GENERAL ORDER 09-6

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for implementation subject to a reasonable period for public notice and comment to be determined by the clerk (see 28 U.S.C. §2071(a)):[1]

1. LOCAL RULE CV-5 Service and Filing of Pleadings and Other Papers

(a) **Electronic Filing Required**. Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

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(2) **Registration for Electronic Filing**.

(A) The clerk shall register all attorneys admitted to the bar of this court, including those admitted pro hac vice, as Filing Users of the court's Electronic Filing System. Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil and Criminal Procedure. The clerk shall provide Filing Users with a user log-in and password once registration is completed. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. After registration, attorneys are required to maintain their own account information, including changes in e-mail address.

[1]New language appears in <u>underlined text</u>; deleted language appears in ~~strikeout~~ text.

(i) If the clerk's office receives a "bounce-back" notice from an e-mail account (i.e., an undeliverable e-mail), the Filing User will be promptly notified by the clerk's office via telephone or otherwise and given an opportunity to update his or her e-mail address within CM/ECF. If, after that notification and a reasonable passage of time, "bounce-backs" continue to occur in that account, the clerk's office is authorized to remove the defunct or undeliverable e-mail address from the CM/ECF database. The Filing User, not the clerk's office, has the primary responsibility of ensuring that his or her e-mail address is functional. See Local Rule CV-5(a)(2)(A), above.

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(6) **Attachments and Exhibits**. Filing Users must submit separately in electronic form and identify each exhibit or attachment, unless the court permits conventional filing. *See* Section (4), "File Size Limitations," above; Local Rules CV-7(b), CV-56(d) (requirements for documents attached to motions).

(7) **Sealed Documents.**

(A) Unless authorized by statute or rule, a document in a civil case shall not be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

(B) A motion to file document(s) under seal must be filed separately from the document(s) sought to be sealed. A motion to seal that is filed as a sealed document does not need to include the certification specified in section (A) above. For additional rules regarding the filing of sealed documents in

criminal cases, see Local Rule CR-49(b).

(C) Documents requested or authorized to be filed under seal or ex parte shall be filed in electronic form. ~~Documents requested or authorized to be filed ex parte shall be filed with the clerk in .pdf format on a CD-ROM disk. The content of the CD-ROM disk will not be uploaded to the court's CM/ECF system. The CD-ROM disk will be forwarded to the presiding judge for his or her review~~. All sealed or ex parte documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel, and may do so in electronic form, and forcomplying with Local Rule CV-5(a)(9) regarding courtesy copies of filings. When a sealed order is entered by the court, the clerk will send a sealed copy of the order only to the lead attorney for each party (see Local Rule CV-11), who is responsible for distributing the order to all other counsel of record for that party.

Comments: The intent of new section (a)(2)(A)(I) is to allow the clerk's office to remove a defunct or chronically malfunctioning e-mail address after reasonable notice to the Filing User. The last sentence reiterates that it is the Filing User who is primarily responsibility of ensuring that his/her e-mail address is a functional one.

Section (a)(6) was amended to add a requirement that attachments be better identified. This means that the filer needs to insert a more specific description of the attachment in the docket text when the attachment is filed.

Section (a)(7)(C) was amended because capabilities of the CM/ECF software now allow attorneys to electronically file sealed ex parte motions. Under such procedures, only the filing party and the presiding judge and his or her staff have access to the sealed ex parte document.

2. LOCAL RULE CV-6 Computation of Time

When a party may or must act within a specified time after service, three days are added after the period would otherwise expire under Fed.R.Civ.P. 6(a), regardless of the method of service. This three-day extension applies only to responses due within a certain time after "service" of a preceding document.

Comment: The purpose of this rule is to provide that the additional time in Fed.R.Civ.P. 6(d) will apply in the Eastern District of Texas even when a document is served by hand delivery. This change is intended to end the disfavored practice of attempting to shorten a party's response time by serving documents by hand rather than by electronic service. The second sentence of the new rule is intended to caution practitioners that the rule is limited to responses due within a certain time after "service" of a document, and does not and cannot extend time periods that run from "filing" of a document or "entry" of a judgment (e.g., motions under FRCP 50 or 59, or the time for filing a notice of appeal under FRAP 4).

3. LOCAL RULE CV-7 Motions Practice

(a) **Generally.** All motions, unless made during a hearing or trial, shall be in writing, filed as a separate document, conform to the requirements of Local Rules CV-5 and CV-10, and shall be accompanied by a ~~separate~~ proposed order for the judge's signature. The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Motions, responses, replies and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format. All other documents, including attachments and exhibits should be in "searchable PDF" form wherever possible.

(1) **Dispositive Motions.** A dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding

attachments, unless leave of court is first obtained. See Rule CV-56 regarding attachment to motions for summary judgment and responses thereto. Any reply or surreply ~~brief~~ to an opposed dispositive motion filed pursuant to section (f) of this rule shall not exceed ten pages, excluding attachments.

