing in that district a certificate of the Clerk of the United States District Court for the district in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that court and (2) upon taking the oath of office, signing the roll of attorneys of that district, and paying the fee required in that district.

(c) A member in good standing of the bar of any state or of any United States District Court may be permitted to argue or try a particular case in whole or in part as counsel or advocate, upon motion and upon filing with the Clerk of the District Court a certificate of the court for each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that state court. Only an attorney who has been so admitted or who is a member of the bar of this court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders.

(d) If an attorney who is a member of the bar of this court, or who has been authorized to appear in a case in this court, changes his or her residence or office address, the attorney shall immediately notify the clerk of the court, in addition to serving and filing a notice of change of address in each pending case in which the attorney has appeared.

[Source: Former Local General Rule 2]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 50, *Seeking Attorney Withdrawal, Disqualification, and Admission Pro Hac Vice*

Rule 1.4. Withdrawal or Displacement of Attorney of Record.

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

[Source: Former Local General Rule 3(c)]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 50, *Seeking Attorney Withdrawal, Disqualification, and Admission Pro Hac Vice*

Rule 1.5. Discipline of Attorneys.

(a) Committee on Grievances. The chief judge shall appoint a committee of the board of judges known as the Committee on Grievances, which under the direction of the chief judge shall have charge of all matters relating to the discipline of attorneys. The chief judge shall appoint a panel of attorneys who are members of the bar of this court to advise or assist the Committee on Grievances. At the direction of the Committee on Grievances or its chair, members of this panel of attorneys may investigate complaints, may prepare and support statements of charges, or may serve as members of hearing panels.

(b) Grounds for Discipline or Other Relief. Discipline or other relief, of the types set forth in paragraph (c) below, may be imposed, by the Committee on Grievances, after notice and opportunity to respond as set forth in paragraph (d) below, if any of the following grounds is found by clear and convincing evidence:

(1) Any member of the bar of this court

has been convicted of a felony or misdemeanor in any federal court, or in a court of any state or territory.

(2) Any member of the bar of this court has been disciplined by any federal court or by a court of any state or territory.

(3) Any member of the bar of this court has resigned from the bar of any federal court or of a court of any state or territory while an investigation into allegations of misconduct by the attorney was pending.

(4) Any member of the bar of this court has an infirmity which prevents the attorney from engaging in the practice of law.

(5) In connection with activities in this court, any attorney is found to have engaged in conduct violative of the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this court.

(6) Any attorney not a member of the bar of this court has appeared at the bar of this court without permission to do so.

(c) Types of Discipline or Other Relief.

(1) In the case of an attorney admitted to the bar of this court, discipline imposed pursuant to paragraph (b)(1), (b)(2), (b)(3), or (b)(5) above may consist of a letter of reprimand or admonition, censure, suspension, or an order striking the name of the attorney from the roll of attorneys admitted to the bar of this court.

(2) In the case of an attorney not admitted to the bar of this court, discipline imposed pursuant to paragraph (b)(5) or (b)(6) above may consist of a letter of reprimand or admonition, censure, or an order precluding the attorney from again appearing at the bar of this court.

(3) Relief required pursuant to paragraph (b)(4) above shall consist of suspending the attorney from practice before this court.

(d) Procedure.

(1) If it appears that there exists a ground for discipline set forth in paragraph (b)(1), (b)(2), or (b)(3), notice thereof shall be served by the Committee on Grievances upon the attorney concerned by first class mail, directed to the address of the attorney as shown on the rolls of this court and to the last known address of the attorney (if any) as shown in the complaint and any materials submitted therewith. Service shall be deemed complete upon mailing in accordance with the provisions of this paragraph.

In all cases in which any federal court or a court of any state or territory has entered an order disbaring an attorney or suspending the attorney from practice, whether or not on consent, the notice shall be served together with an order by the clerk of this court, to become effective twenty-four days after the date of service upon the attorney, disbaring the attorney or suspending the attorney from practice in this court upon terms and conditions comparable to those set forth by the other court of record. In all cases in which an attorney has resigned from the bar of any federal court or of a court of any state or territory while an investigation into allegations of misconduct by the attorney was pending, even if the attorney remains admitted to the bar of any other court, the notice shall be served together with an order entered by the clerk for this court, to become effective twenty-four days after the date of service upon the attorney, deeming the attorney to have resigned from the bar of this court. Within twenty days of the date of service of either order, the attorney may file a motion for modification or revocation of the order. Any such motion shall set forth with specificity the facts and principles relied upon by the attorney as showing cause why a different disposition should be ordered by this court. The timely filing of such a motion will stay the effectiveness of the order until further order by this court. If good cause is shown to hold an evidentiary hearing, the Committee on Grievances may proceed to impose discipline or to take

such other action as justice and this rule may require.

