

83.1 Admission to the Bar.

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

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

1. **A verified petition for admission** stating the following:
 - place of residence and office address;
 - the date(s) when and court(s) where previously admitted;
 - legal training and trial experience;
 - whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and
 - that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Federal Rules of Criminal Procedure for the District Courts; the Local Rules of the District Court for the Northern District of New York; and the N.Y.S. Lawyer's Code of Professional Responsibility. The applicant shall further affirm faithful adherence to these Rules and responsibilities.
2. **Affidavit of Sponsor.** The sponsor must be a member in good standing of the bar of the Northern District of New York who has personal knowledge of the petitioner's background and character. A form Affidavit of Sponsor is available from the Clerk's office.
3. **Attorney E-Filing Registration Form.** The E-Filing Registration Form must be in the form prescribed by the Clerk, which sets forth the attorney's current office address(es); telephone and fax number(s), and e-mail address. A copy of the Attorney E-Filing Registration Form is available on the Court's webpage at "www.nynd.uscourts.gov." See subdivision (e) for requirements when information on the Registration Form changes.
4. **Certificate of Good Standing.** The certificate of good standing must be dated

within six (6) months of the date of admission.

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

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

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

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

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

(b) Applicants who are not admitted to another United States District Court in New York State must appear with their sponsor for formal admission unless such appearance is waived in the exercise of judicial discretion. If the applicant is admitted to practice in New York State, the Certificate of Good Standing submitted with the application for admission must be from the appropriate New York State Appellate Division. All requirements of subdivision (a) apply.

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

- (c) Applicants who are members in good standing of a United States District Court for

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

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

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

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

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

(g) United States Attorney's Office. An attorney appointed by the United States Attorney General as a United States Attorney, an assistant United States attorney, or as a special assistant United States attorney under 28 U.S.C. §§ 541-543, who has been admitted to practice before any United States District Court, shall be admitted to practice in this Court upon motion of a member of the bar of this Court. Thereafter, the attorney may appear before this Court on any matter on behalf of the United States.

83.2 Appearance and Withdrawal of Attorney.

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

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

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

83.3 Pro Bono Panel.

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

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

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

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

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

5. Where the Court finds that the nature of the case requires specific expertise, and among the Panel members available for appointment there are some with the required expertise, the attorney may be selected from among those included in the group or the Court may designate a specific member of the Panel.

6. Where the Court finds that the nature of the case requires specific expertise and none of the Panel members available for appointment has indicated that expertise, the Court may appoint an attorney with the required expertise who is not on the Panel.

(b) Application for Appointment of Attorney.

1. Any application for the appointment of an attorney by a party appearing *pro se* shall include a form of affidavit stating the party's efforts to obtain an attorney by means other than appointment and indicating any prior pro bono appointments of an attorney to represent the party in cases brought in this Court, including both pending and terminated actions.
2. Failure of a party to make a written application for an appointed attorney shall not preclude appointment.
3. Where a pro se litigant, who was ineligible for an appointed attorney at the time of initial or subsequent requests, later becomes eligible by reason of changed circumstances, a subsequent application may be entertained, using the procedures specified above, within a reasonable time after the change in circumstances has occurred.

(c) Factors Used in Determining Whether to Appoint Counsel.

Upon receipt of an application for the appointment of an attorney, the Court shall determine whether an attorney is to be appointed to represent the *pro se* party. The Court shall make that determination within a reasonable time after the application is made. Factors that the Court will take into account in making the determination are as follows:

1. The potential merit of the claims as set forth in the pleading;
2. The nature and complexity of the action, both factual and legal, including the need for factual investigation;
3. The presence of conflicting testimony calling for an attorney's presentation of evidence and cross-examination;
4. The capability of the *pro se* party to present the case;
5. The inability of the *pro se* party to retain an attorney by other means;
6. The degree to which the interests of justice shall be served by appointment of an attorney, including the benefit that the Court shall derive from the assistance of an appointed attorney;
7. Any other factors the Court deems appropriate.

(d) Order of Appointment. Whenever the Court concludes that the appointment of an attorney is warranted, the Court shall issue an order directing the appointment of an attorney to represent the *pro se* party. The order shall be transmitted promptly to the Clerk. If service of the summons and complaint has not yet been made, an order directing service by the United States Marshal or by other appropriate method of service shall accompany the appointment order.