If a party files more than one summary judgment motion, ~~In addition to the above limitations, unless leave of court is first obtained,~~ the following additional limitations shall apply: (1) a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments; (2) a party's responses to summary judgment motions shall not exceed sixty pages collectively, excluding attachments; (3) a party's reply ~~briefing~~ to summary judgment motions shall not exceed twenty pages collectively excluding attachments; and (4) a party's surreply ~~briefing~~ to summary judgment motions shall likewise not exceed twenty pages collectively, excluding attachments.

Dispositive motions shall contain a statement of the issues to be decided by the Court. Responses to dispositive motions must include a response to the movant's statement of issues.

(2) **Non-dispositive Motions.** Non-dispositive motions shall not exceed fifteen pages excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or surreply ~~brief~~ to an opposed non-dispositive motion filed pursuant to section (f) of this rule shall not exceed five pages, excluding attachments.

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(e) **Time to File Response**. A party opposing a motion has 12 days from the date the motion

was served in which to ~~serve and~~ file a response and any supporting documents, after which the court will consider the submitted motion for decision. ~~Except for motions served under Fed.R.Civ.P. 5(b)(2)(A), three days shall be added to the prescribed time period pursuant to Fed.R.Civ.P. 6(d).~~ See Local Rule CV-6 (three days added to the prescribed period). Any party may separately move for an order of this court lengthening or shortening the period within which a response may be filed.

f) **Reply Briefs.** Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within 5 days from the date the response is served.. A surreply responding to issues raised in the reply may be served and filed within 5 days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

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(j) **Re-urged Motions in Transferred/Removed Cases.** Except in prisoner cases, any motions pending in another federal or state court made by any party will be considered moot at the time of transfer or removal unless they are re-urged in this court. See also Local Rule CV-81(d).

(k) **Motions for Leave to File**. With the exception of motions to exceed page limitations, motions for leave to file a document must be accompanied by the document sought to be filed. The motion and the document should be filed separately. If the motion for leave to file is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the previously filed document will be stricken. The time for filing any responsive documents shall run from the date of the order granting the motion for leave to file.

(l) **Motions for Leave to Exceed Page Limitations.** A document that exceeds a page limitation established by these rules should be filed as follows: file the overlength motion, then separately file a motion for leave to exceed the page limitation. If the court denies the motion for leave to exceed page limitations, the portion of the document and attachments cited only therein that exceeds the page limitation will not be considered by the court, unless otherwise ordered. The time for filing any responsive documents shall run from the date of the order on the motion for leave to exceed page limitations.

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Comments: The word "separate" was deleted from section (a) because the court desires the proposed order to be filed as an attachment to the motion and not as a separate document. If they are filed as separate documents, they receive a separate document number on the electronic docket sheet and thus can be mistaken for an actual judge's order. Sections (a)(1) and (a)(2) were amended to provide clarity. Section (e) contains a cross-reference to new Local Rule CV-6, which is where the prior language regarding Fed.R.Civ.P. 6(d) was moved. .An exception was added to section (j) so that motions in transferred or removed prisoner cases do not need to be re-urged. The additional sentence in section (k) was added to mirror the same result regarding the time for filing a responsive document that is already specified in section (l).

The words "serve and" were deleted from section (e) so that it is clear that an e-document is timely if filed before midnight on the relevant due date.

4. LOCAL RULE CV-10 Form of Pleadings

(a) **Generally.** When offered for filing, all documents, excluding preexisting documentary exhibits and attachments, shall:

(1) be endorsed with the style and number of the action;

(2) ~~contain~~ have a caption containing the name and party designation of the party filing the document and a statement of the character of the document clearly identifying ~~each included pleading, motion or other document~~ it (e.g., Defendant John Doe's Answer; Defendant John Doe's Motion to Dismiss under Rule 12(b)(6)) [note: see Local Rule CV-38(a) for cases involving jury demands][~~counsel are encouraged to file pleadings, motions and other documents separately whenever possible, i.e., do not include a motion and a response, or an answer and a motion in the same document~~ see also Local Rule CV-7(a)(each motion must be filed as a separate document)];

(3) be signed by the attorney in charge, or with his or her permission;

(4) when filed by paper, be plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper~~, fastened at the top only, and punched at the top center with two holes 2 7/8 inches apart~~; and

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Comments: The word "contain" was replaced by "have" in section (a)(2) to avoid redundancy. The second note in section (a)(2) was replaced with a reference to Local Rule CV-7(a), which clarifies that motions are to be filed separately. The last clause in section (a)(4) was deleted, as it describes a procedure concerning paper documents that is no longer utilized.

