

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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

DAVID J. MALAND, CLERK
BY
DEPUTY *David Maland*

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 immediate implementation.¹ These amendments shall be posted forthwith on the court's Internet website, found at www.txed.uscourts.gov.

1. LOCAL RULE CV-4 Complaint, Summons and Return

- (a) Where electronic filing is not required under Local Rule CV-5(a), the original and one copy of the complaint in a civil action must be filed with the clerk, except in patent, trademark or copyright cases, where an original and two copies of the complaint must be filed. A civil cover sheet listing any related cases shall accompany the complaint. See Local Rule CV-42. Any waiver of service of summons shall be done in accordance with Rule 4(d), Fed.R.Civ.P. If service of summons is not waived, an original and two copies of the summons in a civil action must be prepared by the attorney for the plaintiff and submitted for each defendant to be served with a copy of the complaint. Additional copies of the complaint and summons in a civil action may be required by the clerk for service through certain governmental agencies or on certain governmental defendants. The clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.

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Comment: The clerk's office recommended this change, since attorneys will be able to file civil complaints electronically this fall. The paper filing requirements in the rule are

¹New language appears in underlined text; deleted language appears in ~~strikeout~~ text.

applicable to persons exempt from e-filing under our rules. All other provisions in this rule apply to all filers.

2. 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.

(1) **Exemptions from Electronic Filing Requirement.** The following are exempted from the requirement of electronic filing:

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- ~~(D)~~ filings to be kept under seal;
- ~~(E)~~ D) consents to proceed before a magistrate judge
- ~~(F)~~ E) proof of service of the initial papers in a civil case;
- ~~(G)~~ F) Papers received from another court under Fed.R.Crim.P. 5(c), Fed.R.Crim.P. 20 and Fed.R.Crim.P. 40 papers received from another court;
- ~~(H)~~ G) official administrative records or transcripts of prior court or administrative proceedings required to be filed by law, rule or local rules;
- ~~(I)~~ H) notice of appeal;
- ~~(J)~~ I) motion application to appear pro hac vice; and

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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.

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- (4) **File Size Limitations.** No single electronic file, whether containing a document or an attachment, may exceed five megabytes in size. Documents and/or attachments in excess of five megabytes must be divided into multiple files and accurately described to the court. See also page requirement for motions and responses in Local Rule CV-7.

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- (7) **Sealed Documents.** Documents requested or authorized to be filed under seal or filed ex parte shall be filed in electronic form. ~~paper form with the court.~~ Unless otherwise directed by the clerk's office, such documents shall be submitted on a CD-ROM, and must comply with the file size and other form requirements of Local Rule 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 for complying 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.

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- (10) **Technical Failures.** - A technical failure does not relieve a party of exercising due diligence to timely file and serve documents. A Filing User whose filing is made untimely as the result of a technical failure at the court may seek appropriate relief from the court will have a reasonable grace period to file

from the time that the technical failure is cured. There will be a notice on the court's website indicating when the database was down and the duration of the grace period. Notice of technical failures at the court will be posted on the court's website. A Filing User whose filing is made untimely as the result of a technical failure not attributable to the court may seek appropriate relief from the court.

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- (c) **Filing of Sealed Documents.** Unless authorized by statute or rule, documents may not be filed under seal, unless accompanied by a motion to seal or containing a written certification by counsel following the certificate of service that the court already has granted authorization to seal. authorized by the court.

Comments: Subsection (D) in section (a)(1) was eliminated due to the amendment to section (a)(7) which requires filings under seal to be submitted electronically.

The change to section (a)(1)(F) was added to include Fed.R.Crim.P. 5(c).

The language in section (a)(1)(I) was changed from motion to application, since the clerk's office approves these applications rather than the judges.

An explanatory note was added to section (a)(2) to remind counsel of their obligation to keep their account information current.

The change to (a)(4) provides a helpful cross-reference to Local Rule CV-7.