(e) Notification of Appointment. After an attorney has been selected, the Clerk shall send the attorney a copy of the order of appointment. Copies of the pleadings filed to date, relevant correspondence, and all other relevant documents shall be forwarded to the Clerk's office nearest to the attorney and made available for immediate review and copying of the necessary papers without charge. In addition to notifying the attorney, the Clerk shall also notify all of the parties to the action of the appointment, together with the name, address and telephone number of the appointed attorney.

(f) Duties and Responsibilities of Appointed Counsel. On receiving notice of the appointment, the attorney shall promptly file an appearance in the action to which the appointment applies unless precluded from acting in the action or appeal, in which event the attorney shall promptly notify the Court and the putative client. Promptly following the filing of an appearance, the attorney shall communicate with the newly-represented party concerning the action. In addition to a full discussion of the merits of the dispute, the attorney shall explore with the party any possibilities of resolving the dispute in other forums, including but not limited to administrative forums. If after consultation with the attorney the party decides to prosecute or defend the action, the attorney shall proceed to represent the party in the action unless or until the attorney-client relationship is terminated as these Rules provide. In the Court's discretion, stand-by counsel may be appointed to act in an advisory capacity. "Stand-by counsel" is not the party's representative; rather, the role of stand-by counsel is to provide assistance to the litigant and the Court where appropriate. The Court may in its discretion appoint counsel for other purposes.

(g) Reimbursement for Expenses. Pro Bono attorneys who are appointed pursuant to this Rule may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources and, absent extraordinary circumstances, shall not exceed **\$1,200.00**. Any expenses in excess of **\$300.00** should receive the Court's prior approval. If good cause is shown, the Court may approve additional expenses. Request for reimbursement should be submitted on the Pro Bono Fund Voucher and Request for Reimbursement Form and be accompanied by detailed documentation. Counsel are advised that vouchers submitted in excess of **\$1,200.00**, absent the Court's prior approval, may be reduced or denied. All reimbursements made by withdrawal from the District Fund shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize withdrawals. **To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed R. Civ. P. 54, the appointed attorney must submit a verified bill of costs on the form the Clerk provides for reimbursement of such expenses.**

(h) Grounds for Relief from Appointment.

After appointment, an attorney may apply to be relieved of an order of appointment only on one or more of the following grounds, or on such other grounds as the appointing judge finds adequate for good cause shown:

1. some conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;
2. the attorney does not feel competent to represent the party in the particular type of action assigned;
3. some personal incompatibility exists between the attorney and the party or a substantial disagreement exists between the attorney and the party concerning litigation strategy; or
4. in the attorney's opinion the party is proceeding for purposes of harassment or malicious injury or the party's claims or defenses are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

(i) Application for Relief from Appointment.

Any application by an appointed attorney for relief from an order of appointment on any of the grounds set forth in this Rule shall be made to the Court promptly after the attorney becomes aware of the existence of such grounds or within such additional period as the Court may permit for good cause shown.

(j) Order Granting Relief from Appointment.

If the Court grants an application for relief from an order of appointment, the Court shall issue an order directing the appointment of another attorney to represent the party. Where the application for relief from appointment identifies an attorney affiliated with the moving attorney who is able to represent the party, the order shall direct appointment of the affiliated attorney with the consent of the affiliated attorney. Any other appointment shall be made in accordance with the procedures set forth in these Rules. Alternatively, the Court shall have the discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.

83.4 Discipline of Attorneys. (Amended January 1, 2007)

(a) The Chief Judge shall have charge of all matters relating to discipline of members of the bar of this Court.

(b) Any member of the bar of this Court who is convicted of a felony in any State, Territory, other District, Commonwealth, or Possession shall be suspended from practice before this Court and, upon the judgment of conviction becoming final, shall cease to be a member of the bar

of this Court.

On the presentation to the Court of a certified or exemplified copy of a judgment of conviction, the attorney shall be suspended from practicing before this Court and, on presentation of proof that judgment of conviction is final, the name of the attorney convicted shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(c) Any member of the bar of the Northern District of New York who shall resign from the bar of any State, Territory, other District, Commonwealth or Possession while an investigation into allegations of misconduct is pending shall cease to be a member of the bar of this Court.