5. LOCAL RULE CV-11 Signing of Pleadings, Motions and Other Documents

Lead Attorney.

(a) **Designation.** On first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise.

(b) **Responsibility**. The lead attorney is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.

(c) **Signing the Pleadings**. Every document filed must be signed by the lead attorney, or by an attorney who has the permission of the lead attorney. Requests for postponement of the trial shall also be signed by the party making the request.

(1) *Required Information.* Under the signature shall appear the

(A) attorney's individual name;
(B) state bar number;
(C) office address including zip code;
(D) telephone and facsimile numbers; and
(E) e-mail address~~, if available~~.

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(g) **Sanctions Concerning Vexatious Pro Se Litigants.** The court may make orders as are appropriate to control the conduct of a vexatious pro se litigant. See also Local Rule CV-65.1(b).

*Comment*s: With mandatory e-filing for attorneys, an attorney's e-mail address should always be available. This prompted the omission from section (c)(1)(E).

New section (e), formerly the last sentence in Local Rule CV-65.1(b), was moved to Rule 11, since it related to sanctions, which is covered by Fed.R.Civ.P. 11. This change conforms this particular local rule to the uniform numbering scheme.

6. LOCAL RULE CV-63 Inability of a Judge to Proceed

Reassignment of Actions after Recusal or Disqualification

(a) **Single-Judge Divisions.**

(1) Upon the disqualification or recusal of a judge from participation in an action or proceeding pending in a division wherein actions are assigned to only one judge, a reassignment ~~and transfer~~ of the action or matter shall be made in accordance with an order of the chief judge of the district.

(2) When the chief judge is the only judge who is assigned actions in a particular division and is disqualified or recuses himself in an action or proceeding pending in that division, the action or matter systematically shall be reassigned ~~and transferred~~ to the judge in active service, present in the district and able and qualified to act as chief judge, who is senior in precedence over the remaining judges in the district. Such action or matter may be reassigned ~~and transferred~~ by such acting chief judge as provided in section (a)(1) above.

(b) **Multi-Judge Divisions.** Upon the disqualification of a judge from participation in an action or proceeding pending in a division wherein the caseload is divided between two judges, the action or matter systematically shall be reassigned ~~and transferred~~ to the other judge sitting in that division. Where the caseload in the division is divided between more than two judges, the action or matter systematically shall be reassigned ~~and transferred~~ randomly to a judge in the division who is not disqualified. The clerk shall randomly assign another case to the recusing/disqualified judge in place of the case he/she recused in or was disqualified in. In instances where each judge in a two-judge or a multi-judge division recuses himself or is disqualified, the action or matter systematically shall be reassigned ~~and transferred~~ in accordance with an order of the chief judge of the district to any judge in active service, in another division who is not disqualified.

(c) **All Judges Disqualified.** If all of the judges in the district shall recuse themselves or be dis-

qualified to serve with reference to a particular civil or criminal action or matter, the clerk of the court shall, without delay, so certify to the chief judge of the Court of Appeals for the Fifth Circuit, in order that he may re-assign such action or matter to a suitable judge.

Comment: Pursuant to this change, cases that need to be reassigned due to recusals or other disqualifications will not be transferred to the newly-assigned judge's division.

7. LOCAL RULE CV-65.1 Security; Proceedings Against Sureties

(a) **No Attorneys, Clerks, or Marshals as Sureties.** No attorney, clerk, or marshal, nor the deputies of any clerk or marshal shall be received as security on any cost, bail, attachment, forthcoming or replevy bond, without written permission of a judge of this court.

(b) **Vexatious Litigants; Security for Costs.** On its own motion or on motion of a party, and after opportunity to be heard, the court may at any time order a pro se litigant to give security in such amount as the court determines to be appropriate to secure the payment of any costs, sanctions, or other amounts which may be awarded against a vexatious pro se litigant. ~~The court may also make such other orders as are appropriate to control the conduct of a vexatious pro se litigant.~~

Comment: The last sentence of section (b) is about the sanctioning of pro se litigants, and not security. It therefore has been moved to Local Rule CV-11 concerning sanctions.

8. LOCAL RULE CV-83 Rules by District Courts; Judge's Directives

(a) **Docket Calls**. Traditional docket calls are abolished. Each judge shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls.

(b) **Transferred or Remanded Cases**. No sooner than the twentieth day following an order of

the court transferring the case to another district court or remanding it to the appropriate state court, the clerk shall ~~mail~~ transmit the case file to the directed court. Where a case has been remanded to state court, the clerk shall mail: (1) a certified copy of the court's order directing such action, and (2) the original of all pleadings and other ~~papers~~ documents on file in the case. Where a case has been transferred to another federal district court, the electronic case file shall be transferred to the directed court. If a timely motion or reconsideration of the order of transfer or remand has been filed, the clerk shall delay mailing or transferring the file until the court has ruled on the motion for reconsideration.