In all other cases, the notice shall be served together with an order by the Committee on Grievances directing the attorney to show cause in writing why discipline should not be imposed. If the attorney fails to respond in writing to the order to show cause, or if the response fails to show good cause to hold an evidentiary hearing, the Committee on Grievances may proceed to impose discipline or to take such other action as justice and this rule may require. If good cause is shown to hold an evidentiary hearing, the Committee on Grievances may direct such a hearing pursuant to paragraph (d)(4) below.

(2) In the case of a ground for discipline set forth in paragraph (b)(2) or (b)(3) above, discipline may be imposed unless the attorney concerned establishes by clear and convincing evidence (i) that there was such an infirmity of proof of misconduct by the attorney as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion of the other court, or (ii) that the procedure resulting in the investigation or discipline of the attorney by the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or (iii) that the imposition of discipline by this court would result in grave injustice.

(3) Complaints in writing alleging any ground for discipline or other relief set forth in paragraph (b) above shall be directed to the chief judge, who shall refer such complaints to the Committee on Grievances. The Committee on Grievances, by its chair, may designate an attorney, who may be selected from the panel of attorneys established pursuant to paragraph (a) above, to investigate the complaint, if it deems investigation necessary or warranted, and to prepare a statement of charges, if the Committee deems that necessary or warranted. Complaints, and any files based on them, shall be treated as confidential unless otherwise ordered by the chief judge for good cause shown.

(4) A statement of charges alleging a ground for discipline or other relief set forth in paragraph (b)(4), (b)(5), or (b)(6) shall be served upon the attorney concerned by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this court and to the last known address of the attorney (if any) as shown in the complaint and any materials submitted therewith, together with an order by the Committee on Grievances directing the attorney to show cause in writing why discipline or other relief should not be imposed. Upon the respondent attorney's answer to the charges the matter will be designated by the Committee on Grievances for a prompt evidentiary hearing before a magistrate judge of the court or before a panel of three attorneys, who may be selected from the panel of attorneys established pursuant to paragraph (a) above. The magistrate judge or panel of attorneys conducting the hearing may grant such pre-hearing discovery as they determine to be necessary, shall hear witnesses called by the attorney supporting the charges and by the respondent attorney, and may consider such other evidence included in the record of the hearing as they deem relevant and material. The magistrate judge or panel of attorneys conducting the hearing shall report their findings and recommendations in writing to the Committee on Grievances and shall serve them upon the respondent attorney and the attorney supporting the charges. After affording the respondent attorney and the attorney supporting the charges an opportunity to respond in writing to such report, or if no timely answer is made by the respondent attorney, or if the Committee on Grievances determines that the answer raises no issue requiring a hearing, the Committee on Grievances may proceed to impose discipline or to take such action as justice and this rule may require.

(e) Reinstatement. Any attorney who has been suspended or precluded from appearing in this court or whose name has been struck from the roll of the members of the bar of this court may apply in writing

to the chief judge, for good cause shown, for the lifting of the suspension or preclusion or for reinstatement to the rolls. The chief judge shall refer such application to the Committee on Grievances. The Committee on Grievances may refer the application to a magistrate judge or hearing panel of attorneys (who may be the same magistrate judge or panel of attorneys who previously heard the matter) for findings and recommendations, or may act upon the application without making such a referral.

(f) Remedies for Misconduct. The remedies provided by this rule are in addition to the remedies available to individual judges and magistrate judges under applicable law with respect to lawyers appearing before them. Individual judges and magistrate judges may also refer any matter to the chief judge for referral to the Committee on Grievances to consider the imposition of discipline or other relief pursuant to this rule.

(g) Notice to Other Courts. When an attorney is known to be admitted to practice in the court of any state or territory, or in any other federal court, and has been convicted of any crime or disbarred, precluded from appearing, suspended or censured in this court, the clerk shall send to such other court or courts a certified copy of the judgment of conviction or order of disbarment, preclusion, suspension or censure, a certified copy of the court's opinion, if any, and a statement of the attorney's last known office and residence address.

[Source: Former Local General Rule 4]

History: Adopted April 15, 1997; amended April 2, 2001.

Research References

Fed. Lit. Guide: NY & CT, Ch. 50, *Seeking Attorney Withdrawal, Disqualification, and Admission Pro Hac Vice*

Rule 1.6. Duty of Attorneys in Related Cases.

