

COURT NOTICE

Eastern and Southern Districts of New York

The Courts have adopted revisions to Local Rules 56.2 and 12.1 Concerning Pro Se Litigants, Local Civil Rule 1.3, Local Civil Rule 11.1 and Local Civil Rule 1.5(e), and prior to taking effect invite comments. Additions and changes appear in ***bold italics***; and deletions, lined through.

Rule 56.2 Change

[Committee Comment]

The current version of Local Civil Rule 56.2 requires a defendant moving for summary judgment to serve a notice on the pro se plaintiff that informs the pro se plaintiff why he or she is receiving affidavits from the defendant and what should be done in response to those affidavits. It refers to Rule 56 of the Federal Rules of Civil Procedure and requires the defendant to enclose a copy of that rule.

This notice, however, gives no information whatsoever regarding the defendant's statement of material facts under Local Civil Rule 56.1, which has been served on the pro se plaintiff. The pro se plaintiff should be informed of the existence of Local Civil Rule 56.1 so that he or she will have some understanding of why he or she is receiving a Local Civil Rule 56.1 Statement. The pro se plaintiff should also be informed that the case could potentially be dismissed for failure to comply with the rule, though a judge is obviously free to excuse a pro se litigant from compliance with this aspect of the rule in an appropriate case.

The proposed change can be accomplished by inserting a reference to Local Civil Rule 56.1 into the text and by requiring the defendant to attach a copy of Rule 56.1 to its motion. As noted, the defendant is already required to attach a copy of Fed. R. Civ. P. 56.

The proposal does not set forth in detail the requirements for responding to the Local Civil Rule 56.1 statement because the focus should remain on the pro se litigant's responsibility to submit responsive affidavits and documents. It is feared that more information in the notice about the 56.1 statement would be too confusing.

The proposal also includes some style suggestions from a district judge, as modified by the Joint Committee, to clarify and simplify the text of the notice.

Local Civil Rule 56.2. Notice to Pro Se Litigants Who Opposes a Summary Judgment

Any represented party moving for summary judgment against a party proceeding *pro se* shall serve and file as a separate document, together with the papers in support of the motion, a "Notice To Pro Se Litigant Who Opposes a Motion For Summary Judgment" in the form

indicated below. Where the pro se party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact.

Notice To Pro Se Litigant ~~Opposing~~ Who Opposes a Motion For Summary Judgment

The defendant in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This means that the defendant has asked the court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION** by filing ~~your own~~ sworn affidavits ~~or~~ **and** other papers as required by Rule 56(e) **of the Federal Rules of Civil Procedure and by Local Civil Rule 56.1**. An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial. The full text of Rule 56 **of the Federal Rules of Civil Procedure and Local Civil Rule 56.1** is attached.

In short, Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising **material** issues of fact for trial. Any witness statements, ~~which may include your own statements,~~ must be in the form of affidavits. **You may submit your own affidavit and/or the affidavits of others.** You may submit affidavits that were prepared specifically in response to defendant's motion for summary judgment.

~~Any issue of fact that you wish to raise in opposition to the motion for summary judgment must be supported by affidavits or by other documentary evidence contradicting the facts asserted by the defendant.~~ If you do not respond to the motion for summary judgment on time with affidavits or documentary evidence contradicting the **material** facts asserted by the defendant, the court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

If you have any questions, you may direct them to the Pro Se Office.

Rule 12.1 Change

[Committee Comment]

Local Civil Rule 12.1 should be amended to eliminate a source of confusion to pro se litigants. The current version of the Local Civil Rule 12.1 gives a special instruction to a defendant in a pro se case who (a) is moving to dismiss (or for judgment on the pleadings) and (b) refers to matters outside the pleadings. It instructs the defendant to serve on the pro se litigant the notice required by Local Civil Rule 56.2.

The problem with this instruction is that Local Civil Rule 56.2's notice makes no reference to a motion to dismiss. Instead, the Rule 56.2 notice tells the pro se litigant that the defendant has "moved for summary judgment." Those defendants who follow Rule 12.1 to the

letter make no change to the notice to reflect this fact. Because there is frequently nothing in the defendants' papers suggesting that they have moved for summary judgment, the pro se plaintiff can only be confused as to why he or she is being given a notice regarding a motion for "summary judgment."

Accordingly, the notice required by Local Civil Rule 12.1 should inform the pro se litigant (1) that, while the defendant has moved to dismiss, it has also submitted to the Court additional written materials and (2) that the Court may treat the motion to dismiss as one for summary judgment. The proposed change gives the text of a notice modeled on the notice contained in Rule 56.2.

Following is (1) proposed amendment and (2) a "redlined" version. This "redlined" version, however, shows the changes to the existing Rule 56.2 notice. The current Rule 12.1 of course does not contain the text of a notice at all.

Once again, this proposal includes the style changes to the Rule 56.2 notice.