Comment: New capabilities of the CM/ECF software have made the e-transfers of docket information from another federal court easy to do.

9. **LOCAL RULE CR-24 Trial Jurors**

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(c) **Signature of the Petit Jury Foreperson.** The petit jury foreperson shall sign all documents or communications with the court using his or her initials.

Comment: New section (c) avoids the inadvertent public disclosure of the criminal petit jury foreperson's full name. It is similar in intent to existing Local Rule CR-6(c) regarding the signature of the grand jury foreperson.

10. **LOCAL RULE AT-1 Admission to Practice**

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(d) An attorney who is not admitted to practice before this court may appear for or represent a party in any case in this court only upon an approved application to appear *pro hac vice*. When an attorney who is not a member of the bar of this court appears in any case before this court, he or she shall first submit an application to appear *pro hac vice* to the clerk of court. The applicant must read and comply with Local Rule AT-3, the "Standards of Practice to Be Observed by Attorneys" and the local rules of this court. The application

shall be made using the form that appears as Appendix K to the local rules, and must be signed by the applicant personally. Such application also shall be accompanied by a $25.00 local fee. Any attachments to pro hac vice applications will be handled as electronic sealed documents by the clerk's office. The application shall be acted upon with dispatch by the clerk on the court's behalf. The clerk shall notify the applicant as soon as possible after the application is acted upon.

(e) Absent an order of the court to the contrary, all active attorneys who are admitted to practice before this court shall be assessed an annual bar membership fee. State and federal government attorneys are exempted from paying the fee, however, as long as they are in government service. The fee will be collected triennially, with the amount to be determined by the court prior to each collection period. All attorneys who have not paid the fee by the deadline shall be suspended from practice without further order of the court. Upon payment of outstanding fees, any attorney suspended for non-payment of fees will be immediately reinstated without order of the court.

Comments: The new sentence in section (d) is designed to avoid disclosure on the Internet of sensitive personal information contained in pro hac vice applications. Pro hac vice applications are currently submitted to the court in paper format, see Local Rule CV-5(a)(1)(G), and the application is scanned by the clerk's office into electronic format and is filed on the docket of the case in which the pro hac vice applicant seeks to appear. While the main body of the application would continue to be available online, all attachments to pro hac vice applications, however, would be handled as electronic sealed documents by the clerk's office, since such attachments sometimes contain sensitive personal information regarding an applicant, and sealing these attachments avoids public disclosure of potentially sensitive personal information.

The new language in section (e) acknowledges that the court has the authority to suspend the annual bar membership fee if appropriate. This is typically done to avoid accumulating an excessively large balance in the attorney admission fund.

10. APPENDIX E Plan for the Random Selection of Jurors

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Section 6. Master Jury Wheels

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~~Public notices shall be posted in each jury division of this district announcing the random selection of names for the master jury wheels as well as in the appropriate division(s) for the later random selection from the qualified wheels for jury panels as they are scheduled to occur.~~ A general notice shall be posted in the clerk's office and on the court's website that explains the process by which names for jury wheels are randomly and periodically drawn.

Comment: The Jury Selection and Service Act, 28 U.S.C. Sections 1864(a), 1866(a) and 1869 (k), were recently amended to eliminate noticing and public drawing requirements. The new language paraphrases new language contained in section 1866(a) of the Act.

10. APPENDIX O PLAN FOR THE ADMINISTRATION OF NON-APPROPRIATED FUNDS

The following plan shall guide the administration and operation of the court's Non-Appropriated Fund (the "Fund") pursuant to the Guide to Judiciary Policies and Procedures, Vol.I, Chapter VII, Part O.

I. **Source of the Fund:** Fees paid by attorneys who apply to join or renew admission to the Bar of the Eastern District of Texas in excess of the basic fee set by the Judicial Conference and all income derived from the corpus shall be the source of the Fund. Neither the fees nor the increase of the corpus are monies appropriated by Congress.

A. Fees for the fund shall be collected from members of the Bar triennially, i.e., once every three years. The current fee is $10 per year ($30 for three years). The fee shall be pro-rated for attorneys who become new bar members after the date that triennial fees are collected, e.g., an attorney who becomes a new bar member during the second year of the triennial

cycle will be charged $20, not $30. The amount of the fee may be changed or suspended by further order of the court. Attorneys who fail to pay the fee within a reasonable amount of time from a due date established by the Clerk will lose their bar membership, subject to reinstatement upon payment of the fee.

Comment: The new language makes it clear that the court can suspend the collection of attorney admission fees. This action was recently taken in order to avoid accumulating an excessively large balance in the non-appropriated fund. See General Order 08-14.

Signed this 10th day of February, 2009.

FOR THE COURT:

DAVID FOLSOM
Chief Judge