(a) It shall be the continuing duty of each attorney appearing in any civil or criminal case to bring promptly to the attention of the clerk all facts which said

attorney believes are relevant to a determination that said case and one or more pending civil or criminal cases should be heard by the same judge, in order to avoid unnecessary duplication of judicial effort. As soon as the attorney becomes aware of such relationship, said attorney shall notify the clerk in writing, who shall transmit that notification to the judges to whom the cases have been assigned.

(b) If counsel fails to comply with Local Civil Rule 1.6(a), the court may assess reasonable costs directly against counsel whose action has obstructed the effective administration of the court's business.

[Source: Former Local General Rule 5]

History: Adopted April 15, 1997.

Rule 1.7. Fees of Clerks and Reporters.

(a) The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to the clerk in advance or the court orders otherwise.

(b) Every attorney appearing in any proceeding who orders a transcript of any trial, hearing, or any other proceeding, is obligated to pay the cost thereof to the court reporters of the court upon rendition of the invoice unless at the time of such order, the attorney, in writing, advises the court reporter that only the client is obligated to pay.

[Source: Former Local General Rule 6]

History: Adopted April 15, 1997.

Rule 1.8. Photographs, Radio, Recordings, Television.

No one other than court officials engaged in the conduct of court business shall bring any camera, transmitter, receiver, portable telephone or recording device into any courthouse or its environs without written permission of a judge of that court.

Environs as used in this rule shall include the entire United States Courthouse property, including all entrances to and exits from the buildings.

[Source: Former Local General Rule 7]

History: Adopted April 15, 1997.

Rule 1.9. Disclosure of Interested Parties.

[Repealed effective March 3, 2003]

[See Rule 7.1 of the Federal Rules of Civil Procedure]

Rule 1.10. Acceptable Substitutes for Affidavits.

In situations in which any local rule provides for an affidavit or a verified statement, the following are acceptable substitutes: (a) a statement subscribed under penalty of perjury as prescribed in 28 U.S.C. § 1746; or (b) if accepted by the court as a substitute for an affidavit or a verified statement, (1) a statement signed by an attorney or by a party not represented by an attorney pursuant to Federal Rule of Civil Procedure 11, or (2) an oral representation on the record in open court.

History: Adopted April 15, 1997.

Rule 5.1. Filing of Discovery Materials.

(a) Depositions and notices of deposition, subpoenas, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, and other discovery requests and materials produced in pretrial disclosure and discovery, shall not be filed with the clerk's office except by order of the court.

(b) A party seeking relief under Rules 26 through 37 inclusive of the Federal Rules of Civil Procedure shall quote or attach only those portions of the depositions, interrogatories, requests for documents, requests for admissions, or other discovery or disclosure materials that are the subject of the motion, together with the objections thereto.

(c) When discovery or disclosure material not on file is needed for an appeal, upon an order of the court, the necessary portion of that material shall be filed with the clerk.

[Source: Former Local Civil Rule 18]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 30, *Propounding Interrogatories*, et seq.

6 Moore's 3d, Ch. 26, *General Provisions Governing Discovery; Duty of Disclosure*, et seq.

Rule 5.2. Electronic Service and Filing of Documents.

A paper served and filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5, served and filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

History: Adopted March 3, 2003.

Research References

Fed. Lit. Guide: NY & CT, Ch. 2, *Formatting, Serving, and Filing Papers*

1 Moore's 3d, Ch. 5, *Service and Filing of Pleadings and Other Papers*

Rule 5.3. Service by Overnight Delivery and Fax.

(a) Service upon an attorney of all papers other than a subpoena or a summons and complaint or any other paper required by statute or rule to be served in the same manner as a summons and complaint shall be permitted by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Overnight service shall be deemed service by mail for purposes of Fed. R. Civ. P. 6(e). "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery.

(b) No papers shall be served by facsimile unless the parties agree in writing in advance to accept service by this means or it is ordered by the assigned judge. Without

such prior agreement or order, such attempted service shall be considered void. Service by electronic means other than facsimile shall be governed by the Standing Order relating to Procedures for Electronic Case Filing.

[Source: Eastern District Administrative Order 2003-01]

History: Adopted March 3, 2003.

Research References

Fed. Lit. Guide: NY & CT, Ch. 2, *Formatting, Serving, and Filing Papers*

1 Moore's 3d, Ch. 5, *Service and Filing of Pleadings and Other Papers*

Rule 6.1. Service and Filing of Motion Papers.