The proposed amendment to section (a)(7) requires the filing party to submit an electronic version of the sealed document to the court, and specifies the format as CD-ROM, but gives the clerk discretion to permit filing in another format (such as e-mail attachment or floppy disk). This rule will allow court staff to download the electronic version provided by counsel into the court's sealed database for use by judges and law clerks. A helpful cross-reference to the courtesy copy requirement is provided. The proposal also requires the lead attorney to provide co-counsel with copies of sealed orders. This reduces the workload

of court staff, who currently must print and mail voluminous sealed orders.

The new language in section (a)(10) is intended to provide more information and clarity regarding the existing procedure on technical failures.

Section (c) was revised to make it clear that a document cannot be filed under seal unless accompanied by a motion to seal or a written certification by counsel that the Court has previously granted permission to file under seal.

3. **LOCAL RULE CV-7 Motions Practice**

- (a) **Generally.** All motions, unless made during a hearing or trial, shall be in writing, and 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 a separate paper document 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.

Comment: The proposal requires motions, responses, replies, and proposed orders to be submitted in searchable PDF format, which is much more useful to court staff. Text can be copied and otherwise altered in this format. Non-searchable PDF documents, such as most scanned PDF documents, do not permit this flexibility. Attorneys are encouraged, but not required, to provide attachments and exhibits in "searchable PDF" format as well.

4. **LOCAL RULE CV-10 Form of Pleadings**

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- (e) **Redaction of Personal Identifiers.** Whenever possible, the parties should refrain from including the following personal identifiers from all documents filed with the court:

- (1) **Social Security numbers.** If an individual's Social Security number must be included in a document, only the last four digits of that number should be used.
- (2) **Names of minors.** A minor should only be identified by initials, unless the minor's parent, guardian or next friend consents to the use of the minor's full name, or uses it in a document filed with the court. Where initials are used for identification, they are sufficient for all purposes for identification
- (3) **Dates of birth.** If an individual's date of birth must be included in a document, only the year should be used.
- (4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- (5) **Home addresses.** If a home address must be included, only the city and state should be listed.

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Comment. New section (e)(5) has been added in conformance with the "Model Local Rule Regarding Privacy and Public Access to Electronic Criminal Case Files" endorsed by the U.S. Judicial Conference.

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

Attorney-in-charge Lead Attorney

- (a) **Designation.** On first appearance through counsel, each party shall designate an attorney-in-charge a lead attorney. Signing the pleadings effects designation.
- (b) **Responsibility.** The attorney-in-charge 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 attorney-in-

~~charge~~ lead attorney, or by an attorney who has the permission of the ~~attorney-in-charge~~ lead attorney. Requests for postponement of the trial shall be signed by the attorney of record and the party making the request.

- (1) *Required Information.* Under the signature shall appear the
 - (A) attorney's individual name;
 - (B) designation of ~~“attorney-in-charge”~~ “lead attorney”;
 - (C) state bar number;
 - (D) office address including zip code;
 - (E) telephone number with area code.
 - (F) telephone number with area code of facsimile machine, if available (see Local Rule CV-77); and
 - (G) e-mail address, if available.
- (2) *Allowed Information.* The name of the law firm and name(s) of associate counsel may appear with the designation “of counsel.”
- (d) **Withdrawal of Counsel.** Although no delay will be countenanced because of a change in counsel, withdrawal of the ~~attorney-in-charge~~ lead attorney may be effected by motion and order, under conditions imposed by the court.
- (e) **Change of Address.** Notices will be sent only to the e-mail and/or mailing address on file. A ~~lawyer or~~ pro se litigant is responsible for keeping the clerk advised in writing of the current address. ~~Counsel of record and~~ Pro se litigants must include in this advisement ~~of change of address~~ the case numbers of all pending cases in which they are participants in this district.

Comments. The term “attorney-in-charge” has been changed to “lead attorney” because the nationally-developed CM/ECF database refers only to “lead attorneys.”

The amendments to section (e), “Change of Address,” accommodate current electronic filing procedures.

6. LOCAL RULE CV-79 Books and Records Kept by the Clerk

(a) **Disposition of Exhibits ~~And/or Sealed Documents~~ by the Clerk.** Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to ~~take the following actions:~~

~~(1) Exhibits.~~ destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial.

~~(2) Sealed documents.~~ Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

Comment. This amendment deletes a procedure the clerk’s office is no longer using, since Federal Records Center rules prohibit the shredding of original documents.