Local Civil Rule 12.1 - Notice to Pro Se Litigants Opposing Motions to Dismiss or for Judgment on the Pleadings Treated as Motions for Summary Judgment Litigant Who Opposes a Rule 12 Motion Supported by Matters Outside the Pleadings

A represented party moving to dismiss or for judgment on the pleadings against a party proceeding pro se, who refers in support of the motion to matters outside the pleadings as described in Federal Rule of Civil Procedure 12(b) or 12(c), shall serve and file the *following* notice ~~required by Local Civil Rule 56.2~~ at the time the motion is served. If the court rules that a motion to dismiss or for judgment on the pleadings will be treated as one for summary judgment pursuant to Federal Rule of Civil Procedure 12(b) or 12(c), and the movant has not previously served and filed the notice required by ~~Local Civil R~~ *this rule 56.2*, the notice must be served and filed within ten days of the court's ruling.

Notice To Pro Se Litigant Who Opposes a Rule 12 Motion For Summary Judgment Supported by Matters Outside the Pleadings

The defendant in this case has moved *to dismiss or* for ~~summary judgment on the pleadings~~ pursuant to Rule ~~56-12(b) or 12(c)~~ of the Federal Rules of Civil Procedure, *and has submitted additional written materials*. This means that the defendant has asked the court to decide this case without a trial, based on *these* written materials, ~~including affidavits, submitted in support of the motion~~. *You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION by filing your own sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial. The full text of Rule 56 of the Federal Rules of Civil Procedure is attached.*

In short, Rule 56 provides that you may NOT oppose ~~summary judgment~~ *the defendant's motion* simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements, ~~which may include your own statements,~~ must be in the form of affidavits. ***You may submit your own affidavit and/or the affidavits of others.*** You may submit affidavits that were prepared specifically in response to defendant's motion ~~for summary judgment~~.

~~Any issue of fact that you wish to raise in opposition to the motion for summary judgment must be supported by affidavits or by other documentary evidence contradicting the facts asserted by the defendant.~~ If you do not respond to the motion ~~for summary judgment~~ on time with affidavits or documentary evidence contradicting the facts asserted by the defendant, the court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

If you have any questions, you may direct them to the Pro Se Office.

Local Rule 1.3(a) – Admission to the Bar

[Committee Comment]

At a recent meeting of the S.D.N.Y. Grievance Committee, two amendments to Local Civil Rule 1.3(a) were proposed: first, an amendment to the provision on reciprocal admission triggered by having become aware that the District of New Jersey does not provide reciprocity; and second, a requirement that an applicant for admission be required to disclose whether he or she was ever denied admission or readmission to the bar of any court.

The proposed amendments read as follows:

Local Civil 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:

In the first instance, each applicant for admission is required to file an application for admission in electronic form on the Court's Web site (www.nysd.uscourts.gov). This one application will be utilized both to admit and then to provide the applicant to the bar of this Court with a password and login for use on the court's Electronic Case Filing (ECF) system. The applicant shall adhere to all applicable rules of admission.

The applicant shall (a) complete the application on-line, (b) submit the application electronically, (c) print and sign a copy of the application, and (d) file the printed application and

fee with the clerk, together with a certificate(s) of good standing and a supporting affidavit(s).

After submitting the application in electronic form, 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), the signed paper copy of the verified written petition for admission 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 ***or denied admission or readmission*** 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.

A member of the bar of the state of New York, ~~New Jersey~~, Connecticut, or Vermont who has been admitted to the bar of this court pursuant to this subsection and who thereafter voluntarily resigns from membership in the bar of the state pursuant to which he was admitted to the bar of this court, and who does not within 30 days of that voluntary resignation file an affidavit with the clerk of this court indicating that such person remains eligible to be admitted to the bar of this court pursuant to other provisions of this subsection (as because he is still a member of the bar of another eligible state and, where applicable, a corresponding district court), shall be deemed to have voluntarily resigned from the bar of this court as of the same date the member resigned from the bar of the underlying state, provided that such resignation shall not be deemed to deprive this court of jurisdiction to impose discipline on this person, pursuant to Rule 1.5 infra, for conduct preceding the date of such resignation.

Local Rule 1.5 Discipline of Attorneys

(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. *Absent extraordinary circumstances, no such application will be granted unless the attorney seeking reinstatement meets the requirements for admission set forth in Local Civil Rule 1.3(a).*

Local Civil Rule 11.1(b) - Six Digit Attorney Identifier

[Committee Comment]

Local Rule 11.1(b) currently requires attorneys to use a four-digit identifier on filed papers. The rule suggests that attorneys use the last four digits of their social security number.

Several lawyers on our committee have expressed the bar's concern about using even partial Social Security numbers. Because of this concern, because most court papers are now filed via ECF, and in particular because the Clerk's Offices of the Southern and Eastern District Courts have confirmed to our committee that they no longer have need for the four-digit attorney identifier on filed papers, the Committee recommends elimination of Local Rule 11.1(b).

Local Rule 11.1(b) - Six Digit Attorney Identifier

~~(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.~~

Comments to the above are to be submitted, in writing, on or at the close of business, Friday, May 18, 2007 which is the effective date of the amendments to Local Civil Rule 56.2, Local Civil Rule 12.1, Local Civil Rule 1.3, Local Civil Rule 11.1, and Local Civil Rule 1.5(e) to:

Clifford P. Kirsch
District Court Executive
U.S. Courthouse
500 Pearl Street, Room 820
New York, NY 10007-1312

or

Robert C. Heinemann
Clerk of Court
U.S. Courthouse
225 Cadman Plaza
Brooklyn, NY 11201