

GENERAL ORDER 06-9

**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 immediate implementation:<sup>1</sup>

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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(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 filed ex parte shall be filed in electronic form. In non-patent cases, unless otherwise

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<sup>1</sup>New language appears in underlined text; deleted language appears in ~~strikeout~~ text.

directed by the clerk's office, such documents shall be submitted on a CD-ROM. In patent cases, parties shall contact the clerk's office to obtain permission to file documents under seal using the court's CM/ECF system. All sealed 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 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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~~(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.~~

~~(d)~~ **Certificates of Service.** The certificate of service required by Fed.R.Civ.P. 5(d) shall indicate the date and method of service.

~~(e)~~ **d) Service by Facsimile Or Electronic Means Authorized.** Parties may serve copies of pleadings and other case related documents to other parties by facsimile or electronic means in compliance with Local Rule CV-5(a) in lieu of service and notice by mail. Such service is deemed complete upon sending. Service after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

*Comment:* Separate provisions relating to sealed documents have been combined as

follows: former section (c), as amended, is now sections (A) and (B) of Local Rule CV-5(a)(7), and former section (a)(7) is now section (a)(7)(C).

In new section (a)(7)(A), the certification requirement has been changed to allow counsel to file a document under seal, provided that counsel certifies that a motion for leave to file the document under seal already has been filed. This change acknowledges that exigent circumstances sometimes require counsel to file a document under seal prior to receiving the court's permission to do so.

New section (a)(7)(B) specifies that a motion to seal document(s) must be filed separately from the document(s) sought to be sealed. This is because the court's CM/ECF electronic filing software does not create a separate docket entry for the motion to seal when the motion is incorporated into another document. A cross-reference to new criminal rule provision CR-49(b) concerning sealed documents has been added.

## 2. LOCAL RULE CR-49 Service and Filing of Papers Documents

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**(b) Filing of Sealed Documents in Criminal Cases.** Documents in criminal cases that are filed under seal pursuant to general order<sup>2</sup> or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that (1) a motion for leave to seal the document in question has been filed or (2) the court has already granted authorization to seal. For filing sealed documents in civil cases, see Local Rule CV-5(c).

*Comment:* Due to the fact that many types of documents filed in criminal cases have been filed under seal by practice and by general order authorization in the past, these types

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<sup>2</sup>Existing general orders that fall into this category are General Order 93-3, "General Order on Sealed Indictments," and General Order 93-4, "General Order on Sealed Criminal Matters."

of sealed filings are being addressed separately in a new criminal rule provision.

3. **APPENDIX D JOINT FINAL PRETRIAL ORDER**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TEXAS**  
\_\_\_\_\_ **DIVISION**

\_\_\_\_\_,  
Plaintiff(s)  
vs.  
\_\_\_\_\_,  
Defendant(s)

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Civil Action No. \_\_\_\_\_

**JOINT FINAL PRE-TRIAL ORDER**

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Approved as to form and substance:

\_\_\_\_\_  
Attorney(s) for Plaintiff(s)

\_\_\_\_\_  
Attorney(s) for Defendant(s)

~~(Note: Each attorney of record shall personally sign and certify to the pre-trial order. The signature of one attorney for another "by permission" will not be accepted by the court. An attorney of record may sign and certify this order on behalf of opposing counsel "with permission.")~~

This Joint Pre-Trial Order is approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Note: Where additional parties are joined or intervene pursuant to Rules 14, 19 and 24 of the Federal Rules of Civil Procedure, the style of the case and the various sections of the pre-trial order should be modified to reflect the additional parties and information pertaining to them.)

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*Comment:* The note that required each attorney to sign and certify to the pretrial order has been removed because it envisioned a face-to-face meeting of attorneys where the order could be agreed upon and physically signed. This practice has changed due to electronic filing. Although it is possible to circulate the order for electronic signatures prior to filing, the simpler practice is to allow plaintiff's counsel, who typically prepares the order, to procure opposing counsel's consent to the content of the order via telephone or e-mail prior to filing. Plaintiff's counsel can then sign the order on behalf of opposing counsel "with permission."

**4. APPENDIX M PATENT RULES**

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**2. GENERAL PROVISIONS**

**2-1. Governing Procedure.**

(a) **Initial Case Management Conference.** When the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the Case Management Statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

- (1) Proposed modification of the deadlines provided for in the Patent Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

- (2) Whether the Court will hear live testimony at the Claim Construction Hearing;
- (3) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;
- (4) The order of presentation at the Claim Construction Hearing; **and**
- (5) The scheduling of a Claim Construction Prehearing Conference to be held after the Joint Claim Construction and Prehearing Statement provided for in P. R. 4-3 has been filed; and
- (6) Whether the court should authorize the filing under seal of any documents containing confidential information.

*Comment:* New subsection (6) requires the parties to discuss at the Initial Case Management Conference whether the court should authorize the filing under seal of any documents containing confidential information.

Signed this 1<sup>st</sup> day of May, 2006.

**FOR THE COURT:**

  
THAD HEARTFIELD  
Chief Judge