On the presentation to the Court of a certified or exemplified copy of an order accepting resignation, the name of the attorney resigning shall, by order of the Court, be struck from the roll of members of the bar of this Court.

(d) Any member of the bar of the Northern District of New York who shall be disciplined by a court in any State, Territory, other District, Commonwealth, or Possession shall be disciplined to the same extent by this Court unless an examination of the record resulting in the discipline discloses

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject;
3. that the imposition of the same discipline by this Court would result in grave injustice; or
4. that the misconduct has been held by this Court to warrant substantially different discipline.

On the filing of a certified or exemplified copy of an order imposing discipline, the attorney shall, by order of the Court, be disciplined to the same extent by this Court. It is provided, however, that within thirty (30) days of service on the attorney of the order of discipline imposed by the Northern District of New York, either the attorney or a bar association designated by the Chief Judge in the order imposing discipline shall apply to the Chief Judge for an order to show cause why the discipline imposed in the Northern District of New York should not be modified on the basis of one or more of the grounds set forth in this Rule. The term "bar association" as used in this Rule shall mean the following: The New York State Bar Association or any city or county bar association.

(e) Any member of the bar of this Court who is convicted of a misdemeanor in any State,

Territory, other District, Commonwealth, or Possession, upon such conviction, may be disbarred, suspended, or censured.

Upon the filing of a certified or exemplified copy of a judgment of conviction, the Chief Judge may designate a bar association to prosecute a proceeding against the attorney. The bar association shall obtain an order requiring the attorney to show cause within thirty (30) days after service, personally or by mail, why the attorney should not be disciplined. The Chief Judge may, for good cause, temporarily suspend the attorney pending the determination of the proceeding. On the attorney's answer to the order to show cause, the Chief Judge may set the matter for prompt hearing before a court of one or more judges or shall appoint a master to hear and to report findings and a recommendation. After a hearing and report, or if the attorney makes no timely answer or the answer raises no issue requiring a hearing, the Court shall take action as justice requires. In all proceedings, a certificate of conviction shall constitute conclusive proof of the attorney's guilt of the conduct for which the attorney was convicted.

(f) Any attorney who has been disbarred from the bar of a state in which the attorney was admitted to practice shall have their name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended automatically for a like period from practice in this Court.

(g) (1) In addition to any other sanctions imposed in any particular case under these Rules, any person admitted to practice in this Court may be prohibited from practicing in this Court or otherwise disciplined for cause.

(2) Complaints alleging any cause for discipline shall be directed to the Chief Judge and must be in writing. If the conduct alleged in the complaint is deemed sanctionable by the Chief Judge, the Chief Judge shall appoint a panel attorney to investigate and, if necessary, support the complaint. At the same time, the Chief Judge shall refer the matter to a magistrate judge for all pre-disposition proceedings.

(3) The Chief Judge shall appoint a panel of attorneys who are members of the bar of this Court to investigate complaints and, if the complaint is supported by the evidence, to prepare statements of charges and to support such charges at any hearing. In making appointments to the panel, the Chief Judge may solicit recommendations from the Federal Court Bar Association and other bar associations and groups. Attorneys shall be appointed to the panel for terms not to exceed four years without limitation as to the number of terms an attorney may serve. An attorney from this panel who is appointed to investigate and support a complaint in accordance with subsection (3) below ("panel attorney") may be reimbursed for expenses incurred in performing such duties from the Pro Bono Fund to the extent and in the manner provided in N.D.N.Y.L.R. 83.3(g).

(4) If the panel attorney determines after investigation that the evidence fails to establish probable cause to believe that any violation of the Code of Professional Responsibilities has occurred, the panel attorney shall submit a report of such findings and conclusions to the Chief Judge for the consideration of the active district court judges.

(5) If the panel attorney determines after investigation that the evidence establishes probable cause to believe that one or more violations of the Code of Professional Responsibilities has occurred, the panel attorney shall prepare a statement of charges alleging the grounds for discipline. The Clerk of the Court shall cause the Statement of Charges to be served upon the attorney concerned (“responding attorney”) by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this Court and, if different, to the last known address of the attorney as shown in any other source together with a direction from the Clerk that the responding attorney shall show cause in writing within thirty days why discipline should not be imposed.