Unless otherwise provided by statute or rule, or unless otherwise ordered by the court in an individual rule or in a direction in a particular case, upon any motion, the notice of motion, supporting affidavits, and memoranda shall be served and filed as follows:

(a) On all motions and exceptions under Rules 26 through 37 inclusive and Rule 45(c)(3) of the Federal Rules of Civil Procedure, (1) the notice of motion, supporting affidavits, and memoranda of law shall be served by the moving party on all other parties that have appeared in the action, (2) any opposing affidavits and answering memoranda of law shall be served within four business days after service of the moving papers, and (3) any reply affidavits and reply memoranda of law shall be served within one business day after service of the answering papers.

(b) On all civil motions, petitions, applications, and exceptions other than those described in Rule 6.1(a), and other than petitions for writs of habeas corpus, (1) the notice of motion, supporting affidavits, and memoranda of law shall be served by the moving party on all other parties that have appeared in the action, (2) any opposing affidavits and answering memoranda shall be served within ten business days after service of the moving papers, and (3) any reply affidavits and memoranda of law

shall be served within five business days after service of the answering papers.

(c) The parties and their attorneys shall only appear to argue the motion if so directed by the court by order or by individual rule or upon application.

(d) No *ex parte* order, or order to show cause to bring on a motion, will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why a procedure other than by notice of motion is necessary, and stating whether a previous application for similar relief has been made.

[Source: Former Local Civil Rules 3(c)(1), (2), and (4) and 6(b)]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

1 Moore's 3d, Ch. 5, *Service and Filing of Pleadings and Other Papers*

Rule 6.2. Orders on Motions.

A memorandum signed by the court of the decision on a motion that does not finally determine all claims for relief, or an oral decision on such a motion, shall constitute the order unless the memorandum or oral decision directs the submission or settlement of an order in more extended form. The notation in the docket of a memorandum or oral decision that does not direct the submission or settlement of an order in more extended form shall constitute the entry of the order. Where an order in more extended form is required to be submitted or settled, the notation in the docket of such order shall constitute the entry of the order.

[Source: Former Local Civil Rule 6(a)]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

Rule 6.3. Motions for Reconsideration or Reargument.

A notice of motion for reconsideration or re-argument of a court order determining

a motion shall be served within ten (10) days after the entry of the court's order determining the original motion, or, in the case of a court order resulting in a judgment, within ten (10) days after the entry of the judgment. There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. The time periods for the service of answering and reply memoranda, if any, shall be governed by Local Civil Rule 6.1(1) or (b), as in the case of the original motion. No oral argument shall be heard unless the court directs that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court.

[Source: Former Local Civil Rule 3(j)]

History: Adopted April 15, 1997; amended effective March 26, 2004.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

Rule 6.4. Computation of Time.

In computing any period of time prescribed or allowed by the Local Civil Rules or the Local Admiralty and Maritime Rules, the provisions of Federal Rule of Civil Procedure 6(a) and 6(e) shall apply unless otherwise stated.

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

1 Moore's 3d, Ch. 6, *Time*

Rule 7.1. Memoranda of Law.

Except as otherwise permitted by the court, all motions and all oppositions thereto shall be supported by a memorandum of law, setting forth the points and authorities relied upon in support of or in opposition to the motion, and divided, under appropriate headings, into as many parts as there are points to be determined. Willful failure to comply with this rule may be deemed sufficient cause for the denial of a motion or for the granting of a motion by default.

[Source: Former Local Civil Rule 3(b)]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

Rule 7.2. Specification of Statutes or Rules.

Upon any motion based upon rules or statutes, the notice of motion or order to show cause shall specify the rules or statutes upon which the motion is predicated.

[Source: Former Local Civil Rule 3(d)]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 9, *Bringing Motions in Federal Court*

Rule 11.1. Form of Pleadings, Motions, and Other Papers.

(a) Every pleading, written motion, and other paper must (1) be plainly written, typed, printed, or copied without erasures or interlineations which materially deface it, (2) bear the docket number and the initials of the judge and any magistrate judge before whom the action or proceeding is pending, and (3) have the name of each person signing it clearly printed or typed directly below the signature.

(b) Every pleading, written motion, and other paper that is signed by an attorney must show directly after the typed name of the attorney (1) the initials of the attorney's first and last name, and (2) the last four digits of the attorney's social security number, or any other four-digit number registered by the attorney with the clerk of the court.

[Source: Former Local Civil Rule 1]

History: Adopted April 15, 1997.

Research References

Fed. Lit. Guide: NY & CT, Ch. 2, *Formatting, Serving, and Filing Papers*

2 Moore's 3d, Ch. 10, *Form of Pleadings*

Rule 12.1. Notice to Pro Se Litigants Opposing Motions to Dismiss or for Judgment on the Pleadings Treated as Motions for Summary Judgment.

A represented party moving to dismiss