

# Changes Are Coming to SDNY and EDNY Joint Local Rules

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On October 16, 2023, U.S. District Court for the Eastern District of New York and the U.S. District Court for the Southern District of New York judges published [proposed changes to their joint local rules](#). As the name suggests, the joint local rules apply in both the Eastern and Southern Districts of New York. These will be the first changes to the joint rules since October 2021. Some changes more substantially alter the requirements for litigators than others, such as the changes to Local Rule 55 default judgments, while others seek to modernize the rules, such as Rule 26(c)(2)'s introduction of metadata in discovery. The 90-day period for comments ended on January 15, 2024, and the effective date of the rules is July 1, 2024. The following highlights the most notable changes to the joint local rules.

**Notable Changes to the Joint Local Rules**

*Local Civil Rule 1.4 – Withdrawal or Displacement of Attorney of Record* The most significant change to Local Rule 1.4 concerns the procedure for becoming an attorney of record. Attorneys appearing on behalf of a party will need to file a notice of appearance in each case. This requirement would not apply to attorneys who file case-initiating documents, such as a complaint or notice of removal. The previous local rule governed the withdrawal or displacement of an attorney of record but did not identify the procedure by which one becomes an attorney of record. The Federal Rules of Civil Procedure likewise did not include a procedure for becoming an attorney of record. Accordingly, the local rule has been amended to require attorneys appearing in a matter to file a notice of appearance and lists the items of information that the notice of appearance must contain. While the requirements for withdrawing or replacing an attorney of record will not change, those for substitution of counsel do. Under the revised rules, an affidavit is no longer necessary when substitution of counsel is stipulated or when counsel from the same firm already entered a notice of appearance.

*Local Civil Rule 1.8(b) – Photographs, Radio, Recordings, Television* Under the new Local Rule 1.8(b), no person may take a photograph or video of any proceeding or communication within the courtroom, unless the presiding judge provides authorization. The rule applies to remote proceedings and conversations with court personnel, including the judge's staff or mediators acting at the judge's direction.

*Local Civil Rule 5.2 – Electronic Service and Filing of Documents* Local Rule 5.2 will now require highly sensitive documents to be filed in hard copy. The new rule maintains the requirement that counsel file electronic documents in accordance with Electronic Case Files (ECF), the federal courts' online filing system, but adds that a party may be exempted from electronic filing by court order or Federal Rule

of Civil Procedure 5. *Local Civil Rule 6.3 – Motions for Reconsideration or Reargument* Under the new Local Rule 6.3, a notice of motion for reconsideration must be served within 14 days after entry of the court’s order. This rule changes the requirement that the motion for reconsideration be served within 14 days of the court’s determination of *the original motion or entry of the judgment*. The new rule establishes the following maximum-page requirements: 10 pages for the memorandum that is served with the notice of motion, 10 pages for any answering memoranda, and five pages for any reply memoranda. *Local Civil Rule 7.1(a) – Motion Papers* The revised Local Rule 7.1(a) clarifies what rules apply to motion papers. While the current rule contains an exception for directives “otherwise permitted by the Court,” the revised rule is more straightforward: its requirements for motion papers would govern unless the particular judge’s practices or orders provide otherwise. *Local Civil Rule 7.1(d) – Letter Motions* Under the new Local Rule 7.1(d), regardless of the particular judge’s rules, the following motions may be brought by letter motion: extensions or adjournments, applications for a pre-motion conference, and similar non-dispositive matters. Other motions may be brought by letter motion only if the particular judge’s rules or orders permit it. *Local Civil Rule 11.1 (b) – Form of Pleadings, Motion and Other Papers* Regarding documents to be filed, the new Local Rule 11.1(b) maintains the old rule’s requirements – typeface, margins, and spacing – but adds that a judge’s individual rules may maintain otherwise. Thus, the particular judge’s rules would govern. *Local Civil Rule 15.1(a) – Amending or Supplementing Pleadings* The new Local Rule 15.1(a) establishes requirements for amending or supplementing pleadings. Parties will need to file not only a copy of the proposed pleading, but also a version that indicates the changes made, such as via redlines or strikeouts. *Local Civil Rule 15.1(b) – Amending or Supplementing Pleadings (continued)* Under the new Local Rule 15.1(b), after a court grants a motion to amend or supplement, the moving party must file the new pleading within seven days of the court’s order. *Local Civil Rule 16.1 – Exemptions from Mandatory Scheduling Order* The new Local Rule 16.1 adds bankruptcy appeals to the list of proceedings exempted from Federal Rule of Civil Procedure 16(b)’s mandatory scheduling order requirements. For these exempted proceedings, the court dictates when and how discovery proceeds. *Local Civil Rule 26.2(c)(2) – Assertion of Claim of Privilege* The change to Local Rule 26.2(c)(2) introduces “metadata” to the local rules. The change encourages parties to use a metadata log that would be sufficient to support a privilege claim. The new rule also prevents parties from objecting to a privilege log on the basis of categorical or metadata grouping. *Local Civil Rule 37.2 – Mode of Raising Discovery Disputes With the Court (Southern District Only)* The revised rule allows judges to establish their own procedures for bringing discovery motions. Otherwise, the previous requirement that the moving party request a conference with the judge would apply. *Local Civil Rule 55.1 – Certificate of Default* The new rules for obtaining a certificate of default are among the most important changes for litigators. The revised Local Rule 55.1 changes the required request from a “clerk’s certificate of default” to a “request to enter default.” Furthermore, where an affidavit alone sufficed under the old rule, the new rule allows for either an affidavit or a declaration. Unlike an affidavit, which a notary must witness and sign, only the declarant signs a declaration. The new rule also changes what the affidavit or declaration must demonstrate. The moving party no longer has to show the other party’s competence and/or demonstrate that the requirements of Federal Rule of

Civil Procedure 4 were met. *Local Civil Rule 55.2 – Obtaining a Default Judgment* The change to default judgment procedure mandates an affidavit or declaration with three showings regardless of whether the party seeks default judgment by the clerk or by the court. The moving party will need to indicate that the clerk entered default under Local Rule 55.1, include a certificate of service, and if applicable, present Local Rule 7.1 motion papers. While the new rules would require those three filings regardless of whether a party seeks default by the court or by the clerk, the proposed Local Rule 55 contains additional requirements for each. The revised Local Rule 55.2(b) maintains affidavit requirements to receive a certificate of default by the clerk but adds that someone with personal knowledge must make the required showing of the principal amount due. Likewise, Local Rule 55.2(b) would require someone with personal knowledge to show the proposed damages and the basis for each element of damages. *Local Civil Rule 56.1(b) – Opposing Party Must Admit or Deny Each Paragraph in Its Statement of Material Facts* While both the old and new rule require a responding party to respond to each correspondingly numbered paragraph, the proposed rule would expressly require the party to admit or deny the truth of each paragraph. *Local Civil Rule 56.1(e) – Opposing Party Must Include the Moving Party’s Statement Directly Above Its Response* The revised Local Rule 56.1 includes a completely new requirement, 56.1(e). Under Local Rule 56.1(e), the moving party must issue an electronic copy of its statement of material facts, and the opposition statement must include each of the moving party’s statements with the response directly beneath. **Conclusion** The period for public comments on the proposed joint local rules closed on January 15, 2024, and the changes will become effective on July 1, 2024. For questions about the new joint rules of the Eastern and Southern District of New York, please contact the author of this article.

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