(6) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned magistrate judge shall schedule a prompt evidentiary hearing. The magistrate judge may grant such pre-hearing discovery as deemed necessary, shall hear witnesses called by the panel attorney supporting the charges and by the responding attorney, and may consider such other evidence included in the record of the hearing as deemed relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The magistrate judge shall report his or her findings and recommendations in writing to the Chief Judge and shall serve them upon the responding attorney and the panel attorney. The responding attorney and the panel attorney may file objections to the magistrate judge’s report and recommendations within twenty days of the date thereof.

(7) An attorney may not be found guilty of a disciplinary charge except upon a majority vote of the district judges, including senior district judges, that such charge has been proven by clear and convincing evidence. Any discipline imposed shall also be determined by a majority vote of the district judges, including senior district judges, except that in the event of a tie vote, the Chief Judge shall cast a tie-breaking vote. If the complaint under subsection (2) above giving rise to the disciplinary proceeding was submitted by a district judge, that judge shall be recused from participating in the decisions regarding guilt and discipline.

(8) Unless other wise ordered by the Court, all documents, records, and proceedings concerning a disciplinary matter shall be filed and conducted confidentially except that, without further order of the Court, the Clerk of the Court may notify other licensing jurisdictions of the imposition of any sanctions.

(h) A visiting attorney permitted to argue or try a particular cause in accordance with L.R. 83.1 who is found guilty of misconduct shall be precluded from again appearing in this Court. On entry of an order of preclusion, the Clerk shall transmit to the court of the State, Territory, District, Commonwealth, or Possession where the attorney was admitted to practice a certified copy of the order and of the Court's opinion.

(i) Unless the Court orders otherwise, no action shall be taken pursuant to L.R. 83.4 (e) and (f) in any case in which disciplinary proceedings against the attorney have been instituted in the State.

(j) The Court shall enforce the N.Y.S. Lawyer's Code of Professional Responsibilities, as adopted from time to time by the Appellate Division of the State of New York and as interpreted and applied by the United States Court of Appeals for the Second Circuit.

(k) Nothing in this Rule shall limit the Court's power to punish contempts or to sanction counsel in accordance with the Federal Rules of Civil or Criminal Procedure or the Court's inherent authority to enforce its rules and orders.

83.5 Contempt.

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Fed. R. Civ. P. 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit on which the notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for resulting damages, and evidence as to the amount of damages that is available to the moving party. A reasonable attorneys' fee, necessitated by the contempt proceeding, may be included as an item of damages. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers on which it is based shall be served on the contemnor's attorney; otherwise service shall be made personally in the manner provided for by the Federal Rules of Civil Procedure for the service of summons. If an order to show cause is sought, the order may, on necessity shown, embody a direction to the United States Marshal to arrest and hold the alleged contemnor in bail in an amount fixed by the order, conditioned upon appearance at the hearing and further conditioned upon the alleged contemnor's amenability to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the resulting damages, the alleged contemnor shall, on demand, be entitled to have oral evidence taken either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, a written demand shall be made on or before the return day or adjourned day of the application; otherwise the alleged contemnor shall be deemed to have waived a trial by jury.

(c) If the alleged contemnor is found to be in contempt of the Court, an order shall be made and entered

1. Reciting or referring to the verdict or findings of fact on which the adjudication is based;
2. Setting forth the amount of the damages to which the complainant is entitled;
3. Fixing the fine, if any, imposed by the Court, which fine shall include the damages found and naming the person to whom the fine shall be payable;
4. Stating any other conditions, the performance of which shall operate to purge the

contempt;

5. Directing, in the Court's discretion, the arrest and confinement of the contemnor by the United States Marshal until the performance of the condition fixed in the order and payment of the fine or until the contemnor is otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. On an order of contempt, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) If the alleged contemnor is found not guilty of the charges, the contemnor shall be discharged from the proceeding and, in the discretion of the Court, shall have judgment against the complainant for costs, disbursements and a reasonable attorneys' fee.