7. LOCAL RULE CR-24 Trial Jurors

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(b) **Communication with Jurors.**

(1) No party or attorney for a party shall converse with a member of the jury during the trial of an action.

(2) After a verdict is rendered but before the jury is discharged from further duty,

an attorney ~~may~~ must obtain leave of the judge before whom the action was tried to converse with members of the jury.

- (3) Nothing in this rule shall be construed to limit the power of the judge before whom an action is being or has been tried to permit conversations between jurors and attorneys.

Comment. This revision clarifies that judicial permission is mandatory. The corresponding civil rule already contains mandatory language.

8. LOCAL RULE CR-49 Service and Filing of Papers

~~(a) **Generally.** Except as specified in section (b) of this rule,~~ All pleadings and papers submitted in criminal cases must conform to the filing, service and format requirements contained in Local Rules CV-5, CV-10 and CV-11.

~~(b) **Multi-defendant cases.**~~

~~(1) **Copies.** Parties in criminal cases shall provide the clerk with the original plus one copy of each document (see Local Rule CR-49(a)(2), plus one additional copy for the case file of each defendant to whom the document applies.~~

Comment. Section (b) is deleted because there is no paper record anymore.

9. LOCAL RULE CR-55 Records

(a) **Removal of Papers, Records, etc.** The clerk shall not allow original copies of any papers, records, etc. in a criminal case to be removed from the clerk's office except by an employee of the court.

(b) **Disposition of Exhibits and/or Sealed Documents by Clerk.** Thirty days after a criminal action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to ~~take the following actions:~~

~~(1) **Exhibits.** destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial. Sealed exhibits submitted in miscellaneous cases to obtain pen registers, wiretaps, etc. will be maintained in the court's vault for three (3) years. At the end of this time, the sealed exhibits will be destroyed;~~

~~(2) **Sealed documents.** Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.~~

Comment. See comment to number 6 above.

10. LOCAL RULE AT-3 Standards Of Practice To Be Observed By Attorneys

Attorneys who appear in civil and criminal cases in this court shall comply with the following standards of practice in this district:²

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(K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

The Court also encourages attorneys to be familiar with the Codes of Pretrial and Trial Conduct promulgated by the American College of Trial Lawyers, which can be found on the Court's website at <http://www.txed.uscourts.gov/>, and to conduct themselves accordingly.

Comment: The judges of the Eastern District of Texas support including the ACTL's

²The standards enumerated here are set forth in the *en banc* opinion in *Dondi Properties Corp. v. Commerce Savings and Loan Association*, 121 F.R.D. 284 (N.D. Tex. 1988).

Codes of Pretrial and Trial Conduct in the Local Rules in order to promote professionalism and courtesy among trial lawyers during all stages of litigation. The codes are intended to provide additional guidance to trial lawyers on proper conduct in pretrial and trial proceedings.

11. APPENDIX D Joint Final Pretrial Order

H. LIST OF EXHIBITS

Counsel should fill out and submit to the Court ~~the form~~ an exhibit list containing the information in the form available on the court's website, located at *www.txed.uscourts.gov*, or at the clerk's office. The list shall include exhibits to be used solely for impeachment.

Comment: This amendment requires parties to provide the information set forth in the exhibit list form available on the clerk's website, but gives parties the option of reorganizing existing data (such as by creating columns in an exhibit list spreadsheet or table to track the columns on the Court's form) to provide the information directed by the Court. This is intended to assist counsel in avoiding reentry of exhibit related data.

12. APPENDIX E Plan for the Random Selection of Jurors³

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Section 9. Drawing of Names from Qualified Jury Wheels; The Issuance of Summonses; and Disclosure of Names

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e. Disclosure of Names

(1) **Disclosure of Petit Jury Lists.** The lists of names of prospective petit jurors shall be disclosed only by the Courtroom Deputy at the time of voir dire proceedings, and not prior to that time. All such lists shall be returned to the Courtroom Deputy at the conclusion of such voir dire proceedings. These restrictions shall not limit the authority of the Chief

³This amendment to the jury plan is subject to approval by the Fifth Circuit Judicial Council. The provision is currently being reviewed by the Council.

Judge of this District, or any judicial officer of this District while presiding over his or her respective docket, to release any such list of names at an earlier time where such earlier release is consistent with this Plan or other pertinent statute.

(2) **Grand Jury Panels.** The list of names of persons summoned to any court in this District for prospective grand juror service shall remain confidential. The names of persons chosen to serve as grand jurors in this District shall remain confidential in the interest of justice until otherwise ordered by the Court 28 U.S.C. § 1863(b)(7).

(3) Disclosure of Juror Information to the Media and the Public. A request for disclosure of juror names to the media or public may be made of the judge to whom the case is assigned in accordance with the above provisions relating to the timing of the release of juror information. The clerk shall not release juror names to the media or public unless specifically authorized by the assigned judge.

Comment: The revision to Section 9 reflects recent direction from the Administrative Office of the U.S. Courts which encouraged inclusion of language dealing with disclosure of juror information to the media and the public in jury plans.

13. APPENDIX H Court-Annexed Mediation Plan

2. QUALIFICATION AND COMPENSATION OF MEDIATORS; ETHICAL PRINCIPLES

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- (3) **COMPENSATION.** Mediators shall be compensated at a rate provided by the parties. Absent agreement of the parties to a different apportionment, the cost of the mediator's services shall be borne equally by the parties to the mediation conference. The Court reserves the right to review the reasonableness and apportionment of the fee. The Court also may at any time request a mediator to conduct a mediation *pro bono*, or for a reduced rate.

Comment: This revision confirms the possibility of judicial oversight of the reasonableness and apportionment of mediation fees.

14. APPENDIX N Policy on Possession and Use of Electronic Devices in Courthouses

In order to protect the integrity of judicial proceedings, to facilitate the legitimate use of electronic devices, and to comply with the mandates of the Federal Rules of Civil and Criminal Procedure and the Judicial Conference of the United States, the Court adopts this policy on the possession and use of electronic devices in the courthouses of the Eastern District of Texas.

Except as otherwise ordered in writing by a judge of this court, the rules set forth below govern possession and use of electronic devices in the federal courthouses in the Eastern District of Texas.

1. Portable telephones, tape recorders, cameras, laptop computers, handheld devices such as PDAs and Blackberries and other electronic devices are prohibited in Eastern District courthouses, except as mentioned below.
2. Law enforcement officers and attorneys and their staffs are permitted to bring electronic devices, including laptop computers, handheld devices (such as PDAs and Blackberries), and telephones, with or without cameras, into Eastern District courthouses, subject to screening by court security personnel. Portable telephones may be carried inside courtrooms, but must be turned off. Court security personnel may bar from the courthouse any device that appears to pose a threat to security, safety, or the integrity of judicial proceedings.
3. Judicial proceedings may not be recorded, broadcast or transmitted by any means, including still or moving photographs or any type of sound recording.
4. No photographs may be taken, or images or sound captured in any form within Eastern District courthouses absent permission in writing by a judge of this court.
5. The use of wireless communication devices other than portable telephones within courtrooms is permitted, subject to orders of the presiding judge, including orders pursuant to Fed. R. Evid. 615 regarding exclusion of witnesses.

The Marshals Service is directed to adopt procedures implementing this policy, and for posting this notice at the public entrances of the courthouses in this district.

Comment: This is a new policy, formulated at the suggestion of the Judicial Conference Committee on Court Administration and Case Management, which has encouraged all federal courts to adopt policies on the possession and use of electronic devices in courthouses.

The general rule is that electronic devices of any kind may not be brought into Eastern District courthouses. The policy, however, permits law enforcement officers and attorneys and their staffs to bring electronic devices, including wireless laptop computers and portable telephones with cameras, inside the courthouses. The policy also prohibits any type of recording or photographing within the courthouse without permission of a judge. Section 5 regarding wireless connectivity was added in anticipation of the court providing access to wireless computer networks in the courthouses.

General Order 04-07 regarding courthouse security is hereby REPEALED, as it has been replaced by Appendix N to the Local Rules.

SIGNED this 2nd day of November, 2005.

FOR THE COURT:


THAD HEARTFIELD
Chief Judge